EMPLOYMENT TRIBUNALS

Claimant: **Ms Tricia Blake**

Respondents: **(1) Peter Laing**
(2) Paul Evans
(3) Newham Community Renewal Programme Limited

Heard at: **East London Hearing Centre**

On: **12 – 15 November and 19 – 21 November 2024**

Before: **Employment Judge J Mack**

Members: **Ms S Harwood**
Mrs B Saund

Representation

For the claimant: The claimant represented herself

For the respondent: Michael Smith (counsel)

RESERVED JUDGMENT

1. **The claimant's claims for incidents occurring before 3 September 2022 were brought out of time. It is not just and equitable to extend the time for bringing these claims. These claims are therefore dismissed.**

2. **All other claims are not well-founded and are dismissed.**

REASONS

Introduction

1. The claimant, Tricia Blake ("the claimant"), brings claims in the Employment Tribunal against three respondents:

    a. Peter Laing ("the first respondent");

    b. Paul Evans ("the second respondent"); and

    c. Newham Community Renewal Project Ltd ("the third respondent").

2. The claimant worked for Newham Community Renewal Project until 30 September 2022. She started work for the third respondent on 12 June 2019. Throughout this time she worked in the position of Income Co-ordinator.

3. The claimant brings the following claims against each of the respondents:

   a. Harassment related to race;
   b. Harassment related to religion or belief;
   c. Direct discrimination on the ground of race;
   d. Discrimination on the ground of religion or belief;
   e. Indirect race discrimination;
   f. Victimisation; and
   g. Unfair dismissal.

4. Neither the claim form nor the list of issues identified specific claims that were being brought against specific respondents. Therefore, throughout the proceedings and in reaching its decision the Tribunal has considered each claim against the first respondent, the second respondent and the third respondent (together, "the respondents").

Preliminary matters

Chronology

5. At the beginning of the final hearing the claimant objected to the Tribunal being provided with a copy of the chronology prepared by the respondents' representatives. The Tribunal asked the parties to work together – as far as possible - to prepare an agreed chronology to which the Tribunal could refer. The parties did not reach agreement on a chronology.

6. The Tribunal invited the respondents to provide the Tribunal with their completed chronology, which they did. The Tribunal also invited the claimant to send it her chronology (she had told the Tribunal she had her own version of the chronology, which contained minor differences from the respondents' chronology); she did not do so. The Tribunal explained to all parties that the chronology was a guide to navigating the factual issues in the case. It has not been determinative of any findings the Tribunal has made or any issues it has decided.

List of Issues

7. The list of issues that was available to the Tribunal on the first day of the final hearing was incorrect, in that it included issues that had been determined prior to the final hearing. The Tribunal therefore asked the parties to agree an updated list of issues, to which the Tribunal could refer during the proceedings. The respondents provided an updated List of Issues to the Tribunal on the second day of the final hearing; this was also seen by the claimant. The claimant did not provide to the Tribunal any comments on, or amendments to, this list of issues.

Claims and issues

8. As a result of the preliminary matter referred to above, the list of issues to be decided by the Tribunal was contained in the amended list of issues that was provided to the Tribunal on the second day of the hearing.

Procedure, documents and evidence heard

9. The claimant represented herself. The respondent was represented by Mr Smith.

Claimant's evidence

10. The tribunal read the statement of, and heard evidence from, the claimant. The tribunal heard oral evidence from Ms Rajdeep Mann, who was called by the claimant. (On the application of the claimant, the Tribunal had issued a witness order to Ms Mann prior to the final hearing.) The Tribunal also read the statement of Natalie Royer, which was tendered by the claimant.

11. The claimant provided to the Tribunal the witness statement of Ms Dionne Thompson. She is a union representative who assisted the claimant during the grievance and appeal process. The respondents objected to the admission of her statement, on the basis that the statement covered comments made to ACAS during the course of conciliation proceedings or that it was opinion evidence. The claimant submitted that the statement was admissible in its entirety.

12. The Tribunal decided that the evidence in Ms Thompson's statement relating to statements made during ACAS conciliation proceedings was not admissible. The Tribunal decided that the other parts of the statement were admissible and had regard to its weight and its relevance to the issues the Tribunal had to decide when reaching its findings and conclusions.

Respondents' evidence

13. The tribunal read the statements of, and heard evidence from, the following witnesses for the respondents:

    a. The first respondent;
    b. The second respondent;
    c. Ms Teresa Edwards
    d. Ms Louise Vera;
    e. Mr Damian Callendar; and
    f. Mr Arnold Ridout.

14. The claimant sought to cross-examine the first respondent on comments made to ACAS during the course of conciliation proceedings. The first respondent objected to questions being asked on this topic. The Tribunal heard submissions from both parties and decided not to admit any evidence on this matter.

Documentary evidence

15. There were two versions of the bundle of documents, with different page numbers: the Tribunal and the respondents had one version of the bundle, while the claimant had another version. The Tribunal is grateful to the claimant and Mr Smith for the steps they took during the final hearing to ensure that the Tribunal, the parties and the witnesses were able to identify the correct documents in as timely a manner as possible.

16. The tribunal considered the documents from the bundle, which the parties introduced in evidence, as well as the additional evidence that was served on the ET during the course of the proceedings. The first piece of additional evidence was a letter, dated 10 January 2023, sent from the claimant to Mr Ridout; this was provided to the Tribunal on the fourth day of the final hearing. The Tribunal was also shown an email, dated 17 October 2023, in which those representing the respondent stated that Mr Ridout was the author of a particular document (page 550 of the document bundle). The Tribunal was shown this email on the fifth day of the final hearing and a copy was provided by email after the Tribunal rose to decide the claims.

