Case Number: 3400025/2015

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Miss M Davis-Bol	**v**	(1) Brook Street (UK) Ltd (2) The Secretary of State for Justice

Heard at: Huntingdon

On: 16, 17, 18, 19 and 20 January 2017 (Part heard)
15 and 16 May 2017
17 May 2017 (Discussion day no parties in attendance)
25 and 27 July 2017 (Discussion day no parties in attendance)
14 and 15 August 2017 (Discussion day no parties in attendance)

Before: Employment Judge D Moore

Members: Mr D Sutton and Mr T Chinnery

Appearances

For the Claimant:	Mr Robison (FRU) Claimant In person for submissions
For the First Respondent:	Ms Owen (Counsel)
For the Second Respondent:	Mr Kirk (Counsel)

JUDGMENT

1. The First Respondent did not discriminate against the Claimant on grounds of her race, did not dismiss her or subject her to any detriment for making a protected disclosure.

2. The Claims against the Second Respondent were submitted outside of the statutory time limit and are dismissed.

REASONS

1. Between the 20 May 2014 and the 28 November 2014 the Claimant was the employee of the Second Respondent, Brook Street (UK) Ltd. Between the 20 May 2014 and the 21 August 2014 she was placed on an assignment at the Northampton Magistrates Court. In section 8.1 of her claim form she indicates complaints of unfair dismissal and race discrimination. In the section relating to other complaints she indicates that unbeknown to herself she became a reluctant whistleblower. There are some 15 or so pages of particulars which despite their length have not proved helpful in defining the issues. They have been the subject of a case management discussions but subsequent service of particulars by the Claimant appears to have obscured rather than clarified the issues. An earlier case management discussion did note the issues but these derived from the schedule not the claim form. That however falls away because the Claimant, in correspondence, made an application to amend her claim and on the 4 April 2016 and Judge Sigsworth, having consulted the parties, directed that the application could be made at the outset of the merits hearing. Ultimately (time having been taken by him to amend the draft) Mr Robison applied to amend by substituting different draft particulars.

2. The claims were initially made against the two Respondents in separate claim forms and there are frequent references to the other in each. In principle the suggestion to amend to substitute a workable draft set of particulars covering both claims commended itself on grounds of pragmatism. Mr Robison indicated that save for one matter in his draft (an allegation against the First Respondent relating to an e-mail sent to them by the Claimant in June 2014) all the matters in his draft were the subject of some mention in the original particulars. The application was not opposed by either of the Respondents and we granted the application to substitute this draft (save for the fresh matter which was not pressed) on the ground that was an encapsulation of existing issues. Given the difficulties in identifying the issues from the original claim forms and the appearance that the schedule of issues referred to by Judge Bloom at the earlier preliminary hearing contained issues not traceable in the Claim forms, we made it clear to the parties that we granted the application on the basis that it was a definitive list of the matters being pursued.

3. We set out the terms of that document and have identified the specific allegations by number:-

   Section 26

   1:1:A The Claimant was employed by the First Respondent and then worked on assignment for the Second Respondent from 20 May 2014 until 21 August 2014.

   The Claimant suffered racial abuse on a regular and ongoing basis from the very start of her assignment with the Second Respondent. The staff of the

Second Respondent engaged in unwanted conduct related to her race and the conduct of the staff of the Second Respondent had the purpose of violating the Claimant's dignity and creating an intimidating, hostile, degrading, humiliating and offensive working environment for the Claimant.

[FIRST ALLEGATION]
Whilst working at the Second Respondent's premises the Claimant heard behind her back 'Who does that Paki think she is wearing a suit' (Laura on 20 May 2014).

[SECOND ALLEGATION]
The Claimant was told that 'the paki food made the office smell and that she must use the kitchen' (early in employment with the Second Respondent, don't know who).

[THIRD ALLEGATION]
Whilst receiving training the Claimant was told 'Do you understand English' (first two weeks Laura).

[FOURTH ALLEGATION]
Later she was called a 'thick fucking Paki unable to follow simple instructions (Sharon in June).

[FIFTH ALLEGATION]
*When she came into work early (*It was said) '*Only a fucking Paki would come in early' (Sharon at end of June).*

[SIXTH ALLEGATION]
She was told all foreigners should sent back to their own country.

[SEVENTH ALLEGATION]
In relation to parking cars at the premises 'this comes from a Paki who takes a bus when she says she can drive' (Laura at the end of June).

[EIGHTH ALLEGATION]
Unattended drinks of the Claimant would have staples dropped into it (June, possibly Laura/Sharon or Tracey all giggling upon return).

[NINTH ALLEGATION]
In relation to passing a test Laura said 'Paky must have cheated' (First week of employment').

[TENTH ALLEGATION]
A comment was made that 'the Paki gets everything wrong can't get the staff these days' (Tracy to Sharon early July).

[ELEVENTH ALLEGATION]
And that as you have difficulty understanding English I had to fucking tell her what I want to do (Fran no date).

[TWELFTH ALLEGATION]
The Claimant informed the First Respondent's manager by visiting their office on the 6 June 2014 that she was experiencing racial harassment by the staff of the Second Respondent. The Claimant informed the manager that she was the subject of racial abuse and bullying. The First Respondent did not take any action to investigate the allegations or offer any support or do anything about the situation, to help the Claimant. The effect of this conduct by the First Respondent was that she experienced racial harassment by the First Respondent.

