EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms N Shire	**- V -**	St Mungo's

Heard at: London Central

On: 19-22 March 2019 (25 March 2019 in chambers)

Before: Employment Judge Baty
Mrs CI Ihnatowicz
Mr S Ferns

Representation:

For the Claimant: In person
For the Respondent: Mr B Toner (counsel)

RESERVED JUDGMENT

1. The claimant's complaint of direct race and religious discrimination and harassment related to race/religion at allegation 25 of the agreed list of issues fails.

2. The tribunal does not have jurisdiction to hear the claimant's complaints of direct race and religious discrimination and harassment related to race/religion at allegations 1-24 of the agreed list of issues, as those complaints were presented out of time and it was not just and equitable to extend time. However, had the tribunal had jurisdiction to hear those complaints, they too would have failed.

REASONS

The Complaints

1. By a claim form presented to the employment tribunal on 17 February 2016, the claimant brought complaints of race and religious discrimination. These were confirmed at this hearing as being complaints of direct race and

religious discrimination and of harassment related to race and religion. The respondent defended the complaints.

2. The claim had originally also been brought against a second respondent, Opps Training and Developments ("Opps Training"). However, the claim was struck out as against Opps Training, due to it having been presented out of time, at a preliminary hearing on 19 July 2016.

3. The claim had originally been due to be heard later in 2016 but was struck out as a result of non-payment by the claimant of a hearing fee under the previous fees regime which applied in the employment tribunals. However, it was reinstated following the Supreme Court's decision in 2017 which brought an end to that fees regime. Thereafter, there were two further case management preliminary hearings (before EJ Segal on 14 August 2018 and before EJ Pearl on 8 January 2019), which resulted in the claim being relisted for the present hearing dates. These are the reasons why there has been such a lengthy delay between the presentation of the claim and this hearing.

4. The respondent's name has changed since the claim was brought: at the time it was "St Mungo's Broadway", whereas now it is simply "St Mungo's".

The Issues

5. Preparation for the hearing has not been smooth. The claimant is a litigant in person. The claim form itself is, and this is no criticism of her, not always clear, in terms of what are said to be allegations of discrimination and what is background. Further and better particulars were ordered and provided, albeit again with the same sort of lack of clarity. Efforts were made by the respondent to identify the individual allegations of discrimination set out in the claim and the respondent produced a draft list of issues on this basis for the two preliminary hearings. The list identified the issues which the respondent considered were contained in the claim form (issues 1-18 on that list) and further issues (issues 22-29) which the respondent maintained required an amendment. The decision on whether an amendment would be granted was left to the start of this hearing.

6. At the start of this hearing, Mr Toner stated that the respondent had considered its position and, as it had come prepared to deal with all of the allegations in the list, it was prepared to allow the amendment to include what were issues 22-29. He had, helpfully, consolidated that list of issues and put the allegations in chronological order (at issues 1-25), removing only one of those allegations, which was an allegation against an employee of Opps Training. As the claim against Opps Training had been struck out, the tribunal did not have jurisdiction to hear this complaint. In addition, he had also added into this list of issues dates of the various allegations where, in his view, it had been possible to ascertain these from the documents. Mr Toner said that the amended list had been provided to the claimant previously. The claimant said that she had only received it this morning. The judge therefore asked the claimant to look through the list and confirm whether she was happy with it when the hearing reconvened the following morning after the tribunal had done its reading.

7. The following morning, the claimant confirmed that the list of issues was agreed. The agreed list of issues for the tribunal to determine was therefore as follows:

DIRECT RACE/RELIGIOUS DISCRIMINATION

Ms Shire claims direct discrimination because of race (Somali national origin) and religion (Muslim). As a matter of fact, did the following treatment occur as alleged by Ms Shire?

1. In October 2014 was Ms Shire denied the opportunity to work in the St John's project where she was supposed to be based?

2. In October 2014 were the following comments made about Somalians/Somalia, and were they directed at Ms Shire:-

    a. "They have a terror group"

    b. "Mogadishu is the worst city in the world"

    c. "Are the Somali's black?"

3. In October 2014 was Ms Shire denied the opportunity to shadow a colleague because the client did not like immigrants?

4. In October 2014 did a staff member say that there will always be a discussion on hijabs, or that hijabs won't get in society?

