# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | **AND** | **Respondents** |
|---|---|---|
| Ms Elaina Cohen | | Mr Khalid Mahmood MP |

**Heard at**: London Central Employment Tribunal

**On**: 18, 19, 20, 23, 24, 25 May 2022 (26, 27 May 2022 in chambers)

**Before:** Employment Judge Adkin
Ms K A Church
Ms K O'Shaughnessy

**Representations**

**For the Claimant:** Ms M. Murphy, Counsel
**For the Respondent:** Mr T Perry, Counsel

# JUDGMENT

(1) The claim of unfair dismissal pursuant to section 94 & 98 of the Employment Rights Act 1996 succeeds, any award to be subject to deductions for contribution to her dismissal and under "*Polkey*" to be determined.

(2) The claim of detriment because of a protected disclosure pursuant to section 47B of the Employment Rights Act 1996 succeeds in respect of the allegation that she was marginalised and isolated in the period January 2020 until her dismissal.

(3) All remaining claims are not well founded and are dismissed:

    a. The claim of automatic unfair dismissal pursuant to section 103A of the Employment Rights Act 1996;

b. All other claims of detriment because of a protected disclosure pursuant to section 47B of the Employment Rights Act 1996;

c. Claims of direct discrimination because of race and religion or belief brought under section 13 and section 39 of the Equality Act 2010;

d. Claims of harassment because of race and religion or belief brought under section 26 and 40 of the Equality Act 2010.

# REASONS

## Procedural matters

1. This hearing was a "hybrid" in the sense that the Tribunal members were present physically in the Tribunal building throughout the hearing together with Counsel for both sides, but there were observers, including the Respondent personally for the first few days observing remotely using CVP, which worked well with no significant difficulties of an audio or visual nature. The Claimant and Respondent both gave live evidence physically in the hearing room.

2. We are grateful to both Counsel who cooperated to ensure that the hearing ran smoothly despite the complexities of a hybrid hearing and the nature of the dispute.

## The Claim

3. The Claimant presented her claim on 22 March 2021, which was accepted on 16 July 2021.

4. An agreed list of issues is attached as an appendix to this claim.

## Evidence

5. The Tribunal received an agreed bundle of over 1,200 pages to which documents were added during the hearing, making a final bundle of 1,321. Any references thus (123) are to pages in the bundle.

6. We received evidence from the Claimant Ms Cohen and Respondent Mr Khalid Mahmood MP. From the Claimant we also received witness statements from:

   6.1. Aisha Ali Khan;

   6.2. Asaf Khan;

   6.3. Barbara Dring;

   6.4. Bishop Dr Desmond Jaddoo;

   6.5. Majid Khan;

6.6. Ruth Adler;

6.7. "A", see below.

## Findings of fact

Background

7. In 2001 the Respondent was elected as a Member of Parliament representing the Perry Barr constituency.

8. On 24 November 2003 the Claimant started to work for the Respondent in his office as MP.

9. In the early days of the Claimant and Respondent working together they were in a romantic relationship. This came to an end. We have received evidence that this was either in 2005 or 2008. It may not in reality have been either of these dates. It does not matter for the purposes of this decision, suffice it to say that it came to an end before the events material to this claim. The two carried on working together after the end of the romantic relationship.

Suspension & earlier claim

10. In 2016 the Claimant's employment was suspended for a period by the Respondent.

11. In 2017 the Claimant brought a claim in the Employment Tribunal. That claim was ultimately settled. Neither party referred to events which are covered by a non-disclosure agreement.

Saraya Hussain

12. In February 2018 Ms Saraya Hussain had come to the attention of the Respondent when she appeared on a BBC Midlands news programme alleging fraud at the Amirah Foundation where she had been employed as a domestic violence outreach worker and event co-ordinator. Allegations were made about a local councillor, Waseem Zaffar.

13. In April 2019 the Claimant says that she discovered that the Respondent Mr Mahmood had employed Saraya Hussain in the Birmingham constituency office in Lozells. By contrast the Claimant herself worked in Westminster. During later events the Claimant was working from home as a result of the Covid-19 Pandemic in 2020-21.

14. The Claimant discovered at this time that the Respondent had given Ms Hussain a parliamentary pass and it was registered on the members' staff interests.

DVLA – alleged first protected disclosure

15. In August 2019 the Claimant says that in the course of sorting the post as part of her duties in the Respondent's Westminster office, she opened a reply from

the DVLA which showed that someone in the Respondent's office had challenged a DVLA bailiff fine on behalf of a woman named in the letter as Saraya Hussain stating she was his constituent. As a matter of fact Ms Hussain lived in the West Midlands area but did not live in the Respondent's constituency and was not a constituent.

16. The Claimant took the reply from the DVLA to the Respondent who was downstairs in Portcullis House. The Respondent told her that he had no knowledge of the letter. He told her to check with the DVLA and handed her back the letter.

17. The Respondent says that he looked into her concerns and discovered that it was a colleague, not Ms Hussain that had written to the DVLA. For the first time during the course of the Tribunal hearing this colleague was identified as Mr Sean Quraishy, whom the Respondent referred to in this hearing as Sean. Unfortunately his enquiries and outcomes carried out at the time were never communicated to the Claimant.

18. From the Claimant's perspective there was an unresolved aspect which was why someone was using the Respondent's official MP email address and electronic signature to correspond on behalf of someone who was not a constituent.

19. On 14 August 2019 the Claimant followed up her conversation with the Respondent with an email sent at 16:53 entitled "Saraya Hussain DVLA" which contained the following:

> "I am surprised you said you don't know anything about the letter to the DVLA on behalf of Saraya.
>
> She is not a constituent and the letter or email was a clear and deliberate misuse of parliamentary stationary or email which is reportable to the parliamentary standards.
>
> To deliberately deceive the DVLA and using parliamentary influence could be considered by the commissioner a crime if the intent of the communication was not to pay or wriggle out of a tax offence and debt.
>
> If Saraya does not know the rules you do, but she does know she is not a constituent as she gave her address as Collville Road."

20. The Respondent, rightly, does not dispute that this was a qualifying protected disclosure.

<u>Telephone confrontation – first alleged protected disclosure detriment</u>

21. On the following day 15 August 2019, Saraya Hussain called the Claimant by telephone.

22. The Claimant called her back and put the call on speaker. A witness for the Claimant Mr Majid Khan supports her account that Ms Hussain was aggressive and shouting at her. The Tribunal found Mr Khan to be a straightforward witness whose evidence we accepted on this point. That Ms Hussain was shouting is also supported by an email sent by the Claimant to her, copying the Respondent on 19 August 2019.

Email follow-up

23. On 19 August 2019 this telephone confrontation was followed up by an exchange of emails. The Claimant wrote to Ms Hussain:

> "I asked Khalid in Portcullis House if he knew anything about it. He denied any knowledge saying there were other Saraya Hussain's.
>
> It is customary to forward official correspondence letters to constituents and therefore after speaking to Khalid I rang the DVLA to establish the address. As it had no office reference or address on it. It was not in Perry Barr.
>
> Your phone call to me has now established that you had not declared being a staff member when you wrote your communication allegedly from Khalid on your behalf.
>
> It is strictly against the rules to use House Stationary in such a way. To mitigate enforcement from another government agency is a serious breach."

24. Ms Hussain replied:

> "Hello Elaina,
>
> I do NOT wish to become embroiled in your emotional/personal issues with Mr Mahmood and am fully aware that you have a well-documented history of harassing and maligning women who are affiliated with him either professionally or otherwise. For this reason I am asking you NOT to contact me for anything other than what might be relevant to the office of Mr Mahmood and his constituents.
>
> I hope you have a productive week.
>
> Best regards
>
> Saraya"

25. The Claimant replied to Ms Hussain, copying the Respondent: stating that she should be very careful given that these comments were defamatory and:

> "I am leaving Khalid to deal with your dreadful email if he doesn't I shall report you through formal channels for abuse in the workplace.
>
> I followed office protocol which was to raise the misuse of stationary with my employer. As he had denied all knowledge of the communication. It is a pity your defence is one of abuse rather than an explanation.
>
> Please do not contact me again."

26. Also on that day, 19 August 2019 the Claimant and Respondent had a discussion about Saraya Hussain, which she followed up with an email to him, in which commented upon the "vile email" but stated that she was pleased that he intended to deal with the matter in a speedy manner to her satisfaction. Her email contained the following:

> "It is my duty as senior advisor and following office protocol to raise directly to you inappropriate use of parliamentary stationary and especially when deliberate deception was involved to mitigate enforcement action from a government agency."

27. In the last few days of August 2019 the Claimant wrote to the Respondent raising her belief that her job was under threat stating that she felt excluded. These comments were in the context of her involvement in protests about the treatment of non-Hindus in Punjab. At around this time the Respondent explained that he was out of the country hence a delay in signing off her expenses.

<u>October follow up</u>

28. On 12 October 2019, the Claimant emailed the Respondent regarding Saraya Hussain, in which she wrote that this was a formal complaint to complain that the lack of office procedure following the abusive email she had received she said he had reported HR and requested a formal update. The Claimant made further reference to this in another dated 15 October 2019 which substantially related to other matters.

29. The Claimant sent some messages to the Respondent via WhatsApp. There are many pages of such communication in the agreed bundle in which the communication is almost entirely one-sided. The Claimant frequently fumed and ruminated in such communications making bitter and provocative remarks directed at the Respondent mixed in with information relating to the business of his office. The Respondent rarely replied.

> [21 October 2019, 10:19:01] Elaina: See email I'm advised to return open shah and follow thru Saraya . I'm fed up being abused by your women

> [21 October 2019, 10:21:13] Elaina: You need to sort it . I'm not interested in excuses I'm good at my job and not interested in your women . They need to get over it and stop using me as an excuse to hide the fact they are antisemites or rinse cash out of the charity sector
>
> [21 October 2019, 10:22:03] Elaina: Or use the parliamentary office to get off a Dvla fine that should have been paid
>
> [21 October 2019, 10:22:18] Elaina: By lying to them

2020

30. There was a general election in December 2019 in which the Respondent was re-elected.

31. In a WhatsApp message send on 2 January 2020, the Claimant wrote as follows:

> [02/01/2020, 17:06:49] Elaina: So sorry to remind you that I'm a member of your staff I haven't heard from you in relation to Parliament since election. If this continues I'm just going to do my own thing as I have since 2005 when you decided I was surplus to requirements due to favours & new female admirers & girlfriends .. happy new year . [954]

Allegations of criminal activity

32. On 10 January 2020 the Claimant attended a meeting with Mr Majit Khan regarding Saraya Hussain with an anonymous female informant "A".

33. According to the Claimant “A” made serious allegations about sexual exploitation, bullying and blackmail into criminal actions. We have received a witness statement from A, which was not challenged by the Respondent with the result that we did not hear any live evidence. The Tribunal did not understand that this means that the Respondent accepts the truth of this statement, but rather that none of the content of this statement which is relevant to the list of issues is disputed. None of the allegations were directed at the Claimant.

34. We have borne in mind the presumption in favour of the identity of the witnesses and others being public (**Frewer v Google**) and the balancing act required. Ultimately the Tribunal has not needed to rely on the content of A's evidence, which is tangential to the allegations we have to determine. The focus of the protected disclosure claim is on the reasonable belief of the Claimant rather than the underlying truth of the allegations referred to by A. A appears on the face of it to be one of a number of apparently vulnerable individuals interviewed by the Police in Project Aureus. The allegations

apparently included some criminal activity involving minors as well as allegations of sexual misconduct. In the circumstances the Tribunal does not consider it appropriate for “A” to be named in the judgment. Had the content of the statement been relevant or a decision been necessary as to its credibility the Tribunal would not have been prepared to accept evidence put forward on an anonymous basis without further scrutiny.

35. The Claimant spoke to a variety of anonymous “informants”. According to the Claimant “B” and “C” made allegations that Ms Hussain had pressurised them into shoplifting and had given them money for their heroin addiction. The Claimant says that she also spoke to “D”, whom she says had been exploited by Ms Hussain. The Tribunal has not received evidence as to the names of B, C and D.

36. The Tribunal has not heard any evidence from Ms Hussain.

37. Some of the allegations involved Mr Waseem Zaffar, a local councillor in Birmingham. We have not heard evidence from Mr Zaffar. We are not required to make any determination of the truth allegations involving either Ms Hussain or Mr Zaffar.

38. The Tribunal accepts that some serious allegations were made at this meeting, but we are not in a position to make a determination of the underlying truth of any of these allegations, nor is it necessary for the claims which we have to determine which relate only to the Claimant’s reasonable belief.

39. The Claimant notified the Respondent that same day that she had been given “illegal info” which related to revenge porn, that she was with the victim and had seen evidence. She followed up with a message the next day setting out that she had sent this message in error, asking him to forget it.

<u>Police involvement</u>

40. On 21 January 2020 the Claimant contacted the West Midland Police regarding the allegations she had heard regarding Ms Hussain.

<u>Alleged third protected disclosure</u>

41. On 26 January 2020 the Claimant had a telephone conversation with the Respondent in which she informed him that she had made contact with the police and told him everything that she knew about the allegations of criminal exploitation, blackmail, threats of violence and fraud allegations that had been made. She says that she spared the Respondent no details but did not reveal the names of the informant women to him.

42. The Claimant says that the Respondent

> "went ballistic and accused me of lying. He accused me of making more trouble for Saraya Hussain because I was jealous. He said he would sack me because he had enough of my lies and attacks against Saraya Hussain."

43. The Tribunal accepts the Claimant's account of the telephone conversation on 26 January. The Respondent has not put forward an alternative version of events. It is clear that the Claimant had been engaging with West Midlands Police in relation to these allegations, as substantiated by an email dated 21 January 2020 (147). It is also clear that at some stage Mr Mahmood became aware of these allegations. Subsequently a meeting was arranged for the Respondent to meet one of the alleged victims, although in fact he did not attend that meeting. There is a reference to concerns raised with the Claimant about Ms Hussain's involvement in the Amirah Foundation in an email dated 14th February (153).

44. It seems to the Tribunal that the Claimant then continued to pursue the allegations made in this conversation by a series of text messages sent between 21:21 and 23:45, which are mixture of ruminations on the allegations that have been discussed, the Claimant's suggestion that she should resign from the liaison of the Commonwealth Games, and criticisms of the Respondent suggesting that he had more than one wife at same time.