IN THE MATTER OF THE EMPLOYMENT RIGHTS ACT 1996

Section 43A and 47B

Protected disclosures

In June 2014 the Claimant made a protected disclosure to the office manager at the Second Respondent regarding racial abuse that she witnessed when she heard staff in conversation with members of the public.

In that same disclosure to the manager of the Second Respondent the Claimant also told him that she was personally experiencing prolonged and regular racial abuse by members of his staff in the office where she was working on assignment.

43(1)(b)

The Claimant reasonably believed that the relevant failure relates solely or mainly to:-

(i) The conduct of a person other than his employer and this matter is the legal responsibility of that other person being the manager of the second Respondent.

[THIRTEENTH ALLEGATION
a) Following the protected disclosure to the manager of the of the Second Respondent the Claimant was subject to detriment by the manager of the First Respondent her employer when the First Respondent decided to end the assignment with the Second Respondent and then failed to find her new employment.

[FOURTEENTH ALLEGATION]
b) The Claimant's complaints/failing to deal with them adequately or at all both before 21 August *2014 and after that date.*

Jurisdiction – time point pursuant to s:48(1A) and s:48(3) ERA 1996 and dependant upon the specific dates in (b) above.

Section 103A

[FIFTEENTH ALLEGATION]
The Claimant having made a protected disclosure to the Second Respondent was unfairly dismissed by the First Respondent as the principal reason for her dismissal was that she had made a protected disclosure the result of which led to continuing racial harassment due to a deliberate lack of action by both Respondents, culminating in events which led to the end of her assignment with the Second Respondent and shortly afterwards she was sent her P45 ending her employment with the First Respondent.

IN THE MATTER OF THE EQUALITY ACT 2010

SECTION 13 DIRECT DISCRIMINATION

[SIXTEENTH ALLEGATION]
a) The Claimant was treated less favourably by the First Respondent due to her race because the Claimant did not find her another assignment following 21 August 2014, and also because the Claimant's complaint regarding race discrimination was not considered properly or at all culminating in the events of the 21 August 2014.

[SEVENTEENTH ALLEGATION]
b) The Claimant was treated less favourably by the Second Respondent due to her race because when she complained to David Hawkins about the racial harassment to which she had been subjected to by his staff he did not deal adequately or at all with the problem leading to further abuse.

[EIGTHEENTH ALLEGATION]
Also on the 21 August David Hawkins did not take proper managerial responsibility for the situation and act fairly when there was a serious altercation outside his office.

4. Application to admit transcripts of covert recordings made by the Claimant: It was self evident from the documents themselves that they were not in fact pure transcripts at all. They were heavily adulterated with the Claimant's own comments. There was no mention of these documents in the Claimant's witness statement and the Respondents were not aware that reliance was placed upon them. Our unanimous decision was that we were not prepared to admit them in their present form. However we did make it clear to the Claimant that she was not precluded from putting an actual and unadulterated part of the recorded conversation to a witness in cross examination to rebut a point or points made by them in their evidence.

5. Video Link: The Tribunal was invited by the First Respondent to reconsider what was said to be a refusal to permit use of a video link to hear Ms Sulemanji's evidence. This in fact was an error on their part. The Tribunal had not refused to do so, but had pointed out that the Tribunal did not have the necessary equipment to facilitate this. The equipment was

brought by the First Respondent and the evidence of the witness concerned was taken by this means.

6. Time points: The Claim form in case number 3400026/15, which lies against the Second Respondent, (the Secretary of State for Justice) was served on the 7 January 2015. Whilst it is right to note that dates are not clearly identified the last act of harassment alleged by the Claimant, is 'early July' and it has not been disputed that the last possible date in respect of the allegation against Mr Hawkins cannot have been later than the 22 July 2014. We note that the Claimant alleges that his failure to act on her complaint of discrimination (Allegation 17) occurred in June 2014. It has been Mr Hawkins' evidence that the meeting to which she refers was on the 22 July 2014. Even by giving her the benefit of this later date, it follows that her complaint should, by reference to the statutory time limits, have been submitted by the 21 October 2014. That period is not affected by early conciliation since she did not approach ACAS until the 7 November 2014. It follows therefore that this complaint is out of time by some three months.

7. The Eighteenth Allegation is the only one against the Second Respondent that post dates the Seventeenth Allegation. It is said to have occurred on the 21 August 2015. Allowing for early conciliation the statutory time limit expired on the 5 January 2015. Given that the Claim form was not submitted until the 7 January this complaint and thus the entirety of the complaint against the Second Respondent is, as a matter of fact, out of time. We made this finding of fact at the outset of the case, but deferred the question of whether it would be just and equitable to extend time until we had heard the evidence. There is no complaint pertaining to dismissal against this Respondent. The Claim form in case no 3400025/2015 lies against the First Respondent and it was submitted on the same day. That claim does raise a complaint in respect of dismissal and no point pertaining to time is taken as a preliminary point.

