EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Miss P Onochie		London Borough of Ealing

Heard at: London Central

On: 17-21, 27-28 and 31 January 2022 and (in Chambers) on 7-8 February 2022

Before: Employment Judge H Stout
Tribunal Member L Jones
Tribunal Member S Brazier

Representations
For the claimant: Mr G C Obiweluozo (solicitor)
For the respondent: Mr B Amunwa (counsel)

JUDGMENT

The unanimous judgment of the Tribunal is that:

(1) The Respondent did not contravene the Equality Act 2010 and the Claimant's claims for direct race discrimination, harassment and victimisation are dismissed.

(2) The Claimant's claim that she was subjected to detriments for having made protected disclosures contrary to s 47B of the Employment Rights Act 1996 are not well-founded and are dismissed.

REASONS

1. Ms Onochie (the Claimant) is employed by the London Borough of Ealing (the Respondent). In these proceedings, commenced on 25 October 2019, she brings claims for direct race / national origin discrimination under ss 13 and 39 of the Equality Act 2010 (EA 2010), harassment related to race / national origin under ss 26 and 39 of that Act and victimisation under ss 27 and 39 of that Act. She further brings claims under s 47B of the Employment Rights Act 1996 (ERA 1996) that she was subjected to detriments for having made protected disclosures.

The type of hearing

2. The hearing was held in person in a well-ventilated (and very cold) Tribunal room that was open to the public. One or two members of the public joined the hearing at various points during the evidence.

The issues

3. The issues to be determined are set out in an Appendix to this judgment in the form agreed by the parties. Many of them are ~~struckthrough~~. This indicates that they are issues that the Claimant agreed prior to the hearing (and Mr Obiweluozo confirmed at the start) were only relied on as 'background' issues and not as specific claims. As such, we explained at the start of the hearing that we would take them into account, but it was a matter for the parties to ensure that alleged matters of background were explored in the course of questioning of witnesses if they considered it necessary to their claim. Not all of them were explored and so not all of them are mentioned in this judgment. At the start of the hearing, the Claimant applied to amend her claim to include a claim concerning the reference given by Ms Hutchinson in March 2018. We refused that application for reasons given orally at the start of the hearing.

The Evidence and Hearing

4. We were provided with a bundle by the Respondent of 1179 pages and a separate bundle by the Claimant of 288 pages. In this judgment, page references are to the Respondent's bundle unless preceded by a C, in which case they are to the Claimant's bundle. We also admitted into evidence certain additional documents which were added to the bundle. These included: notes purportedly of a 1-2-1 meeting between the Claimant and Ms Hutchinson on 10 July 2017, an induction timetable for the Claimant, the full copy of the Respondent's Disciplinary and Grievance policy and a single page of Suspension Guidance produced by Mr Obiweluozo.

5. We received a witness statement and oral evidence from the Claimant. For the Respondent, we received statements and heard oral evidence from the following witnesses whose roles at the relevant time were as follows:-

    a. Salwah Hutchinson – Services Manager/Housing Demand Manager;
    b. Glenda Joseph – Business Service Officer in the Business Support Team;
    c. Thomas James – Interim Sheltered Housing and Careline Manager;
    d. Lynne Duvall – Head of the Respondent's Housing Demand Service;
    e. Lucy Ondier-Thomas – Housing Demand Team Manager;
    f. Mark Wiltshire – Direct of Safer Communities and Housing July 2016 – March 2020, and now Director of Community Development;
    g. Julie Wicks – Payroll Team Leader;
    h. Oyekan Reginald – Housing Solutions Officer;
    i. Alison Reynolds – Director of Customer and Transactional Services.

6. We explained our reasons for various case management decisions carefully as we went along.

The facts

7. We have considered all the oral evidence and the documentary evidence in the bundle to which we were referred. The facts that we have found to be material to our conclusions are as follows. If we do not mention a particular fact in this judgment, it does not mean we have not taken it into account. All our findings of fact are made on the balance of probabilities and having considered the totality of the evidence.

Background

8. The Claimant describes herself as being Black African and of Nigerian national origin. Since 1989 she has worked for various local authorities in various capacities, mostly in their housing departments. From about January 2016 until 25 June 2017 the Claimant worked for the Respondent local authority on an agency basis as a Finance & Income Officer within the Landlord Services Department. She applied for and received an offer of permanent employment in the Business Services team, Housing Demand Service as a Business Services Officer (BSO) in a team managed by Salwah Hutchinson (Housing Demand Manager). She remained in that role until 13 March 2018 when she was successful in obtaining a new role in a different team as a Suitability and Refusals Officer, managed by Lucy Ondier-Thomas (Housing Demand Team Manager). The Claimant remains in employment with the Respondent.

9. In overview, the facts of this case fall into six periods as follows:-

a. The period from June 2017 to November 2017 when the Claimant started in the BSO role and there was conflict between her and her team members, and the Claimant made various complaints about her team members and Ms Hutchinson, in particular a complaint of 10 August 2017 about an incident in the canteen and a complaint of 22 September 2017 about her team members more generally;
b. The period from November 2017 to March 2018 when the Claimant understood that Ms Hutchinson had concerns about her performance and conduct and proposed to terminate her employment, during which the Claimant raised a formal grievance on 17 November 2017 and then was off sick from 5 December 2017 to 16 February 2018;
c. The period from March 2018 to 25 May 2018 when the Claimant commenced employment in her new role under Ms Ondier-Thomas;
d. The period from 25 May 2018 to 24 October 2018 when allegations were made by four of the Claimant's former team members (Glenda Joseph, Priscilla Donkor, Maria Byrne and Charmaine Calliste) that she had shown them sexually explicit images or videos on her mobile phone (including child pornography), and the Claimant was arrested by the police and suspended from work pending investigation;
e. The period from 24 October 2018 onwards when, following the police decision to take 'no further action', the Claimant returned to work, but the Respondent's own internal disciplinary investigation continued before concluding that disciplinary action was not appropriate, a fact of which the Claimant was notified on 5 December 2018 after she had raised her second formal grievance on 19 November 2018;
f. The period from December 2018 to 30 October 2019 when the Claimant's second formal grievance (and grievance appeal) were being determinined, the Claimant commencing these proceedings on 25 October 2019, shortly before the end of that period.

<u>The Housing Demand Service Team</u>

10. The Housing Demand Service is managed by Ms Hutchinson, who is of Black Caribbean origin. For most of the time relevant to this claim, there were 11 people in the team, which worked on the fourth floor of the Respondent's building in the "Purple Section". The other people in the team, and their racial/national origins (insofar as they are known or appear to be to Ms Hutchinson) are as follows:
    a. Carlene Beepath – Black British (from Barbados, i.e. Caribbean);
    b. Maria Byrne – Irish origin;
    c. Priscilla Donkor – Black or Black British – African (Ghanaian);
    d. Charmaine Calliste – Black British from Granada (Caribbean);
    e. Glenda Joseph – Black British from Caraku (Caribbean), married to somebody of Black African/Ghanaian origin;
    f. Kwaku Acheampong – Black African (Ghanaian);
    g. Sadnah Vijay – Afghanistan;
    h. John Boafe – Black African (Ghanaian);
    i. Amira Ahmed – Indian;
    j. "Milan" – Indian.

11. The Housing Demand Service sits within Business Support Services. The Head of Business Support Services was at the relevant time Lorna Anderson. Ms Anderson is understood by Ms Hutchinson to be Black British of Jamaican origin. Ms Hutchinson reported to Ms Anderson during 2018. Since 2019 Ms Hutchinson has reported to Jack Dempsey (Head of Housing Allocations). Ms Anderson and Mr Dempsey in turn report to Lynne Duvall (Head of Housing Demand), who is White.

12. The BSO role involved assessing applications for housing and matching applicants to suitable properties negotiating with B&Bs and landlords. Particular activities include bookings (i.e. calling landlords to make accommodation bookings), sign-ups (i.e. completing the paperwork associated with a booking) and B&B invoicing (i.e. checking invoices from Bed & Breakfast (B&B) accommodation and authorising payment). The team deals with people who are homeless. Some requirements are anticipated and pre-booked. Others come in as walk-ins or on-the-day referrals that need to be assessed and processed on an emergency basis so that accommodation can be found for them before close of business that day.

13. Priscilla Donkor left the Council on 29 June 2018. Other key members of the team are still employed, but only Ms Hutchinson and Ms Joseph have given evidence to us.

The Respondent's equality and diversity training

14. Mr Wiltshire, Ms Hutchinson, Ms Reynolds and Ms Anderson were provided by the Respondent with Equality in the Workplace training in 2014. Mr Wiltshire supplemented this in oral evidence, explaining that in his role equality and diversity training is an integral part of all the training he does and his job. He has in particular been working with an independent commissioner for equality. Ms Hutchinson also gave evidence that she has been on the BAME staff group committee at the Respondent since 2018, and that group looks to address workforce inequalities. Ms Duvall had not completed the Respondent's equality and diversity training but her role involves managing an ethnically diverse workforce where over 80% of the extended management team are from BAME communities.

15. On the last day of evidence, when cross-examining Mr Wiltshire, Mr Obiweluzo went to p 323 in the bundle for the first time and suggested to Mr Wiltshire that the only equality and diversity training he had done was in 2014 as shown on that sheet. Mr Wiltshire explained that was only a record of the training specifically on equality and diversity done on the Respondent's training system. Equality and diversity training has also happened in other ways since then as part of other training as he explained in oral evidence. The other witnesses were not challenged on their training record. All of them denied in cross-examination that they had at any point treated the Claimant any differently because of her race or nationality.

16. Mr Obiweluozo relied in closing submissions on a decision of the EAT in *Allay (UK) Limited v Gehlen* (UKEAT/0031/20/AT) [2021] ICR 645 where he submitted the EAT had upheld a decision that staff equality training had become stale after 20 months and that a failure to refresh the training meant that the employer could not rely on the 'reasonable steps' defence. However, that case does not mean that all equalities training becomes stale after 20 months. That was a just a finding of fact by the Tribunal in that case, in the light of the fact that further harassment had taken place within that 20-month period. Although 2014 is a long time ago, given that most of the Respondent's witnesses were not cross-examined about their training record and so did not have the opportunity to give us the additional evidence that Mr Wiltshire gave us (and which we accept), we are not prepared to find that the Respondent's equalities training had become 'stale' in this case. In any event, we do not find that the training the Respondent's witnesses did have had any bearing (one way or another) on what happened in this case.

The commencement of the Claimant's employment as BSO

17. Under the Respondent's Probation Procedure policy all new employees serve a minimum probationary period of six months, and the Claimant's contract as BSO reflected that. The policy (161) provides that regular meetings will take place during probation to set performance expectations, provide supervision and feedback, etc, and that if issues of misconduct, unacceptable performance or attendance arise these will be dealt with under the probation procedure rather than the Council's disciplinary and performance policies, and a probationary review hearing will be held.

18. The Respondent also has a policy on induction (311) which applies across the Respondent. We find that when the Claimant commenced as BSO there was a period of induction. It does not appear to have been as formal or well-documented as that which the Claimant received when moving to the Suitability and Refusals Officer role, but we accept there was an induction process. We reject the suggestion by the Claimant that the two documents that the Respondent produced relevant to this mid-way through cross-examination of Ms Hutchinson (in response to questions in cross-examination raising this issue for the first time) were "fabricated". The Claimant had seen them previously at the probation review meeting on 24 January 2018 as they were included as appendices to Ms Hutchinson's probation report (427). The Claimant disputes that there was any formal induction or that there was a 1-2-1 meeting on 10 July 2017, but Ms Hutchinson has not actually asserted that there was a meeting on 10 July. We do not have to resolve whether there was or there was not. Nothing turns on it.

19. The Claimant complains that SMART targets were not set for her during probation, that training needs were not identified or an action plan drawn up. However, Ms Hutchinson says that targets are not set during induction. She said that training needs were identified and addressed, as can be seen from the notes of the 1-2-1s that both parties agree did take place on 15 August

2017 and 26 September 2017. We do not have to decide whether the induction and training process was fair or reasonable. This is not an unfair dismissal case. We are, however, satisfied that Ms Hutchinson has told the truth about what happened with training and induction in the Claimant's case and although the process could have been more formal and well-documented, there is no evidence to suggest that a different approach would have been taken by Ms Hutchinson with any other employee.

The Claimant's relationship with the Business Support Services Team

20. We deal in this section with general allegations about the relationship between the Claimant and her team. Other specific incidents are dealt with in the chronological account below.

21. The Claimant and Ms Hutchinson first became acquainted as colleagues when working for the same team in the London Borough of Hammersmith and Fulham in about 2008, where the Claimant was employed as a temporary staff member. When the Claimant's contract ended there, the Claimant requested a reference from Ms Hutchinson, which Ms Hutchinson provided (1042). The Claimant regarded that reference as positive.

22. The Claimant alleges that she was treated differently by the rest of the Business Support team from the outset. The Claimant contends in these proceedings, that the team and Ms Hutchinson would use 'foul language' and make racially motivated abuses/remarks/curses towards her, such as Glenda Joseph, Priscilla Donkor and Ms Hutchinson mocking African names (eg "Yetunde"), saying 'funny African names', 'smelly African food', making curses in Caribbean dialect, saying that 'black people come from banana boat'. These allegations by the Claimant have evolved over the course of the events with which we are concerned.

23. In her first written complaint of 22 September 2017, they barely featured. In that complaint the Claimant complained about being rebuffed by her team members in various ways: she alleged that Priscilla Donkor 'flared up' in answer to a question by the Claimant saying (in what the Claimant indicates was a direct quote) *"I cannot be doing bookings and training you at the same time. I feel you should get training from other member of staff on Sign-ups"*; she complained about the canteen incident (as to which, see below); she complained about Priscilla Donkor not wanting to tell her why she was crying when she was upset in the office, Priscilla telling the Claimant she was being 'insensitive', and Ms Hutchinson telling her that Ms Donkor did not have to talk to the Claimant about what was upsetting her and that she (the Claimant) should not have followed her into the toilet; the Claimant complained about Glenda Joseph not replying when she called her three times on her day off and left her contact number with two other people to ask Glenda to call her back because she wanted to tell Glenda about how bad it was to drink Coca Cola; she complained about Glenda and Priscilla asking her to do sign-ups while she was being trained. In a numbered list at the end of this document of 22 September 2017, the Claimant wrote *"Too many gossips and whispers*

I find it intimidating" and *"Appropriate working language must be used to avoid others feeling intimidated"*. She did not specify further and did not accuse anyone of race discrimination.

24. In the Claimant's formal grievance of 17 November 2017 she complained about *"clinging friends in the team"*, which we take to be a reference to what she perceived as a 'clique'. She complained about Ms Beepath referring to her as *"the one beside you"* rather than by name, she accused the team of being *"loud, noisy, rude and gossips all the time".* She made allegations that she heard Ms Hutchinson while chatting with her friends call *"someone" "PIG's face"* and say that *"Foul LANGUAGE"* is 'normal' to the team. She also complained that Ms Hutchinson *"and her friends speak their Caribbean language, which I find intimidating … should not be allowed in an open plan office … a multi-cultural environment"*. She made no allegation of race discrimination beyond that.

25. When asked in her Stress Risk Assessment on 22 January 2018 whether she had experienced any bullying, racial or sexual remarks, the Claimant did not give any specific examples.

26. When asked about these allegations by Mr James in the grievance meeting on 26 January 2018, the Claimant is recorded in the notes of the meeting as replying *"the culture was loud and noisy"* and then *"explained that she was given some papers to take downstairs and an officer told her not to bother and to refuse to do it. SH and GJ were cursing and SH used the words 'pig's face' after she told her what was happening. She thought this was not nice and she had never seen a manager behave like that"*. Asked if she had made a complaint about that, the Claimant is recorded as replying that she had *"made a complaint that foul language should not be encouraged"*. She was also asked to give examples of what she meant and why she found it intimidating. The Claimant is recorded as replying, *"It was in a language she did not understand and they used it when they wanted to curse somebody. When she worked in Haringey they were not allowed to speak any other language other than English. It was not allowed in any other place she had worked. PO said they cursed everybody"*. The Claimant disputed the notes of the meeting at the time, but never actually provided specific corrections to it.

27. The first time that the Claimant made an explicit allegation of race discrimination is in her letter of 17 February 2018 to her trade union representative Mary Lancaster (which the Respondent accepts was copied to Ms Anderson) complaining about the handling of her probation and return to work by Ms Hutchinson. This letter does not contain a complaint about other team members. In this letter she says for the first time *"I believe had I been white, I would not have been treated this way"*.

28. In her second formal grievance of 19 November 2018 (submitted after she returned to work following her suspension and arrest) the Claimant made somewhat different complaints about her former team members: *"They made mockery of my nationality and continuous gossips and making jokes of*

African people and their funny names, in my presence and I felt intimidated. Salwah and Glenda in their gossip chats called an African ***Pigs face*** [sic]*. I am an African and Felt discriminated because of my Nationality. The name Yetunde (African name) is always a mockery topic in my presence. This was an unwanted behaviour I find offensive and I felt intimidated and humiliated. Foul language was the order of the day in my former team."*

29. In her claim in these proceedings the Claimant's allegations included that: on 28 November 2017 Ms Hutchinson *"called the Claimant names to her face, namely 'African pig face' by Salwah Hutchinson and Glenda Joseph"*, that between 26 June 2017 and March 2019 that the Claimant *"had to ensure comments made within earshot and eyeshot relating to her race, namely Glenda Joseph making a mockery of African names (eg Yetunde) and saying that the African foods (eg plaintain chips, nuts, etc.) that the Claimant ate was 'smelly' which led to the Claimant no longer eating with other staff and having to self-isolate and eat on her own. Glenda Joseph also stated that she has problems with the Black African race and that Black African people come from 'Banana Boats'";* that *"The Claimant had to endure working in an environment where the Caribbean language is spoken leading to her being and feeling excluded and isolated"*; that she was humiliated in a team discussion about fraud where Ms Joseph and others suggested that Nigerians were particularly prone to fraud, but Ms Hutchinson then accused the Claimant of saying that Nigerians were fraudsters, as well as many other complaints about the management of her work and performance by Ms Hutchinson.