45. In common with hundreds of pages of reproductions of the WhatsApp exchange between the Claimant and Respondent, the latter very rarely responds. When he does respond it is with a word or a very short phrase, which is in context and does suggest that he is reading the messages but in the main choosing not to respond. He is described as "catfish" in the transcript we have received. We understand from the Claimant that this is her nickname for him on the WhatsApp system.

46. The Tribunal has taken judicial notice of the fact that catfish is a slang term for someone who uses a fake or misleading photograph in a social media or online dating context. The Claimant plainly regarded this nickname with some amusement.

47. The Claimant sent many abusive and unpleasant messages to the Respondent, including the following:

> [26/01/2020, 21:21:56] Elaina: you don't listen to me ever so get on with your stupidity .. if I'm going to mtg on Wednesday night I m not able to go to London. I cannot be in London this week I'm working on RBS I need to finish this case it's dragging on. And sort out your bullying women .. Just to put record straight I don't malign your girlfriends nasra crook liar / shah antisemite crook liar
>
> security risk/ qanita liar security risk / latest employee you catfishes liar bully and fraudster / you need to sort your life out with the two wives you have or find one that's not a crook connected to a dodgy charity and legally divorce rifhat and get married ... I'm out of your life .. I just work in your office. I had lucky escape.

> [26/01/2020, 21:28:57] Elaina: My phone full ! finish your vendetta with wasim or leave him alone his own stupidity will end his career I'm fed up of being in middle .. as for me I m resigning as liaison of games you went to reception and though I was not invited because I m standing up for your constituents you deliberately didn't tell me. I was told by someone else ..
>
> [26/01/2020, 21:31:09] Elaina: I ll formally email you with my resignation .

48. 'Qanita' is a reference to Maria Qanita, a colleague who appears historically to have a difficult relationship with the Claimant. The Claimant alleges that Ms Qanita tried to remove her from her position with the Respondent's help. We have not heard any details on that allegation.

<u>Lunch</u>

49. Despite the disrespectful messages from the Claimant, there is also evidence from WhatsApp exchanges that at this time the two of them were able to continue with ordinary business, even meeting for lunch on 4 February 2020. After meeting for lunch:

> 04 February 2020 [04 February 2020, 14:00:14] Elaina: Why are you still employing me . Coz I'm brilliant at my job .. perhaps the email from Saraya needs to be addressed because an employer would have dealt with it and you didn't you gave the fraudster a pass [976]

50. On 5 February 2020 the Claimant made reference to the lack of action in relation to Ms Hussain:

> "you took no action SH after being discovered abusing her position in parliament claim to be new to the DVLA sendmail and intimidating and abusive email as a way of responding".

51. She goes on to complain that the Respondent had casually mentioned to her that the IPSA was questioning her professional integrity by suggesting that they had a personal relationship which needed to be declared.

<u>Project Aureus</u>

52. The West Midlands Police carried out an investigation into the allegations relating to Ms Hussain and others, codenamed Project Aureus.

53. On 11 February 2020 the Claimant sent a text message to Ladywood police station in which she tried to encourage the Police force to involve the Respondent in the investigation, or at least tell him about the investigation.

54. In the meantime the Claimant continued to subject the Respondent to disrespective and abusive comments by WhatsApp:

> [13 February 2020, 12:40:35] Elaina: spiteful untrustworthy liar womaniser . and more .. and you brought this on yourself. Serves you right .

55. On 14 February 2020 the Claimant wrote to the Respondent in formal terms reiterating her concerns about Ms Hussain and stating that her employment should be reconsidered.

56. On 14 February 2020 Majid Khan arranged for the Respondent a meeting for himself, the Claimant and the lady who has been described to us as "Victim A" or "A". After several hours the Respondent failed to arrive and said that he should never have agreed to attend.

57. Instead he wrote an email to the Claimant in which he asked her to compile her concerns about Ms Hussain into a formal document (evidenced where possible), so that he could take action as merited once he had a clear paper trail of all the allegations being made. Mr Mahmood's email was as follows:

> "Thank you for making me aware of the issues and concerns you have raised.
>
> Could you please compile all your concerns (evidenced where possible) into a formal document so that I may take action as merited once I have a clear paper trail of all the allegations being made.
>
> As it is, there are only text messages from you and I'm sure you understand that they alone do not constitute as anything other than what they are."

58. The Tribunal finds that it was not unreasonable for him to try to get down what seemed to be quite serious allegations in a written form so that he could work out how to deal with them.

<u>Claimant copies in Chief Constable</u>

59. The Claimant replied to the Respondent on the same day saying she is not prepared to discuss this further, but chose to copy in the Chief Constable West Midlands Police, David Thompson under the heading Urgent investigation Saraya Hussain terms as follows:

> "Dear Khalid
>
> I am not prepared to discuss this with you any further. You have been told on a number of occasions that her employment should be re considered due to concerns already raised with you at her involvement in the Amirah Foundation.
>
> I now believe these serious concerns from information I received to be founded in fact.

> You were in a position to act when Saraya Hussain was discovered misrepresenting you on House of Commons stationary for personal financial benefit from the DVLA, and then sending abusive emails.
>
> I brought this directly to your attention.
>
> I have completely lost trust and confidence in both the West Midlands police and your ability to safe guard victims and constituents.
>
> Mahmoodk is available to read by all office staff including Saraya Hussain and you are asking me to discuss information I gave you in confidence.
>
> This involves abuse of position of your employee and a number of high profile members including a police officer and member of the PCC connected to Labour members and involved in a prevent funded domestic violence charity.
>
> I have informed my lawyer in order to establish my rights and protection under employment law.
>
> I shall then decide how to proceed.

60. On 15 February 2020 under the heading "Formal complaint" in an email sent at 23:50 the Claimant wrote that she could not compile concerns and that the Respondent should seek them from the police. She expressed her dismay that the Chief Constable had not told the Respondent prior to this. The Claimant characterised misuse of stationary as a deliberate fraud.

61. She reiterated her view that there had been fraudulent misuse of House of Commons stationary by Ms Hussain, and expressed her concern that Ms Hussain had, subsequently to the Claimant raising this, been provided with a parliamentary pass. She urged him to take guidance from HR on "safeguarding and data protection".

62. The Claimant continued to send disrespectful and abusive emails to the Respondent by WhatsApp:

> [21 February 2020, 15:18:05] Elaina: Cat fishing women is nt a crime but when you are an MP and do it on your MP Facebook it's unethical .. especially with your history .. as a continuing victim to this day of trusting a crooked womaniser if for nothing else you deserve a front page on your sleaze ..

Respondent reiterates request for allegations to be put in writing

63. Also on 21 February 2020 Mr Mahmood reiterated to the Claimant that he needed a full report and evidence to substantiate concerns. He pointed out that so far the only allegations made had been made orally and over WhatsApp. He also wrote to the Claimant is warned that unnecessary external communications may bring the office into disrepute.

> Further to your email dated 14th February 2020, I am deeply concerned by the nature and also the tone of the allegations being made in relation to one of your colleagues.
>
> Firstly I would like to remind you that khalid4perrybarr@gmail.com is a private email which I have sole access to and that you have previously used to communicate with me. You are welcome to continue to do so where necessary.
>
> In relation to the content of your most recent email - and previous ones - I have requested for you to provide me with a full report of your allegations and to date have not received anything as such. As you may well understand, in order for me to further proceed I would need such a report along with evidence(s) to substantiate your claims particularly as you have seen fit to include West Midlands Chief Constable in your most recent email.
>
> As you state you have sought legal advice I have in addition spoken with personnel in order to ensure the whole process is conducted openly, thoroughly and robustly. This may include the appointment of external investigators in light of your allegations.
>
> Thus far your allegations have been made verbally and/or over the what's app medium so I will reiterate that I will need a formal complaint/report from your self in order to pursue the matter.
>
> Without such a document I am limited and am unable to proceed any further and in fact any action without evidence could be taken as bullying and/or harassment of an employee.
>
> I would like to take this opportunity to remind that any unnecessary communications with external organisations and/or individuals in relation to this or other office related matters could potentially bring the office into disrepute and such conduct could compromise the validity and robustness of any potential investigation and I would ask for you to read the staff policies on confidentiality and also to revisit your contract of employment and particularly to pay attention to the section/clauses below:
>
> Clause 17 Duty of Confidentiality
>
> 17 Duty of Confidentiality
>
> 17.1 The contractual relationship between you and me is based on trust and confidence. You must preserve the secrecy or

confidentiality of any information relating to myself or to others, and any information which gives rise to a duty of confidentiality to a third party, which has been acquired by you in the course of your employment. During the course of your employment, you must preserve the confidentiality of such information, and you must not disclose or publish such information to any person or persons, or use it for your own purpose or for any purpose other than those I have authorised. Any breach of this duty may lead to disciplinary action.

17.2 This duty of confidentiality continues after the end of your employment with me.

17.3 The restriction in clause 17.1 does not apply to:

17.3.1 prevent you from making a protected disclosure within the meaning of section 43A of the

Employment Rights Act 1996; or

17.3.2 use or disclosure that has been authorised by me, is required by law or by your employment.

In addition to this I am attaching the whistleblowing policy

https://intranet.parliament.uk/Documents/Chapter%2019%20Disclosing%20Malpractice%20April%202019%20FINAL%20PDF.pdf

for your perusal.

I look forward to bringing this matter to a conclusion and await your timely response.

Email to General Secretary & Police

64. Despite the Respondent's clear guidance about unnecessary communication with external organisations, the Claimant on the afternoon of 21 February 2020 sent an email to Jennie Formby, the then General Secretary of the Labour Party, which she copied to the Chief Constable of the West Midlands Police and the Respondent's private email, inviting her to conduct her own investigation as follows:

> "Please could you conduct your own investigation.
>
> I was instructed not to tell Khalid about an investigation by West Midland Police into serious allegations of abuse and criminal activity due to safeguarding of the victims.

I have repeatedly asked for Khalid to be told because of the position in which I'm placed as the allegations are against a staff member and other members of the Labour Party.

However the allegations by the women bravely coming forward involved alleged two black mail plots against him , , , safeguarding of constituents and current and historic fraud they were made on video and were believed. I i felt compelled to eventually tell him in confidence.

If this is my mistake I shall face up to my misplaced loyalty and genuine concern over the police handling of the case.

However Instead of Khalid giving me the support I need he has turned on me by ignoring me for two weeks and sending threatening emails as per the Naz Shah case on antisemitism which you are aware.

Whatever I write whatever I say to anyone makes no difference I just get more stressed more depressed and more angry at the unfairness of the treatment I receive when I try to help everyone and end up as a scapegoat and punch bag.

I have included the Chief Constable and Khalid In order for everyone to understand my position.

I have been told to email Khalids While please would you advise if this is necessary.

I am not leaving my job I love the work the tax payer charges me to carry out on behalf of constituents and the wider issues for which I remain a Labour member.

This is continued victimisation in the workplace and must be sorted."

Discussion 24 February 2020

65. On 24 February 2020 the Claimant and Respondent discussed the matter in the Parliamentary office. Mr Mahmood suggested to the Claimant that she was lying and was motivated by jealousy of Ms Hussain.

Complaint ICGS

66. On 24 February 2020 the Claimant then contacted the ICGS helpline (Independent Complaints and Grievance Service). The ICGS appears to have taken this matter on to be investigated.

Further email to Respondent copying police

67. On 24 February 2020 the Claimant wrote to the Respondent in an email, copying David Thompson, Chief Constable West Midlands Police:

> "Dear Khalid
>
> I cannot be blackmailed into setting out the details of allegations on email made by third parties in police testimony due to safeguarding.
>
> I have told you repeatedly to contact the police.
>
> Isolating me in this way is a breach of the bullying and harassment policy and could be subject to an urgent independent investigation.
>
> Please consider the stress that your continuing attitude and emotional bullying has on me both personally and in the workplace.
>
> Elaina"

68. The Tribunal finds the approach of copying the Chief Constable surprising and inappropriate given that the Claimant had been told by the Police not to notify the Respondent, it seems that there was not any particular information that he could offer to assist the investigation and he had requested three days earlier that she did not inappropriately copy in external organisations.

Conclusion of Police investigation

69. On 9 March 2020 DCI Pearson and DS Simpson of the West Midlands Police Constabulary had a meeting with the Claimant at Perry Barr. They explained that the investigation (Operation Aureus) was complete and there was no criminal investigation to progress. Four out of five alleged victims had withdrawn and the fifth alleged victim was refusing to engage.

70. The Police asked the Claimant if they had any further information to support the investigation. She said that there were a number of WhatsApp messages but admitted that these would not add any additional value. It was arranged however that these would be supplied to the police.

71. The Claimant thanked the Police for their work on this investigation. This thanks was reiterated by her in an email dated 11 March 2020.

72. On 11 March 2020 the Claimant sent the Respondent the following message:

> [11 March 2020, 18:25:50] Elaina: Be mindful whatever you send me I putting into the public domain on twitter I will not be bullied because you are a womanising crook

Further email to Police

73. Also on 11 March 2020 the Claimant emailed the Chief Constable Thompson with Respondent in copy. In that email she refers to being politely admonished by DCI Pearson for contacting the Chief Constable during Operation Aureus. She refers to what she considers to have been compelling witness evidence taken by video of the actions of Ms Hussain. She reiterated the allegation about fraudulent use of House of Commons stationery in the letter to the DVLA. She makes reference to the Police deciding to keep the Respondent "in the dark" about the criminal investigation. She wrote:

> "Khalid is still very angry with me as a result of my acceptance with guidance of the police operational decision not to tell him about the serious alleged criminal allegations against a staff member.
>
> This is now the subject of an independent inquiry."

74. As to the position in the workplace she wrote :

> "Although I m currently less stressed having sought professional guidance I am still experiencing isolation in my workplace."

Instruction of HR consultant

75. On the evening of 11 March 2020 Mr Mahmood instructed Lynda Rollason.

76. Ms Rollason is an HR consultant, whom the Respondent had consulted on a previous occasion in 2016 in relation to the Claimant. We have not received any detailed evidence about this as it is subject to a settlement agreement reached in 2017.

77. In cross examination Mr Mahmood gave apparently contradictory evidence on whether this was admitted "retaliation" for the Claimant raising protected disclosures. The Tribunal believes that the Claimant had misunderstood the question or was talking at cross purposes the first time he gave an answer on this point. The second time he gave evidence on this point was to say that he "absolutely did not" do this as retaliation, which we understand is his stated position.

