EMPLOYMENT TRIBUNALS

Claimant: Ms Ravinder Cheema
Respondent: Workers Educational Association Ltd

Heard at: Watford
On: 30 January to 3 February 2023 and 16 February 2023 (panel only on 16th)

Before: Employment Judge Dick
Mr A Scott
Mr R Clifton

Representation
Claimant: Ms Laura F. Redman (counsel)
Respondent: Mr Colin McDevitt (counsel)

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The claimant was not unfairly dismissed by the respondent. The claim for unfair dismissal is dismissed.

2. The claimant was not wrongfully dismissed by the respondent. The claim for notice pay is dismissed.

3. The claimant's claim of discrimination within the meaning of section 13 of the Equality Act 2010 because of her race, contrary to section 39 of that Act, does not succeed and is dismissed.

4. The claimant's claim of harassment within the meaning of section 26 of the Equality Act 2010 related to her race, contrary to section 40 of that Act, does not succeed and is dismissed.

REASONS

Key to references:

[x] = page of agreed bundle;

{x} = paragraph number in the witness statement of the witness being referred to; in the case of the claimant, the statement is the 188 paragraph version dated 16 December 2022.

INTRODUCTION

1. The claimant was employed by the respondent as an Education Coordinator from 11 June 2018 until she resigned on 23 November 2020. Her case was that she was constructively unfairly dismissed and subjected to direct discrimination because of her race, which she identifies as Asian, and harassed for reasons relating to her race. There was also a claim for notice pay based upon the constructive dismissal.

CLAIMS AND ISSUES

2. The claims were brought by a claim form presented on 2 February 2021. It was not in dispute, taking into account the dates of the ACAS conciliation process, that the claim for unfair dismissal was in time and that any discrimination/harassment complaints relating to events on or after 21 August 2020 were in time. Complaints relating to events before that date could be considered by the Tribunal either (i) if they were part of "conduct extending over a period" within the meaning of s 123(3)(a) of the Equality Act 2010 ("EqA" or "the Act"") or (ii) if the Tribunal considered it "just and equitable" to extend time under s 123(2)(b) EqA.

3. The factual and legal issues for us to decide were, as the parties agreed, unchanged from the list of issues set out in the Case Management Summary prepared by Employment Judge McNeil KC following a preliminary hearing on 7 January 2022. The list is appended to this judgment. The claimant relied on 19 specific things which she said caused her to resign and/or amounted to direct race discrimination and/or harassment. Most related to the conduct of her line manager Sabina Trowbridge or to the conduct of Emma Carney, who was Ms Trowbridge's line manager.

PROCEDURE, EVIDENCE etc.

4. We are grateful to both counsel for preparing at our request a "cast list" and chronology. Before the evidence was called we explained to the parties that we would read the witness statements but they should be sure to refer us to any documents of relevance in the agreed bundle. At the request of the

parties, we disregarded pages 445 to 452 of the bundle, which were included in error.

5. Before the evidence was heard, we heard argument about the admissibility of various passages in the statements of three of the Claimant's witnesses: Rabena Sharif, Jackie Delisle-Barrow and Aisha Ahmed. Objection was taken on behalf of the respondent for various reasons such as irrelevance to the agreed issues. Some of the objections were conceded on behalf of the claimant but we were asked to rule upon others. We gave oral reasons for our decision which do not repeat here. In short we excluded two passages further to those already agreed to be inadmissible. We considered that it would be premature to exclude the others, though what weight we might give them would be another matter. We do, of course, refer below to any evidence which was of significant assistance to us in coming to our conclusions.

6. After taking time to read the statements, we heard evidence from the witnesses. In each case the usual procedure was adopted, i.e. their written statements stood as their evidence-in-chief and they were then cross-examined. The claimant gave evidence and also called Jackie Delisle-Barrow and Aisha Ahmed. The respondent called Ms Trowbridge and Amy Marshall (see below). One of the claimant's witnesses, Rabena Sharif, and one of the respondent's witnesses, Sylvia Gentleman, were unavailable to give live evidence. By agreement, we admitted their statements into evidence (or rather, such parts as were admissible) on the basis that we would give them such weight as we saw fit given that the evidence had not been tested in cross-examination.

7. During the course of the case we had enquired with the parties whether consideration had been given to calling Amy Marshall – now head of HR for the respondent and, at the material times, a Senior HR Business Partner – given her involvement in some of the events that were in issue. A statement was prepared overnight and admitted into evidence without objection; Mrs Marshall was called as the final witness for the respondent.

8. At the conclusion of the evidence we heard oral submissions from both counsel, supplemented by written submissions which were of considerable assistance to us. Those submissions concluded on 3 February. We were unable to complete our deliberations that day and so indicated that we would give a reserved judgment. The Tribunal re-convened in the absence of the parties on 16 February to complete our deliberations.

FACT FINDINGS

9. We find the following facts on the balance of probabilities. We have not resolved every disputed fact, but we have resolved all of those which were necessary for us to decide upon the agreed issues. We start with some background and then address, under separate sub-headings, each of the factual issues at paragraph (v) of the list of issues. In our sub-headings we use the same lettering as is used in the list of issues, though we use a

shorter description of the issue; for the full issue, reference should be made to the list of issues. For the sake of clarity we have reordered and combined some of the issues and we have also included some points that are not in the list of issues by way of explanation, putting our other findings in context. While the issues are dealt with in roughly chronological order, it must be kept in mind that many overlap to some extent.

Background and general

10. The claimant started work for the respondent on 11 June 2018. She worked as an Education Coordinator at the respondent's Slough office. One of her principal responsibilities was delivering the Slough Borough Council contract ("the SBC contract"). For most of the relevant time the claimant's line manager was Ms Trowbridge.

Quality of the claimant's work and her relationship with Sabina Trowbridge

11. There was no dispute that the relationship between the claimant and Ms Trowbridge was strained. A number of criticisms were made on the claimant's behalf about Ms Trowbridge's management style. Some of the specific criticisms are dealt with individually below. More generally, however, Rabina Sharif and other witnesses criticised Ms Trowbridge's management style. It is was clear from Ms Sharif's evidence that her criticisms of Ms Trowbridge extended not just to her treatment of the claimant but to all of her management work. Likewise, with the exception of her evidence on specific points which we deal with separately below, Ms Delisle-Barrow's evidence criticised Ms Trowbridge's conduct towards many members of staff. Her statement, for example, contains a paragraph headed "Other people had left because of the way they were treated by Sabina Trowbridge"; there was no suggestion that those others were all also Asian. Aisha Ahmed's evidence was to similar effect – with the exception of the individual points we consider elsewhere, she took issue with Ms Trowbridge's management style in general rather than her conduct towards the claimant in particular. We find that, in general, while some criticism of Ms Trowbridge's management style may have been legitimate, there was no evidence that this was aimed at the claimant in particular.