30. In her witness statement for these proceedings, these allegations were further elaborated, the Claimant adding more allegations, including that *"on multiple occasions 8/8/2017, 18/9/2017, 2/10/2017, 10/11/2017, 19 and 20 February 2018 and 8 /3/2018, Glenda Joseph had made racial remarks about African foods to my hearing that it was smelly. She said Nigerians will not progress to a very high level and Africans should go back to their country where they live like monkeys"* and that *"Glenda Joseph and Priscilla Donkor have expressed numerous times their dislike for me. I sat beside Priscilla Donkor, and she says it boldly on the 15/7/2017 she hated Nigerians with passion to my hearing; she cared less if she hurt my feelings"*, that Ms Donkor *"laughed her head off saying Dutty Woman, Niaja, Bludclart, Wah di backside"* and that Ms Joseph said *"Niaja, Wah deh backside, Nanny rass, Batty woman, blow wow, chi chi girl, looking frass Niaja, fuck, suck your mother, dotty girl, dutty woman".* The Claimant in her witness statement also alleges that in August 2017 she asked Priscilla Donkor a question regarding a work system called ETAM and Ms Donkor refused to help, verbally attacking her, saying she *"hates Nigerians"* and *"should go where I would be with my type".* The Claimant says she was so upset by what was said about her food that in August 2017 she moved to the breakout area to eat her food away from the team. The Claimant further alleges that on 18 September 2017 Ms Hutchinson stood up 'in anger', *"shouted rudely the words Niaja, Wada Rass, Bumba Claat, waved her arm … aggressively … standing over [the Claimant] and banging the table and the wall using her hands"*.

31. Some of these allegations were put to Ms Hutchinson in cross-examination (eg the *"Pig's face"* allegation). She denied that, and in her witness statement denied all the other allegations. Ms Joseph denied the allegations in her witness statement and was not cross-examined on most of them. It was put to her that she mistreated the Claimant because of her race/nationality, to which Ms Joseph in oral evidence answered *"it was nothing to do with her race or her being a Nigerian, my brother-in-law is Nigerian, my niece and nephews are Nigerian, my husband is African, he is Nigerian"* and about the language allegations *"I come from Caraku a very small island, people of my age group speak Patois (broken French), this language [the Claimant alleges] tends to be more around Jamaican, we don't speak that at all it is totally foreign to me"*. Ms Joseph gave evidence that the Claimant was initially welcomed into the business support team and relations were initially good, although she found that the Claimant could be forthright. For example, when Ms Joseph pointed out an error in a letter the Claimant had drafted, the Claimant's response was that she *"had a degree and knew what she was doing"* and Ms Hutchinson also gave evidence that on several occasions the Claimant stated that she 'had a degree and her job was beneath her'. Ms Joseph acknowledged that relations had deteriorated, that the rest of the team found the Claimant difficult, that they felt she was *"slow"* and the team was 'carrying her', that she would not take advice or correction, and she also thought that the Claimant behaved very badly towards Ms Hutchinson (about which Ms Joseph led the team in complaining to Ms DuvallDuvall by email of 20 February 2018). Ms Joseph said that it was a relief when the Claimant got her new job and moved on because the team could be *"harmonious"* again; she was not going to pretend that she did not think it was good the Claimant had left, but she maintained that her relationship with the Claimant had, throughout, been 'professional', which she explained in oral evidence meant that they talked *"just about work and that was it"*.

32. The Claimant maintains that, from shortly after she started working in the team, the rest of the team were not talking to her. It was put to Ms Joseph several times that she was not talking to the Claimant, but Ms Joseph denied this. Ms Joseph does recount that the Claimant asked for personal mobile numbers of team members. When she and Jackie Chambers refused to give theirs, the Claimant refused to say 'good morning' to them. Ms Hutchinson suggested that Ms Joseph and the Claimant have a chat to resolve things, which they did.

33. As to the Claimant's allegations against team members of overtly racist conduct, we find that these do not reflect reality. We find that what the Claimant wrote in her complaint of 22 September 2017 and grievance of 17 November 2017 reflect the truth of the matter as it appeared to the Claimant to be at the time. Everything else is after-the-event elaboration. The Claimant may now have convinced herself of these more elaborate allegations, but she is mistaken. It is implausible that the Claimant was during 2017 experiencing explicit, overt race discrimination from members of her team but did not mention this in her written complaints at the time. Other allegations (for example the *"pig's face"* allegation) have undergone a metamorphosis such that the allegation now made is inconsistent with what was said by the

Claimant at the time. What started as, in effect, a generic expletive uttered by Ms Hutchinson as an expression of frustration becomes both Ms Hutchinson and Ms Joseph calling the Claimant *"African pig face"* to her face. Had that been what had happened, the Claimant could not have written what she did in her 2017 complaints, nor would she have answered Mr James in the grievance meeting as she did. Further, the Claimant's argument that she 'was not asked' what the foul language was at the time so did not get an opportunity to specify it until 2018 or in these proceedings is simply incorrect: she *was* asked in her Stress Risk Assessment and by Mr James in the grievance meeting in January 2018 and did not then say any of what she has now said. It is also implausible that Ms Joseph would have used Caribbean language of the sort alleged by the Claimant when that is not her language. On all of these elaborated allegations, accordingly, we accept Ms Hutchinson's and Ms Joseph's evidence and we reject the Claimant's.

34. It does not necessarily follow from our rejection of the Claimant's elaborated allegations that relations were good between the Claimant or the team, or that there was no race/nationality discrimination. The Claimant and the rest of the team did not get on well. The evidence before us shows that the Claimant was trying to make friends with other members of the team, but the way in which she went about this was (understandably in our judgment) regarded by her team members as inappropriate and they did not warm to her. The Claimant's expectation that Ms Donkor, who she barely knew, ought to tell her why she was crying in the office was unreasonable; her multiple attempts to contact Ms Joseph by phone on her day off in order to tell her about why Coca Cola was bad for her were inappropriate; her behaviour towards Raza in the canteen (which we deal with below), accusing her of 'poisoning' her was unreasonable, as was the Claimant's own refusal to apologise for that. The Claimant's attitude to work, and unwillingness to accept direction, maintaining a position that the work that they were doing (which most of them had been doing for years and she was not doing very well) was 'beneath her' would also have been off-putting for anyone. The other team members also felt that the Claimant's behaviour towards Ms Hutchinson was unreasonable (a feeling that came to a head on 20 February 2018). All of this meant that the Claimant was kept by other team members at something of a distance as she was perceived to be a difficult individual with poor social skills, but it was not the case, at least in the period up to December 2017, that team members were not speaking to the Claimant. They were still maintaining a professional relationship (as Ms Joseph put it) and still talking to each other about work matters.

35. It is also plausible that during this period the Claimant was still trying to ingratiate herself with team members. We factor in here the allegations that were made by Ms Donkor, Ms Byrne, Ms Calliste and Ms Joseph about the Claimant having (and showing them) sexually explicit images/videos on her phone. We deal with the specifics of these allegations below, but we note here our finding that we have found the allegations made by those individuals plausible and while we make no findings of fact as to the truth of those allegations (since the parties have expressly asked us not to do so, and it is not necessary for our decision) we do find that the Claimant was in the

autumn of 2017 still communicating enough with her team to share things with them that she had on her mobile phone, and that she did during the autumn of 2017 continue to try to initiate what she thought of as friendly interaction with other team members.

36. We also record here that the Claimant seems to have perceived there to be a group of friends (*"clinging friends"*) within the team who were 'excluding' her when in fact the relationship between other team members was not so close. Thus, although Ms Joseph did have Ms Hutchinson's personal phone number, they both confirmed that they did not socialise outside work; indeed, Ms Hutchinson has a special needs child and goes straight home from work to look after him. She does not go out to the pub or drink or socialise with anyone outside of work.

37. It was suggested by Mr Obiweluozo that there was a 'two-tier' system in the team, by which he meant a divide between the Claimant and the rest of the team members because of race/nationality. We find as a fact that there was tension between the Claimant and other team members, but we do not find that it was on grounds of race or nationality. Although Afro-Caribbeans were the most numerous in the team, they made up less than half the team members and (given our rejection of the Claimant's elaborated allegations of overtly racist conduct above) there is nothing from which we could infer that the divide between the Claimant and the rest of the team members was on grounds of race/nationality. It is significant in this respect that the key allegations against the Claimant of having sexually explicit material on her mobile were made by one person of Black African Ghanaian origin (Ms Donkor), one person of Irish origin (Ms Byrne) and two people of Black Caribbean origin (Ms Calliste and Ms Joseph). Although none of them precisely shared the Claimant's protected characteristic as they were not Nigerian, the allegations were not all made by people of Black Caribbean origin as the Claimant appears at times to allege or believe, and one of them was in fact, like the Claimant, Black African. On the other hand, there are strong, non-racial reasons, why there was a divide between the Claimant and the rest of the team, and that was because of her unreasonable behaviour towards team members in general, and Ms Hutchinson in particular, and her poor social skills as we have set out above.

<u>The canteen incident - first 2017 complaint</u>

38. On 9 August 2017 (or morning of 10 August – the date is not material) the Claimant complained to Ms Hutchinson about an incident where she said a member of security staff had 'manhandled' her out of the lift following a trip to the canteen and the Claimant had been accused by a canteen manager of being 'discriminatory' towards the canteen staff. The Claimant explained that she had not wanted to be served by a particular member of staff, Raza, as about 4.5 months previously Raza had 'tried to poison her' with a cup of coffee that was 'off'. However, Raza had served her anyway and then followed the Claimant and accused her (the Claimant) of discriminating against her (Raza) and asked her (the Claimant's) name, which the Claimant

refused to give, reminding the member of staff of the occasion 4.5 months previously when she had (in the Claimant's words) 'tried to poison her'. Raza had then asked security to ask the Claimant her name, which she still refused to give.

39. This is the first untoward issue that Ms Hutchinson was aware of with the Claimant. The Claimant explained that Ms Hutchinson went with the Claimant to the canteen and the member of security staff said that the manager of the canteen had alleged that the Claimant had been rude, and had discriminated against Raza and had called security.

40. Raza then made a written complaint about the Claimant, to which the Claimant responded by also making a written complaint. In the Claimant's letter (339) the Claimant alleges that Raza was in breach of health and safety/ well-being of staff, food safety and compliance with public health requirements.

41. Ms Hutchinson arranged to meet with Raza on 11 August. At this meeting Raza repeated her allegation that the Claimant was 'discriminating'. The Claimant accepts that at this stage Ms Hutchinson took her side to an extent, saying to Raza that she did not consider the Claimant was discriminatory because as a customer she was entitled to choose who she wished to be served by (380). There was then a delay in dealing with the issue as Ms Hutchinson was away and the café managers were still considering their position. The café managers eventually indicated that they did not want to pursue it, but considered an apology from the Claimant would be appropriate. The Claimant, however, refused to apologise.

42. Subsequently, Ms Joseph says that Kwaku Acheampong told her that the Claimant had said that she was unhappy about the Team and Ms Hutchinson over their lack of support for the canteen incident and that the Claimant threatened Ms Hutchinson. Ms Joseph suggested that Kwaku tell Ms Hutchinson this himself.

43. On 15 August 2017 there was a one-to-one meeting between the Claimant and Ms Hutchinson in which it was identified that she had been trained on B&B invoices and was 'fully conversant' with the process, there had been some problems with sign-ups; in other areas training was required and was identified (C4, 330).

44. On 18 September 2017 the Claimant and Ms Hutchinson had a further one-to-one meeting (347, 380). Both of them took notes of the meeting or wrote them up shortly afterwards.

45. Ms Hutchinson's notes of the one-to-one record discussion of issues with sign-ups taking a long time and of training required on bookings, which it is identified that Ms Beepath will provide. It is noted again that the Claimant is 'fully conversant' with the process on B&B invoices. The notes record that since the last one-to-one the Claimant had received more training from Ms Beepath and the only outstanding training still to be delivered was from Ms

Beepath on *"matching"*. Performance targets are not set for employees on probation, but performance is measured and reported as part of the team statistics, and Ms Hutchinson recorded that on the form. Ms Hutchinson confirmed all this in oral evidence, and we did not understand the Claimant to dispute that she had had this training, just that it was not in her view sufficient and/or should have been provided in a more structured way from the outset.

46. The Claimant and Ms Hutchinson have given differing accounts of the meeting on 18 September 2017. Ms Hutchinson's version is that during this meeting the Claimant sought to raise her concerns about Ms Joseph not wanting to give her her personal mobile phone number, which Ms Hutchinson says she was unwilling to talk about because she did not regard it as a work issue. Ms Hutchinson's notes (and evidence) indicate that she then sought to discuss the issue in the canteen and tried to explain that the Claimant needed to wear her name badge at all times in accordance with the Respondent's policy and give her name when asked. She also tried to persuade her to apologise, seeking to explain why making an allegation of 'poisoning' was prejudicial for a member of catering staff and an inappropriate response to having been given a coffee with milk that was 'off'. The Claimant refused. Ms Hutchinson perceived her as becoming aggressive and the Claimant walked out of the meeting. Despite the Claimant's behaviour, Ms Hutchinson did not consider it appropriate to pursue the matter formally. When the Claimant was asked in cross-examination why she had not apologised, it was clear that she still did not see why it might be unreasonable to accuse a member of canteen staff of 'poisoning' her despite it being evident that all that can have happened was that fatty or gone-off milk had been used in her coffee. As reasons for not apologising, the Claimant argued that when she had confronted Raza previously, she had looked frightened and refunded the money to the Claimant (as, indeed, the café did on 10 August 2017 as well – the Claimant seems to have taken this as an admission of guilt rather than obvious goodwill gesture). The Claimant also said that the incident had so affected her that she had not attended the café for months prior to the incident on 10 August 2017.

47. The Claimant says in her witness statement that she complained at this meeting on 18 September 2017 about foul language and racial remarks by Priscilla Donkor, but this is not reflected in her own notes of the meeting (C15). On her account, the Claimant says that she also complained to Ms Hutchinson about Ms Joseph's refusal to answer her calls on her day off, and that Ms Hutchinson became 'very interested' in why the Claimant had been trying to contact Ms Joseph for 'non-work' reasons. The Claimant did not consider that as it was a non-work matter she had to listen to Ms Hutchinson. She wrote, *"I was angry and felt enough is enough and to avoid more confrontation, I stood up to leave the meeting room"*. On the Claimant's account it was at this point that Ms Hutchinson tried to raise the canteen issue and get her to apologise for that. The Claimant was surprised by this as she had believed from their conversations in August 2017 that Ms Hutchinson was 'on her side'. The Claimant said that she left the meeting room and went straight to Ms Joseph to try to 'make peace' with her. The Claimant said that

Ms Joseph said that she had done nothing wrong, but mentioned the fact that the Claimant was 'still on probation', at which the Claimant took offence.

48. In her witness statement, the Claimant alleges that on this date Ms Hutchinson stood up 'in anger', *"shouted rudely the words Niaja, Wada Rass, Bumba Claat, waved her arm … aggressively … standing over [the Claimant] and banging the table and the wall using her hands"*. Ms Hutchinson denies this. She says she does not speak in such terms or ever behave in such a manner. The Claimant did not record this allegation in her notes of that meeting and we reject this allegation for the reasons we have rejected the Claimant's other elaborated allegations of race discrimination above.

49. Regarding the one-to-one meeting on 18 September 2017, we observe that there is in reality little significant difference between the Claimant and Ms Hutchinson about what happened at this meeting, just a major difference in perception. We find that Ms Hutchinson had genuine and reasonable concerns about the Claimant's performance and behaviour which she tried to raise with the Claimant. The Claimant was not receptive, became angry and demonstrative and walked out of the meeting early.

50. After this meeting, the Claimant requested a meeting with Lorna Anderson by email (336, 380 – 381). Ms Anderson responded to the Claimant's email. In oral evidence the Claimant added that she had spoken to Ms Anderson by the locker and she asked her what she wanted to speak to her about and advised her to join the trade union and put her grievance in writing formally. However, we then were taken to the version of this email at 830 of the bundle where the Claimant replied by email to Ms Anderson to say that all was fine, *"Sorry for alerting you, all sorted"*. When it was put to the Claimant that it looked as if she had not spoken to Ms Anderson on that occasion, she maintained that she had still had a conversation with Ms Anderson as she described and that it was on Ms Anderson's advice that she joined the trade union. However, we do not accept that the Claimant had any such conversation with Ms Anderson on or around 18 September 2017 as the Claimant's own letter of 22 September 2017 (341) states that she decided not to speak to Ms Anderson on that occasion. Likewise the Claimant's notes of the 18 September 2017 meeting state (C18) that she did not speak to Ms Anderson as she was not in the office so she *"calmed down and got on with [her] work"*. She also states there that she decided to join the trade union for support after Ms Hutchinson told her on 18 September 2017 that she had gone to HR to complain about her conduct in the one-to-one meeting that day. In the circumstances, we reject the Claimant's oral evidence on this point. She did not speak to Ms Anderon on this occasion.

51. On 20 September 2017 the Claimant was doing some training with Carlene Beepath when she was interrupted and asked by Ms Donkor and Ms Joseph to complete two sign-ups. The Claimant found this stressful and did not think she should have been asked to do this on a training day, but Ms Hutchinson explained that any member of the team might be called on to do emergency bookings and sign-ups. The team's priority is ensuring that homeless people are housed for the night. There may be up to 13 walk-up emergencies in one

day, who have to be assessed and then accommodation found for them. If doing an emergency sign-up had meant the Claimant had missed training, Ms Hutchinson said that she would have arranged further training, but the Claimant had completed the training.

52. On 21 September 2017 the Claimant was on training for a second day. She returned from lunch (with Carlene Beepath) and on return was challenged by Ms Hutchinson because she had not signed out (337). The Claimant says she did not know she needed to and this was 'micro-management' by Ms Hutchinson. Ms Hutchinson says that she was looking for the Claimant to get her to help with 'sign ups' and that once she had found her, she did come to help. We find that these incidents on 20 and 21 September 2017 are further instances of the Claimant's unreasonable and difficult-to-manage conduct, not of micro-management by Ms Hutchinson.

53. On 21 September 2017 the Claimant forwarded her complaint of 10 August 2017 about Ms Hutchinson and the canteen issue to Ms Anderson (338-340).