78. The Respondent did not disclose documentation relating to Ms Rollason's instruction by him to the Claimant. It was his position that he did not initially consider that this was relevant. These documents were only disclosed during the course of the Tribunal hearing as a result of a series of enquiries that were being made by the Claimant's representatives.

79. Mr Mahmood's evidence was that he did not see this as being connected to the Claimant's dismissal. It is clear to the Tribunal that these documents are relevant and did need to be disclosed.

80. The Respondent's evidence is that he did not read the detail of the Claimant's email on page 173, but merely forwarded it on his iphone to Ms Rollason, which he did at 18:22.

81. There was evidently some sort of discussion between the Claimant and Respondent on 11 March.

82. Later on the evening of 11 March 2020 the Claimant wrote to the Respondent at 19:01 in an email entitled "continuing abuse by my employer" in the following terms:

> "If you don't stop threatening me because no one trusts you and I was caught in the middle of your ill judgement and personal vendettas I'm going to have to go to a higher authority in the party and explain what's happening in your office both now and historically.
>
> I would remind you that your reputation is likely to be damaged far more than mine and your threats and my decision in the face of being isolated and ignored by you as an employee will be defended again in legal action against you.
>
> I would remind you that you did nothing last August when I was attacked by Saraya Hussain after discovering misuse of stationary and your current attitude is reminiscent of your defence of Naz Shah when I was the subject of continued antisemitic abuse."

83. The Claimant contends that the Respondent planned her dismissal as early as 11 March 2020. He denies that.

84. The Tribunal considers that on 11 March the Respondent was contemplating some form of disciplinary action against the Claimant at the very least and this is why he instructed Ms Rollason.

<u>Email 12 March 2020</u>

85. On 12 March 2020 the Claimant sent a further email sent at 02:00 to the Respondent. In this email she says that she felt that he had unreasonably [by implication verbally] attacked her that evening (11th March).

86. She says that "I would have wanted to be able to bring the allegations of the women to your attention" but refers to being "shackled by the police". We infer that the source of the friction between them must be at least in part that the Respondent felt that the Claimant had not kept him informed as to what she was doing.

87. The Claimant referred to feeling isolated and signed off by writing "I don't know what else I can do to resolve this to your satisfaction part from jumping off Westminster Bridge".

88. Whether or not this was an allusion to a private reference that the two of them would have understood, the tone and content of this email ought to have caused the Respondent some concern about the Claimant's mental state.

89. The Claimant wrote in a separate email to SCI Simpson of the West Midlands Police on 12 March 2020

> “I ve been through this before I have an excellent lawyer to protect my employment rights and I’m comfortable with any scrutiny”

ICGS investigation

90. On 18 March 2020 the Claimant had an interview with ICGS (Independent Complaints and Grievance Service).

91. This was a preliminary meeting being carried out by Case Manager Alison Twist to see if there was a case to answer. In that preliminary meeting the Claimant set out her own history working for the Conservative Party, the history of the Amirah Foundation, the abuse that she says she received from Ms Hussain by telephone. She claims to have spoken to 5 people who alleged that Ms Hussain exploited them and involved then in criminal activity, for example someone who was shoplifting at her instruction. She mentioned the alleged misuse of parliamentary stationary. She expressed the view that police had let everyone down.

Respondent’s request for written report into allegations

92. The Respondent continued to chase the Claimant for a report into the serious allegations raised with him by the Claimant.

93. In March 2020 he sent the following messages by WhatsApp:

> [19 March 2020, 14:11:11] Catfish: I ask to provide me with a full report please
>
> [23 March 2020, 13:24:26] Catfish: Send detail in a report to allow me to act , thank you

Rollason investigation

94. On 24 March 2020 Linda Rollason the HR consultant wrote to the Respondent to confirm her brief. She wrote:

> "What I am trying to establish is whether there has been misconduct, and if there has at what level, or was Ms Cohen acting

in good faith in making a disclosure to West Midlands police; the degree to which she has bought you/your office into disrepute; and whether she has breached her contractual confidentiality requirements. The picture still remains somewhat cloudy, and it is imperative that we don't make any similar mistakes as outlined in Mr Dempsey's report.

Could you therefore, as a matter of urgency, provide me with the following:

- A timeline for what has happened and when, including when Ms Cohen first made allegations against Ms Hussain, and exactly what those allegations are;
- Anything she has written, formally to you or via email and social media including WhatsApp, about these accusations;
- Any responses you have made about these accusations;
- The texts you were going to provide me with which you considered amounts to harassment/bullying by Ms Cohen towards you;
- Any breaches of confidentiality - what these are, when they happened, and any responses you have made to Ms Cohen, and vice versa, on the matter of confidentiality.

In short, I need a fully picture of what has happened, and when - perhaps in the last 12 months. As per Mr Dempsey's report, timing is very important, as matters need to be dealt with when they arise, unless delaying tactics are used by the perpetrator."

95. The perpetrator here is a reference to the Claimant. It is plain that her brief was to investigate this as a disciplinary matter.

96. Mr Dempsey's report referred to by Ms Wallace and dates from 2016 and relates to the Claimant's conduct. We have not seen this document, that can see from references to it that one of Mr Dempsey’s criticisms of the Respondent was that he did not take action expeditiously.

<u>Claimant’s complaint about isolation</u>

97. On 26 March 2020 the Claimant wrote a lengthy email to the Respondent, which takes up four pages of close type. In it she complains about isolation and again refers to the Respondent being upset because she had not told him about the police investigation because she had been advised not to due to "the risk of compromising their victim led investigation". She characterises the police operation as a shambles.

98. By way of explanation as to how she became aware of the allegations, she wrote that she had been approached completely out of the blue by a community activist in January 2020 to see if she would meet a young woman to listen to her story.

99. Also on 26 March 2020 the Claimant postponed the ICGS process, saying that this was because of her concern about the Respondent being in the highest risk category of catching Coronavirus.

100. On 4 April 2020 the Claimant wrote to the Respondent as follows, again complaining about a lack of communication:

> “I hope you are well .It is good news we have a new leader.
>
> I was wondering what action you have taken as a result of the report you requested.
>
> I’m obviously disappointed that your non communication for several weeks is still in place with me after I complied with your wishes.”

101. On 6 April 2020 the Respondent provided some comments on the Claimant's statement (ICGS). Her statement complained about the decision not to communicate with her as his employee (1283). As to telephone communication he says this in response to a question:

> p.1: In what way have you stopped communicating with EC? And when?
>
> A.1: I haven't stopped communicating with EC at all, she sends multiple messages via Whatsapp Platform and communicates through it as I have sent you several of her messages before and will send more in due time. Although, I do cut off her phone calls due to them being abusive and extremely disdainful in nature."

<u>Anti-Semitism allegation</u>

102. In April 2020 the parties had the following exchange by WhatsApp:

> [07 April 2020, 11:56:11] Elaina: Keir Starmer has asked for outstanding antisemitism cases to be given to him. Mine is in the pile and has been since for some time.
>
> [07 April 2020, 12:25:52] Elaina: It's important because you have done the same with Saraya who is known to have used in front of others the word ' Zionist' as an insult.
>
> [07 April 2020, 12:27:07] Catfish: All cases of Antisemitism must be dealt with , Keir as leader will deal with them if you evidence you should forward them to the Labour Party
>
> [07 April 2020, 12:36:47] Catfish: I have never refused to listen to what you wanted to say , we have an issue that every time I try to speak to you on the phone, I get personal abuse about issues that are not work related , hence I communicate be message , that also ends in personal abuse

Investigation

103. The first government lockdown in response to the Covid-19 pandemic took effect from 23 March 2020.

104. On 20 April 2020 Ms Rollason wrote to the Claimant:

> "You will be aware that, should you wish to proceed to a disciplinary investigation, Ms Cohen might submit a grievance once she receives the letter of invitation to an investigatory meeting. I have discussed previously this possibility with Kim McGrath [HOC HR], who assured me that the House of Commons has a process for dealing with this which would not impede the disciplinary process.
>
> I will not be able to hear the case myself as I would have conducted the investigation. You therefore have the option to find someone else yourself, or I can provide a seasoned HR specialist to do both the disciplinary hearing, and someone else for the appeal hearing. Both of these would also be at £100 per hour." [1314]

105. No progress was made on the investigation during April and May 2020. There is some correspondence about non-payment of Ms Rollason's invoice.

106. The Respondent says that she was struggling to cope with this matter, and the amount of work that he would have to do to provide an input into the investigation. He says that for his own mental-health at this stage he took a deliberate decision not to progress it.

107. The Claimant continued to communicate with the Respondent by WhatsApp:

> [29 April 2020, 14:53:47] Elaina: How can I pursue a claim against Saraya ? I'm told she's left the office and working back with wasim .. if this is correct I m going to halt my complaint

108. On 26 June 2020 the Respondent wrote to Ms Rollason to progress and investigation. In a reply on 7 July 2020 Ms Rollason replied requesting an upfront retainer of £5,000 from which she would return any unused money to him. That appears to be the last correspondence with Ms Rollason. We presume that the Respondent chose not to engage Ms Rollason on these terms.

Ward forum

109. In an email dated 17 July 2020 the Claimant wrote to the Respondent pointing out that Saraya Hussain had been asking questions on his behalf at a ward forum. She stated that she did not know which Ward Forum as she had not been made aware by him that the team were joining Zoom during Lockdown.

This email she copied to Dr Justin Varney, Director of Public Health, Birmingham City Council.

110. By reply in an email dated 20 July the Respondent clarified that Ms Hussain had joined this forum at his request and stated that it would have been appropriate for the Claimant to enquire of him directly.

Alleged anti-Semitic Facebook post

111. On 25 June 2020 a post appeared on the Facebook page of Saraya Haych. It does not appear to be in dispute that this is an account belonging to Saraya Hussain. The wording of the post is as follows:

> "Rebecca Long-Bailey has been sacked from the shadow cabinet after she shared an article containing an "anti-Semitic conspiracy theory.
>
> The Israeli police force has tried to distance itself from any perceived similarities, issuing statements denouncing what happened and stating that its officers are not trained to use knee-to-neck techniques.
>
> But photographs taken as recently as March have shown Israeli forces using the same restraint on unarmed protesters just yards from the Al-Aqsa Mosque in Jerusalem's Old City."

112. The post contained an image of Ms Long-Bailey, who was until that date the Shadow Secretary of State for Education and a member of the Shadow Cabinet.

113. Approximately 3 weeks later on 18 July 2020, the Claimant wrote to the Respondent in an email entitled "Anti-Semitism" as follows:

> "Dear Khalid
>
> It has been brought to my attention that your Birmingham staff member Saraya Hussain also posts on face book using the profile Saraya Haych.
>
> On this social media platform she has posted an article on the sacking of Rebecca Long Bailey.
>
> She then goes on to praise ' Maxine Peake the author of the article for which Rebecca Long Bailey was sacked.
>
> She then questions the article and content being antisemitic grumbling that any complaint about Israel is classed as antisemitic.
>
> She then posts the full Maxine Peake article after making her comments , for 'anyone that wishes to peruse it'
>
> She has 374 followers sharing her views.

> I hope you will take action on what is clear support and the sharing by a Labour member of your staff of an antisemitic trope."

114. On 20 July 2020 the Claimant wrote to complain to the Respondent:

> "I am isolated you never speak to me and I am left to my own devices , and you wonder why I am upset when you send me an email in this tone. Please could you respond instead on what action you intend to take on the discovery of vile antisemitic tropes posted on Saraya Hussain's face book under the pseudonym Saraya Haych for which Rebecca Long Bailey was sacked.
>
> As a Jewish member of your staff I am disgusted."

115. In a separate email on 20 July the Claimant accused the Respondent of being increasingly antisemitic [229] and went on:

> "It cannot be an attitude of degrees. If you defend antisemitism in any form from anyone it is equally wrong.
>
> It has become a habit for you to weaponise antisemites against me . You need to apologise and discuss why this is happening or I shall have no alternative but to formerly report it."

116. A few minutes later the Claimant the emailed Labour General Secretary in an email headed "Antisemitism in Labour" alleging the Respondent had chosen to ignore the Facebook post [229].

<u>Z level jihadi tweet</u>

117. On 5 August 2020 there was an anti lockdown rally in Birmingham, which the Respondent criticised. A further rally was proposed outside the Respondent's constituency office for 23 August 2020.

118. On 21 August 2020 the Claimant tweeted about the proposed rally outside the Respondent's constituency office in the following terms:

> "I ll be at the protest outside the office where I work. I m not prepared 2B intimidated by funded anarchists calling themselves Daughters of Kashmir"

119. Approximately an hour later she posted a further tweet:

> "So I'm going to sit outside my office and look these troublemakers in the eye. I want peace in Kashmir but this bunch of z level jihadis run by Shadowy figures need to back off bcoz we all know what's going on"

120. Although the Claimant took this tweet down, it was seen and commented upon by others on Twitter.

121. The Respondent told the Claimant that the tweets were highly unprofessional and irresponsible in an email entitled “Professional boundaries”. He communicated with her both by WhatsApp on 21 August 2020 and also by email the following afternoon on 22 August 2020 in the following terms:

> Dear Elaina
>
> Many thanks for your messages. I appreciate this is not a very welcome situation with regards to the protest which has been advertised over social media.
>
> Although as an active member of my staff I need to ensure safety is paramount for my staff and as your employer due to the potential health and safety concerns which may arise with this situation my advise to you and to all my staff in the Birmingham office is not to attend the office or to escalate any community tensions which I feel may occur.
>
> The tweets which you have done of course are on your personal account although have affiliation with my office and believe this is highly unprofessional and irresponsible.
>
> It is unfortunate that once again I am having the need to raise unprofessionalism with you once again.
>
> Although you have now retracted that you will not be attending. The tweets have already been made public and as you are aware people do screen shot tweets which further escalates the matter of unprofessionalism.
>
> This is not a personal battle for you. With relation to incidents which relate to me or my office and my staff it would be in the best interest of all for these messages not to be circulated over social media as shows severe unprofessionalism.
>
> Please desist from further social media with regards to this or any other incident which I may be a target of. These issues are dealt with by the authorities though the appropriate channels.”

122. Later on he wrote requested that she refrain from sending personal WhatsApp messages to him. He wrote that any further work communication he would be happy to advise and assist on and signed off “Thank you for agreeing to keep all communication work related”.