12. It was clear to us, both from the claimant's evidence and from the evidence of the other witnesses she called, that she worked hard in difficult, and sometimes somewhat chaotic, circumstances It was the claimant's case that she met her targets {51}. For her part, Ms Trowbridge did not specifically complain that the claimant failed to meet all of her targets. Rather, Ms Trowbridge said, her concern was the claimant's underperformance more generally. We were taken to examples such as mistakes in written work for which the claimant was responsible (see paragraph 19 below) and the preparation of a report around 23 August 2019

[424] which was below the required standard in the opinion of the respondent's Senior Education Manager (who was not the subject of criticism on behalf of the claimant). Ms Trowbridge also told us that the claimant was not able to publicise courses without being checked, not able to respond to contractors' requests for information and not able to consistently raise contracts without errors. The claimant, she said, would "go around in circles" and be defensive when she tried to resolve these issues {6}. We were also taken to a document recording a mid-year review of the claimant's performance by Ms Trowbridge on 15 April 2020 {506-508}. The mid-year progress on most of the claimant's goals was recorded as "Support Needed to Achieve". We find, having considered all of this evidence, that Ms Trowbridge was entitled to take the view that she did of the claimant's performance. To be clear, it was never suggested that the claimant was bad at all aspects of her job; this was clearly not the case.

13. Ultimately, it was clear to the Tribunal that the claimant and Ms Trowbridge each did not like the way the other did her job; in each case this was a genuine belief. More generally, it was clear to us that a number of the respondent's employees (i.e. those witnesses we heard from) did not feel they were well-managed.

Issue (a) – Bullying and harassment after concerns raised October 2018

14. The claimant claimed she was bullied and harassed from the time she raised concerns with the respondent about Ms Trowbridge in October 2018. We were not presented with any evidence that she raised concerns *about* Ms Trowbridge at that time, but she did say {13} that she had raised concerns *with* Ms Trowbridge about the risks of not achieving the number of required "learners" on the SBC contract. Ms Trowbridge did not respond at the time, though at the end of January 2019 Ms Trowbridge did ask the claimant to implement the actions that the claimant had suggested in October [80].

15. No particular instances said to relate directly to issue (a) were raised with us but, as will be clear from our findings below, we do not find that the claimant was bullied or harassed at any time.

Issue (b) – Ms Trowbridge and Ms Carney unreasonably raising concerns about targets

16. The claimant said that Ms Trowbridge and Ms Carney unreasonably raised concerns with her as to why targets had not been met in January 2019. We were not presented with evidence about this happening in January 2019, though see paragraph 22 below regarding April 2019.

Issue (k) – Emails to the claimant

17. The claimant's case was that Ms Trowbridge belittled her and embarrassed her in emails. In her statement at {22}, the claimant said that an email was "defensive and seemed to heap blame" on her. In her statement at {51} she said that from January 2019, Ms Trowbridge panicked and began to blame her for low enrolment numbers. From this point onwards, she said, the emails she received undermined her work and "were over critical, and spiteful". She pointed in particular to an email [207] which she described at {60} as "belittling, vindictive". The full contents of that email are as follows:

> Dear Ravinder
>
> Thank you for sending Jen a report.
> However, sending screenshots of WEA processes is not an appropriate way for our partners to receive information that they request.
>
> Please could you write a short report for Jen covering the main points and use this approach in the future.
>
> Many thanks
>
> Sabina

18. That email was plainly not, in our judgment, either belittling or vindictive. Nor was Ms Trowbridge's criticism unfounded – we note that in the claimant's own response (also at [207]) she at least partially accepts so.

19. At {150} the claimant refers to an email [314] which she says caused her anxiety level to shoot to an unmanageable level as it was accusatory and unfounded. It was in our judgment neither of those things. In the email, Ms Trowbridge complains that documents, for which the claimant was ultimately responsible and had gone out to clients, had basic grammatical mistakes. In her oral evidence, the claimant did not dispute this was the case. We accept, particularly in the context that the respondent was an educational organisation, that this was a legitimate criticism.

20. The claimant described other emails as victimising her and objectionable {97} and says that in others, Ms Trowbridge made "petty, malicious comments and nit-pick[ed] everything in a manner that [was] clearly motivated by spite and revenge". At [169] she implies that an email at {321} reflected a "coercive, gang-like culture" (from Ms Trowbridge and Ms Carney). During the course of the evidence were taken to all of the emails mentioned above, as well as a good number of others. As was the case with the two emails we have detailed at paragraphs 17 and 19 above, we considered the contents of the emails to be entirely unobjectionable. Where they contained mild criticism, these criticisms did not seem to us to be unfounded. The claimant's descriptions of these emails simply did not accord with reality in our judgment. We found her efforts in her oral evidence

to paint the emails as passive-aggressive to be unconvincing. As such, the emails negatively affected our view of the claimant's credibility and we therefore treated the rest of her evidence with some care.

Risk of redundancy (1)

21. In early 2019, the claimant was made aware that the respondent was considering a restructuring that might involve redundancies. On 4 April an email was sent to the claimant explaining that everybody who might be made redundant had been contacted by telephone. The claimant, who had not been so contacted, therefore reasonably concluded that her role was not at risk of redundancy.

Issues (c), (d), (e) and (f) – April 2019 Meeting and grievance

22. On 11 April 2019 a meeting took place at which the claimant, Ms Trowbridge and Ms Carney were present. Although the claimant originally described this as a meeting on Zoom, she agreed in her evidence that it in fact took place by way of conference call. We attached no significance to this minor difference. In the original pleadings, the claimant had said that the meeting and the grievance (see below) had been in February 2019; this incorrect date therefore found its way also into the list of issues. This was corrected in the claimant's later witness statement and we again attached no significance to this minor error.

23. The claimant's case was that Ms Trowbridge and Ms Carney interrogated and humiliated her at the meeting and blamed her for learner numbers not being achieved, telling her she had failed and that her performance was not good enough and that if she failed she would be responsible for losing the local authority (i.e. SBC) contract (Issue (c)). During the same meeting, it was said, Ms Trowbridge and Ms Carney shouted over the claimant (Issue (d)). The claimant's evidence was that she was criticised aggressively and unpleasantly in a fierce and endless onslaught and was subjected to a barrage of insults and accusations. She told us that two other members of staff witnessed the call from her end, although we did not hear evidence from either of those two people about the meeting. Ms Trowbridge's evidence was that neither she nor Ms Carney had shouted at the claimant although she (Ms Trowbridge) did become upset as the claimant had said that she had not been supported by Ms Trowbridge. Ms Trowbridge said that while there had been a difference of opinion, she did not regard it as "fierce". They had been asking the claimant about a document she had been asked to prepare in December that she still had not prepared. The claimant, she said, spoke a lot but was not listening; it was possible she was spoken over as Ms Trowbridge or Ms Carney tried to get their point across.