17. The Tribunal watched two video clips, which were introduced into evidence during the cross-examination of the claimant. The clips were recordings of the meeting that Ms Edwards held with the claimant during her investigation of the grievance. The claimant sought to introduce three other clips into evidence during the hearing and the Tribunal heard submissions from the claimant and the respondents on their admissibility. The Tribunal decided that these clips did not contain information that was relevant to the issues it had to decide; it therefore decided that they were not admissible and refused to admit them.

Submissions

18. The Tribunal received and considered oral and written submissions from the claimant and respondents.

19. Both the claimant and the respondents called an additional witness. The length of the witness statements that were provided to the Tribunal also required further time for reading. This meant that the Tribunal could not give its decision and reasons during the time originally listed for the final hearing, so it reserved its decision.

Findings of fact

20. The relevant facts are as follows. Where the tribunal has had to resolve any conflict of evidence, the findings indicate how it has done so at the material point.

21. The Tribunal received oral evidence - and the bundle contained written evidence - that was described to the Tribunal as “contextual information”. However, the Tribunal has limited its findings of fact to those matters that are relevant to – and determinative of – the issues that it has had to decide in this case.

<u>The parties</u>

22. The claimant is of Caribbean descent. She is non-religious.

23. The third respondent is a company and registered charity. The charity works in the London Borough of Newham to tackle the causes and consequences of poverty, isolation and disadvantage by providing housing, foodbanks, advocacy, youth services, young carer provision, adult education and immigration and energy advice to Newham residents. It has a board of directors. The board directors are all trustees of the charity and volunteers.

24. One of the services provided by the charity is housing. Tenants in the third respondent's housing may receive housing benefit and are also required to make payments towards their housing. If they fail to do so the third respondent amasses arrears. The claimant started work with the third respondent in 2019 in the role of Income Co-ordinator. The purpose of this role was to reduce the level of housing arrears that had accumulated in the Housing Department of the third respondent.

25. The first respondent has been the third respondent's Chief Executive since 16 March 2020.

26. The second respondent worked for the third respondent as Housing Services Manager from September 2019 to April 2023. He was the claimant's line manager from September 2019 to October 2020. The claimant and the second respondent knew each other from their earlier employment with another organisation. When the second respondent started work with the third respondent he and the claimant were on friendly terms.

<u>2019 payment correspondence</u>

27. In December 2019 the claimant was working for the third respondent on a consultancy basis. She sent invoices to the third respondent, which were paid by it on receipt.

28. On 19 December 2019 the claimant submitted an invoice for payment. On 20 December 2019, Steve Wyatt (who worked for the third respondent) told the claimant that her invoice would be approved for payment on 10 January 2020; this date was because of the festive break. There followed correspondence by email between the claimant and Mr Wyatt, in which the claimant expressed her concern and disappointment that she would not be paid until the New Year and that she had not been made aware of amended festive payment processing dates. There was also a phone call between the claimant and Mr Wyatt (the Tribunal did not have a transcript of this call). Following this discussion, Mr Wyatt arranged for the claimant to be paid between Christmas and New Year and informed the claimant accordingly.

29. In an email that Mr Wyatt sent to the second respondent and Mr Callender (a director at the third respondent and, latterly, the claimant's line manager) on 21 May 2020 (which followed a second incident between the claimant and Mr Wyatt) Mr Wyatt stated that he had expressed concern to Mr Callendar about the claimant's communication style in December. The Tribunal finds that this is a reference to the incident before Christmas relating to the claimant's pay date.

30. There is no evidence before the Tribunal to suggest that Mr Wyatt had previously expressed concern in writing about the claimant's communication style; in particular, Mr Wyatt did not say in his May 2020 email that the claimant was aggressive in May or in December 2019. Had Mr Wyatt found the claimant – generally or her communication style – to be aggressive, the Tribunal thinks it more likely than not that Mr Wyatt would have recorded this concern in writing, either in December 2019 or when repeating his concern in May 2020. Therefore, the Tribunal finds that he expressed concern about the claimant's style of communication but did not perceive it as being aggressive.

March 2020 incident

31. In March 2020 an incident involving the claimant occurred. This incident ended with the claimant returning her keys to one of the venues managed by the third respondent (St George's Avenue) and leaving another of the third respondent's venues (Barking Road). As noted above, at this time the second respondent was the claimant's line manager.

32. The second respondent spoke to his partner about this incident. His partner is a black Nigerian woman. The second respondent's partner said to him words to the effect that: *"It's just a black girl tantrum and she will calm down in the morning".*

33. Shortly after the incident, the second respondent met the claimant at St George's Avenue (the claimant was still working for the third respondent). During this meeting the second respondent told the claimant what his partner said, including that she thought the claimant had had a "black girl tantrum". The claimant was taken aback by this statement and was significantly upset by the second respondent's comments. The Tribunal finds that this remark materially contributed to a breakdown of the working relationship between the claimant and the second respondent. The claimant did not make any formal or informal complaint about the second respondent's comment at this time.

Mediation

34. While the second respondent was not the claimant's manager after October 2020, he remained the manager of the housing team. The claimant worked closely with the housing team, given her role in reducing tenants' arrears. As the relationship between the claimant and the second respondent deteriorated after the discussion in March 2020, Mr Callender arranged and facilitated mediation between them.