<u>First class idiot</u>

123. On 23 August 2020 the Claimant replied says in email to Respondent

> "If I were to put all our messages over the years into the public domain most would regard you as a first class idiot"

OH referral

124. In a reply also on 23 August the Respondent told the Claimant to take sick leave and to seek professional advice.

125. On 7 September 2020 the Respondent sent the Claimant an OH referral form,

> "Due to you mentioning your mental well-being on numerous occasions and stating in this email that you are stressed".

126. By reply on the same date the Claimant described this as open hostility, alleged the Respondent was "gaslighting" her and she told the Respondent to seek counselling.

127. On 23 September 2020 the Claimant forwarded the OH referral emails to Sir Keir Starmer and General Secretary alleging adversarial behaviour and victimisation.

128. On 24 September 2020 the Respondent provided a timeline explaining his actions regarding the Claimant's mental health.

129. On 5 October 2020 the Respondent sent the Claimant an invite to an informal meeting regarding her health and wellbeing. In a reply on the same date the Claimant rejected the Respondent's apparent concern about her health but also suggested a meeting to discuss her concerns.

Further email to Police

130. On 9 October 2020 the Claimant emailed the West Midlands Police force suggesting her job is at risk because of the decision taken by the Police not to inform the Respondent about Operation Aureus.

11 October 2020

131. On 11 October 2020 the Claimant and Respondent spent a Sunday afternoon duelling by emails.

132. At 15:10 the Respondent proposed to defer the meeting in the diary for the following day so that he could consult with HR.

133. At 16:00 the Claimant wrote that she would forward his reply to the Labour Party and Parliamentary Standards. She says in her witness statement that this was copied to David Evans and Keir Starmer although this is not clear from the version of this email in the bundle.

134. At 17:06 the Respondent wrote with David Evans and Keir Starmer in copy, justifying his approach and copying earlier correspondence sent on 6 October 2020 which included a chronology and the "first class idiot" comment.

135. At 18:35 the Respondent informed the Claimant in an email sent to her alone that he considers she has been harassing him within the meaning of the Protection from Harassment Act 1997. He tells her that her threats and verbal abuse by email, text messages and WhatsApp messages have caused him alarm and distress. The Respondent says that copying the Labour leader and General Secretary is an attempt to put pressure on him. He concludes by saying that in the circumstances he needs assistance from HR on how to deal with the harassment.

136. At 18:39 Ms Cohen counter alleged that it was a standing joke that the Respondent's stock answer to her if she says anything is "fuck off", she says as a former journalist she was not that sensitive about verbal banter and if he was offended it was open for him to tell her. In this email she reminded him about the allegations about the misuse of parliamentary stationary and the police investigation involving serious criminal allegations.

137. At 19:11 the Respondent again copied David Evans and Keir Starmer into an email referencing the Claimant's "verbal abuse" reiterating the first class idiot epithet.

Subject Access Request

138. On 13 October 2020 the Respondent emailed staff regarding a Subject Access Request under data protection legislation ("DSAR") from local councillor Waseem Zaffar asking staff to compile correspondence involving Mr Zaffar and place in an electronic file.

139. On 17 October 2020 the Claimant asserted she needed to inform third parties of the DSAR and stated the Khan family had refused permission to share their correspondence.

140. On 20 October 2020 the Respondent emailed the Khan family regarding DSAR, pointing out to them that they did not have the authority to give directions to his staff. In a separate email he repeated the instruction to Claimant to compile emails, explain to her that it was against the protocol for her to delete emails and explained that it was his responsibility to safeguard the interests of the constituents and third parties. He explained that it was his responsibility to redact. He reminded her of an earlier written warning and gave her deadline of 30 October and asked her to stop "harassing" him with emails and other topics. A few minutes later she said that she had had a lengthy conversation on data compliance, and acknowledged that he had been correct.

141. On 26 October 2020 the Respondent emailed Claimant regarding DSAR stating that she was not being open and transparent but rather unprofessional and obstructive. The Claimant replied that the allegations are false and victimisation.

Formal warning

142. On 2 November 2020 the Respondent gave the Claimant and another colleague Khurram warnings for non-compliance with duties. He set out the

history from 13 October 2020 onward, describing how she had failed to comply with his request. He reiterated the request and reiterated that it should be done by 4 November 2020.

143. The Claimant responded that the constant attacks were motivated by antisemitism and should be reported to the police as a hate crime. The Claimant complains to the General Secretary of the Labour Party.

144. Also on 2 November 2020 she wrote to the Respondent:

> The constant attacks against me are once again motivated by antisemitism and must cease immediately.
>
> I am the only Jewish member of your staff and I am the only member of staff you subject to victimisation.
>
> It has been noted by the authorities that when I asked you to request the removal of offensive antisemitic tropes by a member of your staff Saraya Hussain you refused.
>
> When I asked you to speak to Naz Shah MP about her constant antisemitic attacks you refused and collaborated with her against me.
>
> As Luciana Berger said following the publication of the EHRC report if you are constantly weaponising antisemitism in others you cannot lay claim to innocence.
>
> In reference to your email you had all the information requested in a sub folder last week to which only you have access as requested . You don't need a password.
>
> I cannot even access it . I made it completely secure for your eyes only as you would certainly have accused me in your current vindictive mood of editing the information once submitted.
>
> I told you all this last week so why are you picking on me without speaking to me about it .
>
> You are also aware this was done for me remotely by digital support in order to be compliant with the SARS request.
>
> Are you suggesting the digital support desk was negligent. ?
>
> I have asked you several times to provide me with any knowledge of emails you have that I may have missed on my computer.
>
> In contrast you have broken the data protection you promised to constituents as data submitted to you by other staff can be read by anyone able time access the network.
>
> Your office is in breach of GDPR and is insecure on confidentiality.

> As you are aware you able to access my email without my permission you have not done so or even requested my agreement out of I am informed your continued form of intimidation should be reported to the police as a hate crime.
>
> I expect an immediate apology by return or I shall request urgent assistance from the authorities tomorrow make you stop.

Zoom

145. On 4 November 2020 the Claimant wrote to the Respondent to complain that she was omitted from his staff approval for Zoom. She asked for this to be arranged with digital support.

Claimant's response to Respondent's family bereavement

146. On 10 November 2020 the Respondent's father in law died.

147. On 11 November 2020 the Claimant emailed the Respondent in crass and insensitive terms, querying the name of the deceased, querying whether he was still married to his first wife under English law, expressing that she felt sorry for his first wife and implying that he was a hyprocrite for making comments about others marrying again whilst doing the same himself. She concluded with the comment:

> "I am daily astounded at the shenanigans in the parliamentary office."

DSAR chain of emails sent externally

148. On 14 November 2020 the Claimant forwarded a chain of emails regarding the DSAR to Majid Khan and Mike Olley, describing the Respondent as

> "cruel, bullying, spiteful, vindictive, anti-semitic, selfish, cold hearted, liar, user, womaniser, con merchant and jealous"

149. The Claimant goes on

> "I hope this description of you offends you as much as your confected outrage offends me
>
> I found your face book post announcing your father in laws death when no one knew you were married more insensitive than anything I have may have done privately as a result of your bullying"

150. This was in short something akin to a "poison pen" email which was calculated by the Claimant to be offensive to the Respondent.

Further ICGS complaint

151. On 18 November 2020 the Claimant raised complaint to the Helpline of the ICGS.

Investigation & suspension

152. On 23 November 2020 the Respondent sent the Claimant an invitation to attend an investigation meeting by Zoom.

153. By a letter dated 24 November 2020 the Respondent suspended the Claimant, making clear that the allegations facing the Claimant potentially amounted to gross misconduct.

Contact with Bahraini Embassy

154. On 25 November 2020 the Claimant had contact with staff at the Bahraini embassy. On her account the embassy contacted her and she provided his personal email address.

Email to Sir Keir Starmer

155. On 25 Novemver 2020 at 06:00 the Claimant emailed Sir Keir Starmer complaining of anti-semitism and stating the Respondent should be suspended. The email entitled “Antisemitism in the shadow cabinet” begins

> Dear Leader
>
> I have been watching your efforts to encourage Jeremy Corbyn to apologise. I’m baffled why you would make this the holy grail of your leadership but yet ignore continuing antisemitism and bullying in your shadow cabinet .

156. She confirmed in this email that she would halt the IGCS investigation.

157. On 25 November 2020 the Claimant wrote to the Parliamentary Standards Commissioner regarding a Possible Breach of Code of Conduct in regard to the parliamentary stationery matter. While she said that the Respondent was not aware of it at the time it was done, she reported it privately to him and then he ignored it. She went on to refer to the police investigation and complained that the work that she should be doing was now being done externally by consultancies paid out of expenses.

158. An investigation hearing with the Claimant was rescheduled to 8 December. However, on 2 December 2020 the Claimant's ex husband fell ill and was admitted to hospital.

Claimant writes to Police again

159. On 14 December 2020 the Claimant wrote to the police asking for the Respondent to be arrested for aggravated harassment and abuse. She wrote in that email that

> "My ex husband with whom I live is critically ill in hospital I ve had 4 threatening emails since he has been admitted deliberately bullying me and it's fuelled by antisemitism."

160. The Tribunal has not had evidence drawn to our attention which showed that the Respondent had admitted deliberately bullying the Claimant.

161. By a letter dated 8 December 2020 the Respondent rearranged the formal investigator meeting to 15 December 2020, to take place by video link.

Journalist query re: alleged anti-semitism

162. On 19 December 2020 the Respondent was approached by Steve Walker, a journalist at Skwawkbox news for his comment on the alleged anti-Semitic post on Saraya's facebook page. He says that this was the first time that he became aware of it and as a result had an exchange on WhatsApp with Ms Hussain as follows:

> [initial comment by R not visible]
>
> [S. Hussain] It's still there
>
> Nothing untoward about it
>
> Simply sharing HuffPost and quoting from the article.
>
> [Respondent] I believe I was concerned previously about any type of article which may be perceived as anti Semitic not to be posted on any social media platform I have requested this for all my staff and I was unware this was present on your social media platform. I must reiterate I do not condone such posts to be made as you are already aware.
>
> [S. Hussain] Of course.
>
> However it is my personal Facebook page and has no affliciation to my work or the Labour Party.

163. The contemporaneous documents suggest that the Respondent had only become aware of the content of the alleged anti-semitic post on 19 December 2020. If that is correct the Respondent either cannot have read the detail of the Claimant's complaints about Ms Hussain's posts or at least showed a surprising lack of curiosity in identifying and reading the facebook post.

164. The Respondent sought advice from Kim McGrath (HR) in relation to the Skwawkbox enquiry, on 21 December 2020, sending Ms McGrath a link to a

Skwawkbox article which criticised him for ignoring a complaint of anti-semitism.

Warning to Claimant

165. On 3 January 2021 the Respondent emailed the Claimant warning her that engaging Labour party officials and leadership to "embroil" their names in an HR issue for later use for media purposes is highly unprofessional.

166. Also on that date there was an mail exchange about the disciplinary meeting due to take place on 5 January 2021. This was the third date on which this had been arranged.

Investigation meeting 5 January 2021

167. The Claimant notified the Respondent by 11:05 that she would not attending the meeting because of a family matter. She claimed that she did not have facilities for zoom due to her suspension and not having access to office equipment and the use of a mobile. She again referred to the non-removal of the antisemitic tropes.

168. On 5 January 2021 the Respondent had a meeting in the Claimant's absence which was attended by Mr Mahmood himself, Kim McGrath, Head of HR and Lourell Harris attended as note taker.

169. Mr Mahmood notified the Claimant at 11:31:13 that the meeting would go ahead at 11:30 as planned. The meeting lasted 20 minutes.

170. There was a review of the evidence in the Claimant's absence.

171. On 12 January 2021 the Respondent sent a disciplinary invite setting out the five allegations.

172. The Claimant emailed the Respondent copying David Evans, Labour Party General Secretary and Sir Keir Starmer alleging she has raised important issues in the office including criminality.

173. On 16 January 2021 the Claimant emailed the Respondent, copying Ms McGrath (HR) at 2:49am alleging that the Respondent had covered up fraud and domestic violence for his personal benefit.

Disciplinary hearing

174. On 18 January 2021 a disciplinary hearing took place. In the note of this meeting it is recorded that prior to formalities commencing the Claimant expressed to Kim McGrath that the employer or complainant should not chair the disciplinary meeting. Ms McGrath replied that the Respondent would be chairing the meeting.

175. There has been a dispute between the parties about whether Ms Aisha Ali Khan was able to confer with the Claimant during the course of this virtual hearing. It seems to be common ground that it was not her role to speak on behalf of

the Claimant. Both the Claimant and Ms Khan were in the same building. Ms Khan had travelled to join the Claimant.

176. The Tribunal has concluded that although Ms Khan was not able to speak on the Claimant's behalf, she was able to confer with the Claimant, as recorded at page 701.

177. The Claimant tried at the outset of this meeting to make a "formal statement", which she was prevented from doing by the Respondent. It seems clear from the note of this meeting that he wanted to focus on the five allegations.

178. During the course of this meeting the Claimant gave a detailed response to each of the five allegations, as documented in the minutes of that meeting (701 - 709). She apologised in respect of the second allegation explaining that this was not her usual behaviour and was a direct response to personal issues she was battling outside of work she also referenced having no contact with the Respondent for almost a year. In respect of the fourth allegation she apologised and admitted to having reached out to the wrong person (Kier Starmer). She explained that she was in a deep state of depression and anxiety due to the Respondent's actions and the victims of operation Aureus and additionally the death of her friend David Bell, a journalist. She said in this respect that if the Respondent wanted a public apology she would do that contact Keir Starmer.

179. In respect of the fifth allegation she admitted that she realised her tweets could be deemed offensive and she deleted them.

<u>ACAS Notification</u>

180. On 24 January 2021 the Claimant notified ACAS under the Early Conciliation procedure.

<u>Dismissal</u>

181. On a date shortly before the decision to dismiss was communicated Ms McGrath of HR services gave the Claimant the following advice

> “You to consider what you want to do with any appeal – independent person to hear? Do you have the budget to pay for someone outside – HR professionals – to hear? Do you have someone else in mind to hear an appeal” [1240]

182. On 27 January 2021 the Respondent sent to the Claimant a letter dismissing her with immediate effect together with a disciplinary report. The letter of dismissal contained the following:

> “You have repeatedly disrespected me, calling me names and copying in additional people to emails sent from you to me in order to intimidate me, make me feel discomforted, and to damage my reputation. I believe your actions have potentially brought me into disrepute and your actions have made me feel harassed and bullied.