24. On 12 April 2019 the claimant brought a written grievance, complaining (to oversimplify somewhat) about the conduct of Ms Trowbridge. We noted that the complaint made no direct reference to the meeting the previous day, while making detailed complaints about other matters such as Ms Trowbridge not coming into the office. Being as generous as possible to the claimant, the only possible indirect reference to the meeting is her complaint that Ms Trowbridge's management style was one of "blame and bullying". We considered that if the meeting had been as the claimant described, then she would have said so in that grievance. We also note that, when a meeting was held to discuss the grievance (minutes at [183], see paragraph 29 below), although the claimant complained about the way she had been spoken to, her description of the meeting was not consistent with her later description of a barrage of insults and accusations.

25. On this issue we therefore preferred the evidence of Ms Trowbridge. While the claimant may have been criticised during the course of that meeting we do not accept that the criticism was illegitimate. We do not accept that the claimant was shouted at.

26. The claimant was also, it was claimed, not told by Ms Trowbridge that a more senior manager (i.e. Ms Carney) would be on the call (Issue (e)). While the claimant was not warned in advance that Ms Carney would be on the call, there was no dispute that during the call she was aware of Ms Carney's presence. Having heard all of the evidence we could not see any reason why there would have been a need to warn the claimant in advance of this. The claimant's case on Issues (c), (d) and (e) is therefore not made out.

27. Formally, the complaint in Issue (f) was that the respondent did not uphold the grievance. This was certainly correct. It was clear to us that the substance of the complaint was that the respondent *should* have upheld the grievance; we deal with this in more detail below, finding that in reality the claimant's case on Issue (f) is also not made out.

Risk of redundancy (2)

28. On 16 April 2019 {39} the claimant received a call from Amy Marshall. The claimant was told in that call that her role was in fact at risk of redundancy. Although in her witness statement the claimant says that she believed this to be retaliation for the grievance she had raised a few days before, that allegation did not form part of her claim before the Tribunal, i.e. it was not on the list of issues. So far it is as it is necessary for us to make a determination on the point, we accept the evidence of Amy Marshall, which was to the effect that the pool was widened during the consultation following the representations of another employee who had been placed "at risk". The timing, she said, was unfortunate but not suspicious.

Grievance Hearing and Outcome

29. The meeting to discuss the claimant's grievance took place on 11 July 2019 {claimant, 49 to 51}. There were various reasons for the delay in arranging the hearing, about which the claimant makes no complaint. It was chaired by Sylvia Gentleman, Senior Area Education Manager, and Mrs Marshall took notes. The outcome was communicated to the claimant by a report of 31 July 2019 [194], in which Ms Gentleman gave detailed reasons for her findings that the claimant's grievance was "unsubstantiated". Ms Gentleman did record that Ms Trowbridge had said, in answer to some of the claimant's complaints, that she would aim to hold more regular team meetings and had accepted that on one occasion she had failed to respond to one of the claimant's emails. Ms Gentleman concluded that there had been a breakdown in communication but there had been no malicious intent.

30. Having considered all of the relevant evidence on this point, including that of the claimant and Ms Trowbridge, we find that the report's conclusions were reasonable. Whilst, in light of the concessions made by Ms Trowbridge, it might have been better to have phrased the grievance as being partially upheld, it is clear that that was in fact the practical result of the report. One of the claimant's complaints was that the report rather brushed over her claim that Ms Trowbridge had ignored important emails from the claimant about curriculum planning. We note that in the ordinary course of business, people may not respond to emails for any number of reasons which are not malicious or even deliberate, and further note that there did not appear to be any suggestion that the claimant sent any "follow-up" emails for those to which she did not get a response. We accept Ms Trowbridge's oral evidence that some of the issues raised in emails would likely have been discussed at team meetings. There did not appear to us to have been an established pattern of Ms Trowbridge ignoring the claimant's emails and in our judgment the issue was dealt with adequately by the report.

31. We note that the claimant did not take the opportunity to appeal the outcome of her grievance. We do not accept the claimant's evidence that, although in her view the report was flawed on its face, i.e. that anyone reading the report could tell that the findings were flawed, she did not appeal as she felt that nobody was listening to her and did not trust the process. The claimant, we conclude, must have realised that any complaint about the process would have to have been dealt with by someone not involved in the original process. We therefore conclude that, while she was obviously not pleased with the outcome of the process, she was prepared to accept it. Ultimately we find that the claimant's complaints about the grievance are not made out.

Issues (r) and (s) – the "job share" and workload

32. On 1 August 2019 the claimant moved from a full-time contract to a part-time contract. Her case was that she was required to carry out the same amount of work, or the same role, when part-time as she had been when

full-time (Issue (r)). Further, she claimed, Miss Trowbridge and the respondent's HR department took no steps to address the numerous concerns which she set out to them in emails about the workload and about the 0.5 (i.e. part-time) job not being a proper job share and was off sick from June 2020 to November 2020 until the date of her resignation as a result (Issue (s)).

33. The part-time role came about as follows. On 12 June 2019 Joe Carter, a colleague of the claimant who worked at the respondent's Reading office, sent an e-mail to the respondent saying that he and the claimant had discussed the restructure, and proposed that he and the claimant enter into a job share "2x0.5fte" [166] ("fte" stood for "full-time equivalent"). On 1 July 2019 [168], Mrs Marshall wrote to the claimant confirming her "appointment to the role of Education Coordinator on a job share basis 0.5 FTE based at the Slough office from the 1st of August 2019". The terms of this role were the subject of a considerable amount of confusion between the respondent on the one hand and the claimant and Mr Carter on the other. The claimant and Mr Carter believed initially that they were to be sharing what was then the claimant's role at Slough and that the claimant's workload and salary would halve.

34. On 30 July 2019 (i.e. two days before the job share was to take effect) Mr Carter wrote to the respondent, asking for some clarity since there had been no discussions about how the job share was to work. Further emails followed in August, it having become apparent to Mr Carter that he was to be asked to continue working in Reading and that the respondent appeared to expect him to be working on separate projects to the claimant, i.e. that they would be in two separate 0.5 FTE roles rather than sharing one job. During that correspondence the respondent, through June Diegan (Regional Education Manager) and Mrs Marshall, explained that work would be split between them and they would have separate objectives and targets, whilst continuing to refer to the situation as a job share. The claimant made further attempts to clarify the situation on 27 August 2019 [208]. By 8 October 2019 (see [220]) the claimant had, understandably, given up seeking the formal clarity which had not been forthcoming, and emailed Ms Trowbridge targets she had set herself, equivalent to half her previous role. On 16 October [222] Ms Trowbridge emailed to say, amongst other things:

> As discussed the delivery of the Slough Borough Council contracts is your responsibility and not part of a job share with [Mr Carter]."
>
> …I based the delivery targets on what had been achieved in previous years for the same period. I am confident that this is achievable on your 0.5 as your targets and responsibilities have been reduced to accommodate your working hours.