Second 2017 complaint

54. On 22 September 2017 the Claimant made a written complaint about Ms Hutchinson to Ms Anderson (341 – 345). This is the letter where the Claimant makes her first written complaint about a number of incidents we have already mentioned. The Claimant's letter begins *"I wanted to speak to you on 18 September 2017, but decided not to as I am worried because I am fairly new to the team and don't want to be seen as a trouble maker. The truth is I am dying in silence and it is affecting my health. After careful consideration I feel it is expedient to write to you in a proper format"*. She goes on to make complaints about Ms Donkor refusing to help her with bookings while she (Ms Donkor) was in the middle of bookings, though she also records that Ms Donkor and her had hugged and made up after that incident. She then complains about the canteen incident, adding her explanation that her digestive system is sensitive and that she had *"REMINDED"* (sic) Raza of her experience 4/5 months ago and *"categorically told her will not Trust her to Serve me again"*. She says that since that incident she has not 'patronized' the canteen. The Claimant complained about Ms Hutchinson's handling of the matter and asked for it to be 'finally resolved'. She then complains about another occasion (on 15 September 2017) when Ms Donkor was in tears in the office and would not tell the Claimant why, and about a *"non-work related issue"* with Glenda Joseph (on 16 September 2017) where the Claimant says she had called her three times on her day off work and left her contact number with Glenda's friends Kwaku and Jackie asking her to call her back. (The Claimant explained in her later grievance [364] and in oral evidence that Ms Joseph drinks a lot of *"coke"* and she wanted to show her a list of eight bad things that coke does to you.) Ms Joseph had not replied and the Claimant was offended by this and spoke to Ms Hutchinson about it as she had *"always felt free to discuss anything with [her]"*. Ms Hutchinson then spoke to Ms Joseph about it, but the Claimant was unhappy about this regarding it as a breach of confidence. She had not realised that Ms Hutchinson and Ms

Joseph were 'very good friends' as otherwise she would not have mentioned it. She then complained about the incidents of 20 and 21 September 2017 regarding training. She complained that Ms Hutchinson is listening to people in the team and there are *"a lot of gossips and whispers in the team, and I find it intimidating"*. She concluded by indicating that she had lost trust in Ms Hutchinson.

First formal grievance

55. Late on 1 November 2017 the Claimant emailed Ms Hutchinson to ask for a copy of her one-to-one *"for the Month of August 2017"*; Ms Hutchinson replied first thing next morning, apologising and attaching the notes of the 18 September 2017 meeting.

56. On 2 November 2017 there was a probation review meeting between Ms Hutchinson and the Claimant at which Ms Hutchinson sought to raise concerns about the Claimant's performance. The meeting had to be cut short as Ms Hutchinson had to attend another meeting and it was agreed to continue it the following day. After the meeting the Claimant emailed Ms Hutchinson complaining about Ms Hutchinson's way of speaking to her, suggesting she had been hostile from outset and saying that she (the Claimant) was feeling depressed after the meeting and wanted a union representative with her for the continuation of the meeting (353). In two replies Ms Hutchinson indicated it was fine to have a union representatives, and also suggested that the Claimant raise her concerns formally so they can be investigated. (The version of the latter email in the bundle is her sending this email to the wrong person, but the Claimant accepts that it was also sent to her, and Ms Hutchinson and the Claimant talked about it at their resumed meeting on 14 November 2017, as the Claimant's own notes of that meeting confirm (1036).)

57. On 8/9 November 2017 the Claimant was off work because she was having building work done (C21). She did not arrange her absence in advance and it clashed with the rescheduled probation review meeting.

58. On 10 November 2017 Ms Hutchinson tried to reconvene the probation review meeting, but the Claimant said she would only meet with Ms Hutchinson with a third party (Ms Anderson) present. In her witness statement, she alleges that Ms Hutchinson used Caribbean language in that meeting *"Wah Deh Rass"* and *"Niaja"* in a loud angry manner while kissing her teeth and pointing her finger, but this does not feature in the Claimant's notes of the meeting. Ms Hutchinson says this is completely untrue. She says she wanted to meet with the Claimant that day to continue her probation review meeting (SH notes at 355; C notes at 1045). We reject the Claimant's evidence on this for the reasons that we have rejected her elaborated allegations above.

59. On 14 November 2017 the Claimant's probation review meeting with Ms Hutchinson reconvened now with her trade union representative in

attendance. The Claimant made her own notes and maintains that Ms Hutchinson's account is inaccurate (C20/1036; SH's notes at 354). Ms Hutchinson explained her concerns about the Claimant's performance. In particular, Ms Hutchinson considered that the Claimant was too slow with bookings and with processing invoices. Ms Hutchinson says (and we accept as she was a generally reliable witness) that she has made similar criticisms of both white and Black Caribbean members of staff previously where justified. The Claimant became agitated during this meeting and Ms Hutchinson's notes indicate that her trade union representative had at least twice to tell the Claimant to allow Ms Hutchinson to finish speaking. The Claimant says that she secretly recorded this meeting and prepared her own notes from that secret recording, but she has not retained the recording and has not therefore disclosed it.

60. As with the previous one-to-one, we find there is much common ground between the Claimant and Ms Hutchinson as to what happened at this meeting. The Claimant's own notes indicate that she was angry at being challenged regarding her performance and that she considered Ms Hutchinson's concerns to be unjustified. However, we find that Ms Hutchinson had genuine and reasonable concerns about the Claimant's performance that she wished to raise with her. The Claimant was again not receptive, and we find that she did become agitated, to the extent that her trade union representative had to intervene as Ms Hutchinson's notes indicate. In preferring Ms Hutchinson's account of the meeting, we have taken into account the Claimant's conduct during the Tribunal hearing. On a number of occasions, she became agitated and raised her voice, or continued talking when she had been asked by the judge to stop. At one point she turned round in her seat and gestured aggressively towards the Respondent's witnesses so that the judge had to warn her that she might appear to be intimidating the witnesses. She occasionally interjected angrily to express disagreement when the Respondent's witnesses were giving evidence, saying they were lying. We find it likely that she behaved in similar ways when challenged by Ms Hutchinson.

61. On 17 November 2017 the Claimant filed her first formal grievance with Ms Anderson, with complaints against Ms Hutchinson, Ms Donkor and Ms Joseph (357-377). In this she complains about harassment and 'systematic bullying' and 'victimisation' by Ms Hutchinson and the team, but not about race discrimination or harassment explicitly. She does make allegations that she heard Ms Hutchinson while chatting with her friends call someone *"PIG's face"* and says that *"Foul LANGUAGE"* is 'normal' to the team. She also complains that Ms Hutchinson *"and her friends speak their Caribbean language, which I find intimidating … should not be allowed in an open plan office … a multi-cultural environment"*. She raised concerns about: the behaviour of the team generally; a discussion about fraudsters (but without any allegation of racism); a failure to confirm she was to attend training on 6 November 2017; Ms Hutchinson's handling of her complaint about Ms Joseph not returning her calls; Ms Hutchinson asking her to apologise to Raza regarding the canteen incident; Kwaku telling her that Ms Joseph was not talking to her; Ms Hutchinson recommending she should fail probation;

Ms Donkor refusing to train her on bookings; Ms Donkor refusing to tell her why she was crying; Ms Hutchinson saying that she was slow at bookings; being asked to do other work while on training with Ms Beepath; not being sent the notes of meetings; Ms Hutchinson's criticisms of her performance at the 14 November 2017 meeting; she concludes by stating there has been a breakdown of trust with Ms Hutchinson.

62. On 28 November 2017 Ms Hutchinson sent to the Claimant and her union representative, Kemi Atolagbe and Karen Miller, the Probation Mid Report form, the Review Meeting minutes of 14 November 2017 and a copy of the Claimant's complaint of 10 August 2017 about the canteen incident.

63. The Claimant says she had a breakdown in the office on 29 November 2017. She says that same day Ms Hutchinson openly remarked to the rest of the team that she would write a report to get rid of the Claimant. Ms Hutchinson did subsequently make a recommendation for the Claimant's dismissal to Ms Anderson in her Probation Report. However, we find that Ms Hutchinson did not openly remark to the rest of the team that she was going to write a report to get rid of the Claimant. Ms Hutchinson denies this and we find it implausible that Ms Hutchinson would have been so unprofessional. On the other hand, the Claimant's evidence has proved frequently unreliable and we reject it in relation to this allegation too.

64. On 30 November 2017 the Claimant emailed Ms Anderson regarding her complaints against Ms Hutchinson (395), attaching a table of complaints (395–418). It includes allegations of bullying, harassment and victimisation but does not refer to any differential treatment because of protected characteristics. It complains that Ms Hutchinson has 'set her up to fail' so that her friend could take over the Claimant's role and that trust between her and Ms Hutchinson has broken down. The letter states that the Claimant has *"sought legal advice"*.

65. On 1 December 2017 Ms Anderson emailed Sita Gore (Human Resources) indicating that she had not yet started investigating the grievance and that *"in light of my tenuous and very precarious relationship with Salwah, which has been brought to Lynne's attention in the past, it might be prudent to have someone else investigate … to preclude any hint of what might be perceived as management biasness by Salwah during the course of the investigation whether informal or formal"* (C33).

66. From 4 December 2017 to 12 February 2018 the Claimant was on sick leave with *"stress at work"*.

67. On 7 December 2017 (C35) the Claimant wrote to Ms Hutchinson complaining that she had not been given any prior warning that her performance was regarded as unsatisfactory. We observe that this is somewhat beside the point as the November meeting was the meeting at which Ms Hutchinson had sought to raise the issue for the first time. Under the Respondent's procedure, the Claimant would then have had time between that meeting and the probation review to improve, but in fact she

went off sick shortly and the probation review then took place during her sickness absence.

68. Ms Hutchinson arranged for the Claimant to see Occupational Health (OH) while she was off sick. The Claimant initially refused, but then did see OH on 21 December 2017. OH reported that the Claimant had told them she was feeling unhappy, feeling hostility from her line manager, that *"the main problem causing [the Claimant's] absence is a management issue and it would be helpful if this could be resolved as quickly as possible"*, and that the Claimant was fit to attend a probation hearing. Mr Obiweluozo went to this document a few times during the hearing as if it was evidence of the Respondent having caused the Claimant's absence by a breach of duty. That is not what the letter says. It just indicates that the Claimant is off sick because of the action Ms Hutchinson has taken and that this *"management issue"* (i.e., as we understand it, the probation review) should be resolved as quickly as possible.

The Claimant's allegations of fraud

69. The Claimant alleges that the Business Services Team were receiving food/gifts from hoteliers and that this constituted fraud or acceptance of bribes. Once she knew this 'truth', she says she stopped eating the food. She said the food was split between Glenda Joseph and Ms Hutchinson with leftovers taken to their friends and security officers. The Claimant says this started on her second day in the team. She first complained about it on 5 December 2017 just after she had commenced sick leave. She emailed Ms Anderson (445) asserting that Ms Hutchinson and her team *"secretly" "collect food from different hoteliers every Tuesdays or Wednesdays"*. She asserted that this was a breach of council policies and procedures. In bold type she emphasised that the email was *"not to be circulated"* but was for Ms Anderson to *"carry out an undergound investigation"* because Ms Hutchinson *"is not fit to be a Manager by any standards. Collecting the [food] and encouraging it is instant dismissal"*. The Claimant gave evidence in her witness statement, which we accept, that she considered this to be a matter of public interest.

70. There is no evidence that Ms Anderson shared this email with anyone or told anyone about it. None of the Respondent's witnesses had seen this email until these proceedings or were aware of its contents.

71. The evidence of Ms Hutchinson and Ms Joseph was that B&B owners did bring in food, that this had been going on for a long time, that the food was usually just samosas or chocolate biscuits and what was brought in was recorded in the gifts book so that there was a record of it. They said that the office was open plan and the food was brought into the office and all managers were aware of it, and would themselves eat the food too. Neither of them recalled being told at any point that it was wrong.

72. On 21 December 2017 the Claimant forwarded to Ms Anderson an email that Ms Donkor had sent on 30 November 2017 with the subject *"Christmas lunch"*

regarding food that someone called *"Jo from Aarav"* wanted to bring in for a *"big lunch, including drinks"* and asking if anyone had any suggestions for it. The email was sent to Ms Hutchinson, Mr Boafo, Ms Joseph, Sadha Vijay, Ms Beepath, the Claimant and Ms Calliste.

73. The next day Ms Anderson replied to the Claimant alone: *"I am emailing to advise you that I have written to audit and investigation to get some guidance on this matter and to clarify what action (if any) should be taken either by management [or] A&I"*. Although Ms Anderson stated she had forwarded this to audit, there is no evidence before us to confirm whether she did so or what, if anything, Audit and Investigation (A&I) did about it at that time. There is no evidence to suggest that anything more happened in relation to this allegation at this point. None of the other witnesses were aware of it, and it is clear from Ms Donkor's 21 December 2017 email that she was unaware of it at that point or she would presumably not have copied the Claimant in on her email about the Christmas lunch.

74. Although it takes us out of the chronology, it is convenient to deal at this point with the rest of the evidence on this matter. In the Claimant's statement to the disciplinary investigation of 21 June 2018 (i.e. after she had been arrested and suspended), she raised the allegation about food again, this time alleging that Ms Duvall was covering it up (584). This allegation identified by the independent investigator Ms Ramasaran who recommended in her report of 17 July 2018 that it be investigated as whistleblowing (559). This was then forwarded (660) on behalf of Mr Wiltshire to the Repondent's A&I department on 16 August 2018. Mr Wiltshire told us, and we accept, that although A&I is an internal department of the Respondent, it is a prosecuting authority which properly has jurisdiction over this sort of allegation and does prosecute employees where appropriate for fraud, bribery and corruption. Mr Wiltshire considered A&I to be the proper organisation to which to refer these allegations. He did not consider it to be a police matter as it was within A&I's jurisdiction.

75. Chris Rabe of A&I acknowledged the referral the same day (1160) to say it would be investigated as whistleblowing. Sarah Corke of A&I appears to have commenced an investigation around 30 October 2018 (659, 660). There is no evidence of what investigation was then carried out, and no evidence that any outcome was communicated to anyone at that stage. However, on 6 March 2021 in answer to an enquiry presumably made in connection with these proceedings Mr Rabe confirmed that the case had been looked into and closed in April 2019 (i.e. shortly after Mr Wiltshire concluded his investigation into the Claimant's second formal grievance). No disciplinary process was commenced as a result of this because A&I did not find that there was any disciplinary case to answer.

76. There are some emails in the bundle (C208) that indicate that such investigation as there was took place in January 2019. There is an email from Ms Anderson which states that a landlady has been bringing in food for three years, and that she regards this as unacceptable. Further emails between Ms Duvall and Ms Anderson appear to indicate agreement that everyone needs

to be reminded that they must not accept regular hospitality. Ms Duvall thought Mr Dempsey had done this, but she was unclear as to whether any reminder had actually been sent out. She confirmed that there was no problem under the Respondent's policy with small gifts being accepted and entered into the gifts book. The Respondent's policy in its Code of Conduct states that *"You must … report to your manager any hospitality, favours or gifts you are offered or receive … return any gifts your manager says you may not keep … not accept gifts or favours from organisations or suppliers that the Council has dealings with (for example goods or services free or below the normal price) … not accept unreasonable or undue hospitality … This does not prevent you … accepting a gift which is of token value (such as a calendar or inexpensive pen), and is offered to you without your asking, and your manager says cannot be seen to influence the way you do your work"* (226).

Grievance process

77. On 19 December 2017 Thomas James wrote to the Claimant to inform her that he had been appointed to investigate her grievance. He asked her to provide some evidence that appeared to be missing from her grievance, which she did on or around 24 January 2018 (794).

78. On 9 January 2018 Mr James wrote to the Claimant to inform her of her right to be accompanied at the grievance meeting scheduled for 19 January 2018.

79. On 17 January 2018 Lorna Campbell (a friend of the Claimant) wrote to Mr James informing him that she would be accompanying the Claimant to the formal grievance meeting. She also asked for the meeting to be rescheduled, but having received no response, the Claimant turned up for the meeting with Ms Campbell. Mr James objected to the Claimant bringing a friend rather than trade union representative or work colleague. Ms Campbell referred to paragraph 5.2 of the Grievance Policy which provides that *"In exceptional circumstances, a representative who is not a trade union representative or fellow work colleague may be permitted, for example, if there are medical reasons or as a reasonable adjustment. This will be at the sole discretion of the manager conducting the meeting. Legal representation, specialist employment law advisers and similar will not be allowed."* (169). There was a short adjournment while Mr James and Human Resources (Sita Gore) conferred and then they confirmed that they would not permit Ms Campbell to attend. The Claimant sent two emails to Mr James following this to complain (443 and 441). These refer to clause 5.2 of the policy, but do not allege any breach of a legal obligation or allege discrimination. The Claimant says that she did not wish to be represented by her union representative at this point because the representative was a friend of Ms Joseph and Ms Hutchinson.

80. By letter of 19 January 2019 (439) Mr James set out in writing the reasons for refusing the Claimant's request to be accompanied by Ms Campbell.

81. The Claimant complained to Mr Wiltshire about this by letter of 21 January 2018 (C48) explaining that she wanted a friend for medical reasons and because her case was confidential, and colleagues would not want to be involved because of fear of victimisation. Mr Wiltshire replied on 24 January 2018 that Mr James had not considered her circumstances to be exceptional as she had worked elsewhere in Ealing and therefore ought to be able to call on an unconnected work colleague and the trade union had advised they could provide another representative, but that the Claimant had not been in touch with them following their email correspondence. The Claimant maintains that there was no one else who could represent her.

82. On 26 January 2018 Mr James met with the Claimant to discuss her grievance. The Claimant attended on her own. Ms Gore of Human Resources was present at the start but the Claimant asked her to leave and she did. The Claimant complains that in this meeting she was not asked by Mr James about the 'pig's face' remark or the foul language, but the Respondent's notes of that meeting (which although formally disputed by the Claimant we accept to be broadly accurate) show that the Claimant was asked about these matters and responded as we have set out above (464).

83. Minutes of this meeting were sent to the Claimant for approval on 13 February 2018. By email of 19 February 2018 the Claimant said she did not agree everything and she would provide amendments (514). Mr James asked when these could be expected, but she did not provide any before he sent the outcome so she decided as she was leaving the team anyway, she would not provide amendments.

Probation review

84. Ms Hutchinson prepared an end of probation report on the Claimant dated 15 January 2018 recommending termination of her employment (426). The particular concerns identified regarding performance were that the Claimant's productivity in relation to B&B invoice processing and sign-ups which were taking the Claimant longer than others, and that the Claimant had been unwilling to entertain a discussion regarding her performance. Statistics were given when appropriate: for B&B the Claimant had processed very few: 35 out of 1922 done by the team in August and 3 out of 1983 in September 2017. For sign-ups the Claimant had done 14 out of 141 in August and 14 out of 142 in September 2017. These were listed because these were her two main areas of work. The report also states that a *"major area of concern"* was the Claimant's *"conduct towards others and her inability to accept that there may be aspects of her behaviour that are not acceptable"*. Ms Hutchinson referred to the canteen incident, the Claimant's refusal to attend, and behaviour at, 1-2-1 meetings, and *"rude and aggressive"* behaviour. In accordance with paragraph 2.2 of the Council's Disciplinary Policy and Procedure, these conduct issues were dealt with as part of the Probation and Performance Review rather than as separate disciplinary matters. The Claimant's sickness absence was also high at 31 days. The report explains that Ms Hutchinson considered that the performance concerns could be addressed through

training and supervision, but the Claimant's conduct was such that she considered termination of employment to be appropriate.