1. You contacted the Bahrain Embassy on 25 November 2020 when you had been suspended from Parliamentary duties on 24 November 2020. This is unprofessional and unacceptable. I was notified by the embassy which is inappropriate conduct on your behalf.

2. Email and Text dates – 10 November 2020 – to – 14 November 2020 regarding Harassment texts and emails sent to me following the death of my father in law on the 10th of November 2020. You copied in an external person who is a constituent into an email which was inappropriate and unnecessary (Majid Khan). Within this email you called me "Cruel bullying spiteful vindictive insensitive antisemitic selfish cold hearted liar user womanising con merchant and jealous", "insecure crooked womaniser". a. Within the text messages you then you threatened me in an attempt to intimidate me "Now then life should be peaceful you start again. Perhaps it's time I defend myself publicly and the truth comes out. If you do not apologise by return ve asked lawyers to release the NDA and all the evidence to Keir Starmer and the standards commissioner"

3. Email dates from – 13 October 2020 – to – 25 October 2020 regarding the SARs request for Councillor Waseem Zaffar which was a confidential matter yet you deemed it appropriate to discuss detail with constituents (Majid Khan and Archie Khan), as the data controller it is my responsibility to carry out this function. Although you made contact within the emails you undermined me and were disrespectful and unprofessional.

4. Email dates from – 11 October 2020 – to – 11 October 2020 and email you sent to me, David Evans and Keir Starmer calling me a "first class idiot" this is very offensive and to copy in the leader of the Labour Party is humiliating and an attempt to tarnish my reputation.

5. Tweet made on 21 August 2020 – to – 22 August 2020 regarding tweets you made public and sent to the organisers for a protest outside my office in Birmingham where you used words which could be deemed Islamophobic. Although you deleted these tweets as you are aware print screens have been taken of these tweets and sent to me as your employer. It is my belief that your actions put the safety of me and my members of staff at risk.

183. In his rationale for dismissal he noted her apology but also that she believed he needed to apologise to her. He felt that she had a lack of understanding of the gravity of her situation and the repercussions. He referred to her ongoing bad behaviour and is conclusion that her actions fell short of the diplomatic Ambassador rolled required in her post working for him as a MP.

184. Following on from the letter of dismissal the Claimant sent the Respondent a mixture of messages. On the one hand there was a query about payment of

expenses and collecting her belongs. On the other she threatened to put any publicly funded legal letters from him on social media.

Appeal against dismissal

185. On 29 January 2021 the Claimant appealed the decision to dismiss her.

Appeal hearing

186. The Claimant provided grounds of appeal in an appeal statement on 16 February 2021 at the appeal hearing.

187. She explained grounds of appeal relating to each of the five allegations.

188. Under a heading "protected disclosures as a "whistleblower"" the Claimant wrote that she has been refused permission in previous hearings and to raise this as a matter as grounds of appeal. In that section she sets out what is now the substance of the protected disclosure claim before us.

189. The Claimant also complained that she was not able to attend the investigation meeting in circumstances where she had requested a postponement due to her ex-husband's ill health

190. The notes of the appeal hearing record that the Claimant's companion Ms Aisha Ali-Khan was permitted to confer with her but not answer questions on the Claimant's behalf. This is noted at paragraph 3.1. The Claimant did not correct this in her amendment points document dated 23 February 2020 and received the following day. The Tribunal concludes that the Claimant and her companion were able to confer during this meeting in line with the note of the meeting.

Appeal outcome

191. On 26 February 2021 appeal outcome letter and report were sent to the Claimant. The Respondent did not consider that there were grounds to allow the appeal and confirmed the decision to dismiss further reasons substantially in line with those already given.

Guidance on alleged anti-Semitic post

192. On 11 March 2021 after the disciplinary appeal had concluded, the Respondent sent an email to Harry Taylor (acting interim director at the West Midlands Labour Party office). In this letter he sought guidance and direction as to whether the Facebook post was anti-Semitic and what action would be required on his part as a responsible employer.

193. The Respondent's oral evidence was that the Labour Party legal department informed him that Ms Hussain's post was not in their view anti-Semitic. We have no basis not to accept that evidence.

Claim in Employment Tribunal

194. On 7 March 2021 an ACAS Early Conciliation certificate was issued, ACAS having been notified by the Claimant on 24 January 2021.

195. On 22 March 2021 the Claimant submitted a claim with an ACAS EC number which was entirely wrong, not merely a couple of transposed digits for example.

196. The Claimant's evidence is that she was filling in the claim form using her phone and that she somehow filled in the wrong ACAS number by mistake.

197. At that time there were delays in processing new claims caused by an administrative backlog in the Tribunal due to the Covid-19 pandemic and associated lockdowns. On 21 June 2021 the Tribunal emailed the Claimant requesting confirmation of her Early Conciliation number.

198. On 27 June 2021 at 13:55 the Claimant wrote to the Tribunal (failing to copy the Respondent) saying that she had received an email on 22 March 2021 from the Tribunal which she was treating as a receipt, but that she had not heard anything from the tribunal despite repeated requests.

199. By reply to the Claimant’s email the Tribunal wrote on 28 June apologising for the delays caused by a backlog and flagging up to her that an email had been sent on 21 June. The Claimant did not respond to this email.

200. On 9 July 2021 the claim was rejected after the Claimant had twice (on 21 & 28 June 2021) been asked to provide the correct EC number. The Claimant received this communication on 14 July 2021.

201. The Claimant told us that she did not receive these letters emailed from the Tribunal chasing a response at the time they were sent. This she confirmed in a letter to the Tribunal dated 14 July 2021. She explained that in fact she changed from using a Hotmail to using a Gmail account, as requested by Luke Green. Mr Green was at that time a member the Tribunal’s administrative staff.

202. After a reconsideration of the rejection of the claim, by Employment Judge Clark, the whole claim was accepted with effect from 16 July 2021 as follows:

> After a reconsideration by Employment Judge Clark, the whole claim is now accepted. Because the original decision to reject the claim was correct but the defect which led to therejection has since been rectified, the claim form is to be treated as having been received on 16 July 2021.

**LAW**

Time limits

203. Section 111 of the Employment Rights Act 1996 contains the following of relevance to time limits for the claim of unfair dismissal:

111 Complaints to employment tribunal

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section], an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

207B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

204. We gratefully adopt Mr Perry's submissions in respect of the law on mistakes regarding early conciliation and claim forms and the impact that has on extension of time. In **Sterling v United Learning Trust** UKEAT/0439/14 (18 February 2015, unreported) a litigant in person had failed to record the full Early Conciliation certificate number on the claim form and as a result had the claim rejected. By the time of resubmission, it was out of time. Langstaff J in the EAT held that an argument that it had not been reasonably practicable to submit a properly instituted claim in time was 'quite difficult' because the claimant had actually submitted a form within the primary period save only for the fact that she had misplaced or misrecorded the numbers on it (para 24). Thus the findings of the tribunal meant that 'The fault might not be great, but it was her [the claimant's] responsibility, as the Tribunal thought, to make sure that the right conciliation number was used and that that was what the Tribunal concluded had not occurred'. The view of Langstaff J was that the tribunal was entitled to conclude it had been reasonably practicable to lodge the claim in time.

205. However, Simler J, also sitting in the EAT came to a different decision in **Adams v British Telecommunications plc** UKEAT/0342/15, [2017] ICR 382, on similar facts to **Sterling**. On appeal, Simler J held that the fact that a first claim had been lodged in time was not dispositive of whether it had been not reasonably practicable to lodge the validly instituted claim within time. Since the claimant had believed that the first claim had been completed correctly, and had not been aware of her mistake until after the time limit had expired, she had no reason to lodge a second claim on the same date as the first (see para 18). Her error was genuine and unintentional and her mistaken belief reasonable in the circumstances.

<u>Protected disclosure detriment ("whistleblowing")</u>

206. The Employment Rights Act 1996 contains the following provisions:

> 43B Disclosures qualifying for protection.
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following-
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> …
>
> 47B Protected disclosures.
>
> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

48.— Complaints to [employment tribunals]1 .

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(2) On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(2A) On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures , the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

95 Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2). . . , only if) —

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2)A reason falls within this subsection if it—
>
> …
>
> (b) relates to the conduct of the employee,
>
> …
>
> (4) Where the employer has fulfilled the requirements of subsection (1), 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.
>
> 103A Protected disclosure.
>
> An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure

207. The burden of proving each of the elements of a protected disclosure is on a claimant (*Western Union Payment Services UK Ltd v Anastasiou*, 13 February 2014 per HHJ Eady QC at [44]).

208. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 the Court of Appeal held that a sharp distinction between "allegations" and "disclosures" which appeared to have been identified in earlier authorities was a false dichotomy, given than an allegation might also contain information tending to show, in the reasonable belief of the maker, a relevant failure. At [35], Sales LJ said:

> "In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)."

209. There is an initial burden of proof on a claimant to show (in effect) a *prima facie* case that she has been subject to a detriment on the grounds that she made a protected disclosure. If so, the burden passes to the not to prove that any alleged protected disclosure played no part whatever in the claimant's alleged treatment, but rather what was the reason for that alleged treatment. Simply

because the respondent fails to prove the reason does not act as a default mechanism so that the claimant succeeds. The ET is concerned with the reason for the treatment and not a quasi-reversal of proof and deemed finding of discrimination i.e. there is no mandatory adverse inference mechanism (*Dahou v Serco Ltd* [2017] IRLR 81, CA).

Whether belief reasonable

210. Whether a belief is reasonable is to be assessed by reference to "what a person in their position would reasonably believe to be wrongdoing": *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 per Judge McMullen QC at [62]. In that case Mr Korashi was a specialist medical consultant and an assessment of what was reasonable needed to be by reference to what someone in that position would reasonably believe.

Public interest

211. The Court of Appeal in *Chesterton Global Ltd & Anor v Nurmohamed & Anor* [2017] EWCA Civ 979 confirmed that public interest does not need to relate to the population at large, but might relate to a subset, in that case a category of managers whose bonus calculation was negatively affected. It seems that it cannot simply relate to the interest of the person making the disclosure.

Causation

212. The causation test for *detriment* is whether the alleged protected disclosure played more than a trivial part in the Claimant's treatment (*Fecitt v NHS Manchester (Public Concern at Work intervening)* [2012] ICR 372, CA).

Discrimination

213. The Equality Act 2010 contains the following provisions:

> 13 Direct discrimination
>
> (1) 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.
>
> (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
>
> 136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) 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.

> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

214. We have considered the guidance set out in *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205, EAT, as approved and revised by the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases* [2005] ICR 931, CA as follows:

> (1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s. 41 or s. 42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as "such facts".
>
> (2) If the claimant does not prove such facts he or she will fail.
>
> (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".
>
> (4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
>
> (5) It is important to note the word "could" in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
>
> (6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.
>
> (7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.
>
> (8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the

SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

215. We have also considered *Nagarajan v London Regional Transport* [1999] IRLR 572, *Madarassy v Nomura International plc* [2007] IRLR 246 CA, *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. In *Hewage v Grampian Health Board* [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

"'the burden of proof provisions in discrimination cases… are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation… they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'.

216. In *Madarassy v Nomura International plc* 2007 ICR 867 CA Lord Justice Mummery held as follows:

"The court in Igen v. Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a

> difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination." (para 56)

217. In *Glasgow City Council v Zafar* 1998 ICR 120, HL, Lord Browne-Wilkinson said that in the context of a discrimination claim 'the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant "less favourably".' He approved the words of Lord Morison, who delivered the judgment of the Court of Session, that 'it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances'. It follows that mere unreasonableness may not be enough to found an inference of discrimination.

<u>Harassment</u>

218. Section 26 of the EqA provides:

> 26 Harassment
>
> (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—
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

219. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 the EAT (Underhill, P) emphasised both the subjective and objective elements of a claim of harassment under section 26. There is a minimum threshold and following guidance was given at paragraph 22:

> "it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"

220. Guidance was given by the Court of Appeal in *UNITE the Union v Nailard* [2018] EWCA Civ 1203, [2018] IRLR 730. In that case, the employment tribunal had allowed that a failure to address a sexual harassment complaint, made against

elected officials of the union, could itself amount to harassment related to sex 'because of the background of harassment related to sex'. That, the Court of Appeal held, went too far. The Tribunal had not made any findings as to the mental processes of the (employed) officials of the union dealing with the complaint and whether they had been motivated by sex discrimination.

221. We are grateful to both Counsel for their written submissions which each supplemented orally.

## CONCLUSIONS

### Time limits / jurisdiction

Summary of the facts

222. The Claimant contacted ACAS on 24 January 2021 and was issued an ECC on 7 March 2021. The Claimant sought to issue her ET1 on 22 March 2021 but included a completely different ECC number from that on her certificate. The Claimant finally provided a valid ECC number on 16 July 2021 and her claim was accepted at that date.

223. The claim was validly accepted on 16 July 2021.

224. (i) Were all of the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") / sections 23(2) to (4), 48(3)(a) & (b) and 111(2)(a) & (b) of the Employment Rights Act 1996 ("ERA")]?

ERA 1996 – not reasonably practicable & such further period as reasonable

225. The Tribunal has considered the **Sterling** and **Adams** authorities referred to by Counsel. We find that at the time that the Claimant attempted to issue her claim form by telephone on 22 March 2021 she had no reason to believe that it contained the defective ACAS number. This was not a deliberate action and she was not aware was defective. We find that in common with the Adams case this was a genuine and unintentional mistake. There appears to have been a delay in processing the claim due to administrative delays attributable to the Covid-19 pandemic.

226. We accept the Claimant's case, supported by her letter to the Tribunal dated 14 July 2021 that she had simply not received correspondence from the Tribunal on 21 and 28 June 2021.

227. We find that the Claimant was unaware of the mistake as to the ACAS number until 14 July 2021. We find that the claimant was labouring under the misapprehension that her claim had been validly submitted. The fact that she wrote to the Tribunal 27 June 2021 supports this.

228. We find that this is a case with some similarity to Adams and that it was not reasonably practicable for the Claimant to present a claim in time given the misapprehension she was under.