35. Contrary to the respondent's insistence, in reality there was not a job share. Indeed, the only overlap in the roles of the claimant and Mr Carter to which Ms Trowbridge was able to point was ensuring they were not duplicating

each other's work. Rather, the claimant and Mr Carter worked, as they had before, doing two different jobs, albeit that each was now to be doing half the hours that they had been doing previously. The claimant was in our judgement justifiably frustrated by the lack of formal clarity from the respondent on this point. That lack of clarity persisted, unacceptably in our judgement, for some time. Equally, two other points are clear. First, both the claimant and Mr Carter were treated in the same way in this regard, i.e. the claimant's treatment was not in any way connected to her race. (Mr Carter is not Asian.) Second, by September 2019, as the claimant says at {72}, the reality of the situation was clear to the claimant (and Mr Carter) and they opted to continue in their new roles.

36. On 25 November 2019, the claimant emailed Ms Trowbridge about the 0.5 role again; by now her focus was on the volume of work rather than the formalities of the "job share". We were not provided with any response to this email, although in the email the claimant suggested a discussion rather than asking for a formal response. It does not appear that the claimant raised any further concern about workload specifically in the months following.

37. As Ms Trowbridge explained in her oral evidence, the claimant's targets which related to the SBC work did remain substantially unchanged when the claimant moved from full-time to part-time working. Ms Trowbridge offered two explanations for this. First, in the year before she went part-time, the claimant, although experienced in the field of education, had only just started work for the respondent. In that first year she was given more support and lower targets than she might otherwise have been given as she "bedded in". That explanation *alone*, we find, would not account for the fact that claimant's targets were unchanged when she moved to part-time working. However, as Ms Trowbridge also said, other work (i.e. other than the SBC contract) was also taken away from the claimant, which she set out at some length in her oral evidence. Although we note that the evidence does clearly establish that the claimant was working out of hours, we also note the absence of any work logs, the lack of complaint from the claimant about workload after November 2019 and the lack of any formal applications by the claimant for time off in lieu (see below). Ultimately, while we accept that the claimant was having trouble managing her workload, we do not accept that that was as a result of having to do as much as full-time hours in a 0.5 FTE role. We do accept that the claimant felt the need to work outside her contracted hours, but to the extent that there was a need to do this, it arose occasionally.

38. We therefore find that the claimant's case is partially made out on Issue (s), in that the respondent failed to address her concerns about the 0.5 job not being a proper job share. The claimant's case on Issue (r) is not made out.

Issues (g), (o) and (p) – Ms Trowbridge micromanaging; One-to-ones; Lack of support

39. It was the claimant's case that after she brought the grievance, Ms Trowbridge micromanaged her and was overly critical of her work (Issue (g)). As will be clear from our other findings, while Ms Trowbridge certainly was critical of the claimant's work, we do not accept the claimant's contention that Ms Trowbridge was *overly* critical. Ms Trowbridge herself accepted that she had resorted to micromanaging, but we accept her evidence that this was because of the issues with the claimant's standard of work which we have set out above. We also accept Ms Trowbridge's evidence that she spent less time managing Mr Carter as he did not require as much management.

40. At {46} of her statement, the claimant complains of heavy line management in that she had three line managers in June and July of 2019. One change was made, quite reasonably in our view, when Ms Trowbridge was removed as the claimant's line manager for the period that the claimant's complaint against her was considered. We were referred on the claimant's behalf to a document at [129] that shows simply that Ms Carney would be her line manager "for the immediate future" (from 17 April 2019). On the evidence there did not appear to us to be any other changes of line management.

41. The claimant also said that she was subject to 50% more one-to-one meetings with Ms Trowbridge than were her colleagues Joe Carter and Rachel Williams (Issue (o)). So far as Mr Carter in concerned, while a document at [500] records three one-to-ones for him as against eight for the claimant over the period September 2019 to February 2020 (the latter date coinciding with the start of the COVID-19 pandemic) we accept the evidence of Ms Trowbridge, based on a document at [327], that three of the claimant's eight meetings, which took place on November, were effectively one meeting that overran. In effect, then, the claimant had a meeting once a month over the period, whereas Mr Carter had three meetings in the five months. In the context that it is the claimant herself who complains that she was not receiving sufficient support from Ms Trowbridge (see below), we find that while there was a difference in the number, this was not substantial; it was certainly not "greatly different" as the claimant asserted. Ms Trowbridge also pointed out in her oral evidence that the number of one-to-ones was a response to the recommendations of the 31 July grievance outcome report.

42. Similarly, the differences in the number of such meetings with Ms Williams was not in our view significant. For the reasons given below, we find that it is in any case not meaningful to compare the claimant with Ms Williams.

43. The claimant also criticised the nature of the meetings as being little more than Ms Trowbridge giving her to-do lists. While we accept that the claimant's views were genuine, it seems to us that this was an area where two people might reasonably take a different view of what was necessary. We do not accept that Ms Trowbridge's choice of how to approach these meetings was unreasonable. The documents show specific tasks for the

claimant to complete and we cannot see any reason why Ms Trowbridge should not have chosen to set these out. We also conclude that Ms Trowbridge was entitled to take the view that she did about how many one-to-one meetings were required with the claimant (and with Mr Carter).

44. The claimant also says that the respondent, and in particular Ms Trowbridge, failed to give her the support she required in order to meet her targets. (Issue (p). The Tribunal noted that this complaint was somewhat at odds with her other complaints that she was over-managed. During their one-to-one meetings, it is clear from the documents at [326] and [327] that Ms Trowbridge spelt out clearly what she wanted the claimant to do. While the claimant says the level of detail provided was unnecessary, we find that Ms Trowbridge was reasonably entitled to take the approach that she did. Ms Trowbridge, we find, did support the claimant, albeit that the claimant did not like the support that she got. We accepted Ms Trowbridge's evidence to us that, SBC being their "best" contract, she did not want it to fail and took what steps she thought were appropriate.

45. We therefore find that the claimant's case on Issues (g), (o) and (p) is not made out.

Issues (h) and (i) – Work taken from the claimant

46. Also after the grievance was brought, the claimant said, Ms Trowbridge started withdrawing prestigious areas of work from her and handing them to Ms Williams, with the effect that the claimant became de-skilled (Issue (h)). When that work could not be completed, the claimant said it was given back to her with last-minute deadlines (Issue (i)).

47. There was no dispute that work was taken from the claimant. While this happened after the grievance had been raised, more significantly, in our view, as Ms Trowbridge pointed out, it also happened when the claimant began working part-time and in the context that she had been complaining of being over-worked. We were presented with no evidence that this caused the claimant to become "de-skilled". Further, all were agreed that the claimant continued to work on the SBC contract, which she herself described as the most prestigious work. Regarding Issue (i), there is of course something of a conflict in the claimant's position in, first, complaining that work was taken from her and then complaining that it was given back to her. Having heard all of the evidence, we find there is no substance to the claimant's claims that the respondent's actions in this regard were unreasonable, and her case on Issues (h) and (i) is not made out.