5. In October 2014 did Kate Thomson ask two other apprentices whether they would like to attend a conference, and not Ms Shire?

6. In the week of 17 December 2014 did Kate Thomson tell Ms Shire that an invitation was where people would "go and drink and stuff"?

7. In the week of 17 December 2014 did Kate Thomson stop talking and stare at Ms Shire after she accidentally ate some chicken that was not Halal?

8. Did Deborah Spencer criticise Ms Shire's English? (Jan 2015).

9. Was Ms Shire called for an early review to decide whether her contract should continue? (19 Jan 2015).

10. Did Peter Coley tell Ms Shire that if she didn't get along with her line manager "she would go"? (Feb 2015).

11. Did Wilma Henderson falsely accuse Ms Shire of sending her emails in capital letters? (Feb 2015).

12. Did Kate Thomson send an email requesting that Ms Shire be removed from a list of four people forwarded for a new project? (27 March 2015).

13. Prior to April 2015 did Laura Mbadike refuse to assign work to Ms Shire?

14. Prior to April 2015 did Laura Mbadike raise her voice at Ms Shire?

15. Prior to April 2015 did Laura Mbadike ignore Ms Shire?

16. Prior to April 2015 did Laura Mbadike and two other staff members speak in their own language before directing an offence at Ms Shire?

17. Was Ms Shire given demeaning and meaningless tasks and not given clients? (prior to April 2015)

18. In July 2015 did Kate Thomson say to a colleague about Ms Shire "she is Somalian, she does not have an idea how the system works?"

19. Did Kate Thompson write to Sam Norwood to conspire against Ms Shire? (19 August 2015).

20. Was Ms Shire taken off the locum list? (22 September 2015).

21. Was Ms Shire denied a probationary review?

22. Did Kate Thomson constantly contact Ms Shire for no apparent reason, including when she was on annual leave?

23. Was Ms Shire subject to more supervisions than other apprentices?

24. Was Ms Shire referred to Human Resources three times within a short period of time?

25. Did Kirsty-Anne McIntyre participate in Ms Shire's mental distress towards the end of her contract?

26. Who is Ms Shire's comparator(s)?

27. If the conduct occurred as alleged, has Ms Shire proved primary facts from which the Tribunal could properly and fairly conclude the difference in treatment was because of her race or religion?

28. If so, what is the Respondents' explanation? Has it proved no discrimination whatsoever?

HARASSMENT

29. If any of the conduct outlined at paragraphs 1-25 occurred as alleged, was it unwanted conduct related to Ms Shire's race or religion?

30. If so, did it have the purpose or effect of:

    a. Violating Ms Shire's dignity, and or;

    b. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms Shire?

TIME LIMITS

31. Were any of Ms Shire's discrimination claims brought out of time?

    a. Ms Shire's employment ended on 5 October 2015.

    b. Acas Conciliation took place from 22 December 2015 until 20 January 2016.

    c. The claim was made on 17 February 2016.

    d. Claims occurring before 23 September 2015 are out of time.

32. If so, is it just and equitable to extend time? If so, for what further period?

The Evidence

Witnesses

8. Witness evidence was heard from the following:

For the claimant:

The claimant herself.

For the respondent:

Ms Kate Thomson, who was employed by the respondent from 2001 to 2017 and who was employed as "Apprentice Coordinator" from November 2012 until 2017;

Ms Deborah Spencer, who is and has for over eight years been employed by the respondent, at all times relevant to this claim as Deputy Manager of the Substance Use Team (part of the Islington Vulnerable Adults Team

("IVAT")) and who, from 1 May 2015 until the termination of the claimant's fixed term employment contract on 5 October 2015, was the claimant's line manager (Ms Spencer had two witness statements); and

Mr Peter Coley, who was employed by the respondent from 2007 until his retirement in June 2016, who was at the time of his retirement "Head of Learning and Development", and to whom Ms Thomson reported.