35. The Tribunal was unable to identify the exact date of the mediation but has found that it took place in October 2020. During this meeting the claimant and the second respondent discussed the comment about the "black girl tantrum". The claimant says that the second respondent told her that he was annoyed that she had referred to the March 2020 comment in an email, which she sent to him in May 2020. The second respondent denies saying this: he says that he told the claimant that he was upset and hurt that she had put the comment in her email. On this point, the Tribunal prefers the evidence of the second respondent: there is no other evidence to support the suggestion that the second respondent was annoyed by the claimant's comment; the second respondent being annoyed would not be consistent with his response otherwise to the March 2020 incident; and, in respect of the other claim where there

is a difference in evidence between these two parties, the Tribunal has found the second respondent's evidence to be more reliable (see below).

Religious music incident

36. In October 2020 – following the first Covid lockdown – the claimant sometimes worked in the third respondent's offices. On 15 October 2020 she was in one of the third respondent's venues for work. Colleagues in the housing team were also working there that day.

37. Music was being played in this venue. This was religious music. The claimant expressed concern that the music was being played loudly, which made it difficult for her to concentrate on her work. She also expressed concern that some service users may feel alienated by the religious nature of the music, particularly if they were of another religion or were not heterosexual. A colleague told the claimant that she appreciated the claimant's concerns and the music was turned off.

38. At some point the claimant went to the bathroom. When she returned, another member of the housing team was in the venue. The claimant and this person had had terse written communication in the past; the Tribunal finds that the relationship between the claimant and this person had broken down to some extent. The religious music was also playing again. This person began questioning the claimant about her attitude to the playing of religious music and the reasons for her earlier complaint. This person and another colleague asked whether the Claimant *"had accepted Jesus Christ into [her] heart"* and said words to the effect that the Claimant had not accepted Jesus Christ into her heart; was a non-believer; and that was why she had an issue with the music.

39. The claimant states that the second respondent instructed her to wear headphones and, later during the incident, shouted at her. The Tribunal does not find that this happened. Based on the documentary evidence it has seen (namely, an email sent to all staff on the day after the incident and the claimant's follow-up to this email), the Tribunal finds it more likely that the incident was defused when the second respondent instructed the team members to stop playing music. The second respondent also sent a follow-up email to colleagues the next day, requesting greater respect amongst colleagues.

Requests for information in July 2021

40. As part of her work as Income Co-ordinator for the third respondent, in July 2021 the claimant was requesting bank statement information. Mr Wyatt, who previously provided this information to the claimant, was no longer working for the third respondent in July 2021. The only people who could provide bank statement information to the claimant were the first respondent and another director, Louise Vera.

41. On 23 July 2021 at 7.14am the claimant sent an email to Mr Callender, copied to Ms Vera and the first and second respondents. In this email she requested *"one statement covering all transactions from the 12/07/21 to the 18/07/21"*. At 8.17am Ms Vera replied, attaching a report *"for dates 8th-12th"*. She stated that there were no transactions between 15 and 18 July. The claimant replied to this email at 8.24am

because she thought that Ms Vera had provided the wrong information: she wrote, *"I think we are getting confused with dates requested, in my email below I stated that I am looking for dates from the 12/07/21 to the 18/07/21 not the 08/07/21 to the 12/07/21 and again there are transactions missing from the report that you have just sent"*. Ms Vera replied to the claimant's email at 8.29am, clarifying that she had in fact provided the information sought by the claimant: she wrote, *"I labelled the transaction report incorrectly but it essentially [sic] the report from 12th to 18th July. Sending again with the correct label."* The claimant then responded (at 8.32am), thanking Ms Vera for her assistance and stating: *"As mentioned transactions are still missing from your report, this is obviously a fault with the baking [sic] system that we are using"*.

42. The first respondent was a party to this email chain. He was concerned that the claimant was not taking the most efficient approach to obtaining the information she required and expressed this concern to the claimant by email, which he sent on the afternoon of 23 July 2021:

> *"there's been a lot of to and fro with this, I have spoken to Damian and trust things are a bit clearer now. Next time please do just pick up the phone to Louise, Damian or myself so we can get issues resolved more quickly."*

43. The claimant responded to the first respondent immediately, explaining that she had in fact called Ms Vera and was following up on this conversation. The first respondent acknowledged the claimant's email explanation, thanking her and stating that things can *"get a bit lost in translation by email"*.

44. The Tribunal finds that the claimant's written communication style in this email chain was terse. While she expresses thanks to Ms Vera for her assistance, the comments she makes (for example, referring to there being confusion and stating that she will take "directives" from Mr Callender) – could reasonably be read as containing a reprimand of the directors. In addition, the Tribunal finds that the language could reasonably be read as expressing impatience with the responses received. Therefore, the Tribunal finds that it was reasonable for the first respondent to discuss this communication with the claimant. The Tribunal also finds that there is no evidence that the first respondent suggested that the claimant was aggressive or perceived her to be such.

Reduction in claimant's hours

45. The claimant first worked for the third respondent as a self-employed contractor, from June 2019 to August 2019, with the contract being renewed for nine months until June 2020. From June 2020 the claimant was employed on a nine-month fixed-term contract; this was extended in March 2021 until September 2021. This contract provided for the claimant to work for 36 hours per week.

46. In September 2021 the third respondent offered to employ the claimant on a new fixed-term contract. This contract was for a period of 12 months. This contract required the claimant to work 18 hours per week, with a commensurate reduction in her salary from her previous contract. The claimant signed this contract.

50th Anniversary Celebrations

47. The third respondent celebrated its 50th anniversary in October 2021. This was an important occasion for the third respondent, which it intended to mark with a celebratory event.

48. The first respondent became aware that not everyone who worked for the third respondent was planning to attend the celebration event. One of the people who was not attending was the claimant. The first respondent asked his direct reports to find out why people were not planning to attend. While he wanted explanations to be provided, he did not require reasons to be put in writing.