Issue (j) – Forums/Meetings

48. The claimant's case here was that the respondent refused to permit her to attend forums and meetings that were necessary for her to do her job and

to meet targets, and that her concerns about this were not dealt with. Ms Trowbridge said that in some cases she limited the claimant's attendance to avoid more than one person from the team attending. Moreover, she said, the claimant needed to complete other tasks which were behind schedule.

49. This is another area, we find, where two people might reasonably have taken different views. On the one hand, the claimant did see these meetings as important to her work. On the other hand, she had been complaining of overwork and the meetings etc. would have taken her out of the office. We accept Ms Trowbridge's evidence that there was a (legitimate) concern on the part of the respondent to limit the attendance to one staff member per event and to give the claimant time to complete other tasks. There is evidence of this approach at [216] – on 4 September 2019, in response to a request by the claimant to attend a forum (clearly the one the claimant refers to at {66}) Ms Trowbridge writes: "Although I agree that attending this forum would be useful, please could you update me on the actions from Monday before I decide, as these need to take priority." The claimant's reply makes clear that while some of the work referred to by Ms Trowbridge had been completed, some of it had not. Ms Trowbridge's decision not to allow the claimant to go to the forum therefore seems to us to have been a decision Ms Trowbridge was reasonably entitled to make. The same can be said of an email at [441] dated 2 July 2020 where Ms Trowbridge suggests the claimant does not attend a forum in order to give her the chance to catch up on work having been off sick. We find that the claimant's case on Issue (j) is not made out.

Issue (l) and (q) – TOIL, annual leave, working from home

50. The claimant's case was that the respondent refused her time off in lieu of work done out of hours ("TOIL") and annual leave and also did not permit her to work at home which would have helped her to carry out administrative work which it was difficult to carry out in the office because of clients attending and requiring her attention (Issue (l)) and that when she was working full-time she was required to come into the office more often than other colleagues (Issue (q)). For the following reasons, the claimant has not made out her case on these issues.

51. Regarding TOIL, we accept Ms Trowbridge's clear evidence that TOIL would be granted in accordance with a process – a form had to be completed in advance and Ms Trowbridge would then authorise it. Ms Trowbridge denied in cross-examination that, since the claimant's job was "responsive", TOIL would only work in reality if it was authorised after the event; she explained, and we accept, that if potential clients attended the office at particularly busy times, they could be asked to come back later. There is some evidence of Ms Trowbridge, at the end of 2019, authorising some TOIL after the event [239] but we note that in January 2020 [242] Ms Trowbridge reminded the claimant that TOIL had to be pre-authorised and could not be accrued merely by the claimant working over her usual hours.

The claimant accepted in evidence that, where she complained of not being granted TOIL, she had not "put them [the hours] on a sheet". The claimant also accepted in evidence that she had been granted some of the TOIL that she had asked for. While the claimant's case was that Ms Williams had been granted TOIL, it was clear to us that the claimant did not know whether or not Ms Williams had completed the required forms; in other words, there was no evidence that Ms Williams had not followed the correct procedure.

52. While the claimant had initially asserted that calendar entries [456-466] showed Ms Williams was treated differently regarding TOIL, her oral evidence was that it in fact showed Ms Williams had been allowed to work from home more often that the claimant. That may be the case, but it was not in dispute that Ms Williams was a lead tutor; we find (indeed there was no real suggestion to the contrary) that her role was significantly different to the claimant's. In particular, the claimant's job was office-based. We were not presented with any evidence to suggest that Mr Carter was allowed to work from home more than the claimant. It was also the case that working from home came under the respondent's "Flexible Working Policy", which was admitted into evidence by agreement during the course of the hearing. This policy required written requests to be made. It was clear from the evidence before us that the claimant made no such request. There was no evidence that other employees were allowed to work from home without having made such a request. The claimant also accepted in evidence that her (informal) request to work from home on Fridays was eventually granted.

53. In short, there was no evidence that the claimant was treated differently to Ms Williams (or Mr Carter) regarding TOIL and we do not accept that a meaningful comparison can be made between the claimant and Ms Williams regarding working from home (in other words, on working from home, the respondent was entitled to treat the claimant and Ms Williams differently).

54. Regarding annual leave, we accept Ms Trowbridge's evidence that, where the claimant was refused leave on particular days, there were good business reasons for that. (The suggestion was only ever that she was not permitted leave on the particular days that she requested it, rather than it being denied entirely.) Emails at [435-437] show occasions where the claimant had taken leave without going through all the procedural steps required by the respondent's clear policy, although we should say that there was no suggestion, nor do we find, that this was done with any ill intent.

Issue (m) – Calls

55. The claimant's case here was that Ms Trowbridge deliberately did not answer her calls even when she was available to do so, while in fact answering calls from other people. We find that that did happen. Indeed, in her evidence Ms Trowbridge candidly admitted as much. Ms Trowbridge's evidence, which we accept to be true, was that she decided to restrict her telecommunications with the claimant to e-mail because she began to find

that phonecalls were often long and confusing with no real resolution. Whilst accepting the truth of that explanation, we do not accept that that was an appropriate way to treat the claimant, particularly given, as Ms Trowbridge accepts, that she did not make the claimant aware that this was how she would proceed and that this would have been humiliating for the claimant. We do accept Ms Trowbridge's evidence that on some – though not all – of the occasions that she did not answer the claimant's calls, there may have been good reasons for her not picking up, such being in meetings. Although the claimant was treated differently to other employees in the sense that Ms Trowbridge did take their calls, there do not appear to have been any other employees whose conduct of calls might have caused Ms Trowbridge to stop taking their calls. Having heard evidence from Ms Trowbridge, and in particular her evidence about the reasons for her actions, we conclude that her approach would not have been different had the claimant's race been different – her actions were in no way affected by the claimant's race. So far as timings are concerned, none of the witnesses were particularly clear about when this was happening, though since Ms Delisle-Barrow observed it, it must have been happening before 28 February 2020 (which is when Ms Delisle-Barrow stopped working at the Slough office).

Issue (n) – Meeting 3 February 2020

56. On 3rd February 2020 a meeting took place at which the claimant and June Diegan and others were present. It was the claimant's case that during the course of this meeting Ms Diegan (who was Ms Carney's line manager) leaned over the person sitting between her and the claimant and into the claimant and waved her finger aggressively at the claimant. We treated this evidence with some care in light of the fact that the person accused of reprehensible conduct had not had the opportunity to comment on it in evidence. Nevertheless we were of course obliged to make findings on the evidence before us, and we find as follows.