9. A further witness statement was produced for Ms Wilma Henderson, who was employed by the respondent from 1996 to 2016 and was at all times relevant to this claim the Services Manager for IVAT. Ms Henderson had relocated to Ireland and it would have been necessary for her to give evidence via video link. At the start of the hearing, Mr Toner stated that, pending instructions, he may choose not to call her, not only because of the practical difficulties involved but also because he was of the view that her evidence was not needed. She was the subject of only one allegation (issue 11). Given that whether that allegation was made out appeared to turn on the documents, the judge at the start of the hearing asked the claimant if, when she reviewed the list of issues, she would consider whether or not she still wished to pursue this allegation (although he stressed more than once that it was entirely up to her whether she chose to do so). At the start of the second day of the hearing, the claimant confirmed that she did still wish to pursue this allegation. Later on that day, having taken instructions, Mr Toner confirmed nonetheless that the respondent was not going to call Ms Henderson (for the reasons above). The tribunal had already read the witness statement. The judge explained that, whilst it was prepared to take that statement into consideration, the tribunal may give less weight to it on the basis that Ms Henderson was not available to be cross-examined on her evidence.

10. In terms of witness order, the tribunal did its best to be flexible, particularly as several of the respondent's witnesses had left the respondent and were only available on certain days.

Documents

11. A bundle of documents numbered pages 1-658 was produced to the tribunal. This had been prepared for the original hearing in 2016, although it was not clear whether the claimant had received a copy of it at the time. The claimant stated that there were a large number of documents (she had a sheaf of 120 pages of documents with her) which she said needed to be added to the bundle. Mr Toner said that the claimant had sent further documents to the respondent in the previous months but that the respondent had not included them because they were already contained in the bundle. The claimant sought to have the documents in her possession added. Mr Toner opposed this. We heard submissions from both parties in relation to this and adjourned briefly to consider our decision.

12. When we returned, we confirmed that our decision was not to allow the additional documentation to be added. We did so for the following reasons.

13. Disputes about preparation for the case had arisen at the previous preliminary hearings, in particular the hearing before EJ Pearl on 8 January 2019. He had specifically stated in his note from that hearing as follows:

"I have therefore provided for a second round of exchange of witness statements. If either party in the second round wishes to rely upon any additional documents, they should be appended to the statements. It is therefore my hope that the parties will be able to prepare for trial without further dispute arising between them."

14. The claimant did not provide a further witness statement beyond the original statement which she had provided and did not append any documents. She had, therefore, been given the opportunity to add these documents but had not done so.

15. To provide 120 pages of documentation at this stage was very late. The claimant would need to provide copies for the respondent and all of the tribunal. Furthermore, and crucially, the respondent would then need to be given the opportunity to go through the claimant's documents to check whether they were indeed documents already contained or whether they were new documents which the respondent was unaware of. This would lead to delay. As it was, there was a very tight timetable to complete the claim within the time allocation (see below). There was therefore a risk that the case may need to be relisted. This would be disproportionate in any case; it was exacerbated further by the fact that it was now over three years since this case had been presented.

16. For all these reasons, we refused the claimant's application. Notwithstanding our decision, the claimant continued to seek to protest after the tribunal had given its decision. In particular, she went on to say that she could provide copies relatively quickly by the next day and that the documents were important to her case. However, that would still mean that the respondent would need time to consider the documents and, by then, the tribunal would have done its reading and may need to spend further time on the new documents. Her further submissions did not therefore impact upon the reasons for declining the application given above and the tribunal confirmed that its decision remained the same. The claimant continued to try to protest against the decision and, in the end, the judge had to tell the claimant that the decision had been made, that that was the end of the matter, and that we now needed to move on.

17. As it turned out, the claimant sought to suggest during her oral evidence that there were some documents (in particular certain emails) which were not in the bundle and, when they were identified, Mr Toner pointed out that they were in fact in the bundle already. It may be the case that the claimant simply did not check thoroughly enough which of her documents were in the bundle or not; in the light of the fact that, at the start of her oral evidence, the claimant stated that she had chosen not to read most of the respondent's witness statements (notwithstanding that they had been long since provided to her) and intended rather to read them just before she cross-examined the respective witnesses of the respondent, it would not be surprising if that were the case.

18. The tribunal read in advance the witness statements and any documents in the bundle to which they referred, as well as the claimant's grievance, the

grievance report and the grievance outcome which Mr Toner had also requested us to read. This was done on the first day of the hearing.