8. The statutory time limit is found at S:123 of the Equality Act 2010. It provides that proceedings on a complaint within S:120 (which this claim is since it is brought before an employment tribunal) may not be brought after a period of three months from one of two dates. The first is in subsection 1(a) and is the period of three months starting with the date of the act to which the complaint relates. The second is subsection 1(b), such other period as the employment tribunal thinks just and equitable. It is this latter ground with which we are concerned in respect of the Claims against the First Respondent. The Claimant appears not to have accepted (despite obtaining representation and being reminded by ourselves, that her two cases are against different Respondents connected only by virtue of the Second Respondent being the client of the First Respondent. The only point relied upon by the Claimant relates to confusion or difficulty in submitting her claim form online. That argument addresses only a difference of two days between the 5 and 7 January 2015. It only relates to the seventeenth allegation; she has not addressed the delay in presenting a claim in respect of those matters with evidence or argument

in respect of the earlier incidents relied upon other than to suggest they form part of a 'course of conduct'.

9. Mr Kirk addresses us in closing drawing and invites us to find the Claimant's evidence to be unreliable as does Ms Owen. Each of has of course has equal weight and responsibility for out decision. It is pertinent for us to note that we had each developed concerns about the reliability of the Claimant's evidence. In the first instance we found her to be evasive during cross examination, we found her to have included detail that she had not mentioned at any prior point earlier than some eight or nine months after the time of the alleged incidents and we found that to a marked degree her answers to questions in cross examination by both counsel conflicted with both her evidence in chief and earlier answers given in cross examination. There is a particularly stark incident of unreliability that we have taken account of; in response to questions put in cross examination the Claimant adamantly and vehemently denied that in a meeting with Ms Sulemanji (First Respondent's HR) that she wanted thousands of pounds in compensation. She denied that she had transcribed the exchange herself. When she was taken to the transcript which she herself prepared, she had to agree that she had said the words '*I'm seeking compensation and I'm not seeking it in the hundreds. I'm seeking it in the thousands'.* That was of course the transcript that shortly before, at the outset that of the hearing, she had sought to have included. It was not a document from the past or one which could have taken her by surprise. She has not given an explanation for this contradiction and the number and strength of her earlier denials rule out the possibility that they are explained by confusion. Of further and particular concern to us has been the fact that in respect of the allegations that words of a racially discriminatory nature were used she has on occasions asserted in cross examination that the alleged remarks were in fact made by a different person to the one she specified in her (amended) particulars. In respect of her allegations of harassment which rest on her own word we have preferred the evidence of the Second Respondent's witnesses. In terms of her demeanor, our concerns over the reliability of her evidence is heightened by the fact that when inconsistencies in her evidence have been put to her she appears unconcerned and we find ourselves not confident that she has taken the dictates of her oath seriously. We understand of course that feelings run high when parties are in conflict and that there is often a degree of animus, however our task is to seek out reliable evidence. We have each found the Respondents' witnesses to have given consistent and careful evidence. We have preferred their evidence to that given by the Claimant. In respect of the allegations against the Second Respondent we have not found, on a balance of probabilities, that the incidents alleged by the Claimant occurred. That being the case these matters cannot form a course of conduct. The Claimant has not advanced any evidence or argument of any other ground upon which they may be included and we find them to be out of time and we dismiss them.

10. The Eighteenth Allegation we treat rather differently. Whilst the Claimant's evidence has not been entirely clear on the point. We gather that she did attempt to submit her claim forms on line on the last day of December 2014 but did not submit the requisite fee or a remission application until 7 January 2015. It is only when the fee or remission application comes together that the Claim is deemed to have been actioned. We have noted that there is some evidence on our file that she contacted a member of staff (who has long since left the service) in this office for advice. Given that we now have no ability to check whether the Central Processing Unit and the requisite online facilities were operating correctly over the new year period we have concluded that we should, on a balance of probabilities, find that there was some difficulty outside of the Claimant's control and that we should extend time for this allegation to the 7 January 2015 thus enabling it to be heard.

The Facts

11. The Claimant was the employee of the First Respondent a secretarial agency. As is common with agencies of this type she was required to work on assignment for the agency's clients. The terms and conditions under which she was employed are at pages 147–153 of the bundle. They are signed by the Claimant. It provides at clause 1.7 that either Brook Street or the client may terminate an assignment at any time without prior notice or liability and that termination of an assignment is not termination of employment. At clause 1.4 it provides that her duties may change between assignments or during an assignment and at clause 5.2 provides that Brook Street did not guarantee that there would always be an assignment and it expressly states that there may be periods when there is no work. The contract requires her, whilst on an assignment, to follow the client's instructions and abide by their workplace rules.

12. Her employment commenced on the first day of her first assignment with the Second Respondent. She was required to carry out clerical work for the Northampton Magistrates Court. The Claimant has insisted that she accepted the assignment as an administrative officer and complains that Mr Hawkins (Manager of the Second Respondent's enforcement team) decided to change her role to that of Designated Officer. There is no substance in her assertion that her role was changed. Her grade was Administrative Officer and having regard to references on the Claimant's Curriculum Vitae, which detailed experience of working with accounts, he assigned her to work in the accounts team. Designated Officer is a term applied to Administrative Officers who have delegated powers under the Courts Act 2005. Those powers are routinely obtained for all Administrative Officers in the office both full time and agency.

13. She was required to work with a Laura King who was a very experienced member of staff who would ensure the Claimant was given the necessary training to enable her to carry out the work required. Mr Hawkins' evidence that the work she was given was not complex and was commensurate with the HMCT Civil Service grade of Band E (which is an

Administrative Officer) was not challenged. We are satisfied that she was not required to do work which was outside of her pay grade. She makes the further complaint that her hours were changed upon arrival. Mr Hawkins explained to her that whereas Brook Street may have told her that the hours were from 9.00am to 5.00pm the office in fact was operated on a flexible basis between 8am to 6pm. He agreed that she could start at 8.00am to suit her convenience as she was reliant on a friend for a lift to work. Pages 304–305 is an e-mail from the Claimant which she adduces in support of her contentions in this matter. It is not indicative of any dissatisfaction and is palpably not a complaint.