229. As to the second limb section 111(2)(b) whether the claim was submitted within such a further period as the tribunal considers reasonable, the Claimant submitted the correct ACAS conciliation number on 14 July 2021, i.e. the very day on which she became aware of the defective earlier number. In the circumstances we find that the Claimant did not delay at all and this was a reasonable further period.

230. It follows that the Claimant gets the benefit of an extension under the tests in the Employment Rights Act 1996. She has the benefit of the extension during the ACAS Early Conciliation period. It follows that events from **25 October 2020** onward are extended by virtue of the Early Conciliation Period from 24 January 2021 – 7 March 2021.

231. The effective date of termination was 27 January 2021. It follows that the claim of unfair dismissal may proceed.

232. For detriment due to whistleblowing the last incident appears to 3 January 2021.

233. The Tribunal has found that the alleged defamatory and abusive emails sent by Ms Hussain in August 2019 are not part of a continuing act, and the claim respect of this alleged protected disclosure detriment is very significantly out of time. We do not find that there is any basis to conclude that it was not reasonably practicable to present a claim within three months of that event. The Claimant was aware of it at the time, indeed she complained about it. We find that the Tribunal has no jurisdiction to hear that claim.

<u>EqA 2010 - 'just & equitable' jurisdiction</u>

234. We are grateful to Mr Perry for his pithy summary of the applicable case law in his closing written submission.

235. The latest alleged act of discrimination according to the list of issues is on the EDT, 27 January 2021.

236. The parties are not in dispute that the Tribunal has a discretion under the 'just and equitable' jurisdiction section 123 EqA. We have reminded ourselves that there is no presumption that time should be extended and that the burden is on the Claimant. Nevertheless, and for the reasons set out above, the genuine mistake of the Claimant, we find that it is just and equitable to extend time in respect of matters that occurred on 25 October 2020 or later or formed part of a continuing act as at 25 October 2020. In doing so we have taken account of all of the circumstances of the case, that the Claimant was under a genuine misapprehension that her claim had been presented on time and the circumstances in which the dispute between the parties in this case has been heavily documented and rehearsed in an internal disciplinary and appeal process. This is not a case in which the Respondent has been significantly disadvantaged by delay, certainly in respect of events in 2020 – 2021.

237. We have considered alleged defamatory and abusive email or emails sent by Ms Hussain in August 2019. These were not part of a continuing act. We do

not find that this was of a piece with other treatment about which she complained or was connected to it. The claim respect of this alleged direct discriminatory (race and/or religion or belief) is very significantly out of time. We do not find that the Claimant has satisfied the onus on her to show why we should grant an extension on a just and equitable basis. The Claimant was aware of this treatment at the time, indeed she complained about it. We find that the Tribunal has no jurisdiction to hear the claim in respect of allegations in August 2019.

## UNFAIR DISMISSAL

(iii) What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")?

238. The Respondent asserts that it was a reason relating to the Claimant's conduct, specifically relating to five examples of misconduct.

Belief in guilt

239. It has not been seriously contended before us that the Respondent did not believe in the guilt of the Claimant generally or in relation to any of the specific allegations.

240. The focus of our deliberations in respect of the claim of unfair dismissal has been on whether there were reasonable grounds for the belief in guilt and whether there was a reasonable investigation and reasonable process followed.

Reasonable grounds

241. *1. The Claimant contacted the Bahrain Embassy on 25 November 2020 when she had been suspended from Parliamentary*;

242. By contrast with the other four allegations which formed the basis for the disciplinary investigation leading to dismissal, the Tribunal found this allegation the most troubling of the five in relation to whether there were reasonable grounds to believe in the Claimant’s guilt.

243. We doubt whether there were reasonable grounds to base a belief of gross misconduct. Although we note that the Claimant was on suspension, the Claimant's case is that she was simply forwarding on a message. Given the ambiguities it is unclear that there were reasonable grounds to suggest the misconduct alleged, i.e. that the Claimant had spontaneously contacted the embassy whilst on suspension.

244. *2. The Claimant sent various emails and texts to the Respondent between the 10 November 2020 and 14 November 2020 harassing him following the death of his father in law*;

245. It is not in dispute that these offensive and inappropriate messages were sent. Indeed the Claimant apologised for them. There were reasonable grounds in respect of this allegation.

246. *3. The Claimant sent various emails and texts between the 13 October 2020 and 25 October 2020 regarding a confidential SARS request for a Labour Councillor discussing details with constituents*;

247. The Claimant ultimately admitted that she had wrongly understood that she was the data controller. There were messages sent to the Khan brothers which were disrespectful to the Respondent and unprofessional. In short there were reasonable grounds.

248. *4. The Claimant sent various emails on the 11 October 2020 to the Respondent, David Evans and Sir Keir Starmer calling the Respondent a "first class idiot"* - C says that R forwarded this to Sir Keir Starmer himself; and

249. The Claimant admitted that she had “reached out” to the wrong person, such that it might be appropriate for her to make a public apology, or to contact Sir Keir Starmer.

250. It should also be noted however that the Respondent himself on 11 October 2020 appears to have introduced the “first class idiot” comment, albeit he was quoting the Claimant from an earlier occasion. He also appears to have in part perpetuated the email argument, choosing to copy in David Evans and Sir Keir Starmer the General Secretary of the Labour party and the Leader of the Opposition.

251. There were grounds to conclude that the Claimant had inappropriately involved senior labour party figures, although not reasonable grounds to conclude that the charge precisely as framed was made out.

252. *5. The Claimant publically tweeted potentially islamophobic words [about z-list jihadis]. The tweet was then sent to the organisers of a protest outside the Respondents office in Birmingham*.

253. The fact of the tweet, its content and the Claimant hurriedly removing the tweet were not seriously in dispute. They were admitted. The Claimant admitted that they could be deemed offensive. There were reasonable grounds in respect of this allegation.

254. Looked at broadly, and in particular with regard to allegation 2, 3 and 5 there were ample reasonable grounds for belief in misconduct.

<u>(v) If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called "band of reasonable responses"?</u>

255. The band or range of reasonable responses test applies to the procedure followed as much as to the substantive decision to dismiss. The role of the Tribunal is not to substitute its own view, but to decide whether the procedure

followed and the substantive decision to dismiss fell within the range of reasonable responses open to an employer.

256. The question is whether some employers in the circumstances, acting reasonably, might follow this process and dismiss.

257. Ms Murphy argued that

257.1. the Claimant was not interviewed as part of the investigation;

257.2. she did not have a pack of relevant documents to view at the disciplinary;

257.3. she was not told she could bring witnesses;

257.4. she was not shown the email from the Bahrain embassy (which C says was at best inconclusive and capable of interpretation to support either side's case);

257.5. At the appeal she was not allowed to confer with her colleague;

257.6. It was not reasonable for R to conduct all three stages of the disciplinary process. This was in order to control the entire process and ensure dismissal;

257.7. That there were particularly significant consequences of a finding of gross misconduct given that the Claimant would be unlikely to work again (**Salford Royal NHS Foundation Trust v Roldan** [2010] EWCA Civ 522).

258. Mr Perry argued that

258.1. the Respondent had a very small office in his unusual role as a MP and that the process followed should be considered in that light;

258.2. The ACAS Code does not prescribe that there should be a separate investigation stage;

258.3. The ACAS Code does not preclude the same individual sitting as disciplinary (dismissal) officer and appeal officer and the Respondent had limited resources. Her concerns were appropriately recorded and considered;

258.4. It is simply not right to say that the Claimant did not have sufficient time to prepare for the disciplinary hearing;

258.5. The failure to provide documentation to the Claimant made no difference in large part given her admissions. Where it was relevant in respect to the Bahrain embassy allegation, there was only one potentially relevant email;

258.6. It is disputed that the Claimant was not able to confer with Ms Khan.

Tribunal decision on process

259. We have rejected the Claimant's argument that she was unable to confer with Ms Kahn. We do not consider that the fact that the Claimant did not attend the investigation meeting in itself made the process unfair. She was given multiple chances to attend and did have sufficient time to prepare.

260. We accept the Respondent's submission that the ACAS code does not prescribe a separate investigatory stage.

261. We have considered the submission that the Claimant did not receive a pack of documents. While that would be concerning if true, we have not detected in the process based on the contemporaneous documents that the Claimant had a difficulty in answering or discussing the allegations generally. As to allegation one, the Bahrain embassy, it would have been better for the Claimant to have been provided with the relevant email, given that the content was ambiguous. This in itself would not have taken the procedure adopted out of the range of reasonable responses, especially given that this was one allegation out of five, but it was less than ideal and did make the process less fair than it might have been.

262. The fact that Ms McGrath was present in both disciplinary hearing and appeal hearing we do not find in itself made the process unfair. In the case of a much larger organisation a separate HR adviser might be preferable, but in circumstances of this case we do not find that it made the process unfair.

263. We are required to take account of the size and administrative resources of an employer. The Tribunal has taken account of the fact that as an MP the Respondent is in an unusual situation as an employer. As an individual he was employing the Claimant, as well as some others based in Birmingham. He was on any view a small employer. Nevertheless he did have administrative resources. We consider however that we should also take account of the fact that he had HR support provided by the Houses of Parliament. He had the ability to instruct an HR consultant. He did that on a previous occasion.

264. We have considered paragraph 27 of the ACAS code of practice for disciplinary and grievance procedures (2015):

> "27. The appeal should be dealt with impartially and, **wherever possible**, by a manager who has not previously been involved in the case." [emphasis added]

265. Mr Cohen did have the benefit of guidance from Ms Rollason on 20 April 2020 [1314] and Ms McGrath [undated, shortly before dismissal in January 2021, 1240] both of whom advised the Respondent that there should be someone separate dealing with the appeal hearing. Ms Rollason also suggested someone separate to deal with the investigation and the disciplinary hearing.

266. The Tribunal considers that in the circumstances of the Respondent an employer acting reasonably might be required to have more than one role in the investigation, disciplinary and appeal process.

267. In this case however the Respondent was the complainant, he chaired the investigation meeting, presided over the disciplinary hearing and made the decision to dismiss and also heard the appeal. While we accept the submission of the Respondent that ACAS does not require a separate investigator, we take account of the ACAS code guidance that wherever possible the appeal should be dealt with by manager who was not previously involved in the case. We find that it would have been possible to have a separate appeal manager in this case. We have concluded that not to have at least one other decision-maker as part of this overall process took it outside of the range of reasonable responses.

268. There was no other "manager" in the terms of the ACAS guidance. Nevertheless there were other options open to the Respondent in this case. We find that the Respondent made a deliberate decision not to allow any other decision-maker in this case. We find that the process was outside of the range of reasonable responses.

<u>'Polkey' / contribution</u>

269. The questions of a deduction under **Polkey v AE Dayton Services Ltd** [1987] UKHL 8 (i.e. whether procedural unfairness made any difference to the outcome) and contribution (i.e. the Claimant's own contribution to the circumstances of her dismissal) had not been identified as being part of the issues to be determined in the agreed list for this hearing. Both of these factors are reasons why in the circumstances of this case the Tribunal would be very likely to make a reduction in any compensation.

270. During submissions Mr Perry tentatively suggested that the Tribunal give a preliminary view in order to help settlement. After further discussion between Counsel and the Tribunal, including a brief adjournment, it was agreed that it was premature to determine these points and that these would if necessary have to be dealt with at a remedy hearing. It is anticipated that these written reasons already cover most of the factual matters that are likely to be relevant to Polkey and contribution.

**PUBLIC INTEREST DISCLOSURE (PID)**

<u>Protected Disclosures</u>

<u>(vi) Did the Claimant make one or more protected disclosures (ERA sections 43B [& 43C]) as set out below.</u>

271. In considering this question the Tribunal will have to consider whether the disclosures, or any of them, included disclosure of information which, in the

reasonable belief of the Claimant, were made in the public interest and tend to show one or more of the matters set out in section 43B(1).

272. The Claimant relies on subsection(s) 43B(1)(a) - criminal offence, 43B(1)(b) - legal obligation and 43B(1)(d) - health and safety of section 43B(1).

[**PD#1**] Fraudulent use of House of Commons stationery in letter to DVLA (August 2019)

273. a. In August 2019 the Claimant says she made a disclosure relating to the unauthorised and fraudulent misuse of House of Commons stationery by a new member of staff [Saraya Hussain]. The new member of staff forged the name of the Respondent on House of Commons note paper without his permission, to deceive DVLA.

274. The relevant email is dated 14 August 2019, which refers to a clear and deliberate misuse of parliamentary stationary, which could be considered a crime by the commissioner. [134]

275. The Respondent, realistically and appropriately, does not dispute that this was a qualifying protected disclosure.

[**PD#2**] Report of abusive behaviour (August 2019)

276. b. Following the August 2019 disclosure to the Respondent, the Claimant received an abusive phone call which was again reported to the Respondent

277. The Tribunal finds that this was a complaint about unprofessional conduct on the part of a colleague. We do not find that the Claimant made this in the reasonable belief that this was in the public interest. She made this complaint because she was personally upset about the conduct of Ms Hussain.

278. We do not find that this was a qualifying protected disclosure.

[**PD#3**] Allegation about criminal conduct (January 2020)

279. c. In January 2020 the Claimant says she made a disclosure to the Respondent, following a meeting with a domestic violence charity worker. During the meeting, the Claimant was told, one of the Respondent's members of staff had been blackmailing, grooming and bullying some of the vulnerable charity service users.

280. We accept the Claimant’s account in her witness statement that on around 26 January 2022 she told the Respondent all she knew about the allegations she had discussed with the various alleged victims. The allegations were something of a mishmash of allegations of different types. It may be that some of these allegations were somewhat overblown or motivated by ulterior political motives. Nevertheless in amongst the allegations communicated by the Claimant to the Respondent were allegations that vulnerable individuals had been encouraged to shoplift, allegations of fraud involving charities and allegations of blackmail.

281. We have considered the elements of the statutory test. There was a disclosure of information to the Respondent, namely that these apparently serious allegations had been made by the alleged victims.

282. Did the Claimant believe that this disclosure tended to show relevant failures? We have found that the Claimant did believe that the disclosure she made to the Respondent tended to show that there had been criminal activity and breaches of legal obligation.