Timetabling

19. A timetable for cross-examination and submissions was agreed between the parties and the tribunal at the beginning of the hearing. It was acknowledged from the start, given the large number of allegations and the amount of evidence, that even though the hearing listing had been extended by a day at the previous preliminary hearing, it would need to be adequately timetabled in order to get through the evidence and submissions within the allocated time. It was quickly apparent that there would not be time, as originally planned, to consider issues of remedy (if appropriate) within the existing listing. However, the timetable agreed with the parties was agreed in order to ensure that all of the evidence and submissions on liability were completed within that allocation and that there was at least some time for the tribunal to deliberate on its decision on liability.

20. Mr Toner had originally indicated that he needed up to 1½ days for his cross-examination of the claimant. In the light of the time constraints, the tribunal could only afford him 1¼ days in the agreed timetable. When the claimant gave her evidence, she frequently did not answer the question that was put to her or went off on a lengthy tangent in her answer (we refer to this again in our assessment of the respective reliability of witness evidence below). However, this meant that Mr Toner, through no fault of his own, got behind on his cross-examination of the claimant. However, in the light of the time constraints, he agreed to tailor the remainder of his cross-examination so as to stick to the original timetable and duly did so.

21. At the beginning of the third day of the hearing, with approximately one and a half hours of her cross-examination remaining, the claimant asked if she could adjourn to go and speak to the legal advisers from ELIPS who were in the building. The tribunal explained that she could do so after her evidence was finished, for two reasons: first, she was on oath and could not therefore speak to anyone about the case until her evidence was completed and, furthermore, there would be no prejudice to her in not speaking to the legal advisers until later in the day as all that was happening until then was that she would be answering Mr Toner's questions; and, secondly, there was a very tight timetable and any delay at this point, when we were just about to continue with the case, would impact upon that timetable. The judge explained that she could go and speak to them in the mid-morning break if she wished to.

22. The claimant also stated that she was not aware that Ms Thomson was due to be giving evidence that day. The tribunal was extremely surprised to hear this as there had been considerable discussion at various points on the previous day about the fact that Ms Thomson could only give evidence on the third day and so her evidence would have to be finished that day. The claimant said that she had not prepared to cross-examine Ms Thomson. When the parties returned from the mid-morning break, the claimant was accompanied (only at this point) by someone who introduced himself as "Daley" and described himself as a friend of the claimant (rather than a legal adviser from ELIPS). Daley stated that the

claimant was not prepared to cross-examine Ms Thomson and requested that an early lunch could be taken so that she could get advice and prepare. Mr Toner objected to this, on the basis that it was the claimant's own choice as to whether to have properly prepared for cross-examination of Ms Thomson or not and it had been clear that Ms Thomson would be attending that day. The tribunal adjourned briefly to consider this. We decided that we would take an early lunch to enable the claimant to prepare; however, this was on the clear condition that the timetable did not change and that the claimant should complete her cross-examination of Ms Thomson by 3:30 PM that afternoon (so as to enable time for any tribunal questions prior to 4 PM that afternoon, which was the time by which Ms Thomson had to go). The claimant agreed to this and it was duly achieved.

23. During her cross examination of the respondent's witnesses, the claimant frequently made lengthy statements to the tribunal rather than asking specific questions of the witnesses. The tribunal had to interject on numerous occasions both to encourage her to ask questions rather than make statements and to try and assist in formulating questions which were comprehensible to the witness in question. The judge also tried to encourage the claimant to focus on the list of issues which was the basis for her case.

24. In the end, however, the agreed timetable was adhered to.

25. Both parties gave their submissions orally.

26. In the light of the time constraints, the tribunal's decision was reserved.

The Law

Direct race discrimination and harassment

27. Under section 13(1) of the Equality Act 2010 (the Act), a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others (direct discrimination).

28. Under section 26(1) of the Act, a person (A) harasses another person (B) if A engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

29. In deciding whether conduct has the effect referred to above (but not the purpose referred to above), each of the following must be taken into account: the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.

30. Race and religion are each protected characteristics in relation to both discrimination and harassment as referred to above.

31. For the purposes of the comparison required in relation to direct discrimination between B and an actual or hypothetical comparator, there must be no material difference between the circumstances relating to B and the comparator. By contrast, there is no requirement for such a comparison in establishing harassment.