14. (First Allegation) It has been the Claimant's evidence that on the first day she wore a suit and that comments were made 'by the others' concerning her clothes. She claims that one said behind her back '*Who does that Paky think she is wearing a suit'.* In her evidence in chief she does not identify this individual, she did not do so in her original claim form or the further particulars she was ordered to provide. Indeed as Mr Kirk reminds us in submissions although she now advances a number of separate allegations involving the use of the word paki they do not feature at all in either of those two documents or her grievance complaint at 189. Following the end of her assignment the Claimant made a formal complaint against a number of individuals which were investigated David Young. She admits in cross examination that she did not refer to this matter on these occasions. It is for the first time, some two and a half years after the alleged incident, in the draft which has now been substituted for her particulars, that she attributes this remark to 'Laura' (King). She has accepted in cross examination that as the remark was made behind her back she could not see who had made the remark and has further accepted that as she had just arrived at the office she did not at that time recognise anyone's voice. She was markedly reluctant to answer questions on the point. Laura King denies making this remark and points to the fact that as the mother of two mixed race children she is sensitive to race issues. There is (as we have already noted) force in counsel's point, that the Claimant was evasive in cross examination and seemingly able to recall detail some two and a half years after the alleged events that she could not recall earlier. Given that the comment was, on the Claimant's account, made behind her back and given that she has (by not answering questions put in cross examination) not advanced an explanation how she was able to accurately do so now, but not at any earlier time we prefer Laura King's evidence and find that she did not make this remark. Her evidence that no such remark was made has not been challenged.

15. The second allegation is that someone made adverse mention of 'paki food'. The Claimant accepts that she was eating a cheese and onion sandwich. She has accepted that all staff, not just herself were not encouraged to eat at their desks but rather to take a proper break. In her amended particulars she has asserted that she did not know who had spoken these words. In her witness statement she states it was 'Fran' (Frances Cooper). During cross examination she stated it was Laura King. It was not however put to Laura King in cross examination. The Claimant made no complaint to Mr Hawkins (Second Respondent's Office Manager)

and has not challenged his evidence that the use of such language would be a serious disciplinary offence for a civil servant, and that he had never heard any of his staff use language of the kind alleged. Frances Cooper has denied making any such comment and given the inherent unreliability of the Claimant's changing account we prefer Ms Cooper's evidence and do not find the Claimant's allegation to be supported by the evidence.

16. In Allegation 3. The Claimant has alleged that during the first two weeks of her training Laura King said 'do you understand English'. She Claims that this was in the first two weeks of her employment whilst she was being trained by Laura King. She gives very little detail of this matter in her witness statement but therein attributes the remark to Sharon (Sharon Wells). We have not found her evidence to be reliable in respect of this allegation.

17. Allegation 4. This is an allegation against Sharon Wells. Contrary to what we had understood at the time of granting the amendment this claim first appeared the Claimant's schedule over 9 months after the alleged event. There was no prior occasion wherein the Claimant accused her of using the word 'Paki'. Ms Wells denies ever making any comment of this nature and we accept her evidence. In the Second Respondent's office there is each day a large quantity of enforcement orders which have to be printed. This is a priority task and staff engaged on other work are instructed not to use a particular printer which is reserved to the task. Ms Wells was tasked with the task of printing out the orders on the day in question. Part way through the print run she noticed the Claimant interfering with the orders on the printer and she asked her what she was looking for. The Claimant said she was looking for her own printing. Ms Wells reminded her in civil terms of the rule that she should not use that particular printer. The Claimant's reply was that she liked using that printer. There is no other evidence on the point, it turns on the evidence of the two individuals concerned and for the reasons we have set out we find Ms Wells evidence to be reliable and the Claimant's not to be so.

18. Allegation 5 relates to comments allegedly made in respect of the Claimant coming into work early. Her time sheets at pages 109–121 do not support her contention that other than her in her first week she came into work early; neither does the arrangement she came to with Mr Hawkins (See paragraph 13). In her evidence she has given conflicting accounts of her arrival time, in her witness statement she claimed it was 7.45am, in cross examination she denied this claiming it was 7.25am and as we have noted the time sheets show it to be 8.00am. The making of this remark and the attribution of it to Ms Wells was never alleged until a considerable time after it was said to have been made. Ms Wells denies making the alleged comment and we prefer her evidence.

19. Allegation 6. The Claimant did not identify the maker of this remark in her witness statement. She could not say when it was alleged to have been made. It was only during cross examination that she described the remark as having been made by Sharon. She alleges that Tracy Smith and Laura King agreed with the remark but could not provide detail of how they

indicated their agreement. She claimed that Frances Copper witnessed it but said nothing. All three deny that such an exchange occurred and we prefer their evidence.

20. Allegation 7. This relates to the fact that on a date in or around June 2014 the permanent staff were informed that on a forthcoming training day for Magistrates the Magistrates would be given priority parking. The staff including Laura King did not approve of this since it deprived the staff of their parking facility. It was in fact the Claimant who first criticised Laura for voicing an opinion on the matter on the ground that Laura did not have a car. As we have noted above in common with all of this series of complaints the suggestion that racially offensive words were used was never made until a considerable time after the alleged incident. We prefer Ms King's evidence that she retorted that she was entitled to an opinion but did not use the words alleged by the Claimant.