49. At the time Mr Callender was the claimant's manager. He asked the claimant – and another person he managed who was also not planning to attend – to explain why they were not attending. Mr Callender also required the claimant and her colleague to provide their explanations in writing. The claimant emailed her reasons to Mr Callender. She wrote:

> *"I do not feel valued at this establishment outside of yourself, therefore do not want to spend time that I am not being paid for attending an event for a company that does not value me or the vast amount of work that has been undertaken for them*
>
> *I also have other commitments that I have prioritised"*

50. The first respondent said he found the claimant's response to be rude. The Tribunal agrees that the response was rude. The first respondent also said he did not find the claimant's response to be aggressive and did not perceive it as such. The Tribunal has seen no evidence that would suggest that the first respondent found the response aggressive or perceived it be so. Therefore, the Tribunal finds that the first respondent did not do so.

Termination of the claimant's contract

51. In May 2022 the first respondent sought legal advice on whether the third respondent could terminate the claimant's contract before its end date in September 2022. This advice was sought – at least initially – by email. In the first respondent's email of 23 May 2022 he indicates a number of matters that motivated the seeking of this advice:

    a. He described the claimant as *"disgruntled, being difficult and working to rule"*;

    b. She refused to attend an all-staff strategy away day, providing only a few days' notice of her decision not to attend;

    c. She would have two years of continuous service from June 2022.

52. The Tribunal considers the first respondent's summary of the claimant's attitude in his email to be a reasonable summary of the claimant's emotional state – as it related to her work - at that time. This is because claimant had told the first respondent,

during a 1:1 that they had in January 2022, that she was unhappy in her role, she felt undervalued and that she intended to leave at the end of her contract. The claimant had also declined to attend the third respondent's Team Building Away Day on 20 May 2022 and had informed Mr Callender of this by email on 18 May (i.e. only two days before).

53. The third respondent did not take any steps to terminate the claimant's contract at that time.

Claimant's grievance

54. On 25 August 2022 the claimant made a grievance to the third respondent. This grievance was in respect of the matters considered above, as well as other matters that were not part of the claimant's claim in this Tribunal. The grievance complained about all three of the respondents.

55. The claimant sent the grievance to Arnold Ridout, the third respondent's Chair. Also on 25 August 2022, Mr Ridout sent a copy of the grievance to Mr Callender and copied his email to the first respondent. Mr Ridout also asked for the grievance to be sent to the second respondent.

56. The first respondent discussed with Mr Ridout and Mr Callendar how the grievance should be investigated. They decided that the third respondent should appoint an external HR consultant to investigate and determine the grievance. The first respondent identified Teresa Edwards via LinkedIn; he shared her details with Mr Ridout and Mr Callendar, who agreed to her appointment. The first respondent sent a proposal for instructions to Ms Edwards; held a call with her to discuss the instructions; and subsequently instructed her.

57. Ms Edwards investigated the grievance in September. She interviewed Mr Callender and the first and second respondents. She also interviewed the claimant. The claimant stated that Ms Edwards put questions to the claimant as if the claimant were herself the subject of the grievance investigation, rather than the complainant. Having viewed excerpts from Ms Edwards' interview with the claimant, the Tribunal disagrees. The Tribunal observes that Ms Edwards' role was to investigate and determine the complaints that the claimant had raised and to do so impartially. To conduct an effective investigation the Tribunal considers that it may be necessary for any grievance investigator to put comments made by the subjects of a grievance to the complainant; it may also be necessary for the investigator to put these comments in a robust manner. The Tribunal finds that Ms Edwards did so and that this did not amount to her treating the claimant as the subject of the investigation (or otherwise treating her inappropriately).

58. After Ms Edwards' second interview with the claimant, the claimant complained to the third respondent about Ms Edwards' conduct of the investigation and requested that Ms Edwards no longer consider the grievance. The third respondent acted on this complaint and appointed one of its trustees, Rajdeep Mann, to lead the investigation. Ms Edwards continued to provide administrative support to Ms Mann while she conducted and reported on her investigation; the Tribunal saw no evidence to the effect – and therefore finds – that Ms Edwards did not influence Ms Mann's conclusions on the grievance complaints.

59. Ms Mann provided the conclusions of her investigation to the claimant on 14 November 2022. The Tribunal finds that the three-month period – from raising the grievance to providing the conclusion - was not too long. The Tribunal recognises that Ms Mann's findings were sent to the claimant a week later than intended, due to an administrative error by Ms Mann. However, the Tribunal finds that the period was not too long because:

    a. The grievance raised by the claimant was complex: it was made against the charity and two individuals, spanned a period of almost three years and covered a large number of incidents;

    b. Ms Mann replaced Ms Edwards as grievance investigator during the course of the investigation; and

    c. The claimant received the assistance of a union representative. The representative was on annual leave for two weeks at the time that Ms Mann was taking over the investigation role from Ms Edwards.

"Fluffy"

60. During Ms Edwards' interview with the claimant – as part of the grievance process - Ms Edwards asked her whether she was a "fluffy" person. This question was prompted by a topic of discussion that had arisen during the second respondent's interview with Ms Edwards. The claimant submitted to the Tribunal that this specific term was used by the second respondent to describe her; the second respondent denied that he had used the specific word "fluffy". However, the Tribunal had the benefit of watching the clip where this topic was discussed. The clip supports the written and oral evidence of Ms Edwards that she used this term to relay the second respondent's sentiment and that she was not directly quoting him. The Tribunal therefore finds that the second respondent did not say that the claimant is not a "fluffy" person.