283. Was that belief reasonable? We have reminded ourselves that it is not the function of the Tribunal to determine whether or not for the purposes of section 43B(1) of the Employment Rights Act 1996 the underlying allegations were true, but rather whether the Claimant had a reasonable belief. Such a reasonable belief may be wrong. It is not our function to determine whether that belief was wrong. We accept the Claimant's account that she had been brought into contact with apparently rather vulnerable individuals who made these serious allegations. We have not received evidence that suggests that the Claimant was in possession of information or evidence that undermined the likely truth of these allegations. We find that it was reasonable of her to believe based on what she had been told that their accounts tended to show that some relevant failures had occurred.

284. In short we find that the disclosure made by the Claimant to the Respondent did satisfy the statutory test and was a qualifying protected disclosure. In other words she was blowing the whistle by making this disclosure.

**Detriments because of protected disclosures**

<u>(ix) Did the Respondent subject the Claimant to any detriments, as set out below?</u>

285. Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the Claimant as a matter of law. The alleged detriments the Claimant relies on are as follows:

<u>a. The Claimant was marginalised and suffered isolation at work</u>

286. The Claimant in her oral evidence said that she had not felt marginalised until January 2020, and that it was January 2020 onward where she had been marginalised and suffered isolation at work. If January 2020 marked a turning point that might be relevant given the protected disclosure made orally on or about 26 January 2020.

287. Whatsapp communication in the bundle starts on 19 August 2019. From that point onward it is always the case that the majority of the messages come from the Claimant and the Respondent responds with very short messages in the main. Sometimes "great" sometimes, “okay” or “okay thank you”. There are some emoji's which are reproduced. There are images omitted, which we understand are either graphics or copies of documents which we have not been able to see.

288. The Claimant had complained about feeling excluded in a WhatsApp message on 30 August 2019. This was 16 days after the first protected disclosure.

289. Similarly, on 19 September 2019 the Claimant complained that "no one in labour cares whether I'm dead or alive or even attending conference or even a member", suggesting a feeling of marginalisation and isolation.

290. On 11 March 2020 the Respondent instructed an HR consultant to investigate the Claimant.

291. On 26 March 2020 the Claimant complained about isolation.

292. On 4 April 2020 the Claimant specifically complained about a lack of contact.

293. On 17 July 2020 the Claimant raised with the Respondent by email that there was a Ward Forum by Zoom. She said not been aware by you of joining on zoom.

294. On 4 November 2020 the Claimant complained that she was omitted from staff approval to zoom. She asked if this could be arranged with digital support.

295. As part of the investigation by Ms Robertson the Respondent admitted that he cut off the Claimant's phone calls. He said that this was because she was being abusive.

296. The Tribunal has taken judicial notice of the background of the Covid-19 pandemic and the associated lockdown from 23 March 2020 onward. It is the experience of the Tribunal, based on our own experiences and those represented to us by other litigants and in the media that most workplaces experienced very different working practices from the ordinary way that work was conducted. Working from home was now a feature for most office workers, as employers and individuals sought to minimise contact with one another. We have also taken account of the fact that this was for many individuals isolating and difficult experience, socially and professionally.

297. Further, the Claimant worked in the Houses of Commons, generally away from the Respondent's constituency in Birmingham, and away from other members of his team. We find that in the ordinary course of business she was trusted by the Respondent to get on with matters without a high level of day-to-day supervision. On the other hand there was ordinarily a degree of back-and-forth communication between the two of them by email and social media.

298. It is not in dispute that the Respondent did not communicate by Zoom with the Claimant, and that oral telephone communication between the two ceased during the course of 2020. The Claimant was never invited to Zoom meetings for the Respondent's team. The Respondent's explanation for this is that there were few Zoom meetings and these did not relate to the Claimant's business, being instead related to the business of the team based in Birmingham. His case is that she was focused on her own projects and tended to work independently on "higher level" work. In regard to spoken telephone conversations he says that the Claimant had become so abusive that he did

cut her off from this type of communication due to these phone calls being abusive and extremely disdainful in nature.

299. The Tribunal accepts the Claimant's evidence that she did feel marginalised and isolated from January 2020 until her dismissal. We find that the Respondent, who had in recent years been a fairly dysfunctional relationship with the Claimant offered very little by way of contact or support during the course of 2020.

300. This was potentially detrimental treatment.

<u>b. The Claimant received defamatory and abusive emails;</u>

<u>From Ms Hussain (August 2019)</u>

301. (1) An email received from Saraya Hussain in August 2019 [137] alerting the respondent to Ms Hussain's wrongdoing. [C50]

302. The Tribunal finds that this allegation is out of time and does not find that is not part of a continuing act. We are not satisfied, the burden being on the Claimant, that there is evidence that it was not reasonably practicable to bring a claim about this allegation. The Claimant was aware of it at the time and complained about it at the time. She had previous experience of employment tribunal litigation and could have taken advice at the time.

<u>Regarding mental-health (August 2019 – 27 January 2021)</u>

303. (2) Communications by the Respondent to the Claimant between August 2019 and 27 January 2021 referring to the Claimant's mental health, the Claimant allegedly stalking Saraya Husain and communications that were aggressive in nature. [C173-4] [scattered]

304. The allegation about allegedly stalking was withdrawn.

305. In respect of the mental-health element we were referred to pages 288, 291, 292-6, 297, 299, 302-4, 279, 311, 312, 314, 320-22, 323, 325, 328, 391-2, 395, 486-7, 566, 580.

306. As to communications that was said to be aggressive in nature we were referred to 605, 609, 1204.

307. The Tribunal can see from the Claimant's perspective that the Respondent beginning to address a potential mental-health problem in this way represented a change from the way that he had communicated with her before. Nevertheless we can see the Respondent had taken advice from "personnel" to offer occupational health and we draw the conclusion that he was choosing to follow this advice. This seemed to the Claimant to be a significant change, but in our judgement was merely a change from a relationship which had not been hitherto professional to one which was, guided by advice and belatedly by the Respondent's attempts to deal with the Claimant in a more professional manner.

308. We acknowledge that the phrase "for audit purposes" is somewhat pointed. This was to some extent for the Respondent's own protection and giving the Claimant a warning that her communications might be reviewed at a later stage externally, which given the content of many of them was a fair point to make.

309. We have not found the Respondent's communication to be aggressive in the face of sustained provocative communication from the Claimant over a lengthy period.

310. In short we do not find that there was detrimental treatment under this heading.

c. The Claimant sustained aggressive and bullying treatment at the hands of the Respondent, including threats of dismissal.

311. The Claimant does not in her witness statement set out the wording of any threat of dismissal or say in clear terms that on a particular date the Respondent threatened to dismiss her. We do not find therefore balance of probabilities that he threatened her with dismissal.

312. We have made findings about marginalisation above. Beyond that we do not find that there is evidence of aggressive and bullying treatment at the hands of the Respondent.

313. We do not find that there was detrimental treatment under this heading.

(x) If so was this done on the ground that she made one or more protected disclosures?

314. There is only one of the allegations of detrimental treatment set out above that has succeeded, namely isolation/marginalisation from January 2020 onwards.

315. The relevant test for causation is whether the alleged protected disclosure played more than a trivial part in the Claimant's treatment (***Fecitt***).

316. The Tribunal finds that protected disclosures in this case were more than trivially a cause of the isolation and marginalisation. We accept the Claimant's evidence that she felt more isolated from January 2020 onwards, which ties in with the third protected disclosure on 26 January 2020.

317. The subject of many of the allegations was Ms Hussain, whom the Respondent appeared to hold in sufficiently high esteem to recruit her into his office. We infer that although he found the truth of the allegations difficult to accept, he may have regarded the allegations, true or not, as potentially embarrassing. He was not personally implicated in the allegations. Nevertheless it might have been inconvenient to have allegations of this sort levelled at a member of his constituency team.

318. In any event this disclosure lead to a further deterioration in the already strained relations between the the Respondent and the Claimant and isolation and marginalisation of the latter. This was in the context of a relationship between the Claimant and Respondent that had been dysfunctional for many years.

319. Many of the communications sent by the Claimant were abusive and unprofessional which exacerbated what was already a difficult relationship between her and the Respondent given the backdrop of a romantic relationship which had come to an end. The Tribunal accepts that this made communication with the Claimant difficult and accepts that the Claimant's own abusive and inappropriate conduct in 2019-2020 aside from the protected disclosures in was an important cause of the deteriorating communication between the two.

320. There are some anomalies, such as the two meeting for lunch in 4 February 2020 the week after the protected disclosure on 26 January. This perhaps underlines that this was not an ordinary professional working relationship.

321. Nevertheless, we have reminded ourselves that following **Fecitt** the contribution made by the protected disclosure need only be 'more than trivial'. This is a comparatively low hurdle for the Claimant to clear regarding causation.

322. Even before the Covid-19 pandemic, but shortly after the first protected disclosure, the Claimant complained of isolation. After the third protected disclosure at the end of January the Claimant complained of isolation in March, April, July, November 2020. During the course of the lockdown, which was an isolating experience for many, the Tribunal would have expected the Respondent as her employer to have taken at least minimal steps to communicate the Claimant, especially when she was reporting isolation.

323. Leaving aside the duty of care, the Claimant worked for the Respondent. There was some need for communication. By his own admission he had stopped speaking to her on the telephone. He had no contact with her by zoom. To a large part he cut off communication with her. The Tribunal finds that fact that he did not is partly attributable to the protected disclosures, and in particular the third protected disclosure, at least more than to a trivial extent.

324. **The finding of the Tribunal is that the isolation and marginalisation experienced by the Claimant from January 2020 onwards was more than trivially because of her having made a protected disclosure**.

**Automatical unfair dismissal (section 103A of the Employment Rights Act 1996)**

<u>(xi) What was the principal reason the Claimant was dismissed and was it that she had made one of more of the alleged protected disclosures?</u>

325. As to whether the sole or principal reason for the dismissal was the protected disclosures this is a different question and a higher hurdle for the Claimant in respect of causation than the 'more than trivial' test for detriment.

326. The Claimant relies upon:

326.1. the Respondent engaged an HR consultant 11 March 2020 which coincided with the Claimant raising the protected disclosure with a wider audience;

326.2. that the fourth disciplinary allegation leading to dismissal actually contained a reference to the protected disclosure;

326.3. that the inadequate and piecemeal disclosure relating to the engagement of an HR consultant in March 2020 is particularly suggestive and that the Tribunal should draw inferences, since this was evidence that should have been disclosed and, it might be inferred that the Respondent deliberately kept this embarrassing evidence out because he knew that it showed a connection between the protected disclosures and the (albeit abortive at that stage) initiation of a disciplinary process.

327. Whereas the protected disclosure may have been part of the reason for the Claimant's dismissal, the Tribunal did not find that that this was the sole or principal reason.

328. We find that the principal reason that the Claimant was dismissed was her conduct. In her evidence to the Tribunal the Claimant seemed to give little credence to the suggestion that her messages to the Respondent were inappropriate and offensive. Whether that was a lack of insight into her effect on others or reluctance to make a concession in the hearing is less clear. Nevertheless the Tribunal forms the view that the Claimant's abusive style of communication and her propensity to involve senior people in her private conflict with the Respondent was the principal reason for her dismissal.

**AGE DISCRIMINATION**

329. (xii-xxi) The Age discrimination claim was withdrawn in its entirety.

**RACE, RELIGION and BELIEF DISCRIMINATION (section 13 EqA)**

330. The Claimant relies upon her being Jewish as a protected characteristic by virtue of it being her race and also religion and belief.

<u>(xxii) Did the Respondent subject the Claimant to the following treatment:</u>

<u>Marginalised</u>

331. a) deliberately target the Claimant, marginalise her, isolate her and bypass her for work;

332. The Tribunal accepts that the Claimant felt marginalised and isolated from January 2020 until her dismissal, and that this was in part due to the Respondent's actions and omissions.

333. This was less favourable treatment than someone in similar circumstances might expect.

<u>Hostile emails</u>

334. b) subject the Claimant to hostile emails;

335. (1) An email received from Saraya Hussain in August 2019 alerting the respondent to Ms Hussain's wrongdoing.

336. The Tribunal finds that this incident is not part of a continuing act. It was out of time. We do not find that it was just and equitable to extend time.

337. (2) Communications by the Respondent to the Claimant between August 2019 and 27 January 2021 referring to the Claimant's mental health, the Claimant allegedly stalking Saraya Husain and communications that were aggressive in nature.

338. The allegation about alleged stalking was not pursued.

339. We did not find that communications from the Respondent were aggressive the nature.

340. In respect of communications about the Claimant's mental-health, we did not find, in context, that this amounted to less favourable treatment.

Criticisms

341. c) make unfair and unfounded criticisms of the Claimant;

342. The burden was on the Claimant to establish this allegation. We do not find that she discharged that burden.

Failure to act regarding anti-Semitism

343. d) fail to act despite requests from the Claimant when a staff member of the Respondent posted anti-Semitic and anti-Zionist tropes on their Facebook account;

344. This post was made on 25 June 2020.

345. The Claimant drew this to the Respondent's attention on 18 July 2020. She chased a response on 20 July and raised it with the General Secretary of the Labour Party on that day. She raised anti-Semitism again on 2 November 2020.

346. We accept the Respondent's submission that the circumstances of Ms Hussain's alleged anti-Semitic post and that of the Claimant's tweet about "z level Jihadis" is misconceived. The Claimant's tweet was sarcastic and disparaging and overtly made reference to religious terminology. On the other hand Ms Hussain's post was written in moderate terms and could not be described as sarcastic. It purportedly referred to matters of fact and was a critique of specific actions of the Israeli police force that were similar in nature to the the wide spread criticisms made of the police in Minneapolis in the case of George Floyd. The Tribunal has considered the guidance of the International Holocaust Remembrance Alliance (IHRA) on the nature of antisemitism:

> "Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel

similar to that leveled against any other country cannot be regarded as antisemitic."

347. In short, whether Ms Hussain's post was anti-Semitic was not clear cut.

348. We accept the points made on behalf of the Respondent that Ms Hussain's facebook post were not linked to the Respondent and that there was no aggravating factor regarding safety.

349. Whilst the comparison with the circumstances of the Claimant's tweet do not hold, we have considered a hypothetical comparator. Had a non-Jewish colleague complained what they perceived to be a racist slight on the Facebook page of a colleague what action would have been expected?

350. The Respondent says that he did take action. He sent a message to Ms Hussain, sought advice from Ms McGrath in HR on 21 December 2020 and from the acting interim director at the West Midlands Labour Party office Harry Taylor on 11 March 2021.