21. Allegation 8. In cross examination the Claimant (who initially had not been able to recall this allegation or incident and indeed had to be reminded that it was a complaint she had made in these proceedings) gave a dramatically different account of her allegation of having staples put in her drink to that which she had pleaded. Her evidence was that it was one staple, or piece of metal, she didn't recall which, found in her drink on just one occasion. She could not say who had dropped it in and was unable to say why she had alleged it to be a malign act rather than happenstance. The allegation was not put to the Second Respondent's witnesses in cross examination. We do not find the allegation to be supported by the evidence.

22. Allegation 9, the Claimant has not referred to this allegation in her evidence in chief and it has not been put in cross examination. It has not been pursued.

23. Allegation 10 the Claimant alleges that this was a response by Tracy Smith to a compliment paid to her (the Claimant) by a Court Enforcement Officer Mr Pope. He has made a statement and has said that no racially offensive language was used. He was offered for cross examination but the Claimant indicated that his evidence was not required. Tracy Smith is alleged to have made the remark; she has not been cross examined on the point. The Claimant, in her witness statement does not say that the remark was made by Tracy Smith to Sharon Wells as she has now alleged, she states that they both said it ('Tracy and Sharon'). In cross examination she repeats this latter formulation of the complaint 'Tracy and Sharon did make the comment'. She has offered no further explanation of the part played by either. It has not been put to Sharon Wells in cross examination. Both have asserted that there was no racially abusive language used in the office particularly that the word 'Paki' was never uttered by anyone. The Claimant has confirmed in cross examination that it was a relatively small office and exchanges of the type she complains of would be overheard by most if not all of those present. There is common ground between all the Respondent's witnesses that language of this sort would not be tolerated either by their employer or

themselves. None had heard such language used. We prefer that evidence and do not find this allegation to be supported by the evidence.

24. Allegation11. The Claimant has not referred to this matter in her evidence in chief; she has adduced no evidence in respect of it. It has not been put in cross examination. We find it not to have been pursued.

25. The Claimant's work and behaviour was the subject of some tension in the office. A number of witnesses have described her as abrasive and unwilling to follow procedures that she did not consider necessary. The Enforcement department is part of the National Compliance and Enforcement Service and is thus part of Her Majesty's Courts and Tribunals Service. We accept that the processes they are engaged in are national processes. They are concerned with enforcing unpaid fines against defaulters. They employ measures which range from making telephone calls to the defaulter to visits from Court Enforcement Officers. It is convenient to note that the Claimant was not trained in or required to have direct contact with the subject of the Department's attention. We accept that direct contact requires particular aptitude and skill and that those concerned with this work undergo training.

26. Allegation 12. The Claimant's evidence is vague on the question of her meeting with Mr Hawkins and we prefer his evidence that it was on the 22 July 2014. In her witness statement the Claimant gives a minimal account of a meeting with Mr Hawkins in June and says she informed him about the shouting, bullying and racial abuse but gives no other detail. She makes no mention of a meeting on 22 July 2014 other than that Mr Hawkins in July asked her if she was ok. She has not given evidence of her reply. We are not satisfied that the Claimant made any complaint about any of the matters which she now alleges were harassment or indeed raise any matters relating to herself. She said that she considered Tracy Smith and Sharon Wells to be rude on the telephone and that they were firmer with non English speakers. Mr Hawkins recalls an earlier conversation with her when she expressed the view that the department should not be questioning people about their circumstances and income. That of course was central to the work of the department. Mr Hawkins formed the view that she was out of sympathy with the work of the department. He explained to her that enforcement staff whose job it was to contact defaulters by telephone may sound harsh but this is a reflection of the work they did. He went on to explain that the people they were speaking to had been fined by a criminal court but had not paid their fines. He suggested to her that she might be jumping to conclusions having only heard one side of the telephone conversation and not having any experience of the work being undertaken. At this point for the first time the Claimant told him she had heard a comment to the effect of 'I wish they would learn to speak English'. We do not accept that Mr Hawkins took no action; he had a meeting with Tracey Smith and Sharon Wells. They accepted that the language barrier can sometimes be a frustration and that they sometimes have to adopt a different approach, speaking very slowly and so forth but they do not accept that this is racist. Mr Hawkins told

them that it was acceptable to be firm with callers but they should retain an awareness of how their behaviour could be interpreted by passers by in the office who could only hear once side of the telephone call. The Claimant did not speak to Mr Hawkins again on this subject.

27. Matters with the Claimant came to a head in respect of a particular element of the work. A member of staff was designated (by rota as we understand it) to enter information on the Team Information Board (TIB). It was a necessary step in order to manage workflow. It recorded the work that had been done, and the work that needed to be done (fines collected and fines outstanding etc). The collator of this information was required to enter the data on the board at the start and close of every day. In order to do so each member of staff (including agency workers) had to provide the required information at this time. The Claimant did not comply with this instruction on a regular basis as in her view it was not necessary to have two reports a day, she thought one would suffice. That was not a matter for her and as we have noted at the outset she was contractually bound to work under the Second Respondent's direction and in accordance with their rules. She has not denied taking the stance she did and has sought to argue before us that the work was unnecessary. We take the point argued before us that the Claimant had a very limited knowledge of the Second Respondent's work any systems, but in any event the value of the work in question is of course a relevant matter for us or indeed the Claimant. If the Second Respondent required her to comply with their practice that was an end of the matter; she was bound to do so.