85. On 19 January 2018 the Claimant was invited to a probation hearing chaired by Ms Anderson and informed of her right to be accompanied.

86. On 22 January 2018 a Stress Risk Assessment was completed with the Claimant by Navroz Shariff.

87. The probation hearing itself took place on 24 January 2018.

88. By email of 12 February 2018 (attaching a letter dated 9 February 2018) Ms Anderson wrote to the Claimant to confirm that her probation period would be extended by a further three months because of concerns about her performance and conduct. The Claimant's sickness absence had also exceeded the Respondent's 10-day trigger point by 21 days.

89. Ms Anderson's letter is long and detailed, and takes full account of the Claimant's representations and deals with them at length. Ms Anderson acknowledges that Ms Hutchinson had not identified the performance issues early enough, or set out a training and action plan to address it. She also acknowledges there is a relationship issue between the Claimant and Ms Hutchinson and that the blame cannot all be laid with the Claimant. She recommended mediation along with the development of a three month individual performance action plan, training plan and allocation of a work buddy and referral to OH. The Claimant did not appeal against this decision.

Return to Business Services Team

90. On 16 February 2018 the Claimant returned to the Business Services team and had a meeting with Ms Hutchinson. On the first day Ms Hutchinson found that the Claimant was not engaging with her or the team and she asked Ms Duvall to intervene. Ms Duvall came to speak to the Claimant. She had had so little interaction with the Claimant that she asked her *"do you know me"* at the outset of the conversation. Ms Duvall felt that it was a constructive meeting, but the Claimant was unhappy that Ms Hutchinson had gone above Ms Anderson and straight to Ms Duvall on her first day back.

91. Mediation did not take place before the Claimant's return. Ms Anderson emailed Ms Hutchinson on 16 February 2018, noting that 'due to [Ms Hutchinson]'s persistence' the mediation recommendation has not yet been implemented (although was still planned). She warned: *"There is no going back to normal if thing around your working relationship with [the Claimant] has not been resolved and the working environment within the team has not improved. This will not help [the Claimant's] performance or her productivity and may well contribute to future sickness absences if the matter is not addressed and actions/recommendations arising from the probation hearing outcome and stress risk assessment is not implemented"* (C88).

92. On 17 February 2018 the Claimant wrote to her trade union representative complaining of issues with the return-to-work process. The Respondent accepts this was copied to Ms Anderson, but it was not seen by any of the Respondent's witnesses at that time. It contains a complaint (for the first time) that the treatment the Claimant was complaining about was related to her race. She wrote, *"I believe had I been white, I would not have been treated this way"*.

First grievance outcome

93. On 19 February 2018 Mr James wrote to the Claimant with the outcome of her grievance. He upheld one of the Claimant's grievances and partially upheld another. He found that conversations between team members could be loud, there was some evidence of swearing but not substantiated and that any Caribbean phrases used would be in English. The remainder of the Claimant's complaints were not upheld (517). Mr James made several recommendations regarding the Business Services Team and mediation. The Claimant emailed (524) to say that she had amendments to make to the notes; Mr James responded that if she wished to appeal she could do so. She did not appeal.

94. In cross-examination the Claimant seemed puzzled at the suggestion that Mr James might have been treating her differently because of her race. She said that the perpetrators of discrimination were Ms Hutchinson and her team and that the Respondent as a whole had acted on that. Although she said that the grievance outcome was flawed because Mr James did not deal specifically with the 'pig's face' allegation in the outcome letter and did not uphold more of her grievance, she did not make any positive assertion that Mr James would have dealt with it differently if she was of a different race or nationality and the claim against him was withdrawn. Mr James confirmed in oral evidence (and we accept) that he did not deal with the *"pig's face"* allegation specifically because this was not presented to him as an allegation of discrimination, only of 'foul language' and he deal with those allegations compendiously in his letter.

95. The same day the Claimant complained to her union representative Mary Lancaster about Ms Hutchinson treating her like a child in relation to addressing her performance. Ms Lancaster agreed to ask Ms Anderson to 'get Salwah to back off' until she (Ms Lancaster) and the Claimant were able to meet.

96. On 20 February 2018 Glenda Joseph emailed Ms Duvall stating that she had found the Claimant's behaviour the previous day towards Ms Hutchinson to be *"totally unacceptable and disrespectful"* and that *"The team feel very strongly about this matter and would like to meet with you"* (525). She copied in other team members, but not the Claimant. Contrary to Mr Obiweluozo's submission, there is nothing odd about this: it was a complaint about the Claimant so no one could reasonably have expected her to be copied in.

97. On the same day Ms Hutchinson also made her own complaint about the Claimant to Ms Duvall, copying in Ms Anderson (529). Ms Duvall expected Ms Anderson to deal with this as Ms Hutchinson's line manager, and Ms Anderson did subsequently say she was looking into it. However, nothing was done.

98. On 27 February 2018 a mediation session took place between the Claimant and Ms Hutchinson (C132). A mediation agreement was produced setting out the ways they agreed to work in future. The session ended positively (C101).

March 2018 reference

99. The Claimant applied for a new role in the Respondent's Suitability and Refusals team. In March 2018 Ms Hutchinson wrote an internal reference for the Claimant in response to a request from Sabrina Joseph of the Recruitment team. The Claimant herself had not named Ms Hutchinson as a referee, but (on Ms Duvall's instruction) a reference from her was sought by Sabrina Joseph as the Claimant's previous line manager. The reference request letter stated that candidates may view the reference. In line with her probation report, Ms Hutchinson gave the Claimant a relatively poor reference which stated among other things (C137) that the Claimant was 'slow' in dealing with 'high performing' areas of work, that there were issues with productivity levels, team work, walking out of meetings and failure to follow the absence reporting procedure. Lucy Ondier-Thomas consulted Sita Gore (Human Resources) about the reference as she was not sure how to handle it given the risk to the Respondent. Ms Gore suggested that the reference was in part not answering questions asked and could be disregarded, but what was there was sufficient for Sabrina Joseph to continue with the appointment if she wished, subject to a 6-month probation as she had not already completed probation. Ms Ondier-Thomas acted accordingly and the Claimant was offered the job subject to a 6-month probation.

100. The Claimant says that on 6 March 2018 the Claimant gave Ms Hutchinson her notice and Ms Hutchinson said she could leave on any day and the Claimant believed she had agreed her last day would be 9 March 2018. However, the next day Ms Hutchinson back-tracked. Ms Hutchinson sought to delay the Claimant's release to the new role as she said she required the Claimant to cover for a further two weeks (C130). We accept that this was Ms Hutchinson's reason for acting as she did. The Claimant also says that on 7 March Ms Hutchinson had asked her to do some photocopying but then 'harassed' her by calling her personal mobile number to say that she did not know where she was. This appears to be another example of the Claimant having become unmanageable, rather than harassment.

101. The Claimant was unhappy about that and complained to Ms Anderson on 9 March 2018 and said that she would take emergency leave to avoid further conflict with Ms Hutchinson (C132).

Claimant moves team

102. On 19 March 2018 the Claimant started working as Suitability and Refusals Officer in Ms Ondier-Thomas' team, which works on a different floor to the Business Support team.

103. The Claimant got on well with Ms Ondier-Thomas, who she found to be much more careful with induction and training than Ms Hutchinson had been. There were no issues in the new team over the next few months.

Allegations regarding sexually explicit images

104. Glenda Joseph gave evidence that in the autumn of 2017 (she was unsure of the date), when standing behind the Claimant's desk, she saw on the Claimant's mobile phone screen the image of a black man's penis. On another occasion, when they were working in the evening, the Claimant showed her a video on her mobile phone saying something along the lines of *"these are Ghanaians and this is what they do"*. Ms Joseph thought it was going to be something funny, but it was a video of child pornography, the details of which are set out in Ms Joseph's statement. We do not set them out here because there is no need to for the purposes of this judgment.

105. Ms Joseph reacted by saying something along the lines of *"what the fuck, you need to get rid of that. If the police ever saw that you would be locked up"*. Ms Joseph says the Claimant shrugged her shoulders and walked away. Ms Joseph says that following this incident, she told a friend, Anneth Allen about it who said she should report it to management, but she did not at that point. She also spoke to her husband about it who also said she should report it. Although it was preying on her mind (she said that *"once you have seen it, you cannot unsee it, you just can't"*), Ms Joseph did not tell anyone at work (even when complaining about the Claimant on behalf of the team on 20 February 2018), because she feared she would not be believed, in particular because she was aware that the Claimant makes much of being a Christian and church-goer. Ms Joseph maintained her evidence to us in cross-examination and for reasons we set out further below and in our conclusions section, we find her evidence to be credible.

106. Many months later, after the Claimant had moved into her new role, Ms Joseph told Carlene Beepath about what had happened. In oral evidence she told us that she said to Ms Beepath that she was *"losing sleep"* over it because she could not get the images out of her head. Ms Beepath advised her to contact the Police or an anonymous *"tip line"*. Ms Joseph was still concerned she would not be believed, but about a fortnight later in conversation with Charmaine Calliste, Priscilla Donkor and Maria Byrne they started discussing what the Claimant looked at on her phone. Charmaine said that the Claimant had also shown her something on her mobile saying *"look at this, I thought I should show you in case you have daughters"* and showed her a picture of an adult male putting his hand up a young girl's skirt in a supermarket. Ms Donkor also said that she had seen images of black men's

penises on the Claimant's phone. Maria Byrne said she had also seen images. A week later Ms Joseph spoke to a union representative about it. She then decided to report the matter to the police, but seeing Lynne Duvall on 23 May 2018 reported it to her instead.

107. Ms Duvall then spoke the next day to Ms Byrne, Ms Calliste and Ms Donkor, and again to Ms Joseph to be clear about what she had said. She took notes of her interviews (688-689). She also interviewed Ms Byrne (589) and Ms Calliste (1077) and asked them to write her an email setting out what they had seen. Ms Byrne emailed on 25 May 2018 stating: *"[The Claimant] did show me her mobile telephone which had a picture of a young girl and an older man – which she said he had abused. Looked like a CCTV shot from a supermarket. I was also shown pictures of her Father's funeral"*. Ms Calliste emailed on 25 May 2018: *"As discussed with you I was shown something from [the Claimant]. She came to me and said do I have girls Then showed me a clip from her phone Which showed a little girl in the supermarket and a man putting her hand up her skirt. I didn't tell anyone about it but she did walk around our table showing other people."*

108. Ms Duvall's inquiries of witnesses were not her carrying out an investigation under the Respondent's disciplinary policy; she was fact-finding in order to be able to take advice as to what to do next. She then reported to Human Resources (Sita Gore) and Mr Wiltshire, but was careful not to involve any more people bearing in mind the sensitivity and confidential nature of the allegations.

109. Ms Gore, Mr Wiltshire, Ms Duvall and Ms Joseph met again (still on 24 May) and asked Ms Joseph to go through her account again as hers seemed to be the more serious allegation and Ms Duvall and Mr Wiltshire were conscious that possession of indecent images of children was a criminal offence. Ms Duvall and Mr Wiltshire confirmed that there was nothing that suggested to them that the allegations might be malicious. Although Ms Duvall was aware in general terms that there had been conflict between the Claimant and her team, she was not aware of the specifics of any complaints that the Claimant had made, and her evidence was that she had no reason to think that the allegations were malicious. We further observe that there was, objectively, no reason to conclude at this point that the allegations were malicious: although the allegations were made some time after the incidents were alleged to have happened, the explanation for this was that Ms Joseph had (understandably given it would have been her word against the Claimant's) felt concerned about being believed. It was not until she realised there was potential corroboration from other team members that she had the courage to come forward. On the face of it, by May 2018 it was also implausible that the Claimant's old team members would have been acting vindictively towards her: she had left, they no longer had to work with her, there was no motive to make up allegations at this point. We are satisfied therefore that it was reasonable for the Respondent not to treat the allegations as malicious at this stage; indeed, we cannot see that any employer could have done otherwise.

110. Ms Duvall then called the police to get advice about what to do. Again, this is the action we would expect of any responsible employer. We would also expect any responsible employer to call the police before speaking to the individual because possession of indecent images of children is a criminal offence and thus a police matter. The police said that they would come to interview the witnesses later that day, and did so, taking written statements from them (which we have not seen as they are still held by the police). Ms Joseph maintained her statement to the police even though the police warned her of the consequences of making a false statement, which could include police prosecution. Ms Joseph confirmed again in evidence to us that she understood that this was still a risk for her, as was 'losing her job'.

111. Having interviewed Ms Joseph, Ms Byrne and Ms Donkor (but not Ms Calliste, who was not around), the police informed Ms Duvall that they and Ms Gore that there was sufficient information to warrant arresting the Claimant, which they said they would do the next day. Ms Duvall said in oral evidence (but not in her witness statement) that the police were very clear that she should not speak to the Claimant. We accept that Ms Duvall was given this advice as it is obvious that it is important with an allegation such as this that the Claimant should not be told about the allegation prior to arrest because of the risk that, if guilty, she would then take action to dispose of her mobile phone or delete evidence before the police could secure that evidence. Any competent police officer would therefore have advised the employer not to give the Claimant any warning of the allegation or the possibility of police involvement and we accept that happened in this case.

112. On 25 May 2018 the Claimant was arrested by the police in the office. Ms Duvall had understood in advance that the arrest would take place in a private room, but in fact when the police arrived they asked Ms Duvall to show them where the Claimant was sitting and then arrested her in the open plan office. Ms Duvall's recollection is that one of the officers made the arrest, and then took the Claimant to a private meeting room to interview her with three other officers. The officers were in plain clothes. The Claimant's recollection in oral evidence is that there were six officers and she was handcuffed in the office. In her witness statement, she said the handcuffing happened subsequently at the station, but does not mention that in the office. Ms Duvall did not recall there being handcuffs and Ms Ondier-Thomas gave positive evidence that there were no handcuffs. We find there were no handcuffs and that this is another of the Claimant's elaborations. The Claimant alleges that it was Ms Duvall and Ms Gore who had her arrested in the open plan office because they 'enjoyed the disgrace and humiliation'. Ms Duvall denies this and we accept her evidence. The Claimant's allegation is fanciful. Ms Duvall was not in any position to control police actions.

113. In the private meeting room Ms Duvall, Ms Gore and a Trade Union representative (Sukhminder Kalsi) also met with the Claimant. It had previously been agreed between Ms Duvall and Mr Wiltshire (on advice from Ms Gore) that the Claimant should be suspended. This was because the Claimant's role involved her working with vulnerable households, and the police had considered there was sufficient evidence to warrant her arrest,

and therefore suspension was considered to be appropriate. Alternatives were considered by Ms Duvall and Mr Wiltshire, including the possibility of redeployment, but given the nature of the allegations and the police action it was decided to suspend. Ms Duvall gave the Claimant a suspension letter. The letter made clear that the suspension was precautionary, on full pay, that the initial period of suspension was 20 days and that it would be subject to review. It made clear that there would be a disciplinary investigation in which all relevant information would be gathered. It informed her of her right to be accompanied at all stages. The letter referred to the allegation as being that *"around October 2017 whilst at work, you showed several colleagues pictures and inappropriate video material, from your personal phone"*. The date of 'October 2017' was not one that had been given by any witnesses, but was an educated guess by Ms Gore, who drafted the letter.

114. The Claimant contends that there was no suspension meeting, although she accepts she was given the suspension letter and does not explain how she got that if it was not in a meeting. We therefore find that there was a suspension meeting. Suspension meetings are always short. There is rarely anything to discuss at that point because it is merely a step that is taken to allow space and time for proper investigation. In the Claimant's case there was nothing of substance to be said at all because the police were present and had just arrested her.

115. The Claimant further contends that the Respondent breached its procedures both by reporting the matter to the police without first carrying out its own investigation (including speaking to the Claimant) and/or by suspending the Claimant without first doing this. We disagree. The Respondent's policies do not deal with when a report to the police should be made; they do make provision for internal procedures to be put on hold where a criminal investigation is being pursued. Whether or not to notify the police and when is a matter of public policy and good citizenship. In this case, we find that the Respondent acted reasonably in taking the allegations seriously and taking police advice; indeed, we do not see how any responsible employer could have done otherwise. Thereafter, the police dictated that the arrest should come first before any further internal investigation.

116. The police seized the Claimant's phone and laptop. While she was at the police station the police searched her home, causing distress to the Claimant's family. The Claimant obtained advice from a criminal solicitor in relation to the police investigation. The Claimant contends that the Respondent was responsible for the actions of the police and makes allegations about links between the Respondent and the police. However, there is no evidence to support these assertions, which (if true) would amount to serious misconduct by both the police and the Respondent. All the evidence suggests that the police were acting on the basis of information gathered from their own interviews with the witnesses, and that the police (as is their proper role) dictated whether, when, where and how the Claimant was arrested and how the investigation thereafter proceeded. It is plain that the police were acting on the basis of their own interviews with the witnesses and in accordance with normal police procedures.

117. Mr Wiltshire and Ms Duvall both gave unchallenged evidence that they made every effort to ensure that, so far as possible given the police actions, the allegations made against the Claimant, and her arrest, were kept confidential. Ms Hutchinson further gave unchallenged evidence that she was unaware at the time of the allegations that had been made, or the police action. We accept the Respondent's evidence on this as we have found all three witnesses to be reliable narrators.

The Respondent's internal investigation

118. The Respondent also decided to proceed with an internal investigation into the matter. Yvonne Ramsaran was appointed as an independent investigator. She is someone not employed by the Respondent, although she may well have worked with the Respondent before as the Claimant contended in her witness statement. We need make no finding on that. During the hearing, Mr Obiweluozo's contention was that as Ms Ramsaran was not a Council employee this was not an 'internal' investigation at all. We reject that contention. Ms Ramsaran was appointed by the Respondent to carry out the investigation under the Respondent's disciplinary procedure. The Respondent, in common with all corporations, is entitled to appoint anyone to carry out such procedures if it wishes to.

119. On 8 June 2018 the Claimant was invited to a disciplinary investigation meeting with Yvonne Ramsaran on 12 June 2018. The Claimant says in her witness statement that she did not accept the invitation because she had been advised by the police not to speak to people at the Council about the allegations, but that is not what she said in her letter of 11 July 2018 (C162) and we consider the reasons she gave at the time to be the true reasons. In that letter she said that she was not attending because she had not been allowed to have a companion of her choice and had lost faith in the Respondent's policies and procedures.