57. Ms Diegan was asking the claimant about low EFSA learner numbers in Slough. The claimant tried to show her a spreadsheet showing that learners could progress from her SBC courses to EFSA. Ms Diegan told the claimant she was not interested in SBC learners and wanted to know what was being done to improve EFSA learner numbers. We find that Ms Diegan became annoyed with the claimant and wagged or pointed her finger at the claimant. We do not go beyond that – Ms Trowbridge's evidence was that while Ms Diegan was "robust", she was not threatening or aggressive. Though that was contradicted by Ms Ahmed's evidence, in Ms Delisle-Barrow's statement she initially described Ms Diegan's behaviour as *passive* aggressive (our italics), although she did later say it was aggressive.

58. Mr Carter was also present at the meeting. While Ms Ahmed's perception was that Ms Diegan was blaming the claimant for figures for which she was not responsible, we note Ms Delisle-Barrow's evidence, in which there was no suggestion that the claimant was being blamed for problems within Mr

Carter's remit; indeed in her oral evidence she did not disagree with the suggestion that the claimant was being asked about things within her remit. We also note that in an email sent the following day, the claimant conceded that in hindsight she could see the reason for Ms Diegan's frustration. We therefore find that, while the claimant should not have been subjected to the finger-pointing, the claimant was not being unfairly asked about matters beyond her responsibility. Ms Diegan's annoyance was, we find, motivated by the claimant's conduct; we find it had nothing to do with the claimant's race. Indeed, the claimant herself in cross-examination agreed that she was not targeted at that meeting because of her race.

59. To the limited extent set out above, we find the claimant's case on Issue (n) to be made out.

Resignation

60. We make findings on the reasons for the claimant's resignation in the *Conclusions* section below, but it will assist if we record the following here. On 30 June 2020 the claimant was signed off work with work-related stress, which an Occupational Health report of 15 September 2020 records her as reporting. The report-writer concluded that the claimant was "Temporarily not fit for work" {337}. The claimant attended a welfare meeting on 19 August {175}. Another welfare meeting was arranged for 9 October, though no witness was particularly clear as to whether she attended. When it was put to the claimant that, during that time, she had accepted sick pay as she wished for the contract to continue, the claimant agreed that she had accepted the pay as that was her right under the contract.

61. On 23 November 2020, the claimant resigned by email [341]. She said that her position was untenable and working conditions intolerable, complaining also of her managers' conduct. No mention was made of racial discrimination. Nor had any such mention been made at any point before that. The claimant's evidence was not particularly clear on the point, but she did at one point say that "it was not something I thought I needed to put in the letter". When she was asked specifically about why she resigned, the claimant referred to a 29 June email being the last straw, though she didn't know it at the time. In that email, she said, Ms Trowbridge had been critical of her. We were taken to emails sent on 29 June [322 – 324]. There are two mild criticisms – one about the claimant not "cc'ing" Ms Trowbridge in to an email and the second about exactly what Ms Trowbridge had asked the claimant to do in an earlier email. These criticisms are expressed in perfectly reasonable terms and indeed in the course of the correspondence the claimant accepts that they are reasonable. When asked specifically why it was that she resigned 5 months after that, the claimant's evidence was to the effect that the respondent did not seem interested in her health and recovery but in getting her into occupational health. She said that she had not been offered counselling and had to make her own arrangements with her GP. This last point is contradicted somewhat by Amy Marshall's contemporaneous note, which she stood by in her oral evidence, which we accept, of the 19 August 2020 welfare meeting – the claimant was offered

various assistance by the respondent (albeit about 7 weeks after her absence began) but declined it as she said she was already receiving help from her GP.

62. Mrs Marshall replied to the claimant's resignation letter on behalf of the respondent, urging her to reconsider. The claimant did not take up that invitation.

Further findings relating to racial discrimination

63. The following points led us to the conclusion that, on the occasions where we have upheld or partially upheld the claimant's case on factual issues, the claimant's treatment was not related to or because of her race.

64. Whilst the claimant's evidence was not particularly clear on the point, it seemed to us that she was saying that by the time of her resignation she had formed the belief that the respondent had racially discriminated against her, but had not mentioned that in her resignation letter. We consider that to be somewhat implausible, given that the letter did purport to set out in some detail the reasons for her resignation.

65. In her statement Aisha Ahmed did not allege any racial discrimination, but in oral evidence she did suggest that with the benefit of hindsight she thought that white colleagues got more recognition for their work. When asked specifically, however, she asserted the problem was definitely bad management but only went so far as to say that there were things that could be interpreted as discrimination. In her oral evidence Ms Delisle-Barrow said that the chaotic atmosphere and poor management she described in her statement applied to everyone who worked in Slough (i.e. not just the claimant). Ms Delisle-Barrow did not suggest there was any racial element to the claimant's treatment. Rabena Sharif's statement did allege that she felt in hindsight she had been discouraged from seeking promotion on account of her race; she also said that she left her role partly because she saw "no progression being a woman of colour". Given the somewhat nebulous nature of these allegations, and the fact that they were not tested in cross-examination, we attached no weight to them.

66. During the course of cross-examination it was put to Ms Trowbridge that the claimant was treated badly due to her failure to conform with (what the claimant asserted) was a stereotype that Asian women should behave deferentially. Ms Trowbridge agreed that the claimant had not been deferential, but did not agree that she had expected that of the claimant; she denied holding such a stereotype. She said that her treatment of the claimant had nothing to do with this, but was to do with Ms Trowbridge's belief that the claimant was underperforming in her role. We accepted her evidence on this point.

LAW

Constructive unfair dismissal

67. Section 94 of the Employment Rights Act 1996 ("ERA") confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under s 111 ERA. The right only applies if there was a dismissal. Generally, then, it will not apply to resignation. However, by s 95 ERA, a resignation is to be construed as a dismissal (and therefore may engage the right not to be unfairly dismissed) if the employee terminates the contract under which he is employed in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is known as constructive dismissal.

68. In this case, the claimant's case was that the respondent breached the implied contractual term as to trust and confidence, formulated in *Malik and Mahmud* v *BCCI* [1997] ICR 606 as an obligation that the employer must not "without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee." Merely acting in an unreasonable manner is not sufficient. The strength of the implied term is shown by the fact that it is only breached if the employer demonstrates objectively by its behaviour that it is abandoning and altogether refusing to perform the contract; this is a "demanding test" (*Frenkel Topping Limited* v *King* UKEAT/0106/15/LA).

69. If there was a dismissal, the Tribunal must consider whether it was fair. S 98 ERA deals with the fairness of dismissals in two stages. First, the employer must show that it had a potentially fair reason for the dismissal within section 98 (1) and (2). Second, if the employer shows that, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason and in particular whether the respondent in all respects acted within the so-called "band of reasonable responses". In practice the tribunal proceeds by asking: (i) was there reasonable and proper cause for the employer's action and (ii) if not, when viewed objectively was the conduct calculated or likely to destroy or seriously damage trust and confidence?