351. We find that it is fair to say that the Respondent was slow in taking action. Certainly in the period 18 July 2020 – 21 December 2020 he demonstrated at the very least a lack of curiosity about the concerns raised by the Claimant.

352. We consider that a hypothetical employee might have expected prompter action. We find that the failure to take prompt action was potentially less favourable treatment by comparison with a hypothetical comparator, and accordingly have gone on to consider what the cause of this treatment was, below.

<u>Dismissed Claimant for a tweet</u>

353. e) dismiss the Claimant for a similar tweet which she immediately removed;

354. It is wrong to characterise the dismissal as being for a tweet without considering the overall context which is that there were five matters for which the Claimant was dismissed. This tweet, which was sarcastic, provocative and inappropriate was not similar to Ms Hussain's Facebook post, as is discussed above.

<u>Complain about criticism</u>

355. f) complain to the Claimant on several occasions that he was subjected to criticism in the Muslim community because the Claimant is Jewish;

356. The Claimant has not established the factual basis that would enable the Tribunal to find less favourable treatment in respect of this allegation.

<u>Punishment for files</u>

357. g) punish the Claimant for not providing files on request, when not doing so to another Muslim employee for the same offence;

358. We do not find that the Claimant has established less favourable treatment in this respect.

359. We accepted the Respondent's evidence (witness statement paragraph 146) that both the Claimant and the Muslim comparator Mr Raja were initially warned. The latter apologised and explained to the Respondent that there had been a family bereavement. The comparator complied as soon as he was able to do so. We accept the Respondent's evidence that this is was entirely different from the circumstances regarding the Claimant and her continued refusal to comply with his request.

Dismissal

360. h) dismiss the claimant.

361. The Claimant was dismissed.

362. In view of the nature of the allegations made about the Claimant several of which might reasonably be regarded as gross misconduct, we do not find that this was less favourable treatment.

Less favourable treatment

363. (xxiii) Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

364. We have dealt with this above. Only two allegations we have found should be be characterised as "less favourable treatment" namely marginalisation and failure to deal with complaints about anti-Semitism.

Because the Claimant was Jewish

365. (xxv) If so, was this because of the Claimant's race, religion or belief?

366. We reminded ourselves that direct discrimination of any type is rarely overt. In the vast volume of correspondence this case, we have not detected actions or words on the part of the Respondent which suggests a discriminatory mindset or that the Claimants race/religion had a detrimental impact on the Respondent's treatment of her.

367. It is significant that the Claimant worked with the Respondent for 17 years. While this does not preclude the possibility of discriminatory treatment there is some force in the the Respondent's submission that the Claimant's race, religion/belief would be unlikely to suddenly become of significance after well over a decade of working together. Our finding is that the marginalisation/isolation was a response to specific events within the Claimant and Respondent's communication and working relationship including protected disclosures and was not in any way because she was Jewish.

368. As to the failure to deal with the alleged anti-Semitic post promptly, it is clear that the Claimant's race/religion and the question of alleged anti-Semitism were a feature of this allegation. We did not form the view that it was the content of the post that caused the Respondent to delay, but rather the conflict within his team. We have formed the impression that the Respondent found this conflict within members of his team difficult to deal with generally and not because the Claimant was Jewish or the complaint related to anti-semitism.

369. The Respondent did communicate with Ms Hussain about the post (593), took HR advice and also referred the matter to the Labour party legal department.

370. We have taken account of a number of features of the case that support our conclusion that the Claimant's race or religion were not a factor. First, the fact that the complaint about the alleged anti-Semitic post was part of a series of attempts on the part of the Claimant inviting the Respondent to take action against Ms Hussain. Secondl, that the Respondent was bombarded with communication from the Claimant generally, the vast majority of which he did not respond to at all. Third, the Respondent also took very little action in relation complaints made by the Claimant's where her race and/or religion/belief was not a factor.

371. Finally, the Respondent also responded to misconduct on the part of the Claimant herself very slowly, indeed that had been a a historic criticism made of the Respondent in Mr Dempsey's report referred to by Linda Rollason. He could have taken disciplinary action against the Claimant earlier during the period material to the claims this Tribunal has determined.

**EQA, section 26: harassment related to race, religion or belief**

372. (xxvi) Did the Respondent engage in conduct as follows:

<u>Hostility</u>

373. a. Without justification engage in hostility towards the Claimant;

374. The Claimant has not established any conduct which could be described as hostile which related to race, religion or belief.

<u>Mossad spy</u>

375. b. frequently refer to the Claimant in a derogatory manner including referring to her as a Mossad spy;

376. This allegation was withdrawn on Tuesday, 24 May 2022 at 15:25.

<u>Marginalisation</u>

377. c. deliberately target the Claimant, marginalise her, isolate her and bypass her for work;

378. The Claimant has not established any conduct falling under the heading marginalisation, isolation, being bypassed for work which related to her race/religion.

Hostile emails

379. d. subject the Claimant to hostile emails;

380. (i) Ms Hussain's email Aug 2019 [137]

381. The Tribunal finds that this incident is not part of a continuing act. It was out of time. We do not find that it was just and equitable to extend time.

382. (ii) Comms re: mental health August 2019 and 27 January 2021

383. The Claimant has not established any conduct relating to communications in relation to the Claimant's mental-health in the period August 2019 – 27 January 2020 one which related to her race/religion.

Unfair/unfounded criticisms

384. e. make unfair and unfounded criticisms of the Claimant;

385. The Claimant has failed to establish this allegation.

Failure to take action over anti-Semitic post

386. f. fail to act despite requests from the Claimant when a staff member of the Respondent posted anti-Semitic and anti-Zionist tropes on their Facebook account;

387. We find that the initial inaction of the Respondent was unwanted by the Claimant in the sense that she wanted action to be taken.

388. We have considered the guidance of the Court of Appeal in the case of *Nailard*. By analogy in this case, we do not find it is enough that the Claimant was complaining about anti-Semitism to mean that the conduct of the Respondent was relating to her race/religion.

389. We are required to consider the thought processes of the Respondent. We do not find that the failure to take prompt action in this case was relating to the Claimant's race or religion/belief. Some of our reasoning in relation to the claim of direct discrimination brought under section 13 applies. The Respondent did not say or do anything which suggested that the conduct related to the Claimant's race or religion/belief.

Criticim in Muslim community

390. g. complain to the Claimant on several occasions that he was subjected to criticism in the Muslim community because the Claimant is Jewish; R144-145

391. The Claimant has not established the evidential basis for this allegation.

Punishment for not providing files

392. h. punish the Claimant for not providing files on request, when not doing so to another Muslim employee for the same offence.

393. The Claimant has not satisfied the Tribunal that this allegation relates to the Claimant's race/religion.

Dismissal

394. i. dismiss the Claimant

395. The Claimant has not established that the decision to dismiss related to her race, religion or belief.

## VICTIMISATION

396. EQA, section 27: victimisation

397. This claim was dismissed upon withdrawal.

## REMEDY HEARING

398. The Tribunal is aware that the Claimant in her claim form as indicated her desire to be reinstated should her claim of unfair dismissal succeed. The Tribunal will consider contributory conduct and also the likelihood of such reinstatement being practicable. The Claimant may wish to take advice before putting forward her choice of remedy.

399. The parties are encouraged to attempt settlement.

400. The parties are Ordered as follows

400.1. The Claimant shall indicate by **12 August 2022** which remedy she is seeking and provide an updated Schedule of Loss.

400.2. The Respondent shall file a Counterschedule of Loss together with all documents relevant to remedy on which it seeks to rely by **26 August 2022**

400.3. The Claimant shall produce an electronic bundle of documents confined to 300 pages, relevant to remedy and a draft list of issues relevant to remedy by **9 September 2022**.

400.4. The Respondent shall offer any suggested amendments to the draft list of issues by **15 September 2022**

400.5. The Claimant (and Respondent if so advised) shall exchange witness evidence relevant to remedy by **22 September 2022**.

400.6. The parties are ordered to exchange and send to the Tribunal any written submissions on which they rely, together with remedy bundle, witness evidence and list of issues (highlighting any areas of agreement) by **27 September 2022**.

400.7. A two day remedy hearing has been listed on **29-30 September 2022**.

Employment Judge Adkin

Date 2 August 2022

WRITTEN REASONS SENT TO THE PARTIES ON

02/08/2022

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant (s) and respondent(s) in a case.

**LIST OF ISSUES**

**TIME**

Time limits / limitation issues

(i) Were all of the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") / sections 23(2) to (4), 48(3)(a) & (b) and 111(2)(a) & (b) of the Employment Rights Act 1996 ("ERA")]?

(ii) Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred; etc.

**UNFAIR DISMISSAL**

*Unfair dismissal*

(iii) What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")?

(iv) The Respondent asserts that it was a reason relating to the Claimant's conduct.

(v) If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called "band of reasonable responses"?

**PID CLAIM**

*Public interest disclosure (PID)*

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(vi) Did the Claimant make one or more protected disclosures (ERA sections 43B [*& 43C*]) as set out below. In considering this question the Tribunal will have to consider whether the disclosures, or any of them, included disclosure of information which, in the reasonable belief of the Claimant, were made in the public interest and tend to show one or more of the matters set out in section 43B(1).

(vii) The Claimant relies on subsection(s) 43B(1)(a), 43B(1)(b) and 43B(1)(d) of section 43B(1).

(viii) The alleged disclosures the Claimant relies on are as follows:

a. In August 2019 the Claimant says she made a disclosure relating to the unauthorised and fraudulent misuse of House of Commons stationery by a new member of staff. The new member of staff forged the name of the Respondent on House of Commons note paper without his permission, to deceive DVLA.

b. Following the August 2019 disclosure to the Respondent, the Claimant received an abusive phone call which was again reported to the Respondent;

c. In January 2020 the Claimant says she made a disclosure to the Respondent, following a meeting with a domestic violence charity worker. During the meeting, the Claimant was told, one of the Respondent's members of staff had been blackmailing, grooming and bullying some of the vulnerable charity service users.

(ix) Did the Respondent subject the Claimant to any detriments, as set out below? Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the Claimant as a matter of law. The alleged detriments the Claimant relies on are as follows:

a. The Claimant was marginalised and suffered isolation at work;

b. The Claimant received defamatory and abusive emails;

(1) An email received from Saraya Hussain in August 2019 alerting the respondent to Ms Hussain's wrongdoing.

(2) Communications by the Respondent to the Claimant between August 2019 and 27 January 2021 referring to the Claimant's mental health, the Claimant allegedly stalking Saraya Husain and communications that were aggressive in nature.

c. The Claimant sustained aggressive and bullying treatment at the hands of the Respondent, including threats of dismissal.

(x) If so was this done on the ground that she made one or more protected disclosures?

(xi) What was the principal reason the Claimant was dismissed and was it that she had made one of more of the alleged protected disclosures?

(xii-xxi) Age discrimination claim is withdrawn in its entirety.

**RACE, RELIGION and BELIEF**

*EQA, section 13: direct discrimination because of* ***race, religion or belief***

*Note: The Claimant relies upon her being Jewish.*

(xxii) Did the Respondent subject the Claimant to the following treatment:

a) deliberately target the Claimant, marginalise her, isolate her and bypass her for work;

b) subject the Claimant to hostile emails;

(1) As set out at (ix)b.(1) above;

(2) As set out at (ix)b.(2) above;

c) make unfair and unfounded criticisms of the Claimant;

d) fail to act despite requests from the Claimant when a staff member of the Respondent posted anti-Semitic and anti-Zionist tropes on their Facebook account;

e) dismiss the Claimant for a similar tweet which she immediately removed;

f) complain to the Claimant on several occasions that he was subjected to criticism in the Muslim community because the Claimant is Jewish;

g) punish the Claimant for not providing files on request, when not doing so to another Muslim employee for the same offence;

h) dismiss the claimant.

(xxiii) Was that treatment "*less favourable treatment*", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

(xxiv) The Claimant relies on the following comparators: Saraya Hussain, Khurram Raja, Sean Quraishy, Agha Hasan and/or hypothetical comparators.

(xxv) If so, was this because of the Claimant's race, religion or belief?

*EQA, section 26: harassment related to* ***race, religion or belief***

(xxvi) Did the Respondent engage in conduct as follows:

a) Without justification engage in hostility towards the Claimant;

b) frequently refer to the Claimant in a derogatory manner including referring to her as a Mossad spy;

c) deliberately target the Claimant, marginalise her, isolate her and bypass her for work;

d) subject the Claimant to hostile emails;
As set out at (ix)b.(1) above;
As set out at (ix)b.(2) above;

e) make unfair and unfounded criticisms of the Claimant;

f) fail to act despite requests from the Claimant when a staff member of the Respondent posted anti-Semitic and anti-Zionist tropes on their Facebook account;

g) complain to the Claimant on several occasions that he was subjected to criticism in the Muslim community because the Claimant is Jewish;

h) punish the Claimant for not providing files on request, when not doing so to another Muslim employee for the same offence.

i) dismiss the claimant.

(xxvii) If so was that conduct unwanted?

(xxviii) If so, did it relate to the protected characteristic of race, religion and belief?

(xxix) Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

(xxx) Did the conduct have the effect, (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

**VICTIMISATION**

*EQA, section 27: victimisation related to* ***race, religion and belief***

(xxxi) Did the Claimant do a protected act and/or did the Respondent believe that the Claimant had done or might do a protected act? The Claimant relies upon the following:

a. Her setting out in writing on numerous occasions to the Respondent that she had been subjected to race discrimination including, but not limited to, WhatsApp messages on 30 August 2019, 19 September 2019, 26 October 2019, 27 November 2019, 26 January 2020, 7 April 2020, 26 July 2020 and 22 August 2020.

(xxxii) Did the Respondent subject the Claimant to any detriments as follows:

a. deliberately target the Claimant, marginalise her, isolate her and bypass her for work;

b. subject the Claimant to hostile emails;

i. As set out at (ix)b.(1) above;
ii. As set out at (ix)b.(2) above;

c. make unfair and unfounded criticisms of the Claimant;

d. fail to act despite requests from the Claimant when a staff member of the Respondent posted anti-Semitic and anti-Zionist tropes on their Facebook account;

e. dismiss the Claimant for a similar tweet which she immediately removed;

f. complain to the Claimant on several occasions that he was subjected to criticism in the Muslim community because the Claimant is Jewish;

g. punish the Claimant for not providing files on request, when not doing so to another Muslim employee for the same offence;

h. dismiss the claimant.

(xxxiii) If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?