120. On 21 June 2018 the Claimant provided written submissions for the internal investigation (547), and then amended them on 23 June 2018 (568) which she sent to Mr Wiltshire, Ms Gore and Ms Ondier-Thomas. In these documents she repeated her complaints about team members and wrote in bold block capitals that she believed if she had been white she would not have been treated in that way. She referred to the Protection from Harassment Act 1997 and accused Ms Joseph and Ms Donkor of making malicious allegations. She repeated the allegations first made in her email to Ms Anderson of 5 December 2017 of corruption in relation to food being brought into the office by hoteliers.

121. The investigation meeting was rescheduled twice. Prior to the third meeting, on 29 June 2018, Ms Ramsaran emailed the Claimant asking her to explain why she thought she would have been treated differently if she was white. She also answered the Claimant's queries, confirming that the incidents were alleged to have taken place between July and November 2017; and setting

out in summary what the allegations were, and who was making them (700). Ms Ramsaran included allegations by all four witnesses, not just those that had been relied on by the police. We observe that this was because the Respondent was concerned with whether the Claimant had conducted herself inappropriately and in breach of the Council's Code of Conduct by sharing sexually explicit images with work colleagues during worktime on Council premises, whereas the police were interested in the potential criminal offence of possession/distribution of indecent images of children.

122. On 10 July 2018 the Claimant provided further written submissions to Ms Ramsaran. The Claimant did not in her submissions respond at all to the allegations made by Ms Byrne and Ms Calliste. She focused on Ms Joseph and Ms Donkor and alleged that their allegations were malicious, in retaliation for her past complaints and/or because of her race.

123. By letter of 11 July 2018 (C162) the Claimant again refused to attend a fact-finding meeting because of a lack of confidence in the Respondent. She set out why she contended the allegations made to the police were malicious, false and in retaliation for her complaints.

124. Ms Ramsaran provided a preliminary report on 17 July 2018 (595). This was not shared with the Claimant at the time. At 598 she notes the limited evidence of inappropriate material prior to police examination of the phone. She points out that if false and malicious allegations have been made that would be misconduct and warrant disciplinary action. She recommends waiting for the outcome of the police investigation, but in the meantime that the Claimant's allegations regarding acceptance of gifts of food (see above) should be referred for investigation as whistle-blowing. The Respondent acted on Ms Ramsaran's recommendations.

Extension of probation

125. The police investigation took much longer than was anticipated by the Respondent and the Claimant's suspension was reviewed and continued on a number of occasions while the outcome of the police investigation was awaited.

126. On 14 September 2018 Lucy Ondier-Thomas wrote to the Claimant seeking to extend her probation period as an alternative to terminating her employment. This wording reflected paragraph 2.3.3 of the Probation Procedure (161). Ms Ondier-Thomas did this (having read the policy and on advice from HR) because, as a result of her suspension, the Claimant had not even had three months in post and was nowhere near completing the six months required. The Claimant agreed to the extension of her suspension. The Claimant alleged in her claim that this was an act of discrimination by Lucy Ondier-Thomas, but in evidence the Claimant made very clear that she does not accuse Ms Ondier Thomas of discrimination and that she considers she is *"innocent"* and had *"nothing to do with this case"*. She alleged that Ms Ondier-Thomas took the decision on Ms Duvall's instruction, but Ms Ondier-

Thomas was clear it was her own decision, and we accept that. We also observe that the decision was in line with the Respondent's policy and if the Claimant's probation had not been extended, the only sensible alternative would have been dismissal because she would not have passed her probation.

127. On 14 September 2018 the Claimant also wrote to the CEO of the Respondent Mr Najsarek raising complaints about her treatment by the Respondent and making a subject access request under data protection legislation. She says in this letter *"Policies and rules have been subverted in order to discriminate, harass, intimidate and humiliate me"*.

Outcome of police investigation

128. On 19 October 2018 the police informed the Claimant and the Respondent that they had completed their investigations.

129. The Claimant was informed by DC Steven Anderson that the police would be taking no further action on the case. The Claimant was provided by the police with a letter about this, that was attached to another letter of the same date that is in the bundle at 927. The Claimant has not provided disclosure of the attached letter. She maintains that DC Steven Anderson advised her to sue the Respondent for malicious allegations. We find that implausible and as the Claimant has not been a reliable witness generally, we reject the Claimant's evidence to this effect.

130. DC Steve Anderson also met with Sita Gore and we accept her notes of that meeting to be accurate (656). He informed her that 'no illegal images' (i.e. no indecent images of children) were found on the Claimant's mobile telephone and the police would not pursue the matter further. DC Anderson was unable to confirm or deny whether any other sexually explicit images had been found or provide the contents of the telephone to the Respondent. The police informed the Respondent that the Claimant had given a 'no comment' interview and failed to provide the correct password for her laptop so that had not been searched. The Respondent subsequently checked the laptop but found nothing on it.

131. On 24 October 2018 Ms Duvall informed the Claimant that her suspension was being ended as the police had concluded investigations and did not intend to take further action. The Claimant was required to return to work on 30 October 2018, although she was informed that the Respondent's internal investigation would continue. Ms Duvall and Mr Wiltshire explained that they considered it was appropriate for the internal investigation to continue despite the police deciding to take no further action, because the police were investigating the potential criminal offence of possessing/sharing indecent images of a child, whereas the Respondent was concerned about the potential disciplinary matter of sharing inappropriate sexually explicit material with colleagues in the workplace during working hours. The Respondent's disciplinary policy provides that *"the display or circulation within the*

workplace of any literature or material (such as pornographic or racist materials) via any medium that could offend other persons" is gross misconduct. We observe that the allegations made by all four witnesses (Ms Beepath, Ms Byrne, Ms Donkor and Ms Joseph) all potentially fell within this definition. Further, the conclusion of the police investigation had not been that the allegations were malicious or that any of the witnesses should themselves face investigation or prosecution for perverting the course of justice, but just that, in the absence of any evidence of child pornography remaining on the mobile phone, there was insufficient evidence to prosecute for a criminal offence.

132. Contrary to the Claimant's belief/assertion, it does not follow from the fact that no evidence of possession of child pornography was found on her mobile phone that the allegation made by Ms Joseph was false; it could simply have been that the material had not been downloaded in the first place or that it had been effectively deleted or overwritten. There was also still evidence from all four witnesses about the Claimant having shared sexually explicit material relating to adults that did not amount to a criminal offence, but which could if shared on the Respondent's premises constitute gross misconduct, and as to the presence of which on the Claimant's phone the police were unable to give the Respondent any information (i.e. it may have been on there, or it may not). As such, it was reasonable for the Respondent to continue the internal investigation following the discontinuation of the police investigation. Indeed, we find it difficult to see how any responsible employer could have done otherwise in the circumstances.

Fourth complaint, October 2018

133. On 28 October 2018 the Claimant wrote to Lucy Ondier-Thomas regarding her return to work. She said she would return to work, but not on 30 October as she had booked annual leave. She asked to work reduced hours for a month and sought various other accommodations, including protection from harassment and bullying by all her former team members, Ms Duvall and Ms Gore.

Outcome of disciplinary investigation

134. Ms Ramsaran concluded her investigation on 15 November 2018. She concluded that the evidence was limited in relation to the most serious allegations by Ms Joseph and Ms Donkor and denied outright by the Claimant. She noted that the Claimant had not denied the allegations made by Ms Byrne and Ms Calliste and that their evidence may support an allegation that the Claimant did show colleagues images from her phone of a sort which would not normally be shared among colleagues. She noted that the allegations had been made months after the alleged incidents, but there was an explanation for this. She concluded that it was appropriate to give the Claimant the benefit of the doubt and that there was therefore no case to

answer. She did not conclude that the allegations was malicious or that any of those who had made the allegations should face disciplinary investigation.

Second grievance

135. On 29 November 2018 the Claimant filed her second formal grievance (701 –715). She complained about the conduct of Ms Hutchinson, Ms Duvall, Ms Gore, Ms Joseph, Ms Donkor and others in connection with the allegations that were referred to the police. She complained about Ms Hutchinson's handling of her probation, and the grievance outcome. She complained that there had been a failure to follow Ealing Council's policies and procedures, the creation of toxic work environment and discrimination. She sought damages and compensation.

136. On 5 December 2018 Mark Wiltshire ('MW') notified the Claimant by letter that he would investigate her second grievance. In his letter he acknowledged how very difficult the situation must have been for her and emphasised the neutrality of the suspension. He notified the Claimant that he had read Ms Ramsaran's report and that no further action was recommended. He proposed a meeting on 17 December 2018 to discuss, but the Claimant raised questions about the appropriateness of him acting so the meeting did not take place.

137. On 12 December 2018 Ms Ondier-Thomas wrote to the Claimant informing her that her probation would be extended for a further period to 28 February 2019 as the Claimant had not been back at work long enough following the lifting of her suspension to be confirmed in post (719).

The faeces allegations

138. In mid December 2018 and on 3 January 2019 the Claimant contends in her claim and witness statement that faeces were placed on her desk twice and her locker broken twice. She says she complained to Lucy Ondier-Thomas and she said that something similar had happened to her and she advised to take photos of it next time.

139. In her grievance meeting with Mr Wiltshire on 29 January 2019 the Claimant said that had *"found pooh on my table"*, that she had not taken a photo and that she had cleaned her desk and it was *"real pooh"* [sic]. She told Mr Wiltshire that she told Ms Ondier-Thomas and Ms Ondier-Thomas said she had a similar experience.

140. Ms Ondier-Thomas gave her account of this incident to Mr Wiltshire in an email of 7 February 2019 (739) and confirmed that in her witness statement. Ms Ondier-Thomas said that the Claimant had mentioned finding something smeared on her desk that 'looked like poo'. Ms Ondier-Thomas said that the Claimant was not raising a formal complaint, it was one of a number of matters that she spoke about on that date, which Ms Ondier-Thomas states

was prior to 16 January 2019. Ms Ondier-Thomas said that she had also found dirt on her desk on another occasion and had just cleaned it off. Ms Ondier-Thomas advised the Claimant to put her concerns in an email, but the Claimant did not and told Ms Ondier-Thomas that she did not want to pursue it. She also wrote that the Claimant had said that at the time of the incident there were no witnesses, she did not take a photograph, did not mention it to other managers.

141. The Claimant spoke to Occupational Health (OH) on 14 February 2019 and OH records her as saying that *"some faecal matter was left on her desk on the 3rd January 2019, regarding which she cleaned and removed herself without taking a photograph"*. On 26 April 2019 the Claimant saw OH again (C233), on which occasion the Claimant mentions finding 'oil and powder under the desk'.

142. In oral evidence, the Claimant initially confirmed that faeces were placed on her desk on two occasions. She told the Tribunal she personally took a photograph on the second occasion. She then modified her account and said that a colleague helped her with her mobile phone to take the photographs because she was so shocked by discovering faecal matter. Later, in response to the Tribunal's questions, the Claimant claimed that she had a photograph of 'the oil and the second one'. On Day 4 of the hearing the Claimant produced copies of four photographs that did not show faecal matter but showed 'oil and powder' on the floor around her desk.

143. On this issue consider that the Claimant has again proved to be an unreliable narrator. It is clear from the contemporaneous documents (i.e. Ms Ondier-Thomas's email and the OH reports) that it was only on one occasion on 3 January 2019 that the Claimant alleged that she had found faecal matter on her desk (not two as alleged in claim form and witness statement), and on the balance of probabilities we conclude that she did not when she found it think it actually was faecal matter. Had she done, it is highly unlikely she would have cleaned it up herself, and she would have complained about it promptly rather than two weeks later. We consider it much more likely that, as reported to Ms Ondier-Thomas, she found something on her desk that 'looked like' faecal matter but which she recognised was not really faecal matter, and we find that was what happened. Moreover, as something similar had happened to Ms Ondier-Thomas previously, the reasonable inference is that this was, as Ms Ondier-Thomas thought, a cleaning issue rather than any targeted attack on the Claimant.

<u>Continuation of the second grievance</u>

144. On 8 January 2019 the Claimant's trade union representative Mark Reynolds informed Mr Wiltshire that the Claimant had agreed to him dealing with the grievance. We were concerned that it was perhaps not appropriate Mr Wiltshire to deal with then grievance as it involved a challenge to decision-making around the Claimant's suspension and police arrest that he was party to. However, he explained (reasonably in our judgment) that he felt he was

best placed to hear the grievance as the most senior person with knowledge of the relevant events and departments and as the Claimant agreed to him dealing with it, we are satisfied that it was on this occasion appropriate for Mr Wiltshire to deal with the grievance notwithstanding his involvement in the events with which it was concerned.

145. On 10 January 2019 Mr Reynolds invited the Claimant to a grievance investigation meeting on 29 January 2019.

146. On 29 January 2019 Mr Wiltshire met with the Claimant to discuss her grievance. The other people at the meeting were: the Claimant's union representative (Mark Reynolds, Unison), Manher Ubhi (HR Business Partner) and Lynne Kaye (a Senior PA acting as note-taker). At this meeting Mr Wiltshire made it clear that he was taking what she said very seriously, that there was going to be organisational learning on what occurred, and he apologised to her for what she had experienced.

147. By email of 30 January 2019 to Mr Wiltshire the Claimant thanked Mr Wiltshire for giving her the opportunity to express how she felt and expressed confidence that now management were involved things will be resolved. She also sought reimbursement for her mobile bills while her phone was with police (735). Mr Wiltshire replied that he would action this as soon as possible and that he hoped they could *"bring your experience to a resolution and enable you to feel safe and supported and so that you can enjoy working in Ealing"* (738).

148. Mr Wiltshire then proceeded to carry out further investigation over the next few months.

Incident with Ms Hutchinson and Mr Oyekan

149. On 27 February 2019 the Claimant alleges that Ms Hutchinson rudely and aggressively interrupted her while she was speaking to Oyekan Reginald (Housing Solutions Officer) and then barged into her, brushing her shoulder and turning back to see her reaction.

150. Ms Hutchinson accepts that she spoke to Mr Reginald, but not that she was aggressive in any way. She said she was the Duty Officer that day and had wanted to speak to Mr Reginald earlier about seeing an emergency client. She saw he was speaking to the Claimant so went away and came back. In answer to our questions in oral evidence, she confirmed (and we accept) that she had not been told prior to this incident not to approach the Claimant, but she was told afterwards by Ms Duvall that she not do so. She says at no point did she have any physical contact with her.

151. Mr Reginald said at that point he was still speaking to the Claimant so she did then interrupt and asked Mr Reginald to see the emergency client. Mr Reginald said he would when he had finished with the client he was then dealing with and the Claimant. He did not mention in his witness statement

that he patted the Claimant on the shoulder after Ms Hutchinson had gone, but he accepted he had done and that was his account to Ms Ondier-Thomas and Ms Duvall who spoke to him about it at the time. He patted her because he was sorry she had been kept waiting, not because anything Ms Hutchinson had done was inappropriate. Mr Reginald said at the time and at this hearing that the incident was unremarkable. He and the Claimant were talking, Ms Hutchinson approached. He stopped talking to the Claimant to speak to Ms Hutchinson, then finished speaking to the Claimant and resumed his duties. He said that Ms Hutchinson did not barge in, or brush the Claimant's shoulder or turn back to look at the Claimant's reaction.

152. The Claimant complained about this incident at the time and it was investigated by Ms Ondier-Thomas and Ms Duvall. Ms Duvall formed the view that there was no wrongdoing by Ms Hutchinson, and she told us that when the Claimant and Ms Hutchinson passed in the corridor after the incident, all that had happened was that they had moved out of each other's way to avoid each other in a narrow corridor. Notwithstanding Ms Duvall's conclusion, she advised Ms Hutchinson not to approach the Claimant to avoid further confrontations. No disciplinary action was taken.

153. On this incident, we prefer the evidence of Mr Reginald and Ms Hutchinson. There was nothing unreasonable or untoward in Ms Hutchinson's actions on this day. Although she did interrupt the Claimant's conversation with Mr Reginald, it was appropriate for her to do so because she was the Duty Manager and needed to communicate something important to Mr Reginald and had already waited before doing so. She interrupted, but not rudely or aggressively. We further accept Ms Hutchinson's evidence, confirmed by Ms Duvall in the light of her investigation at the time, that there was no physical contact between the Claimant and Ms Hutchinson.

<u>The Claimant passes probation</u>

154. On 7 March 2019 Ms Ondier-Thomas confirmed that the Claimant had passed her probation for the post of Suitability & Refusal Officer (751).

<u>Second grievance outcome and appeal</u>

155. On 2 April 2019 Mr Wiltshire sent the Claimant the outcome of her second grievance. At the outset of the letter, he apologised for the length of time it had taken. It was a substantial period, but he says that it was because of the complexity and number of the issues that he had to deal with. He considered it was not a straightforward case, and it was very unusual. He told us that he had been keeping Mr Reynolds updated on his progress, and we accept his evidence in this regard as if he was not, we would have expected Mr Reynolds to be chasing Mr Wiltshire by email, and there is no evidence he was.

156. We note that the Respondent's Grievance Policy states that normally a grievance outcome should be sent within 10 days of the meeting, and that employees should be updated in writing as to progress if it is going to take longer than that. Mr Wiltshire did take substantially longer than the indicated 10 days, and he did not keep the Claimant informed of progress in writing, but there was no need to do so as he was in oral communication with Mr Reynolds. In our judgment Mr Wiltshire dealt with the grievance within a reasonable time.This was a lengthy and complex grievance and Mr Wiltshire was initially not able to start on it because of the Claimant's objection to him dealing with it, so the reality is that he took only just over two months to investigate and consider a large number of issues spanning a significant period, and he produced at the end of it a 10-page letter that dealt thoroughly and thoughtfully with the issues the Claimant had raised.

157. It was a long and detailed letter in which the Claimant and her allegations are treated with dignity and care. It began with written apologies for her experiences again, and for the delay in issuing the response. It included formal apologies later in the letter for where the arrest took place and for what happened in the course of the police investigation. Regarding what had happened with the police, he concluded that *"it would have been unavoidable to have engaged the police, and that upon balance it could have been prejudicial to their investigation had the Council commenced an internal investigation earlier"*.

158. Mr Wiltshire considered carefully whether or not there was a case for making a misconduct allegation against someone for making a false allegation, but decided that there was not because the police had not considered that any of the witnesses should be charged with making false allegations, and because Ms Ramsaran had not considered there was evidence that the allegations were false or recommended any investigation for misconduct by those making the allegations. He did, however, recommend that former team members should be reminded of the Council's behaviours and codes of conduct. He found that Ms Hutchinson's approach to the Claimant earlier that month when she was talking to Mr Reginald was unnecessary, as he understood that she had been given a prior verbal instruction not to approach the Claimant, and caused the Claimant alarm. He instructed that Ms Hutchinson should be reminded not to approach the Claimant and only engage with her through her line manager. We observe here that Mr Wiltshire has misunderstood the sequence of events: Ms Hutchinson was not told to refrain from approaching the Claimant until after this incident.