28. On the morning of the 21 August 2014 Sharon Wells was compiling the record and the Claimant was required to have provided her with the 'Income from work' figure first thing that morning. By approximately 9.15am she had not done so, and Ms Wells raised the matter with Laura King (who on that day had arrived at that time). Ms King asked the Claimant for the files and the Claimant stated that she did not see why she had to send e-mails at the end of the day and the beginning of the next. Ms King tried to explain that this was not duplicated but the Claimant became agitated put her hand up to Miss King. The precise nature of this gesture has exercised the Claimant to an unnecessary degree. We have had no difficulty understanding it and none of the witnesses called upon to address it have had any difficulty. She did not push Ms King in the face and it has not been suggested that she did; she did not touch Ms King's face. She extended her hand palm outwards towards Ms King's face in order to indicate that she had no interest in what Ms King was saying. Whilst she did this the Claimant was saying '*Enough, finished it is ridiculous how work is duplicated'*. Ms King told her that if she had trouble with TIB she should go and see Mr Hawkins. This episode was witnessed by Ms Arthurs. She is a manager from a different department who has little contact with the enforcement team. By chance she was walking through their office en-route from the kitchen to her own office. She corroborates Ms King's account that it was the Claimant who was shouting and arguing in the terms reported by Ms King. She heard no inappropriate comment from Laura or anyone else and recalls Laura King speaking in an

even tone. A little thereafter she encountered Laura in tears and being comforted by Sharon Wells. She explained that the episode with the Claimant had upset her. Ms Arthurs offered to go and speak to Mr Hawkins but they informed her that he had been told and that he was to meet a representative from Brook Street later that day. Nonetheless she felt it her duty to give an account to him and she did so.

29. The meeting took place that morning at around 11.00am. Ms Mandy Bradshaw from Brook Street and the Claimant attended. In order to ensure privacy Mr Hawkins did not hold the meeting in his office but convened it in another room away from the general office. He had not witnessed the incident himself but explained it in terms described by Laura King, Sharon Wells and Ms Arthur. We accept his account that he did not suggest the ending of the assignment he wanted to hear the Claimant's side of the story so that he could view the matter in the round. In the course of the meeting the Claimant was agitated and argumentative Ms Bradshaw corroborates Mr Hawkins evidence that she considered the work in question to be unnecessary and that she found the environment of an open plan office too noisy. She admitted that she put her hand up to Laura to 'stop her interrupting her'. It is difficult to be certain who first mooted the suggestion of terminating the assignment. Mr Hawkins recalls that it was Ms Bradshaw and Mr Bradshaw recalls it being Mr Hawkins. In any event it is abundantly clear that there was mutual recognition that the assignment could not continue. Mr Hawkins' staff were distressed and had found the Claimant difficult and uncooperative. The Claimant for her part had voiced her dislike of working in what she described as a noisy environment and was clearly of the view that the work she had been given to do was unnecessary and not to her liking. We are satisfied that no complaint of discrimination was made at this meeting.

30. Ms Bradshaw gave the Claimant a lift back into the town centre. On the journey the Claimant, for the first time said she had been the victim of racial abuse whilst working at the MOJ. She asked the Claimant why she had not raised it with the First Respondent before and the Claimant replied that she did not feel she could tell the staff at the branch. The point has not been challenged and we accept Ms Bradshaw's evidence. Ms Bradshaw asked her to provide specific details which she would pass to the 'HR Team'. She explained that she was going on leave at 1.00pm that day and that she would contact the Claimant upon her return. The Claimant ignored that and visited the First Respondent's office several times that afternoon and provided the note at page 410 of the bundle. The detail which the Claimant provided in response to Ms Bradshaw's request runs to just five and a half lines of manuscript. It is as Ms Bradshaw notes largely illegible and it is not in any way a detailed account of racial abuse. Ms Bradshaw forwarded it to the HR Department.

31. On the 29 August the Claimant visited the First Respondent's premises and was found by Ms Bradshaw in the open plan office loudly making comments such as 'Brook Street put people in Jobs with Racists'. There were visitors to the business present in that area. Ms Bradshaw took her

to a private office. Ms Bradshaw explained to her that her note (page 410) was of little or no use and that if she wanted the matter to be taken further to provide a detailed and legible written account of her complaint; she suggested that the Claimant might type it.

32. On the 5 September 2014 the Claimant did produce a further document. Her complaint/grievance was investigated by Ms Sulemanji (HR Business partner). She interviewed the Claimant on the 17 September 2014 and the notes of the interview are at pages 218–233 of the bundle. (By this time the Claimant had been sent a P45 by the First Respondent; we return to that point in due course). The Claimant was asked by Ms Sulemanji if she was making a covert recording. She denied it but took a recorder from her bag and slammed it down angrily. The notes do not show the Claimant giving details of any of the matters she has pursued before us. Ms Sulemanji interviewed employees at the First Respondent's Northampton branch and four Brook Street workers who were on temporary assignment with the Second Respondent.