32. Under section 39(2) of the Act, an employer must not discriminate against an employee of his on various grounds, including dismissing her or subjecting her to any other detriment. Under section 40(1) of the Act, an employer must not harass an employee of his. Where conduct constitutes harassment, it cannot also constitute a detriment as defined in the Act and therefore cannot be direct discrimination as well as harassment.

33. The burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did contravene one of these provisions. To do so the employee must show more than merely that she was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied. There must be something more. If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision and, in doing so, the employer must prove that the treatment was "in no sense whatsoever" because of the relevant characteristic. If the employer is unable to do so, we must hold that the provision was contravened and discrimination did occur.

34. However, where the tribunal is able to make clear findings of fact one way or another, it is not necessary to apply the burden of proof set out above.

Time extensions and continuing acts

35. The Act provides that a complaint under the Act may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates (subject to any adjustments in relation to periods spent in ACAS Early Conciliation) or such other period as the employment tribunal thinks just and equitable.

36. It further provides that conduct extending over a period is to be treated as done at the end of the period and that failure to do something is to be treated as occurring when the person in question decided on it.

37. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA, the Court of Appeal stated that, in determining whether there was "an act extending over a period", as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed, the focus should be on the substance of the complaints that the employer was responsible for an ongoing situation or a continuing state of affairs. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as the indicia of "an act extending over a

period". The burden is on the claimant to prove, either by direct evidence or by inference from primary facts, that alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period".

38. As to whether it is just and equitable to extend time, it is for the claimant to persuade the tribunal that it is just and equitable to do so and the exercise of the discretion is thus the exception rather than the rule. There is no presumption that time will be extended, see Robertson v Bexley Community Centre [2003] IRLR 434 CA. This is, however, the exercise of a wide, general discretion.

39. At the start of the hearing, and for the benefit of the claimant who was a litigant in person, the judge went through the law in relation to the claim in non-legal language to explain what was required to establish complaints of this nature.

40. In his submissions, Mr Toner referred the tribunal to the cases of Bakkali v Greater Manchester Buses (South) Ltd t/a Stage Coach Manchester UK EAT/0176/17/RN and Evans v Xactly Corporation Ltd UK EAT PA/0128/18/LA.

Assessment of Evidence

41. Before going on to make findings of fact, we make the following observations about the respective reliability of the evidence of the claimant and the respondent's witnesses.

The claimant

42. During Mr Toner's cross-examination of the claimant, the claimant frequently failed to answer the question that was put to her and often went off on a tangent in her evidence, setting out things she wanted to tell the tribunal about rather than answering the question put. The judge had to intervene on numerous occasions to remind her that she was going off on a tangent and to ask her to answer the question that was put.

43. Furthermore, she contradicted herself, both within her oral evidence and in relation to the documentary evidence within the bundle. One such example is that, in an email of 15 September 2015 at page 460 of the bundle, she stated that she was not told that she did not pass her probationary review but knew it was extended for two months; but only three days later in an email on 18 September 2015 at page 462 of the bundle, she stated that nobody had told her that her probationary period had been extended but that she had been told that she did not pass her probationary period; the two emails are completely contradictory.

44. Furthermore, her oral evidence was littered with new material which had not previously been brought up, either during her employment, during the extensive grievance which she submitted shortly after her employment ended, in her claim form, in her further and better particulars or in her witness statement. First, the detail of the circumstances of the alleged discriminatory comments at issues 2-4 only came out during cross-examination; and the individuals whom

she said had made those comments were individuals who were not at the tribunal to be questioned on this evidence. Secondly, in response to questioning about the incident of 24 September 2015 which resulted in an issue arising about her conduct in absenting herself from a meeting, the claimant for the first time in oral evidence suggested that she had told Ms Spencer and Mr Coley in advance of her absenting herself that she would be doing so in order to attend prayers in relation to Eid. The significance of this is that, if true, it would provide a reason why she was absent (and one related to her religion, albeit this absence did not form part of the allegations in the list of issues). The emergence of these important details at this late stage, when there were multiple opportunities for them to have been raised earlier, further adds to the concerns we have about the reliability of the claimant's evidence.

45. We also note that the claimant, on numerous times during her evidence, stated that English was not her first language and sought to use this as a general reason for any inadequacies in or problems of comprehension. However, having heard her over the four days she attended tribunal, we found that her English was of a very good standard and that she did not have problems either expressing herself or comprehending what was being asked.