70. A sequence of events may meet the test even if none of its individual components does. An employee may rely on a "last straw" which was not itself a repudiation of the contract; this is so even if the employee affirmed the contract after the earlier matter as long as the last straw adds something new and effectively revives those earlier concerns (*Kaur* v *Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 97). If the last straw is entirely innocuous or trivial, and none of the preceding matters amount to a fundamental breach of contract, the claim of constructive dismissal will fail.

71. If there was a fundamental breach by the employer, it must be *a* (though not *the only*) reason for the employer's resignation.

72. There is no constructive dismissal if, after a fundamental breach, the employee affirms the contract, i.e. behaves in a way which shows that he

or she intends the contract to continue. Delay in resigning is relevant to whether the breach was affirmed, though it is not determinative of the issue. Delay in resignation whilst an employee is on sick leave is less likely to amount to an affirmation than if the employee is still attending work.

Wrongful dismissal

73. If there was a constructive dismissal (see above) the claimant would also be entitled to notice pay under the terms of her employment contract.

Direct discrimination because of race

74. S 39 EqA says that an employer must not discriminate against an employee by (amongst other things) dismissing them or by subjecting them to any other detriment. There was no dispute here that the claimant was the respondent's employee within the meaning the Act. Nor was there any dispute that the respondent would be liable under s 109 for any contraventions of the Act done by other employees (e.g. the claimant's mangers). Under s 13(1) EqA read with s 9, direct discrimination takes place where because of race a person treats the claimant less favourably than that person treats or would treat others.

75. By s 23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case. The circumstances need not be precisely the same, provided they are close enough to enable an effective comparison: *Hewage* v *Grampian Health Board* [2012] UKSC 37. In many direct discrimination cases, it is appropriate for a Tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of a protected characteristic (in this case, race). However in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the "reason why" the claimant was treated as they were (*Shamoon* v *Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11; [2003] IRLR 285).

76. The protected characteristic need not be the only reason for the treatment, provided it had a significant influence on the outcome (*Nagarajan* v *London Regional Transport* [1999] IRLR 572, HL). The case law recognises that very little discrimination today is overt or even deliberate; people can be unconsciously prejudiced. A person's motive is irrelevant, as even a well meaning employer may directly discriminate.

77. S 136 of the EqA makes provisions about the burden of proof. If there are facts from which the Tribunal could decide, in the absence of any other

explanation, that there was a contravention of the Act, the Tribunal must hold that there was a contravention, unless the respondent proves that that there was not a contravention. S 136 requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another (*Hewage* above). The burden of proof does not shift where there is no evidence to suggest the possibility of discrimination (*Field* v *Steve Pye and Co (KL) Ltd* [2022] EAT 68). Guidelines on the application of s 136 were set out by the Court of Appeal in *Igen Ltd* v *Wong* [2005] EWCA Civ 142 and the importance of these was recently restated by the Employment Appeal Tribunal in *Field* v *Steve Pye and Co (KL) Ltd* [2022] EAT 68. We do not reproduce the thirteen steps of the guidance here, but we took account of all steps. One important point to note is that the question is whether there are facts from which a Tribunal *could* decide… It is not sufficient for the employee merely to prove a difference in protected characteristic and a difference in treatment. Something more is required (*Madarassy* v *Nomura International Plc* [2007] EWCA Civ 33). Unfair or unreasonable treatment on its own is not enough (*Glasgow City Council* v *Zafar* [1998] IRLR 36). If the burden of proof does shift, under the *Igen* guidance the employer must prove that the less favourable treatment was "in no sense whatsoever" because of the protected characteristic. Because the evidence in support of the explanation will usually be in the possession of the employer, tribunals should expect "cogent evidence" for the employer's burden to be discharged.

Harassment related to race

78. S 40 EqA says that an employer must not harass an employee. Under 26(1) EqA read with s 9, harassment related to race takes place where there is unwanted conduct related to race which has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether the conduct has that effect the Tribunal must take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Time limits

79. In discrimination claims, under s 123 EqA a complaint must be brought after the end of (a) the period of 3 months starting with the date of the act complained of or (b) such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period.

CONCLUSIONS

80. In summary, we have found the following of the claimant's factual claims made out:

Issue (s) – the respondent did fail to deal with the concerns the claimant expressed around August 2019 about the part-time job not being a proper job share. As to whether the claimant became unwell in consequence, see below.

Issue (m) – Ms Trowbridge did on occasions not answer the Claimant's calls when she could have done and was answering other people's calls. This must have been before 28 February 2020.

Issue (n) – at the meeting on 3rd February 2020, Ms Diegan became annoyed with the claimant and wagged or pointed her finger at the claimant.

81. We now go on to consider the other points in the list of issues.

Unfair dismissal, Constructive dismissal

82. Regarding Issue (s), we find that the respondent's failure to confirm the change to the basic conditions of the claimant's employment, i.e. whether or not she was in a job share, amounted to a breach of the trust and confidence term, which entitled the claimant, around August 2019, to terminate the contract. The issue went to the very heart of the claimant's employment and there was no reasonable and proper cause for the failure to clarify. However, we find that the claimant affirmed this breach. In our judgment, the poor communications from the respondent to the claimant amounted to a failure to formally confirm the obvious. For the reasons we have set out above, by September 2019 the new terms of employment were clear to the claimant and she chose to continue in employment for over a year.

83. Regarding Issues (m) and (n), while the treatment of the claimant in and around February of 2020 was not acceptable, we do not find that it went so far as to amount to breaches of the term of mutual trust and confidence, i.e. that it was likely to destroy or seriously damage the relationship in such a way as to cross the high bar enunciated in *Frenkel Topping Limited* (see above). Nor do we find that this treatment was capable of acting as a "last straw", in effect reactivating the "Issue (s) breach", given the time elapsed since the "Issue (s) breach" and the lack of any similarity between the incidents. Even if it had done, or even were the events to be viewed as a series of events that cumulatively amounted to a breach, we would have found the claimant affirmed the breach – even discounting her sick leave, she kept working until 30 June 2020, almost five months after the behaviour the claimant has proven in issues (m) and (n).

84. In light of those findings it is not strictly necessary for us to make findings as to whether the claimant resigned in response to such of the respondent's conduct as we have found proven, however we do record the following. We do not consider that a, or the, reason for the claimant's resignation was the conduct which we have found proved. The conduct occurred months before the claimant resigned (even discounting her time on sick leave). Given the limited nature of our findings on Issue (s), we do not conclude that the

claimant became unwell as a result of the conduct which we have found proven in that Issue (i.e. failure to clarify terms). While the claimant felt overworked, we have concluded that she was not in effect being asked to do a full-time job in part-time hours. The reason in evidence she attributed for her decision to resign was a response to emails which we have found were unobjectionable.

85. We therefore find as follows. Though there was a breach of the implied term of mutual trust and confidence to the limited extent set out above, the claimant affirmed the contract and she did not resign in response to the respondent's proven conduct. The claimant was therefore not dismissed and there can be no issue of unfair dismissal or of wrongful dismissal.