33. The Claimant had not been dismissed at the date of the grievance but had been dismissed on the 28 November, that being an automatic process when an assignment has not been offered or accepted for a period of three months. She explained to the Claimant that her complaint about the Second Respondent's staff was being investigated by them and that when she had the results she would pass them on. The Claimant does not accept, but we do that the First Respondent had no right or ability to investigate their client's staff. We find that they did all that could reasonably and properly be done by passing the matter to them. She confirmed that the investigation she had conducted (which as we have noted included interviewing other Brook Street staff assigned to the Second Respondent and named by the Claimant as persons she wanted interviewed had not seen or heard racist comments being made to the Claimant or any fellow workers.

34. Ms Sulemanji did discover an e-mail sent on the 27 June 2014 in which the Claimant had written 'please get me out of here there are very nasty women who call racial names'. It had been 'lost in the system' as it had been addressed by the Claimant to a Manager who was in the process of transferring to another branch. The Clamant whom we note had told Ms Bradshaw she felt unable to make a complaint to the First Respondent, has accepted that she did not follow this up. On two subsequent visits the Claimant expressed a dislike of her assignment and her desire for a different one. She did not find her to have made any complaint related to race on that occasion. There were other matters addressed which do not relate to the matters before us.

35. The Second Respondent did conduct an investigation into the matter. It was conducted by Mr Young. The Claimant was informed that Mr Young would be conducting the investigation. He had a copy of the written complaint made by the Claimant (pages 265–266). The specific allegations of racist comments therein differ widely in terms of content and

number to those claimed in these proceedings. Firstly they are not attributed to any person. The only remarks alleged were that 'Permanent Staff' would make comments such as 'You foreigners should go back to your own country' and 'All you criminals should never be allowed to stay in this country'. The remainder of her complaint is devoted to the ending of her assignment, her allegation that agency staff are treated differently to permanent staff and a complaint that she did not receive (unspecified) training when she asked for it. Mr Young found no evidence to support the claimant's contention that she had raised her concerns with Mr Hawkins he found no evidence to support the Claimant's contentions of racial abuse. His report is at pages 251–262 of the bundle. He recommended that there was no case to answer. Ms Sheppard who was the deciding officer concurred with that view (Pages 372–373).

36. We return to the question of the P45 issued at the end of the assignment. As Ms Sulemanji explained to the Claimant that the P45 had been issued in error pursuant to an accounting procedure. The facts of this matter are relatively easy to understand. The Claimant, following the end of her assignment had demanded her accrued statutory holiday pay from the First Respondent. It is of course the case that the right is to paid holiday and payment is only due in respect of untaken holiday if it subsists at the end of the employment. Whilst we are not privy to the intricacies of the First Respondent's accounting system it appears that when Ms Bradshaw sought to meet the Claimant's demand by inputting (or processing) the payment in respect of accrued holiday pay the system generated a P45. The Claimant's contract (and the First Respondent's intention) is abundantly clear the end of an assignment does not and did not terminate the employment. It is likely therefore that the First Respondent's system could only reconcile payment of accrued holiday pay with termination and thus the P45 was created. There was however pay from the assignment due to the Claimant and the First Respondent immediately created a new payroll record. We are satisfied that the Claimant was aware prior to issuing her complaint that she had not been dismissed at this time. Indeed any doubt about that is dispelled by the fact of her complaint that the First Respondent did not find her a new assignment thereafter (we turn to this point in due course).

37. Whilst the Claimant had not been dismissed in September 2014 she was dismissed on the 21 November 2014. The reason for that dismissal was that the First Respondent's have in place an automatic process which operates when an assignment has not been offered or accepted for a period of three months. It is convenient since it rests on common facts to deal at this point with the Claimant's complaint that the First Respondent did not find her a new assignment. This rather overstates their obligation. Clause 5.1 contains the First Respondent's principal obligation and that is to use their reasonable endeavours to allocate the Claimant to a suitable assignment. They guarantee (subject to Clause 7) an offer of 336 hours work on an assignment over a 12 month period. (In fact given that the Claimant was assigned on a full time basis to the Second Respondent and had worked 37 hours a week for just short of 14 weeks her hours had

already significantly exceeded 336 in respect of the 12 month period that she was within). They of course have no power whatsoever to compel a client to accept one of their staff. Their modus operandi is to secure interest from Clients in contracting for temporary staff. They then publish those opportunities in a list displayed on a board in their office and online for their staff to peruse. The initiative is for any interested individual to show interest and ask to be put forward and the decision as to whom to interview and subsequently hire rests solely with the Client. The Claimant has neglected to recognise this process in her evidence and rests her point solely on the fact that the respondents did not assign her to another contract. The First Respondent's evidence is essentially not challenged and is not rebutted by any evidence from the Claimant. We accept that in terms of clerical (as opposed to Industrial) work HMCTS were a large user of the First Respondent's Services. Given that the Claimant was pursuing complaints against them and had not been considered to have given satisfaction by them that particular source of work was (at least for the time being) closed to the Claimant. We accept that there was very little other clerical work available at the time. The only other vacancy referred to by Ms Bradshaw required a car owner and frequent travel between Wellingborough and Northampton, as the Claimant did not have a car that position was not open to her. The openly other position that the Claimant enquired about was not one which the First Respondent was engaged to fill. Save for these we have no evidence of the Claimant seeking to be put forward for a post and no evidence of any failure on the part of the First Respondent to put her forward for a post. We are satisfied that no opportunity for a further assignment existed at the time.