The respondent's witnesses

46. By contrast, the respondent's witnesses were all clear and open in their responses. They did not deviate from their position when questioned. They answered the questions put and did not go off on tangents. They were consistent, both in relation to their own written statements, the numerous documents in the bundle, and to the evidence of the other witnesses of the respondent. They were also prepared to concede where they thought they could have done things better (for example when Ms Spencer noted that she had failed to check a previous set of meeting notes which had revealed that the claimant was on annual leave and for which she had apologised to the claimant at the time). Without exception, we found them to be very credible witnesses.

47. Therefore, where there is a conflict between the evidence of the claimant and of the respondent's witnesses and there is no other corroboratory evidence available, we prefer the evidence of the respondent's witnesses. In addition, where the only evidence in relation to an allegation is evidence provided by the claimant for the first time in cross-examination at this tribunal and where the respondent has therefore not been given an opportunity to defend itself against that allegation (and particularly where the relevant witnesses have not been called as a result of the respondent not knowing prior to the claimant's oral evidence that they might be needed), we take that into account in deciding whether or not to accept the evidence given by the claimant.

General Findings of Fact

48. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues. What is set out in this section is general background facts; for ease of reference, we then go on to find further

facts in relation to each of the 25 specific allegations as we go through those allegations in the next section.

49. The respondent is a homelessness charity and housing association providing accommodation and support to more than 2,500 vulnerable people a night who are either homeless or at risk. It has more than 250 projects, which include hostels and supportive housing projects, advice services and specialist physical health, mental health, skills and work services. It provides services in London but also provide services elsewhere in the UK.

50. The respondent is a very diverse organisation, with many religions, races, nationalities and ethnicities represented amongst both its employees and its clients.

51. The respondent operates an apprenticeship scheme. Essentially, it is a fixed term contract during which the apprentices are given the opportunity to undertake, with support, on-the-job learning (including shadowing the respondent's staff) as well as completing a comprehensive training programme and gaining a formal health and social care qualification. It is open to applicants with lived experience of homelessness. At the end of the contract, individuals are not guaranteed a job within the respondent, but are able to apply for any available roles, or can choose to move to a different organisation.

52. The apprenticeship scheme was begun by Mr Coley in 2010. However, at all times material to this claim, Ms Thomson, as Apprentice Coordinator, reporting to Mr Coley, was responsible for the running of the apprenticeship scheme. A large part of her role involved liaising directly with the respondent's apprentices. She did not line manage them, but she provided support alongside their line managers, on a broader basis, to assist with any concerns they had generally with the scheme.

53. The number of apprenticeship vacancies would depend upon which of the respondent's projects had allocated funding for an apprentice. In October 2014, there were 11 apprentice posts available, across a number of different projects. The respondent received around 120 applications and, of those, 30 individuals attended an assessment centre and were assessed over two days. Of those 30 applicants, the respondent recruited 11 apprentices, one of whom was the claimant.

54. The claimant was recruited on a one-year fixed term contract as an apprentice from 5 October 2014 until 5 October 2015. The claimant had previously worked for the respondent as a locum worker and a volunteer.

55. The claimant is of Somali national origin and is a Muslim.

56. As noted, within the respondent there is a service called Islington Vulnerable Adults Team ("IVAT"). It had three vacancies for an apprentice, two of whom were based at Rosebery Avenue and Wharton Street (the claimant and Ben Williamson (who is black British)). Within IVAT was the Substance Use Team, to which the claimant and Mr Williamson were allocated. Their line

manager was Ms Laura Mgbadike; Ms Mgbadike reported to Ms Spencer, the Deputy Manager of the Substance Use Team.

57. The third apprentice within IVAT was Ms Alexandra Weekes Aggrey (who is described as black African). She had a different line manager to the claimant.

58. Perhaps unsurprisingly in the context of an apprenticeship scheme designed to improve skills and result in the obtaining of a qualification, the scheme involved numerous supervisory meetings with line managers. This applied to all apprentices including the claimant.

59. We have seen copies of numerous such meetings with the claimant. The notes of the meetings are extensive and comprehensive. They set out areas of development and areas which the manager in question feels the claimant needs to work on. They also set out the sort of work the claimant was being given and discussions regarding what training needs might be appropriate. Where criticisms are made, these are in the manner of "constructive criticism" with a view to facilitating development. Having read through many of these sets of notes in the bundle, they indicate to us management of the claimant which is designed to be constructive and to help with her development.