Grievance appeal

61. The claimant appealed against the findings of the grievance on 22 November 2022. The grievance appeal was conducted by Mr Ridout. As part of his investigation appeal, Mr Ridout spoke to the claimant, Mr Callender and the first and second respondents.

62. Mr Ridout's meeting was held with the claimant on 8 December 2022. Mr Callender provided the claimant with investigation meeting notes and other notes related to the claimant's grievance on 7 December, which was the day before the scheduled meeting between Mr Ridout and the claimant. Mr Ridout said in his statement that this was because he understood that the claimant had made the request for information under the Subject Access Request provisions (i.e. a data protection request). Based on the correspondence between Mr Ridout and Mr Callender that the Tribunal has seen, the Tribunal finds that the reason that the information was not provided until 7 December was because of the third respondent's attempts to ensure that the request was handled in accordance with relevant legislation.

63. The Tribunal finds that Mr Ridout interviewed the second respondent because he wanted to do a thorough job in investigating the appeal: he wanted to clarify the information he had received from the grievance investigation and to reach his own decision as to the appeal. The Tribunal finds that the second respondent did not provide a "statement" to Ms Edwards, Ms Mann or Mr Ridout during the grievance or appeal investigations; rather, he was interviewed, and notes were prepared of his interviews on two separate occasions. The Tribunal duly finds that Mr Ridout did not allow the second respondent to change his statement during the appeal investigation. The Tribunal also finds that there was no obligation on Mr Ridout to share with the claimant the notes of his interview with the second respondent before reaching his decision on the claimant's appeal.

64. Mr Ridout provided the conclusions of his investigation in writing to the claimant on 22 January 2023. At paragraph 9 of this letter he wrote:

> *"Nor does microagression have a statutory definition, although it is normally taken to be a small act or remark that makes someone feel insulted or treated badly because of their race, sex, etc., even though the insult, etc. may not have been intended, and that can combine with other similar acts or remarks over time to cause emotional harm. In the light of this definition I have taken microagression to be similar to lower order discrimination."*

65. Mr Ridout referred to microaggressions later on in his letter, at paragraph 39, where he wrote:

> *"I agree with Rajdeep Mann that the words used by Paul Evans were inexcusable, even for longstanding work colleagues. I therefore find that this behaviour was discriminatory (and not just a microaggression as found by Rajdeep Mann)."*

<u>Redundancy</u>

66. When the claimant started working for the third respondent in 2019 its housing arrears were approximately £190,000. By September 2021 its housing arrears were significantly reduced and to the level of expected housing benefit arrears. The claimant herself said, during her oral evidence, that she had reduced the debt by £50,000 by summer 2021.

67. On 1 September 2022 the third respondent posted to the claimant a letter, written by Mr Callender, that informed the claimant she was at risk of redundancy. This letter was also emailed to the claimant on 2 September 2022. On the same day Mr Callender sent a business case to Ms Vera and the first respondent. This business case was for the ending of the Income Co-ordinator role.

68. Mr Callender held a consultation meeting with the claimant and her union representative on 13 September 2022. During this meeting Mr Callender explained that there were no current vacant roles, or posts going out to advertisement, that relate to an Income Co-ordinator role. Two posts were discussed with the claimant during this meeting, both of which required knowledge of the Russian or Ukrainian language (neither of which the claimant had). The Tribunal notes that, during the first two weeks of September 2022, the claimant was the subject of a redundancy

consultation and a disciplinary investigation that were being conducted by the third respondent, in addition to having an open grievance against each of the respondents.

69. On 21 September 2022 the third respondent informed the claimant that she was being made redundant. She received approximately £950 in redundancy payment.

Policy

70. During the period of the claimant's employment the third respondent had a grievance policy. It was not disputed that this policy complied with the ACAS Code of Conduct.

Submissions

71. The respondents provided written and oral submissions. These were:

    a. The incidents before September 2022 are not continuing acts and the claimant is not inviting the Tribunal to extend time to bring the claims. Therefore they were out of time;

    b. There was no provision, criterion or practice because the claimant's claims focus on how she was treated individually;

    c. There was no purpose to harass the claimant;

    d. Despite what the claimant says, there is no objective evidence of violation of dignity;

    e. It is clear that there was a redundancy situation.

72. The claimant provided oral and written submissions. She invited the Tribunal to take into consideration the following key issues:

    a. All claims were brought in time as they were part of a continuing act; she submitted that the continuing act was enabled by the second respondent;

    b. The evidence supported all of the claims that she brought;

    c. It was unreasonable for the third respondent to expect the claimant to deal with three processes at once during summer 2022 (i.e. the grievance, disciplinary and redundancy processes);

    d. The dates demonstrate that the third respondent was seeking to make her redundant in retaliation for her raising a grievance;

    e. The appeal process was not fair.

The Law

Harassment

73. Section 26 of the Equality Act 2010 (the "EA") states:

"(1) A person (A) harasses another (B) if-

a. *A engages in unwanted conduct related to a relevant protected characteristic; and*

b. *the conduct has the purpose or effect of –*

a. *violating B's dignity; or*

b. *creating an intimidating, hostile, degrading, humiliating or offensive environment for B."*

74. In these reasons – for the purpose of brevity only - the Tribunal will refer to the "intimidating, hostile, degrading, humiliating or offensive environment" as the "unwanted environment".

75. Section 4 of the EA provides that race is a protected characteristic. It also provides that religion or belief is a protected characteristic. 'Race' means colour, nationality, national or ethnic origin (section 9 of the EA); religion includes a reference to a lack of religion (section 10 of the EA).