38. The Claimant in fact raised no complaint or grievance with the First Respondent in respect of her actual dismissal in November 2014 however for the sake of completeness Ms Sulemanji did deal with it in her outcome letter. It is the practice of the First Respondent that if no assignment is offered or accepted in a period of three months they automatically terminate the employment. We are satisfied that this was the reason for the Claimants dismissal. We accept the point that employees engaged by agencies are often somewhat transient sometimes looking for a permanent position, sometimes exploring opportunities with other agencies and sometimes not necessarily wanting assignments all of the time. However we are not concerned in this case with a complaint of 'ordinary' (S:97) unfair dismissal since the Claimant has insufficient service to pursue such a claim.

Conclusions

39. This has been an unusual case. We are required to reach our decisions on the basis of the evidence put before us by the parties. Our task is to decide and determine the facts of the matter, and having done so to apply the relevant law to those facts. The complaints that we have the power to consider are only those set out in the claim form (Note Ali v Office of National Statistics [2005] IRLR 201, CA. It is necessary for claimants to set out the specific acts complained of. Employment Tribunals only have jurisdiction to consider those specified complaints). We have found the Claimant's

evidence to be markedly unreliable; far beyond the situation where the passage of time has affected memory on small points of detail. The Claimant has adamantly given conflicting accounts throughout her evidence. Her claims fail at the first step of our task; we have not found, on a balance of probabilities, that the incidents she relies upon to have occurred.

40. In respect of the outstanding complaint against the Second Respondent (Allegation 17) that Mr Hawkins did not act responsibly in respect of the alleged altercation outside of his office. We have accepted his evidence that he was unaware of it until it was reported to him by Sharon Wells and latterly Ms Arthurs. We do not find the allegation proved; he did address the incident fairly he arranged a meeting with Ms Bradshaw to address the complaint that it was the Claimant who was behaving unacceptably. He trusted his own staff's account; they were long serving and trusted employees. In addition to that he had clear evidence from a relatively independent witness (Ms Arthurs) who had witnessed the incident by chance and who sought him, out to give her account unprompted by Sharon Wells or Laura King. The Claimant was invited to attend the meeting and we are satisfied that Mr Hawkins afforded the Claimant the opportunity to address the matter. It was his reasonable belief and we find on the balance of probabilities that it was not an altercation in the sense of two or more parties arguing. It was the Claimant who was behaving unacceptably. We do not find the facts of this complaint proved and we dismiss it. Thus the entirety of the claim against the Second Respondent is dismissed.

41. We turn then to the complaints against the First Respondent. And begin with the Twelfth Allegation since it is this alleged disclosure to the Second Respondent that she relies upon in respect of certain of her claims against the First Respondent. In the first instance the evidence does not support the Claimant's contention that she made the disclosure. In the first instance the phrase averred by the Claimant 'I wish they would learn to speak English' does not rest comfortably with her insistence that it is racial abuse. However it is not necessary in this instance (in common with the remainder of the case) to address the complexities of legal definition for the simple reason that the factual allegations that follow have not been proved by the evidence before us. Albeit that the First Respondent contends that there was no protected disclosure that need not occupy us because the alleged detriment (Allegation Thirteen) that the First Respondent's Manager ended the assignment because of this disclosure is not established on the evidence. As we have found the assignment came to an end because there was mutual recognition that it, the assignment had failed. The Second Respondent was dissatisfied with the Claimant's behaviour, and the Claimant was expressing dissatisfaction with the assignment (and or the Second Respondent's staff). It did not come to an end because of this disclosure. With regard to the second aspect we refer to our earlier findings pertaining to the question of further assignments. The Claimant was not deprived of further assignments because of her meeting with Mr Hawkins, there were no such opportunities at the time in question.

42. The position is similar in respect of Allegation Fourteen. There was no failure to deal with the Claimant's complaints. (She has 'fluctuated between suggesting that this point refers to Ms Sulemanji's investigation of her complaints and Mr Young's investigation on behalf of the Second Respondent). Ms Sulemanji carried out a full and careful investigation into them and dealt with them appropriately. For the sake of completeness we note again that the First Respondent has no right or ability to investigate the Second Respondent's staff. The Claimant has persisted in her view to the contrary but has not been able to substantiate it.

43. Again a similar position; the Claimant was not dismissed at all in September 2014 and she has been aware of that since that time. She was dismissed in November but not for any reason related to a disclosure that she may have made. She was dismissed pursuant to a procedure which applies to all of the First Respondent's staff which terminates the employment where there has been no offer or acceptance of an assignment for the requisite period.

44. Allegation Sixteen rehearses the same averments but expresses them as acts of Direct Race Discrimination. Our findings of fact operate in the same way. The matters the Claimant relies upon as less favourable treatment have all been shown to have a wholly benign motive unrelated to any consideration of the Claimants race, nationality or ethnic origins. The claims against the Second Respondent fail on the basis that the factual averments set out by the Claimant in her claim have not been established.

45. We dismiss these claims in their entirety. For the purposes of Rule 76(a), which imposes upon us a mandatory duty to consider costs in cases which satisfy the relevant criteria, we are satisfied that; subsection (b) is made out and that these complaints had no reasonable prospect of success. We recognise (but as we have not heard from the parties on the point do not determine) that there may be grounds for a finding under subsection a). There is presently no application for costs before us and thus we make no order at this juncture.

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Employment Judge D Moore

Date: …15/12/2017……..

Sent to the parties on: .....

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For the Tribunal Office