Direct discrimination because of race

86. Regarding Issue (s), the claimant was not treated less favourably than Mr Carter; indeed, she was treated in the same way as he was. Neither, we conclude, was she treated any less favourably than any hypothetical comparator who was not Asian might have been. Regarding Issues (m) and (n), the claimant was not treated less favourably than Mr Carter or someone who was not Asian would have been, had they conducted themselves in the way in which the claimant conducted herself.

87. More generally, for the reasons we have set out above, we conclude that the respondent's treatment of the claimant was not because of her race. The claim for direct discrimination is therefore dismissed.

88. In coming to our conclusions, we considered s 136 EqA. There were in our judgment no facts on which a Tribunal could decide, in the absence of any other explanation, that there was racial discrimination (or harassment). Regarding Issue (s), the claimant was demonstrably treated in the same way as her colleague who was not Asian. Regarding Issues (m) and (n), in the circumstances as we have found them to be, even in the absence of any other explanation, we do not consider that the behaviour we have found proven could lead a Tribunal to decide that there was racial discrimination. This was not a case where there was more than a difference in protected characteristic (race) and a difference in treatment (indeed, given our findings above, there was not a difference in treatment).

89. Even had the burden shifted under s 136, given our factual findings, our conclusion would have been that the respondent's treatment of the claimant was in no sense whatsoever because of her race. In coming to our conclusions, we directed ourselves that that discrimination can be unconscious or subconscious.

Harassment related to race

90. The respondent's conduct as we have found in Issues (s), (m) and (n) was plainly unwanted, but, for the reasons we have set out above, it did not relate to the claimant's race. The claim for harassment related to race is therefore dismissed.

Time Limits

91. In light of our findings above, we did not need to consider whether the respondent's conduct extended over a period or whether it would be just and equitable to extend time limits on the EqA claims.

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Employment Judge **Dick**

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Date: 15th May 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

16/5/2023

N Gotecha

FOR THE TRIBUNAL OFFICE

APPENDIX: Agreed List of Issues

The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

Time limits / limitation issues

(i) It is not in dispute that claims relating to the Claimant's dismissal have been brought in time. It is also not in dispute that claims relating to events on or after 21 August 2020 were brought in time.
(ii) 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)? In particular, where events occurred before 21 August 2020, were they part of "conduct extend over a period" within the meaning of section 123(3)(a) of the EqA and, if so, when did that period come to an end?
(iii) If any claims are out of time, is "just and equitable" to extend time and, if so, for what period?

Constructive unfair dismissal & wrongful dismissal

(iv) Was the Claimant dismissed? In particular, did the Respondent, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the Claimant?
(v) The conduct the Claimant relies on as breaching the trust and confidence term is:

a. Bullying and harassment from the time the Claimant raised concerns about her line manager Ms Sabrina Trowbridge (ST) in October 2018;
b. By ST and ST's manager, Emma Carney (EC) unreasonably raising concerns with the Claimant as to why targets had not been met in January 2019;
c. In late January or February 2019, by ST and EC interrogating and humiliating the Claimant in an audio zoom meeting and blaming her for learner numbers not being achieved, telling the Claimant she had failed and that her performance was not good enough and that if she failed she would be responsible for losing the local authority contract;
d. During the same call, ST and EC shouting over the Claimant;
e. The Claimant was not warned by ST that a more senior manager, EC would be on the call;
f. Not upholding a grievance that the Claimant brought in February 2019;
g. By ST micromanaging and being over-critical of the Claimant's work after she brought the grievance;
h. At the same time, after February 2019, by ST withdrawing prestigious areas of work from the Claimant and handing these a new/junior staff member Rachel Williams so that the Claimant became deskilled;
i. When these areas of work could not be completed, handing them back to the Claimant to problem solve with last minute deadlines;
j. Refusing to permit the Claimant to attend Forums and meetings that were instrumental to her doing her job and her delivering her targets and failing to deal with the Claimant's concerns about this;
k. By ST embarrassing and belittling the Claimant in emails;

l. By ST refusing the Claimant TOIL and annual leave to which she was entitled, and which should have been granted and not permitting the Claimant to work at home which would have enabled the Claimant to carry out administrative work, which it was difficult for her to carry out when in the office because of clients attending the office and the need to answer regular queries from persons attending at the office;
m. By ST not answering the Claimant's calls although ST was available and answered calls from others;
n. By June Deigan at a meeting in January or February 2020 leaning over the person sitting between her and the Claimant and into the Claimant with her entire body and waving her finger aggressively when she disagreed with the Claimant;
o. Subjecting the Claimant to approximately 50% more one-to-ones than Joe Carter and Rachel Williams;
p. Failing to give the Claimant support to meet her targets;
q. When the Claimant was working full-time requiring the Claimant to be present in the office more often than other colleagues;
r. Being required to carry out the same role as under her full-time contract when her contract was reduced to a 0.5 part-time contract on 1 August 2019 ostensibly on the basis of a job-share;
s. Taking no steps to address or remedy the Claimant's concerns in numerous emails sent to ST and Human Resources after 1 August 2019 that her 0.5 job was not a proper job share and about the volume of work she was having to undertake with the consequence that the Claimant became unwell and was off sick from June 2020 to November 2020 until the date of her resignation.

The Respondent disputes the Claimant's allegations.

(vi) If the Claimant establishes that the Respondent acted in breach of the implied term of mutual trust and confidence, did the Claimant affirm the contract of employment before resigning?
(vii) If not, did the Claimant resign in response to the Respondent's conduct?
(viii) If so, has the Claimant been paid all the notice pay to which she was entitled?
(ix) If the Claimant was dismissed, what was the principal reason for her dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA"); and, 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'?

Remedy for unfair dismissal

[*Omitted*.]

EQA, section 13: direct discrimination because of race

(xi) In relation to her Claims for direct discrimination because of race, the Claimant relies on the Respondent's treatment of her as set out at paragraph 3(v) a to s above.
(xii) Was that treatment "less favourable treatment" in the sense that the Respondent treated the Claimant less favourably than the Respondent

treated or would have treated others ("comparators") who were not Asian in not materially different circumstances? The Claimant relies on the following comparators, who are both white: Rachel Williams and Joe Carter. In relation to her allegations specifically about the "job share", the Claimant compares herself with Joe Carter, who she alleges was given greater support than she was. Further and in the alternative, the Claimant relies on hypothetical comparators.

(xiii) If so, was this because of the Claimant's race?

EQA, section 26: harassment related to race

(xiv) Did the Respondent engage in the conduct set out at paragraph 3(v) a to s above?

(xv) If so, was that conduct unwanted?

(xvi) If so, did it relate to the protected characteristic of race?

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

Remedy for direct discrimination and/or harassment

[*Omitted*.]