76. When deciding whether conduct is related to a protected characteristic, there is no requirement for a Tribunal to find that the conduct in question is motivated by the protected characteristic; that is, there is no requirement for a mental element, as is required by a claim for direct discrimination: see *Hartley v Foreign and Commonwealth Office Services* 2016 ICR D17, EAT and *Carozzi v University of Hertfordshire* 2024 EAT 169.

77. Whether conduct is unwanted is subjective and the word "unwanted" is essentially the same as "unwelcome" or "uninvited": see the cases of *Reed and anor v Stedman* [1999] IRLR 299 and *Insitu Cleaning Co Ltd v Heads* [1995] IRLR 4. This is reflected in the Equality and Human Rights Commission's Employment Statutory Code of Practice (the "Code") (see paragraph 7.8).

78. The Code notes that unwanted conduct can include *'a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour'* (per paragraph 7.7). The conduct may be blatant (for example, overt bullying) or more subtle.

79. The Tribunal needs to consider purpose and effect separately. Whether B's dignity has been violated is a question of fact for the Tribunal. Relevant factors that a Tribunal may consider when deciding whether a violation of dignity has occurred were identified in the case of *Weeks v Newham College of Further Education* [2012] 5 WLUK 195.

80. For conduct to amount to harassment, the Tribunal must be satisfied both that the claimant considered that the conduct created the unwanted environment and that the Tribunal concludes that it was reasonable for the conduct to have that effect: see *Richmond Pharmacology v Dhaliwal* 2009 ICR 724, EAT. In applying the objective

part of the test, the Tribunal must consider whether it was reasonable for the conduct to have effect on the particular claimant: see *Reed and anor v Stedman* (above).

Direct discrimination

81. Section 13 of the EA states:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

82. What is less favourable treatment is determined objectively and is a matter of fact for the tribunal.

83. It is for the claimant to prove that they suffered the treatment complained of. In cases where the reason for the less favourable treatment is not immediately apparent, the Tribunal will have to consider the mental processes, conscious or subconscious, of the alleged discriminator to discover what facts operated on his or her mind (see *R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors* [2009] UKSC 15.

Burden of proof

84. Section 136(2) of the EA states:

"If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred."

85. These provisions apply to all forms of prohibited conduct under the Act, including direct discrimination on the grounds of race and religion and belief. They deal with the burden of proof; guidance on their application was provided by the Court of Appeal in *Igen Ltd v Wong* [2005] IRLR 258, CA. There are two stages to the burden of proof.

86. Stage 1 deals with the primary facts of the case. At this stage the Tribunal has to find that there are primary facts from which it could decide – in the absence of any other explanation - that discrimination took place. If the claimant satisfies the burden of proof at Stage 1, the burden shifts to the respondent in Stage 2 to prove - on the balance of probabilities - that the treatment was not for the proscribed reason. At this stage (per *Igen*): (i) the respondent must prove that the less favourable treatment was "in no sense whatsoever" because of the protected characteristic; and (ii) the ET will expect "cogent evidence" for the burden to be discharged.

87. Section 19 of the EA states:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –

> (a) *A applies, or would apply, it to persons with whom B does not share the characteristic,*
>
> (b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
>
> (c) *it puts, or would put, B at that disadvantage, and*
>
> (d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*

88. What is a 'provision, criterion or practice' is not defined in the EA. The Tribunal should apply it widely. The Code states (at paragraph 4.5): *"The phrase… is not defined by the Act but it should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions".*

Victimisation

89. Section 27 of the EA states:

> "*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
>
> a. *B does a protected act, or*
>
> b. *A believes that B has done, or may do, a protected act."*

90. Protected acts are defined in subsection (2) as:

> *"a. bringing proceedings under the EA;*
>
> b. *giving evidence or information in connections with proceedings under [the EA];*
>
> c. *doing any other thing for the purposes of or in connection with [the EA];*
>
> d. *making an allegation (whether or not express) that A or another person has contravened [the EA]."*

91. Detriment is not defined in the EA: it is, in effect, anything that changes the person's position for the worse or otherwise puts them at a disadvantage.

Unfair dismissal

92. Section 94 of the Employment Rights Act 1996 (the "ERA") confers on employees the right not to be unfairly dismissed. A person who complains that they have been

unfairly dismissed may bring a complaint to the Tribunal under section 111 of the ERA.

93. Section 98 provides that redundancy is a potentially fair reason for dismissal.

94. Section 139(1) of the ERA states:

1. *For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*

   …

   b. *the fact that the requirements of that business –*

      i. *for employees to carry out work of a particular kind…*

have ceased or diminished or are expected to cease or diminish.

95. When a respondent relies on section 139(1)(b) it must prove that the requirements of its business for employees to carry out work of a particular kind have ceased or diminished or are expected to do so.

96. Section 98(4) of the ERA states:

"… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

97. The Tribunal's role is not to decide again whether the employer should have made the claimant redundant. Per the case of *Williams and ors v CompairMaxam Ltd: "The question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted".* *Williams* also identifies factors that a Tribunal may consider when deciding whether an employer acted reasonably (though these are not determinative of the decision the Tribunal needs to make).

Time limits

98. Section 123 of the EA states:

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –

> (a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> (b) *such other period as the employment tribunal thinks just and equitable.*
>
> *…*
>
> *(3) For the purposes of this section –*
>
> (a) *conduct extending over a period is to be treated as done at the end of the period...”*

99. Per *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96*,* in order to establish conduct extending over a period, a claimant must prove that that the incidents are linked to each other, and that they are evidence of 'an ongoing situation or continuing state of affairs'. A continuing act or continuing state of affairs should be distinguished from a one-off decision that has continuing consequences.