159. He also found that Ms Duvall's letter of 24 October 2018 could have been worded more supportively and sympathetically and provided more clarity around next steps. He asked HR to review the guidance and support for line managers. He found there was insufficient evidence of faeces being put on her desk. He also dealt with what he termed *"Historical issues"* at 761, though he did not reinvestigate the matters that had been dealt with in the previous grievance (including the 'pig's face' allegation). He also did not specifically acknowledge that this was an allegation of race discrimination. He explained in oral evidence that he did not recall the Claimant focusing on this aspect in

the meeting that they had. He was in his letter trying to summarise what she had complained about and explaining why he did not re-investigate the matters that he regarded as historical issues.

160. The outcome letter indicated that Mr Wiltshire would meet with the Claimant to discuss compensation, but this did not happen at this point. Mr Wiltshire said this was because the Claimant appealed, and we accept that is the reason as it is plausible and reasonable to await the outcome of an appeal in such circumstances. The Claimant wanted Mr Wiltshire to put an apology on the intranet, but he considered this to be inappropriate as only a handful of people had known about the original arrest, but if an apology was put on the intranet that fact would have been published to up to 10,000 employees. We find his decision in this respect was reasonable.

161. On 11 April 2019 the Claimant informed the Respondent of her intention to appeal against the outcome of the second grievance.

162. On 5 May 2019 the Claimant filed an appeal against Mr Wiltshire's grievance decision (764–776). The appeal raised most of the matters previously complained about again, but does not include any specific complaint that Mr Wiltshire had failed to investigate race discrimination.

The appeal

163. Alison Reynolds (Director of Customer and Transactional Services) was appointed to hear the appeal, i.e. someone at Mr Wiltshire's level but in another department who had had nothing to do with the prior events. She wrote on 21 June 2019 inviting the Claimant to an appeal hearing on 1 July 2019.

164. A meeting took place on 1 July 2019 chaired by Alison Reynolds to discuss the Claimant's grievance appeal. In the course of the meeting the possibility of compensation and/or a compromise agreement was raised. While this was discussed on a *"without prejudice"* basis, investigation of the Claimant's grievance was paused.

165. On 28 August 2019 Mr Reynolds (786) on the Claimant's behalf asked Mrs Reynolds to continue with the investigation of the grievance appeal. Mrs Reynolds then proceeded to arrange meetings with Mr Wiltshire and Ms Duvall, as her email of 21 September 2019 indicates (787). The Claimant says she chased the outcome of her grievance appeal, but the only evidence of her doing this is her emailing her trade union representative Mr Reynolds on 23 September 2019 (C280). By email of 2 October 2019 Liz Chiles informed the Claimant on Mrs Reynolds' behalf that she had two further meetings and would finalise the outcome by 14 October 2019. In fact, there was a further delay and the outcome letter was sent by Mrs Reynolds on 30 October 2019. We find that save for the further delay between 14 and 30 October 2019 the Claimant was kept up to date with the progress of her appeal.

166. In the letter, Ms Reynolds concluded that:

    a. Staff who had complained about the sexually explicit images of minors had been willing to make statements to the police and were therefore reasonably believed;
    b. It was not appropriate to re-open her complaints about Ms Hutchinson;
    c. Mr Wiltshire's letter of 2 April 2019 had addressed all issues raised and apologised, there was no reason to revisit that; and,
    d. An apology for the arrest on the Council's intranet would be inappropriate.

167. The letter closed with recommending that there should now be a meeting between the Claimant and Mr Wiltshire, that meeting having not happened as Mrs Reynolds understood it because of the appeal. Mr Wiltshire gave evidence there was no meeting because by that time these proceedings had started and there were *"without prejudice"* discussions going on.

168. The Claimant complains about the delay in dealing with the grievance appeal. Mrs Reynolds has explained that her reasons for delaying in dealing with the grievance appeal was pressure of work, holiday and the delay while *"without prejudice"* discussion was happening. She has provided copies of her work diary and provided details of the work she was doing at the time, and we accept Mrs Reynolds explanation for the delay and find that she would not have dealt with any other appeal of similar complexity any differently or any more quickly. It was suggested to Mrs Reynolds that she was deliberating delaying to ensure that the Claimant was out of time to bring these proceedings. She denied this, saying that she could not see that any delay on her part should affect what the Claimant did about bringing a claim. We accept this, and observe that in the event the Claimant did commence proceedings prior to receiving the appeal outcome.

<u>These proceedings</u>

169. Prior to the conclusion of the grievance appeal, on 10 September 2019 the Claimant commenced a further period of stress-related absence. Her mental health at this point was poor and she told OH that she felt there was a conspiracy at work and she had been bullied (C246).

170. On 23 September 2019 in her letter to her trade union representatives, (C280) the Claimant alluded to the Tribunal time limits and said that if she had not had a response she would contact ACAS by December 2019.

171. In fact, on 24 October 2019 the Claimant gave ACAS notice of Early Conciliation and ACAS issued a certificate the same day.

172. On 25 October 2019, before receiving the grievance outcome, the Claimant filed her claim in these proceedings.

173. The Claimant has obtained a report from Dr Oladinni (Consultant Psychiatrist) date 24 December 2020 who sets out his opinion that the Claimant has suffered from a stress related Adjustment disorder and continues to have subjective distress and emotional disturbance interfering with social functioning and mild depressive symptoms.

Mobile telephone expenses and second-hand phone

174. The Claimant complains that the Respondent has not reimbursed her mobile telephone expenses and second-hand phone purchased while the police had her contract phone for forensic investigation.

175. At the grievance interview on 29 January 2019 Mr Wiltshire offered to repay the Claimant for her mobile bills. The notes record him saying *"Just to check for audit purposes – I need a bank statement which shows phone transactions or contract and we can make a one off payment. Only needs to be one month and we can calculate."* By email of 30 January 2019 to Mr Wiltshire the Claimant then sent in her documents (735). Mr Wiltshire replied that he would action this as soon as possible and that he hoped they could *"bring your experience to a resolution and enable you to feel safe and supported and so that you can enjoy working in Ealing"* (738). In the grievance outcome he wrote: *"I confirm that the documentation you emailed me on 30 January 2019 in relation to your personal mobile charges will be processed as an expense claim, to reimburse you for charges incurred during the suspension period and I have made a request that you be recompensed for £202.80"*. Mr Wiltshire said that meant that the Claimant had to claim it through the expenses system. He says he could not simply authorise payment of a cheque, and that it was appropriate for it to go through expenses as it was an expense on which tax need not be paid. That is not clear from the letter which objectively indicates that the Claimant will be paid without any need for any further step by the Claimant. The Claimant never claimed through the expenses system, nor did she ask anyone why she has not received the payment. Mrs Wicks confirmed that although a payment could be made on a one-off basis through payroll, tax and NI would have been payable on that and in fact that the only way for employees to claim expenses is by themselves completing a submission through the Council's iTrent system or the equivalent hard copy form.

176. We find that Mr Wiltshire's communications to the Claimant at the grievance meeting on 29 January 2019, in his email of 30 January 2019 and in the grievance outcome of 2 April 2019 all indicated that she was to be paid the sum automatically without any further action from her. This is unfortunate, as that was not in fact the position. She needed to make a claim through the iTrent system and if she had done so, she would have been paid. She can still claim now. We have considered carefully what the reasons might be as to why Mr Wiltshire's communications with the Claimant were so misleading and we conclude that this was essentially a matter of oversight or mistake or lack of care. We infer that in January 2019 he had not really thought through

how the payment was to be made, by April 2019 he had convinced himself it would be made through the iTrent system and he assumed that the Claimant was sufficiently familiar with the system that she would simply make the claim. The confusion could very simply have been resolved if the Claimant had asked the question, but she did not. Ultimately, then, the reason why the Claimant has not been paid the money is because of Mr Wiltshire's oversight and miscommunication and the Claimant's failure to query it and not for any other reasons.

Conclusions

Direct race discrimination

The law

177. Under ss 13(1) and 39(2)(c)/(d) of the Equality Act 2010 (EA 2010), we must determine whether the Respondent, by subjecting her to any detriment, discriminated against the Claimant by treating her less favourably than it treats or would treat others because of a protected characteristic. The protected characteristic relied on by the Claimant is her race (Black African) and/or her national origin (Nigerian). For short, we will refer compendiously to these characteristics in the decision as 'race'.

178. A detriment is something that a reasonable worker in the Claimant's position would or might consider to be to their disadvantage in the circumstances in which they thereafter have to work. Something may be a detriment even if there are no physical or economic consequences for the Claimant, but an unjustified sense of grievance is not a detriment: see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] ICR 337 at [34]-[35] per Lord Hope and at [104]-[105] per Lord Scott. (Lord Nicholls ([15]), Lord Hutton ([91]) and Lord Rodger ([123]) agreed with Lord Hope.)

179. 'Less favourable treatment' requires that the complainant be treated less favourably than a comparator is or would be. A person is a valid comparator if they would have been treated more favourably in materially the same circumstances (s 23(1) EA 2010). However, we may also consider how a hypothetical comparator would have been treated.

180. The Tribunal must determine "what, consciously or unconsciously, was the reason" for the treatment (*Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] ICR 1065 at [29] per Lord Nicholls). The protected characteristic must be a material (i.e non-trivial) influence or factor in the reason for the treatment (*Nagarajan v London Regional Transport* [1999] ICR 877, as explained in *Villalba v Merrill Lynch & Co Inc* [2007] ICR 469 at [78]-[82]). It must be remembered that discrimination is often unconscious. The individual may not be aware of their prejudices (cf *Glasgow City Council v Zafar* [1997] 1 WLR 1695, HL at 1664) and the discrimination may not be ill-intentioned but based on an assumption (cf *King v Great Britain-China Centre* [1992] ICR 516, CA at 528).

181. If a decision-maker's reason for treatment of an employee is not influenced by a protected characteristic, but the decision-maker relies on the views or actions of another employee which are tainted by discrimination, it does not follow (without more) that the decision-maker discriminated against the individual: *CLFIS (UK) Ltd v Reynolds* [2015] EWCA Civ 439, [2015] ICR 1010 especially at [33] per Underhill LJ. What matters is what was in the mind of the individual taking the decision. It is also important to remember that only an individual natural person can discriminate under the EA 2010; the employer will be liable for that individual's actions, but the legislation does not create liability for the employer organisation unless there is an individual who has discriminated. As Underhill LJ explained in that case at [36]:

> 36. … I believe that it is fundamental to the scheme of the legislation that liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the act complained of must himself have been motivated by the protected characteristic. I see no basis on which his act can be said to be discriminatory on the basis of someone else's motivation. If it were otherwise very unfair consequences would follow. I can see the attraction, even if it is rather rough-and-ready, of putting X's act and Y's motivation together for the purpose of rendering E liable: after all, he is the employer of both. But the trouble is that, because of the way [what is now the EA 2010 works], rendering E liable would make X liable too …. To spell it out: (a) E would be liable for X's act of dismissing C because X did the act in the course of his employment and—assuming we are applying the composite approach—that act was influenced by Y's discriminatorily-motivated report. (b) X would be an employee for whose discriminatory act E was liable under [EA 2010, s 109] and would accordingly be deemed by [EA 2010, s 110] to have aided the doing of that act and would be personally liable. It would be quite unjust for X to be liable to C where he personally was innocent of any discriminatory motivation.

182. However, in that case the Court of Appeal also observed, that where a decision is taken jointly by more than one decision-maker, a discriminatory motivation on the part of one decision-maker will taint the whole decision: ibid at [32].

183. In relation to all these matters, the burden of proof is on the Claimant initially under s 136(1) EA 2010 to establish facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent has acted unlawfully. This requires more than that there is a difference in treatment and a difference in protected characteristic (*Madarassy v Nomura International plc* [2007] EWCA Civ 33, [2007] ICR 867 at [56]). There must be evidence from which it could be concluded that the protected characteristic was part of the reason for the treatment. The burden then passes to the Respondent under s 136(3) to show that the treatment was not discriminatory: *Wong v Igen Ltd* [2005] EWCA Civ 142, [2005] ICR 931. The Supreme Court has recently confirmed that this remains the correct approach: *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] 1 WLR 38.

184. This does not mean that there is any need for a Tribunal to apply the burden of proof provisions formulaically. In appropriate cases, where the Tribunal is in a position to make positive findings on the evidence one way or another,

the Tribunal may move straight to the question of the reason for the treatment: *Hewage v Grampian Health Board* [2012] UKSC 37, [2012] ICR 1054 at [32] per Lord Hope. In all cases, it is important to consider each individual allegation of discrimination separately and not take a blanket approach (*Essex County Council v Jarrett* UKEAT/0045/15/MC at [32]), but equally the Tribunal must also stand back and consider whether any inference of discrimination should be drawn taking all the evidence in the round: *Qureshi v Victoria University of Manchester* [2001] ICR 863 per Mummery J at 874C-H and 875C-H.

185. We have also directed ourselves to *Bahl v Law Society* [2003] IRLR 640, in which Gibson LJ provided helpful guidance on the approach to reasonableness and unreasonableness in a discrimination context as follows:

> 98.. Accordingly, to the extent that the tribunal found discriminatory treatment from unreasonable treatment alone, their reasoning would be flawed and the finding of discrimination could not stand. That is the clear ratio of Zafar and that decision remains unaffected by Anya.
>
> The relevance of unreasonable treatment
>
> 99.. That is not to say that the fact that an employer has acted unreasonably is of no relevance whatsoever. The fundamental question is why the alleged discriminator acted as he did. If what he does is reasonable then the reason is likely to be non-discriminatory. In general a person has good non-discriminatory reasons for doing what is reasonable. This is not inevitably so since sometimes there is a choice between a range of reasonable conduct and it is of course logically possible the discriminator might take the less favourable option for someone who is say black or a female and the more favourable for someone who is white or male. But the tribunal would need to have very cogent evidence before inferring that someone who has acted in a reasonable way is guilty of unlawful discrimination.
>
> 100.. By contrast, where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups.
>
> 101.. The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination But it will depend upon why it has rejected the reason that he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct. Persons who have not in fact discriminated on the proscribed grounds may nonetheless sometimes give a false reason for the behaviour. They may rightly consider, for example, that the true reason casts them in a less favourable light, perhaps because it discloses incompetence or insensitivity. If the findings of the tribunal suggest that there is such an explanation, then the fact that the alleged discriminator has been less than frank in the witness

> box when giving evidence will provide little, if any, evidence to support a finding of unlawful discrimination itself.

186. We have also taken account of *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865 at [22] where Elias J observed:

> "(I)t is crucial that the Tribunal at the second stage is simply concerned with the reason why the employer acted as he did. If there is a genuine non-discriminatory reason, at least in the absence of clear factors justifying a finding of unconscious discrimination, that is the end of the matter. It would obviously be unjust and inappropriate to find discrimination simply because an explanation given by the employer for the difference in treatment is not one which the Tribunal considers objectively to be justified or reasonable. If that were so, an employer who selected [for redundancy] by adopting unacceptable criteria or applied them inconsistently could, for that reason alone, then potentially be liable for a whole range of discrimination claims in addition to the unfair dismissal claim. That would plainly be absurd. Unfairness is not itself sufficient to establish discrimination on grounds of race or sex, as the courts have recently had cause to observe on many occasions: see *Bahl* and the House of Lords decision in *Glasgow City Council v Zafar* [1998] ICR 120."

Conclusions

187. With regards to the issues in the list of issues, we conclude as follows. In relation to all the allegations apart from the complaint about Ms Ondier-Thomas extending her probation, we accept that the matters about which the Claimant complains are significant enough to amount to detriments:-

Issue 1.41: "on 29 November 2017, SH openly remarked to the Business Services Team that she would have the claimant removed from her post and prepared a management report to Lorna Anderson of the same date with this recommendation"

188. We found as a fact that Ms Hutchinson did not openly make a remark to the team as alleged by the Claimant. That part of this allegation therefore fails. As to Ms Hutchinson's reasons for writing a probation report recommending the Claimant's dismissal, we find that her report was soundly based on facts about the Claimant's performance and conduct as Ms Hutchinson genuinely perceived them to be. Her recommendation for dismissal was also reasonable given the Claimant's conduct during probation which in our judgment would have been regarded by most employers as unacceptable. We rejected in our findings of fact the Claimant's case as to overtly racist conduct by team members, or that there was a racial divide within the team. There is therefore no evidence from which we could infer that the Claimant's race played any part whatsoever in Ms Hutchinson's approach to the Claimant's probationary period. This claim fails.

Issues 1.42 and 1.46: the decision of Thomas James ("TJ") on 19 January 2018 to refuse the claimant's request to be accompanied by Lorna Campbell to the grievance meeting scheduled to take place on 26 January 2018 and TJ rejecting the claimant's formal grievance by letter dated 19 February 2018 without addressing the staff conduct issues raised by the claimant

189. The Claimant accepted in oral evidence, and Mr Obiweluozo confirmed in closing submissions, that the Claimant did not believe that Mr James' handling of her grievance was influenced by her race. We agree. There is no evidence from which it could be inferred that Mr James would have dealt with any other person's grievance any differently. These claims fail.

Issue 1.48: on or about 25 May 2018 PD and GJ made false and malicious allegation against the claimant of possession of child pornography/pornographic material(s) on her mobile phone

190. For the reasons set out below and in our findings of fact, we conclude on the balance of probabilities that the allegations made by Ms Donkor and Ms Joseph were not false and malicious. (For the avoidance of doubt, we understand the Claimant to use the word 'false' here as a synonym for 'malicious'.) We also record that in discussion with the parties at the start of proceedings, it was agreed that we were not being asked to find that the Claimant did in fact show pornographic material on her mobile to her colleagues, just whether or not the allegations were malicious.