Conclusions

Time limits

100. The Tribunal has considered firstly the issue of whether the claims for the incidents in March and October 2020 were brought in time and, if not, whether we should extend the time for these claims to be brought. The Tribunal has therefore considered whether the incidents in March and October 2020 form part of a course of conduct extending over a period.

101. In reaching this decision the Tribunal as have taken into account:

    a. The claim regarding the incident in March 2020 relates to a comment made by the second respondent. The claimant has brought no other claim about the second respondent’s conduct;

    b. The claim regarding the incident in October 2020 relates to action by two colleagues who worked in the third respondent’s housing team. The claimant has not brought any other claim about these colleagues’ conduct;

    c. The claims regarding the incident in March 2020 are claims of direct race discrimination and harassment relating to race. The claimant has brought no other claim for direct race discrimination and harassment relating to race until other than incidents in January 2023 (almost three years later);

    d. The claims regarding the incident in October 2020 are claims of direct religion/belief discrimination and harassment relating to religion and belief. The claimant has brought no other claim for direct religion/belief discrimination and harassment relating to religion or belief.

102. The Tribunal therefore concludes that the claims for the incidents in 2020 are not part of a continuing act or continuing state of affairs. These claims are therefore brought out of time.

103. The Tribunal then considered whether it would be just and equitable to extend time for these claims. In doing so, it considered the circumstances in which each claim was brought; any information about why the claimant brought the claim at this time; and any prejudice that would be caused to the respondent in allowing each to be brought.

104. The claimant's explanation for bringing the claims for the incidents in 2020 at this time is that they formed part of a continuing act. However, the Tribunal has already rejected this argument. The claimant did not provide any further explanation to the Tribunal for the time that had elapsed between the incidents in question and the bringing of the claim. The Tribunal accepts the respondents' submissions that the respondents have been disadvantaged by these claims being brought now, given the difficulty in presenting evidence from so far back.

105. The Tribunal therefore decided that it would not be just and equitable to extend time for the claims relating to the incidents in 2020.

<u>Harassment related to race</u>

First respondent's email of 10 January 2023

106. For reasons discussed elsewhere in this judgment the Tribunal received no evidence relating to an email that the first respondent sent to ACAS on 10 January 2023. Therefore, the Tribunal dismisses this part of the race harassment claim as it cannot conclude that any email was sent and, if any email was sent, the nature of its contents.

Mr Ridout's comments regarding microaggressions

107. The Tribunal has found (and it is not disputed) that Mr Ridout described microaggressions as "lower order discrimination". The claimant's claims about microaggressions were allegations of racial discrimination and, therefore Mr Ridout's comment relates to race, which is a protected characteristic. The claimant describes this comment as unwelcome and it is not disputed that it was unwelcome.

108. The Tribunal concludes that Mr Ridout's choice of words was poor and it can understand why the claimant could have read it as diminishing the significance of microaggressions. However, the Tribunal finds that Mr Ridout, in making this statement, was not intending to violate the C's dignity or create an unwelcome environment. This is because his statement must be read along with the rest of his decision, which is set out in his sixteen page letter. Specifically, at para 39 of his letter (cited above) he refers to the comment in question as being discriminatory and *"not <u>just</u> a microaggression* [emphasis added]*".*

109. The Tribunal has concluded that, read as a whole, Mr Ridout was clearly concluding that microaggressions are a form of discrimination. The Tribunal also concludes that paragraph 39 of his letter demonstrates that the purpose of Mr Ridout's discussion of microaggressions (at paragraph 9) was to establish the framework within which he would consider the claimant's complaints of microaggressions. Therefore, the Tribunal concludes that it would not have been reasonable for Mr Ridout's comment

to violate the claimant's dignity or have the effect specifically on the claimant of creating an unwelcome environment. This claim is therefore dismissed.

Direct race discrimination

Mr Ridout and the second respondent's statement

110. The Tribunal has already found that Mr Ridout did not allow the second respondent to change his statement. Therefore, the claim, insofar as it relates to this incident, is dismissed.

Indirect race discrimination

111. The claimant brought her claim of indirect race discrimination by relying on a number of matters that the Tribunal has already found did not occur; these are:

   a. A perception of aggression arising from the claimant's correspondence with Mr Wyatt;

   b. A perception of aggression arising from the claimant's communications about the production of transaction statements;

   c. A perception of aggression arising from the claimant's feedback regarding the third respondent's 50th anniversary celebrations;

   d. A perception of aggression in relation to the email seeking advice on the termination of the claimant's contract; and

   e. The second respondent saying that the claimant was not a "fluffy" person.

112. The claimant also brought this claim on the basis that her working hours were reduced in September 2021. The Tribunal has found that this happened.

113. The claimant submits that the third respondent operated a provision, criterion or practice (a "PCP") by expecting a particular tone to be taken in email correspondence and/or in spoken communication. She submitted that she fell foul of this requirement as to tone because she was perceived to be aggressive in her communication. However, the Tribunal has already found that the third respondent and its employees did not perceive the claimant to be aggressive in her emails. The Tribunal has also found that, where colleagues were concerned about the claimant's communication, they had good reason to be concerned. Finally, there has been no evidence put before the Tribunal that would suggest that the third respondent operated a PCP with respect to style of communications: there is nothing in any policy the Tribunal has seen to this effect; there is nothing in the claimant's contracts; and there is no explicit or implicit reference to a provision, criterion or practice in any evidence the Tribunal was taken to. Consequently the Tribunal concludes that the third respondent did not operate the alleged PCP.

114. The claimant's claim for indirect race discrimination is therefore dismissed.

Victimisation

115. The claimant brought her claim of victimisation on the basis of a number of matters that the Tribunal has already found did not occur; these are:

    a. The second respondent saying that he was annoyed that the claimant referred to the March 2020 comment;

    b. The third respondent taking too long to conclude the grievance process; and

    c. Questions being put to the claimant as if she were the subject of the investigation.