191. As to Ms Joseph, from whom we have heard evidence, although she made the allegations some time after the incidents were alleged to have happened, the explanation for this was that Ms Joseph had (understandably) felt concerned about being believed and it was not until she realised there was potential corroboration from other team members that she had the courage to come forward. On the face of it, by May 2018 it was implausible that the Claimant's old team members would have been acting vindictively towards her: she had left, they no longer had to work with her, and none of them had suffered any particular detriment as a result of anything the Claimant did (other than finding her difficult to work with). There was simply no motive for them to make up allegations as at May 2018. While the Claimant was working in the team, there may have been a motive, but Ms Joseph did not come forward then (even when she complained about other aspects of the Claimant's conduct on 20 February 2018). This further strengthens the impression that when Ms Joseph did come forward she was not acting maliciously. Ms Joseph was very conscious of the serious implications for her of lying (criminal prosecution or dismissal) and we find it implausible that she would have run that risk some two months after the Claimant had left the team if she did not genuinely believe that she had been shown child pornographic material. She has been consistent about the content of that material at all times, and we found her oral evidence generally to be credible and consistent. We were particularly struck by her description of the effect that seeing the video had had on her, i.e. 'once you see it you cannot unsee it'. We found this persuasive as we ourselves found that even reading a description of it had had a similar effect on us. We therefore find that Ms Joseph was not acting maliciously.

192. We have then considered whether Ms Donkor was acting maliciously. We have not heard evidence from Ms Donkor, but there is no evidence before us to suggest that she was acting maliciously. The fact that Ms Byrne, Ms Beepath and Ms Joseph made similar but different allegations which they

each expressed in their own words and own ways in their emails and in interview with Ms Duvall, strongly suggests that these were genuine and not malicious allegations. Further, as we have said, the Claimant had left the team two months' previously so there was no motive for any of them to make up the allegations at this point. In the circumstances, we are satisfied on the balance of probabilities that Ms Donkor was not acting maliciously.

193. We add that, in the absence of any evidence that the allegations were malicious (beyond the bare fact of the Claimant's denial), it would be wrong for us to draw an inference from the fact that Ms Byrne, Ms Beepath and Ms Donkor were not called by the Respondent to give evidence in this case that they were lying, and (despite the invitation) of Mr Obiweluozo we decline to do so. The Respondent *has* called the main person who made the allegations, and we are satisfied that she was not acting maliciously. Parties should take a proportionate approach to litigation, and there was in our judgment no need for the Respondent to call the others as witnesses in this case. There were no allegations made by the Claimant against Ms Byrne or Ms Beepath. Although there was an allegation against Ms Donkor, she had left the Respondent's employment so it is understandable that she was not called given that Ms Joseph was available. There is no evidence that any of these indiviudals were asked to give evidence and refused. There is no basis for drawing an adverse inference from their absence.

194. We further observe that the burden of proof is on the Claimant to establish that the allegations were malicious and so, although we have not based our decision on the burden of proof, it would have been for the Claimant to call Ms Donkor if she wished to establish her allegation that she was acting maliciously. The fact that the Respondent did not call Ms Donkor does not go against the Respondent in this case.

195. As the allegations were not malicious, that could be said to dispose of the Claimant's claim as pleaded, but we have nonetheless gone on to consider whether, even if the allegations were not malicious, the making of them was nonetheless influenced by the Claimant's race. However, there is no evidence from which we could reach that conclusion. We rejected the Claimant's allegations of racist behaviour by her team members, and her case that there was a racial divide in the team. We are satisfied that the Claimant's race played no part whatsoever in the making of the allegations.

Issue 1.51: Lynne Duval ("LD") suspending the claimant on 25 May 2018 based on false, malicious and fabricated allegation of possession of pornography and handed her a suspension letter of the same date

196. We have already found that the allegations were not false, malicious or fabricated. In our findings of fact, we further found that it was reasonable for Ms Duvall to treat the allegations as credible and to seek advice from the police. The decision to suspend was taken by Ms Duvall and Mr Wiltshire with advice from Ms Gore. The reason stated by Mr Wiltshire at the time was because the Claimant was working with vulnerable families and therefore a precautionary suspension was appropriate given the nature of the allegations

against the Claimant. We are satisfied that it was reasonable to suspend given the allegations made, and that the police had considered there was sufficient evidence to justify arresting the Claimant for a relatively serious offence. We would expect any other employer to do the same and the procedure followed by the Respondent was appropriate and reasonable.

197. Mr Obiweluozo has made a number of submissions alleging that the Respondent failed to follow its own procedures in relation to suspension. Most of those points have no merit. For example, initial enquiries *were* made by Ms Duvall before any action was taken, and the Claimant was given the reasons for her suspension in writing in the letter of 25 May 2018. As to whether the Respondent should have considered alternatives to suspension, we accept that little consideration was given to this, but in our judgment there was no need for serious consideration of alternatives in this case. It is in our judgment reasonable for a public sector employer to suspend from work someone who has been arrested by the police on suspicion of possessing indecent images of children; indeed, we would have been surprised if any public sector employer had taken a different approach. There was in our judgment no material failure by the Respondent to follow any of its procedures in relation to the suspension decision and in any event there is no basis from which we could infer that the Claimant's race had anything to do with the decision to suspend.

Issue 1.52: On 14 September 2018, Lucy Ondier Thomas extended the claimant's probation period based on false, malicious and fabricated allegation of possession of pornography

198. The Claimant accepts that Ms Ondier-Thomas's actions in this regard were not discriminatory, and we agree. There is no evidence from which we could infer that in this case. She simply took the only decision reasonably available to her under the Respondent's policy in the circumstances (apart from dismissing the Claimant, which was the only reasonable alternative). For this reason, we also find that this could not reasonably have been considered to be a detriment as it was a much better option for the Claimant than dismissal, and the Claimant agreed to it.

Issue 1.53: LD notifying the claimant by letter dated 24 October 2018 that the investigation into the allegations against the claimant would continue despite the police confirming no further action would be taken against her

199. In our findings of fact, we have already explained that in our judgment it was reasonable for the Respondent to continue with the internal investigation despite the police confirming no further action would be taken against the Claimant. For the reasons we have given there, the outcome of the police investigation was not a 'vindication' of the Claimant, but a decision that there was insufficient evidence to prosecute. The police were also investigating only the potential criminal offence (possession of indecent images of children); the Respondent's (legimate) concerns were that the Claimant had shown pornographic material to her colleagues in her workplace during worktime, which was (if proved) gross misconduct under the Respondent's

policy and merited further internal investigation. We are wholly satisfied that the Claimant's race had nothing to do with that decision. The same approach would have been taken regardless of the race of the individual involved.

Issue 1.54: MW failing to act on the grievance dated 29 November 2018 to investigate allegations against the claimant promptly or within a reasonable time and/or failure to carry out proper investigation or at all against the persons who made the false, malicious and racially motivated allegation against the claimant which led to her arrest

200. In our findings of fact, we have set out why we consider that Mr Wiltshire investigated the grievance within a reasonable time, and why he did not himself carry out (or instruct to be carried out) an investigation into allegations of misconduct against those who had made the allegations against the Claimant. In our judgment, it was reasonable of Mr Wiltshire not to seek to re-investigate this. Investigations had been carried out by the police and Ms Ramsaran and it was reasonable of him to work on the basis that neither the police or Ms Ramsaran had identified any concerns that the allegations made against the Claimant were malicious or warranted investigation for perverting the course of justice / misconduct. We are satisfied he would have taken the same approach regardless of who had brought the grievance in these circumstances. We find that the Claimant's race had nothing to do with it. This claim fails.

Issue 1.55: the Respondent placed or permitted to be placed, faeces on the claimant's desk on two occasions in or around mid-December 2018 or otherwise permitted this to be done

201. We have found as a fact that no faeces were placed on the Claimant's desk. This claim fails for that reason alone. What was on the Claimant's desk was some dirt that looked like faeces. This had also happened to Ms Ondier-Thomas and so there is in any event no basis for suggesting the Claimant was being less favourably treated by any person on the grounds of race.

Issue 1.56: On 27 February 2019 SH rudely and aggressively interrupting the claimant whilst she was speaking with Reginald Oyekan ("RO") and thereafter tried to barge into her; brushing the claimant's shoulder and turning back to see the claimant's reaction

202. In our findings of fact we concluded that Ms Hutchinson did not act rudely and aggressively towards the Claimant and that there was no physical contact between them. This claim therefore fails.

Issue 1.59: from 5 May 2019 to 4 November 2019, Alison Reynolds failed to progress the claimant's appeal against a grievance outcome dated 5 May 2019 promptly or at all

203. In our findings of fact we concluded that Mrs Reynolds did progress the appeal, and that her delay in doing so was wholly explained by the time taken up by "without prejudice" discussions, her holiday and her work

commitments. The Claimant has not identified any basis from which we could infer that Mrs Reynolds would have taken a different approach to any other similar appeal. We are satisfied that the Claimant's race had no influence whatsoever on the way that Mrs Reynolds dealt with the appeal.

Harassment related to race

The law

204. By s 26(1) of the EA 2010 a person harasses another if: (a) they engage in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of (i) violating the claimant's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. By s 26(4), in deciding whether conduct has the requisite effect, the Tribunal must take into account: (a) the perception of the claimant; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect. In *Land Registry v Grant* [2011] EWCA Civ 769, [2011] ICR 1390 at [47] Elias LJ focused on the words of the statute and observed: *"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment"*. As the EAT explained at [31] in *Bakkali v Greater Manchester Buses (South) Ltd* [2018] ICR 1481, harassment involves a broader test of causation that discrimination which requires a *"more intense focus on the context of the offending words or behaviour"*. The mental processes of the putative harasser are relevant but not determinative: conduct may be 'related to' a protected characteristic even if it is not 'because of' a protected characteristic. The provisions on harassment take precedence over the direct discrimination provisions: conduct which amounts to harassment does not (save where the harassment provisions are disapplied for the specific protected characteristic) constitute a detriment for the purposes of ss 13 or 27: see EA 2010, s 212(1).

Conclusions

205. The Claimant relies in relation to her harassment claim on some of the same allegations as she relied on in relation to her direct race discrimination claim. For the reasons we have set out above, we found that none of that conduct was because of her race. We are satisfied for the same reasons that it was not 'related to' her race for the purposes of s 26 of the EA 2010 and accordingly the harassment claim also fails.

Victimisation

The law

206. Under ss 27(1) and s 39(2)(c)/(d) EA 2010, the Tribunal must determine whether the Respondent has treated the Claimant unfavourably by subjecting her to a detriment because she did, or the Respondent believed she had done, or may do, a protected act.

207. A protected act includes (so far as relevant in this case) bringing proceedings under this Act or making an allegation (whether or not express) that a person has contravened this Act (ss 27(2)(a) and (c)). An act is not protected if it is done in bad faith (s 27(3)).

208. In considering whether an act is a protected act, we must remember that merely referring to 'discrimination' or 'harassment' in a complaint is not necessarily sufficient to constitute a protected act as defined. The EA 2010 does not prohibit all discrimination/harassment, it only prohibits discrimination/harassment on the basis of a proscribed list of protected characteristics. The Tribunal must determine whether, objectively, the employee has done enough to convey, by implication if not expressly, an allegation that the Act has been contravened. In *Durrani v London Borough of Ealing* UKEAT/0454/2012/RN, that was not the case where the employee, when questioned, explained that the 'discrimination' complaint was really a complaint of unfair treatment, not of less favourable treatment on grounds of race or ethnicity. The EAT, the then President, Langstaff P, observed as follows at paragraph 27:

> 27. This case should not be taken as any general endorsement for the view that where an employee complains of "discrimination" he has not yet said enough to bring himself within the scope of Section 27 of the Equality Act . All is likely to depend on the circumstances, which may make it plain that although he does not use the word "race" or identify any other relevant protected characteristic, he has not made a complaint in respect of which he can be victimised. It may, and perhaps usually will, be a complaint made on such a ground. However, here, the Tribunal was entitled to reach the decision it did, since the Claimant on unchallenged evidence had been invited to say that he was alleging discrimination on the ground of race. Instead of accepting that invitation he had stated, in effect, that his complaint was rather of unfair treatment generally.

209. In deciding whether the reason for the treatment was the protected act, we apply the same approach as for discrimination set out above. Likewise, the test for whether something is a 'detriment' is the same, as is the burden of proof.

210. However, a claim of victimisation cannot succeed unless the alleged victimiser is at least either aware of the protected act, or believes that a protected act has been done (or may be done). In *South London Healthcare NHS Trust v Dr Bial-Rubeyi* (UKEAT/0269/09/SM), the EAT found that there was no evidence from which the Tribunal could have concluded that the alleged victimiser was aware that the claimant had made a complaint of discrimination. In those circumstances, the EAT (McMullen J) substituted a finding that the Respondent did not victimise the Claimant.

Conclusions

211. We have considered each of the communications that the Claimant relies upon as constituting protected acts and we conclude as follows:-

a. *Issue 8.2* - The Claimant's communication of 21 September 2017 consisted of her forwarding to Ms Anderson a copy of her complaint of 10 August 2017 about the canteen incident. That complaint refers to Raza accusing the Claimant of 'discrimination' (on no particular ground) but otherwise contains nothing that could be construed as an allegation of contravention of the EA 2010 and is not therefore a protected act.

b. *Issue 8.5* - The Claimant's grievance of 17 November 2017 does contain the words 'harassment' and 'victimisation' but it does not link these with any protected characteristic. There is reference to other members of the team speaking *"their Caribbean language"* but this is mentioned as merely one of a number of aspects of the team's behaviour with which the Claimant is unhappy, and the Claimant does not suggest at any point that the reason for the conduct of the team about which she complains has anything to with race or nationality or any other protected characteristic under the EA 2010. The focus of the Claimant's complaints are that there is 'nepotism' and 'clinging friends' within the team, not that there is any conduct that could be construed as being unlawful under the EA 2010. Further, Mr James who investigated the Claimant's grievance did not recognise it as raising any allegation of breach of the EA 2010. We find that, objectively, it does not contain any allegation that amounts to a protected act within the definition of s 27 of the EA 2010.

c. *Issue 8.8* - The Claimant's letter of 17 February 2018 sent to the Claimant's trade union representative and copied to Ms Anderson does include an allegation that if she had been white she would not have been treated by Ms Hutchinson as she was. We accept that this is a protected act within the meaning of s 27 EA 2010.

d. *Issue 8.10* - The Claimant's letter of 14 September 2018 to Mr Najsarek refers to discrimination and harassment, but does not link that with any protected characteristic and on an objective reading of that letter it contains nothing that could be construed as a protected act under s 27 of the EA 2010.

e. *Issue 8.11* - The Claimant's second formal grievance of 19 November 2018 contains (at 709) explicit allegations of nationality discrimination and harassment. The Respondent accepts, and so do we, that this constitutes a protected act under s 27 of the EA 2010.

f. *Issue 8.13* - The Claimant accepted in evidence that her grievance appeal of 5 May 2019 did not contain any allegation that Mr Wiltshire had failed to investigate her allegations of discrimination. We find that it does not include anything that could be construed as an allegation of contravention of the EA 2010. It is not a protected act.

g. *Issue 8.14* - The Claimant's submissions for the disciplinary investigation, appended to her email to Mr Wiltshire, Ms Gore and

Ms Ondier-Thomas of 23 June 2018, includes an explicit allegation that 'if she had been white' she would not have been subject to malicious allegations. As such, it constitutes a protected act. The Claimant's submissions of 10 July 2018, however, do not include a protected act. In those submissions, the Claimant suggests that her former team members were motivated by a desire for 'revenge'. She does not make any allegation that could be construed as an allegation of contravention of the EA 2010. This is not a protected act.

212. We have considered each of the alleged detriments relied on by the Claimant and we conclude as follows. In each case (save in relation to the extension of her probation period by Ms Ondier-Thomas) we are satisfied that these matters are significant enough to constitute 'detriments' within the meaning of s 27 EA 2010:-

Issue 9.1: On 25 May 2018, the arrest, search against the claimant's will, humiliation and her detention based on false, malicious and fabricated allegation of possession of pornography/pornographic material.

213. This allegation is concerned with the actions of the police. The Respondent was not responsible for the actions of the police and this claim therefore fails.

214. Alternatively, to the extent that this allegation is an allegation against Ms Duvall/Mr Wiltshire for reporting the matter to the police, there is no evidence that they were aware of the Claimant's communication to her trade union representative of 17 February 2018 which is the only protected act that we have found had occurred at this point. It follows that it cannot have motivated them and the claim would fail for that reason too.

215. In any event, for the reasons we have set out above in relation to the direct discrimination allegations, we find that the Respondent's actions in reporting the matter to the police were reasonable and there is no basis for inferring that they were motivated by any complaint the Claimant had made. This claim fails.

Issue 9.2: Suspending the claimant on 25 May 2018 by Lynne Duval.

216. The decision to suspend was made by Ms Duvall and Mr Wiltshire on the advice of Ms Gore. There is no evidence that they were aware of the Claimant's communication to her trade union representative of 17 February 2018 which is the only protected act that we have found had occurred at this point. It follows that it cannot have motivated them. In any event, for the reasons we have set out above in relation to the direct discrimination allegations, we find that the Respondent's actions in suspending the Claimant were reasonable (indeed we do not think that any public sector employer could reasonably <u>not</u> have suspended an employee who the police had arrested for such an offence). There is no basis for inferring that Ms Duvall/Mr Wiltshire were motivated by any complaint the Claimant had made. This claim fails.

Issue 9.4: LD continuing to investigate allegations against the claimant from 24 October 2018 to 15 November 2018 despite the police confirming that no further action would be taken.

217. Ms Duvall was aware of the Claimant's statement of 23 June 2018 which we have found constituted a protected act (but not of the 17 February 2018 letter). However, there is nothing to suggest that this influenced in any way her decision to instruct that the internal investigation be continued on 24 October 2018. The decision to continue with that investigation was reasonable for the reasons we have set out above in relation to the discrimination allegations. Indeed, we again cannot see that any public sector employer could reasonably have done any differently. We are satisfied that the decision had nothing to do with any complaint the Claimant had made. This claim fails.

Issue 9.5: Lucy Ondier Thomas extending the probation of the claimant on 14 September 2018

218. For the reasons that we have set out above, we do not consider this decision could reasonably have been regarded by the Claimant as a detriment because the only proper alternative would have been dismissal. In any event, the Claimant accepts that Ms Ondier-Thomas was just following policy at this point and we agree. There is no basis for any inference of victimisation.

Issue 9.6: Failing to reimburse the claimant for mobile phone charges incurred whilst in police possession, as promised immediately or within a reasonable time after 30 January 2019 following MW's promise to the claimant that she would be reimbursed for phone charges incurred

219. Mr Wiltshire was aware of the Claimant's protected acts of 23 June 2018 and 19 November 2018. In our findings of fact we concluded that the reason that this money was not paid was oversight and miscommunication and the Claimant's failure to query it. We have nonetheless considered whether the Claimant's protected disclosures played any role in Mr Wiltshire's miscommunications or oversight, but can see no reason to infer that they did. The elements of the Claimant's communications that constituted protected acts were small elements of the complaints and the impression that we formed in evidence was that Mr Wiltshire was used to dealing with equalities issues and would not react adversely to any such allegation. We find that his treatment of the expenses issue is wholly explained by the factors we have identified, i.e. oversight, miscommunication and the Claimant's failure to query it. This claim fails.