116. The claimant also brought this claim on the basis of two matters that the Tribunal has found did occur; these are:

    a. Mr Ridout sharing the grievance with the first respondent and (indirectly) with the second respondent; and

    b. Preventing the claimant from preparing adequately for the grievance appeal hearing by failing to provide paperwork when requested.

117. It is not disputed that the claimant did a protected act; this is that she alleged that a person has contravened the Equality Act.

Sharing grievance

118. The Tribunal considers that it was not appropriate for Mr Ridout to share the grievance in full with the first respondent (and to ask for it to be shared with the second respondent). The Tribunal recognises that those who are the subject of a grievance are entitled to be informed that a complaint has been made against them. They are also entitled to be provided with details of the complaints that have been made against them. The Tribunal also acknowledges the administrative burden that the third respondent would have faced in editing the claimant's lengthy grievance before providing it to the first and second respondents. However, the Tribunal considers that this is a burden it should have grasped, to avoid irrelevant or unnecessary information being provided to the first and second respondents.

119. While the Tribunal has concluded that the grievance should not have been shared in full, it has not been able to identify any detriment suffered by the claimant from the sharing. The Tribunal has seen in the claimant's written and oral evidence that the claimant's confidence in the integrity of the grievance process was diminished. It has also concluded that confidentiality in the process was undermined. However, the Tribunal has concluded – from Ms Edwards's, Ms Mann's and Mr Ridout's evidence; the notes of interviews; the video extracts; Ms Mann's written findings; and Mr Ridout's written findings – that the grievance and appeal processes were conducted thoroughly and impartially. The Tribunal has seen no evidence that sight of the full grievance enabled the first or second respondents to falsify any information they provided to the grievance or appeal processes.

120. Therefore, the Tribunal dismisses this claim of victimisation.

Paperwork

121. The third respondent accepted that it did not provide the information – which the claimant had requested in order to prepare for her grievance appeal hearing – until the day before the hearing. The Tribunal notes, and the claimant accepted during cross-examination, that the claimant did not ask a postponement of this hearing to give herself more time to prepare for the hearing.

122. The Tribunal does not consider it good enough that the third respondent provided important documents to the claimant only the day before the appeal hearing. The Tribunal does not consider the third respondent's response – that the claimant could have asked for more time – to be good enough either: the third respondent does not dispute that the delay hampered the claimant's preparation for the hearing. The Tribunal therefore concludes that the claimant was subject to detriment.

123. On the other hand, the Tribunal concludes that the delay was not because of the claimant having done a protected act. The Tribunal has not found any evidence that the delay was engineered by the third respondent or that there was otherwise any artificial delay. The appeal investigation and hearings were largely being conducted by Mr Ridout, who is a volunteer for the third respondent. He was supported by an external contractor. The Tribunal has no other concerns about the way the third respondent conducted this appeal hearing. Therefore, the claim that the provision of documents was delayed because of the claimant's conduct runs contrary to the third respondent's overall approach to the grievance and appeal process, as well as running contrary to the evidence before the Tribunal.

124. The Tribunal has found no evidence to suggest that the first or second respondents were involved in the grievance appeal process (other than being interviewed by Mr Ridout).

125. The Tribunal therefore dismisses this claim of victimisation.

<u>Redundancy</u>

126. The Tribunal has concluded that the reason for claimant's dismissal was redundancy. In reaching this conclusion, the Tribunal relied on the following:

    a. The claimant's role did not exist prior to 2019;

    b. The role was created by the third respondent specifically to address a backlog of arrears;

    c. The third respondent recruited to this role on a time limited basis;

    d. The claimant's employment was extended by way of a series of fixed-term contracts;

    e. By 2022 the claimant had significantly reduced the level of arrears; and

f. After the claimant's dismissal the role of Income Co-ordinator ceased to exist at the third respondent.

127. The claimant invited the Tribunal to find that the redundancy process was initiated only because she had submitted a grievance and that the third respondent still required the role of Income Co-ordinator. While it is correct that the redundancy process was started on 1 September 2022, less than a week after the claimant had submitted her grievance, DC explains in an email to the claimant that the third respondent started redundancy because the claimant said in her grievance that she would not hand in her notice. The Tribunal therefore concludes that the reason for the commencement of the redundancy process was not because the claimant had made a grievance but because she had departed from her previous intention to hand in her notice.

128. The claimant also submitted that there was not a redundancy situation because members of the housing team would be continuing the task of collecting tenants' arrears after she was dismissed. However, the Tribunal concludes that this would be on a significantly reduced basis, could be performed as part of the housing team's existing roles and the task no longer required a dedicated Income Co-Ordinator Role. This therefore did not undermine the contention that the claimant's role was redundant.

129. The Tribunal has also concluded that the third respondent conducted a fair redundancy process: it provided the claimant with notice that her role was at risk of redundancy and it consulted with her on the redundancy. The third respondent also provided the claimant with alternative offers of employment; while these came with language requirements that the claimant was unable to meet, it was open to the claimant, during the consultation meeting, to suggest any alternative ways to perform these roles. The Tribunal recognises that the claimant was facing disciplinary, redundancy and grievance proceedings at the same time but concludes that it was reasonable for the third respondent to initiate and continue the redundancy process because her contract expired in September 2022.

130. Therefore, the Tribunal concludes that the claimant was dismissed for redundancy and the third respondent acted reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The claim for unfair dismissal is duly dismissed.

____

Employment Judge J Mack
Dated: 19 December 2024