Issue 9.7: on or around October 2017 to present, failing to carry out a proper investigation or at all against the persons who made the false, malicious and fabricated allegations against the claimant immediately or within a reasonable time following receipt of allegations made against the claimant and which led to her arrest

220. Although Mr Wiltshire was aware of the Claimant's protected acts of 23 June 2018 and 19 November 2018, the reasons he did not investigate those who made the allegations against the Claimant we have identified above when considering the direct race discrimination claims. We find Mr Wiltshire's explanation to be a complete one and the Claimant's protected acts did not influence his approach in any way. This claim fails.

Public interest disclosure detriments

The law

221. Under s 47B(1) ERA 1996, a worker has a right not to be subjected to a detriment by any act or deliberate failure to act on the part of her employer done on the ground that the worker has made a protected disclosure. Under s 47B(1A)(a) ERA 1006 a worker has the same right not to be subjected to a detriment by another worker of the employer done in the course of that other worker's employment.

222. What is a 'detriment' is the same as for direct discrimination claims (see above).

223. Section 43A ERA 1996 defines a protected disclosure as a qualifying disclosure, which is in turn defined in s 43B(1) as "any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more" of a number of types of wrongdoing. These include, (b), *"that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject"* and (d), *"that the health or safety of any individual has been, is being, or is likely to be endangered"*.

224. A qualifying disclosure must be made in circumstances prescribed by other sections of the ERA, including, under section 43C, to the worker's employer.

225. In the light of *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325, [24]-[26], it was for a time suggested that a mere allegation could not constitute a disclosure of information. However, in *Kilraine v Wandsworth LBC* [2018] ICR 1850 the Court of Appeal clarified (at [30]-[36]) that *"allegation"* and *"disclosure of information"* are not mutually exclusive categories. What matters is the wording of the statute; some 'information' must be 'disclosed' and that requires that the communication have sufficient *"specific factual content"*. In *Simpson v Cantor Fitzgerald Europe* [2020] EWCA Civ 1601, [2021] ICR 695 the Court of Appeal at [53] approved the approach of the EAT (UKEAT/0016/18/DA) at [42] in relation to the use of questions in an alleged protected disclosure) that the fact that a statement is in the form of a question does not prevent it being a disclosure of information if it *"sets out sufficiently detailed information that, in the employee's reasonable belief, tends to show that there has been a breach of a legal obligation"*.

226. What must be established in each case is that the Claimant has a reasonable belief that the information disclosed tends to show one of the matters in s 43B(1), i.e. that the information disclosed 'tended to show' that someone had failed, was failing or was likely to fail to comply with one of the legal obligations set out there. 'Tends to show' is a lower hurdle than having to believe the information 'does' show the relevant breach or likely breach: see *Twist DX Limited v Armes* (UKEAT/0030/20/JOJ) at [66].

227. In the light of Babula v Waltham Forest College [2007] EWCA Civ 174, [2007] ICR 1026 ([74]-[81]), what is necessary is that the Tribunal first ascertain what the Claimant subjectively believed. The Court of Appeal in *Ibrahim v HCA International Ltd* [2019] EWCA Civ 2007, [2020] IRLR 224 (see especially [14]-[17] and [25]) has confirmed that it is the Claimant's subjective belief that must be assessed when considering the public interest element as well. The Tribunal must then consider whether the Claimant's belief in both respects was objectively reasonable, i.e. whether a reasonable person in the Claimant's position would have believed that all the elements of s 43B(1) were satisfied, specifically that the disclosure was in the public interest, and that the information disclosed tended to show that someone had failed, was failing or was likely to fail to comply with a relevant legal obligation. The Court of Appeal in *Babula* emphasised that it does not matter whether the Claimant is right or not, or even whether the legal obligation exists or not. As such, it is not necessary that the disclosure identify or otherwise refer to the legal obligation (or any of the matters in s 43B(1)), although whether it does or not may be relevant to the reasonableness of the claimant's belief that the information disclosed tends to show a relevant breach: see *Twist DX Limited v Armes* (UKEAT/0030/20/JOJ) at [87] and [103]-[104] per Linden J.

228. The reasonableness of the worker's belief is determined on the basis of information known to the worker at the time the decision to disclose is made: *Darnton v University of Surrey* [2003] ICR 615. It is to be assessed in the light of all the surrounding circumstances and as such witness evidence will be relevant to determining whether or not a written disclosure satisfies the statutory requirements or not. What was or was not known to the Claimant and relevant witnesses at the time will be relevant to whether or not the Claimant could reasonably believe that the disclosure met the statutory requirements: see *Twist* ibid at [57]-[59].

229. Prior to the amendment to s 43B of the ERA 1996 (by the Employment and Regulatory Reform Act 2013, s 17) to introduce the 'public interest' requirement, it had been held (in *Parkins v Sodexho* [2002] IRLR 109) that a disclosure concerning a breach of the employee's own contract could be a protected disclosure. In *Chesterton Global and anor v Nurmohamed* [2017] EWCA Civ 979, [2018] ICR 731 the Court of Appeal (per Underhill LJ at [36]) made the following observations about the policy intent of the introduction of the 'public interest' requirement:

> The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the

> Parkins v Sodexho kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of section 43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers-even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.

230. The Court of Appeal in that case approved guidance formulated by counsel as to the matters that may be relevant to assessing the reasonableness of the Claimant's belief in the matter being a matter of public interest which included the following ([34]):

> (a) the numbers in the group whose interests the disclosure served [see above];
> (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed-a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
> (c) the nature of the wrongdoing disclosed-disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;
> (d) the identity of the alleged wrongdoer-as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, ie staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest"-though he goes on to say that this should not be taken too far.

231. If a protected disclosure has been made, the Tribunal must consider whether the Claimant has been subjected to a detriment "on the ground that" he made a protected disclosure (s 47B(1)). This means that the protected disclosure must be a material factor in the treatment: *Fecitt v NHS Manchester* [2011] EWCA Civ 1190, [2012] ICR 372 at [43] and [45]. This requires an analysis of the mental processes of the worker who is alleged to have subjected the claimant to a detriment. In order for a decision-maker to be materially influenced by a protected disclosure, they must have personal knowledge of it: see *Malik v Cenkos Securities Plc* (UKEAT/0100/17/RN) at [85]-[87]. As Choudhury J explains there, that is because in whistle-blowing cases, as in discrimination, the focus is on what is in the mind of the individual alleged to have subjected the claimant to a detriment. As was held in the discrimination case of *CLFIS (UK) Limited v Reynolds* [2015] IRLR 562, it is not permissible to add together the mental processes of two different individuals.

232. The burden of proof is on the Claimant to establish a protected disclosure was made, and that he or she was subject to detrimental treatment. However,

s 48(2) provides that it is then *"for the employer to show the ground on which any act, or deliberate failure to act, was done"*. It has been held that, although the burden is on the employer, the Claimant must raise a prima facie case as to causation before the employer will be called upon to prove that the protected disclosure was not the reason for the treatment: see *Dahou v Serco Ltd* [2016] EWCA Civ 832, [2017] IRLR 81 at [40] (deciding this point so far as dismissal cases are concerned, persuasive obiter on the same point for detriment cases). As such, the section creates a shifting burden of proof that is similar to that which applies in discrimination claims under s 136 of the EA 2010. Unlike in discrimination claims, though, if the employer fails to show a satisfactory reason for the treatment, the Tribunal is not bound to uphold the claim. If the employer fails to establish a satisfactory reason for the treatment then the Tribunal may, but is not required to, draw an adverse inference that the protected disclosure was the reason for the treatment: see *International Petroleum Ltd v Osipov and ors* UKEAT/0058/17/DA and UKEAT/0229/16/DA at [115]-[116] and *Dahou* ibid at [40].

Conclusions

233. In relation to each of the alleged protected disclosures, we find as follows:-

a. *Issue 11.1* – The Claimant's complaint of 10 August 2017 about what happened in the canteen was not a protected disclosure. Although the Claimant refers to health and safety breaches, her allegation is that, some months previously, Raza put gone off milk in her coffee. We accept that the Claimant subjectively believed that doing so had endangered her health and safety, and we are prepared to assume (although she has given no direct evidence on the point) that she subjectively believed this was a matter of public interest, but her beliefs do not meet the objectively reasonable test. No one could reasonably believe that the putting of the gone off milk in the coffee was not an accident (especially where they had been refunded the cost), and no one could reasonably believe that accidentally putting gone off milk in coffee posed a danger to health and safety: first, because it is always obvious so no one drinks it; secondly, because even if they did drink it, we cannot imagine that it poses any health risk given that it would have been put into hot coffee which would likely kill any bacteria. Nor could anyone reasonably believe that someone accidentally putting spoiled milk in one individual cup of coffee was a matter of wider public interest. It affects only the individual.

b. *Issue 11.2* - The Claimant's communication of 21 September letter is same as the 10 August 2017 letter so this is not a protected disclosure either.

c. *Issue 11.3* – The Claimant's complaint to Ms Anderson of 22 September 2017 did not constitute a protected act for the purposes of a victimisation claim, but it does not follow that it is not a protected

disclosure. The Claimant refers to harassment for which there is legal protection under the Protection from Harassment Act 1997 (PHA 1997) even where the harassment is not related to a protected characteristic. The Claimant also details what she perceives to be threats to her own health from Ms Hutchinson and Raza. We are therefore prepared to accept that the Claimant subjectively believed she was disclosing information that tended to show a breach of a legal obligation/ danger to health and safety. We are also again prepared to assume without deciding that she had the necessary subjective belief in the public interest. However, so far as the actions of Raza are concerned, we do not consider the disclosure meets the objective test for the reasons given above in relation to Issue 11.1, and we do not think that objectively anyone could reasonably have considered this letter raise any matter of public interest. It is concerned only with personal issues and conflict between the Claimant and Raza, Ms Hutchinson and other members of her team. That is a very small circle and the matters complained of are really only of relevance to the Claimant herself. This is not a protected disclosure.

d. *Issue 11.4* – The Claimant's email to Ms Hutchinson of 2 November 2017 is a short email complaint about perceived hostility and lack of support. There is nothing to suggest that the Claimant believed she was disclosing information that tended to show breach of a legal obligation/health and safety and we find she did not have any such belief. Moreover, no one could reasonably consider that this email tended to show any such brief. Further, objectively, this is a personal matter between the Claimant and Ms Hutchinson in which there is no public interest. This is not a protected disclosure.

e. *Issue 11.5* – The Claimant's first formal grievance of 17 November 2017 did not amount to a protected act for the purposes of victimisation, but the reference to harassment could reasonably be understood as invoking the PHA 1997. However, again, even if the Claimant believed it was a matter of public interest (about which we have heard no evidence), objectively this was a personal grievance by the Claimant in respect of which there was no public interest. This was not a protected disclosure.

f. *Issue 11.6* – There was not a separate grievance on 30 Nov 2017 so this is a repeat of Issue 11.5.

g. *Issue 11*.7 – The Claimant's email to Ms Anderson of 5 December 2017 sets out explicit allegations of (in summary) misconduct in public office/bribery and discloses information that tends to show there may have been a breach of the Respondent's legal obligations in this respect. The Claimant has given evidence, which we accept, that she believed this to be a matter of public interest. We accept that this email meets the objectively reasonable test too, and that it was also a matter objectively of public interest since the public has a

general interest in ensuring that public monies are spent in accordance with proper procedures, and not because individuals (landlords in this case) have bribed or otherwise influenced local authority officers by giving them gifts. This was therefore a protected disclosure.

h. *Issue 11.8* – The Claimant's email of 19 January 2018 complains about breach by the Respondent of its policy in relation to who may accompany an employee to a disciplinary or grievance hearing, but it does not contain any allegation that tends to show breach of a legal obligation. The Claimant has not given any evidence that she considered this did amount to a breach of a legal obligation or was a matter of public interest. Accordingly, it does not meet the subjective test. It also does not meet the objective test because any reasonable person would be aware that a policy is not the same as law, and in any event, this is again a personal matter in respect of which there is no wider public interest. This was not a protected disclosure.

i. *Issue 11.9* – On 9 March 2018 the Claimant emailed Ms Anderson complaining about bullying and harassment by Ms Hutchinson and asserting it was a threat to her health. We accept that the Claimant subjectively believed that she was disclosing information that tended to show a breach of a legal obligation/health and safety, and we accept that objectively this letter meets that test too. However, the Claimant has given no evidence that she considered this to be a matter of public interest and, objectively, we do not accept that it was a matter of public interest. It concerns again the purely personal matter of the Claimant's relationship with Ms Hutchinson. This is not a protected disclosure.

j. *Issue 11.10* – The Claimant's email to Mr Najsarek of 14 September 2018 is her making a data subject access request under data protection legislation. It does refer (without factual details) to 'discrimination, harassment and bullying' but there is nothing to suggest that she subjectively considered it disclosed the necessary information, and objectively it does not. Further, it is all personal to her and objectively not a matter of public interest. This was not a protected disclosure.

k. *Issue 11.11* – The Claimant's formal grievance of 19 November 2018 constituted a protected act for the purposes of the victimisation claim and we accept that, subjectively and objectively, this grievance discloses information that tends to show a breach of a legal obligation in terms of the explicit allegations of discrimination, harassment and malicious falsehoods. However, the Claimant has given no evidence that she considered this to be a matter of public interest, and we find that objectively it is not a matter of public interest but only a matter concerning her personal circumstances. This was not a protected disclosure.

l. *Issue 11.12* – See 11.11. These are the same document.

m. *Issue 11.13* – The Claimant's grievance appeal of 5 May 2019 does refer to harassment and bullying by Ms Hutchinson and alleges that false and malicious allegations were made against her. We accept that subjectively the Claimant believed that this document disclosed the necessary information, but there is no evidence that she believed it was in the public interest and, objectively, we find it was not, as it was all concerned with the Claimant's personal employment issues, not any wider matter of public interest. This was not a protected disclosure.

n. *Issue 11.14* – The Claimant's statement for the disciplinary investigation of 23 June 2018 refers to many of the allegations she has made previously (including race discrimination, PHA 1997, 'poisoning' in the canteen, malicious falsehoods, and of bribery/corruption in relation to receiving food from hoteliers). Our findings in relation to each of these elements are therefore as previously: the disclosure in relation to receiving food from hoteliers is a protected disclosure. The other matters are not because the Claimant has given no evidence that subjectively she believed these to be of public interest, and objectively they were not as they were all concerned with her personal circumstances. Even if the Claimant was right that she had been wrongfully accused of a crime, it was not a matter of public interest at that stage because the police were still investigating and the only public interest was in that investigation proceeding. It is a not a miscarriage of justice for someone to be subject to investigation where credible allegations are made (as there were in this case).

234. It follows that the only protected disclosures that the Claimant made were: (i) that of 5 December 2017 to Ms Anderson, which was not seen by, or known to, anybody else and therefore cannot have influenced anyone's conduct, and (ii) the repeat of those allegations in her statement for the disciplinary on 23 June 2018. This was seen by Mr Wiltshire, Ms Ondier-Thomas and Ms Duvall and therefore could in principle have influenced their approach to Issue 17.4 (Ms Duvall's decision to continue the internal investigation after the police decision to take no further action), Issue 17.5 (Ms Ondier-Thomas' decision to extend the Claimant's probation) and Issue 17.7 (failure to pay mobile phone expenses. However, we find that this protected disclosure had no bearing whatsoever on any of those decisions. Mr Wiltshire had, straightforwardly, and promptly referred this disclosure to A&I as soon as Ms Ramsaran recommended he should and thereafter it was investigated by A&I. There is nothing to suggest that there was any adverse reaction to the Claimant raising this issue at all. In any event, we are satisfied for the reasons we have given above for concluding that the Claimant's race / protected acts had nothing to do with these decisions, that this protected disclosure had nothing to do with them either. There are other factors that wholly explain the Respondent's actions in each case.

235. We add, lest we have made any error in our conclusions as to what was, and what was not, a protected disclosure in this case, that we are wholly satisfied that none of the Claimant's complaints influenced in any way her treatment by the Respondent's witnesses. In each case, in relation to all the acts that the Claimant has alleged in these proceedings constituted detriments, we find that the Respondent's actions were wholly explained by the lawful reasons we have identified above.

236. Finally, we add regarding Issue 17.6 that this claim also fails: the allegations were not investigated in October 2017 because they were not made until May 2018, at which point they were investigated by the police and Ms Ramsaran. There was no need for any further investigation and the Respondent's decision not to investigate further was a reasonable one on which the Claimant's various complaints had no bearing whatsoever.

Jurisdiction

237. As the Claimant's claims have all failed, there is no need for us to consider whether the Tribunal had jurisdiction to consider the Claimant's claims having regard to the time limits in s 123 EA 2010 and s 48 ERA 1996. However, we observe that had we had to determine this issue, we would likely have found all the claims to be out of time in any event. This is because the only act complained of that falls within (or after) the three months prior to the Claimant contacting ACAS on 24 October 2019 is Mrs Reynolds decision on the appeal. Mrs Reynolds had had nothing to do with any of the prior matters and we would therefore likely have concluded that there was no 'continuing act' continued into the three months prior to the Claimant commencing her claim to bring any of the prior matters in time: see *South Western Ambulance Service NHS Foundation Trust v King* (UKEAT/0056/19/OO) at [32]-[33]. We would then have had to decide (in relation to the discrimination claims) whether it was just and equitable to extend time for any prior discriminatory act. Given the age of some of the allegations, it is unlikely we would have granted a just and equitable extension. Further, the Claimant was in receipt of legal advice from the end of 2017 onwards, so on the *Dedman* principle we would have been likely to find that it would have been reasonably practicable for her to bring her whistleblowing claim much earlier than she did. We add that the fact that the Claimant was awaiting the outcome of the appeal is no reason to extend time, especially given that the Claimant did not in fact await the outcome of the appeal before commencing proceedings so it was clearly not actually an obstacle to her commencing proceedings earlier.

Overall conclusion

238. The unanimous judgment of the Tribunal is that:

(1) The Respondent did not contravene the Equality Act 2010 and the Claimant's claims for direct race discrimination, harassment and victimisation are dismissed.

(2) The Claimant's claim that she was subjected to detriments for having made protected disclosures contrary to s 47B of the Employment Rights Act 1996 are not well-founded and are dismissed.

_____
Employment Judge Stout

__22/02/2022_____
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

23/02/2022.....

FOR THE TRIBUNAL OFFICE