60. In many areas, managers were complimentary about the claimant's progress. However, there were certain areas where criticism was made of the claimant. These, in summary, tended to be to do with her communication. In particular, the claimant had a tendency to use capital letters in emails, which managers considered could come across as aggressive or be perceived as shouting; she would on occasion make some spelling errors, particularly with names; and she had a tendency not to let people know when she was leaving the office such that her managers did not know where she was.

61. The claimant was very resistant to accept criticism and to accept that there were areas where she could improve. We have seen numerous examples of this throughout the bundle from the very early stages of her apprenticeship onwards.

62. Furthermore, the claimant appeared to resent the way in which she was managed by Ms Mgbadike, although other than in relation to the criticism outlined above, she was very vague as to the respects in which she considered Ms Mgbadike's management to be at fault.

63. Each apprenticeship was subject to a probationary period of six months. An interim review was due to be held in the middle of that six-month period; a formal review was then due to be held at the end of that six-month period, at which the probation might be passed, the probation period might be extended or the probation might be failed, in which case the apprenticeship might be terminated.

64. An interim review meeting in relation to the claimant took place on 19 January 2015, at which Ms Mgbadike and (as was normal for such meetings) Ms Thomson were present.

65. Due to a private matter in April 2015, Ms Mgbadike took a month's emergency leave and in fact subsequently left the organisation. The line management of the claimant and Mr Williamson was, therefore, with effect from 1 May 2015, taken over by Ms Spencer.

66. During the period when she was managed by Ms Mgbadike, the claimant made various complaints about her. These concerned matters such as an allegation that Ms Mgbadike had put the phone down on her (when, in fact, Ms Mgbadike had taken a call from the claimant on a mobile phone, she did not know from whom the call was because she did not have the claimant's number in her mobile phone already, and she was on a busy London street and consequently couldn't hear what was being said, and for which incident she subsequently apologised to the claimant). However, in this period the claimant did not suggest that anything that Ms Mgbadike (or anyone else at the respondent) did was because of her race or religion.

67. Because of the timing of Ms Mgbadike's departure, the claimant did not have her formal probationary review exactly 6 months after the start of her apprenticeship (which would have been April 2015). In order to get to know her better, Ms Spencer did not hold the review immediately but held some further supervisory meetings with the claimant first. However, the formal review was duly held on 2 June 2015. Because of the outstanding communication issues, Ms Spencer decided to extend the claimant's probationary period by two months.

68. During the period leading up to this formal probationary review, the claimant complained to Ms Spencer in one of her supervisory meetings. At one point during the meeting, she stated that she felt discriminated against because of her religion and ethnicity; however, she did not give any details of why she felt she had been discriminated because of her religion or ethnicity. Ms Spencer encouraged her to raise a grievance. The claimant was made aware of the respondent's grievance procedures. However, she never raised a grievance at any stage during her employment.

69. Around the middle of August 2015, Ms Spencer, Ms Thomson and Ms Henderson began compiling information for the claimant's next formal probationary review.

70. In August 2015, Sam Northwood of Opps Training, which dealt with the qualification aspect of the apprenticeship scheme, contacted Ms Thomson, setting out some concerns she had about the claimant (specifically: that she had coursework outstanding from March 2015; her communication with Ms Northwood, in particular that on two occasions recently she had been abrupt, verging on rude, with Ms Northwood; and that she was currently not responding to Ms Northwood's calls). On 19 August 2015, Ms Thomson emailed Ms Northwood asking if she could email her a brief statement on the recent issues

regarding the claimant which the respondent would include in the formal probationary review.

71. On 20 August 2015, Ms Spencer was approached by a locum, Mr Abdi Ali (who is also of Somali national origin) regarding issues he was having with the claimant; in a subsequent email of 24 August 2015, Mr Ali confirmed that he could no longer handle this "communication problem" that he was having with the claimant.

72. On 5 September 2015, the claimant notified Ms Spencer of an incident involving another member of staff. However, when Ms Spencer tried to discuss the matter, the claimant was reluctant to speak with her about it or to help her investigate it further.

73. On 14 September 2015, Ms Spencer received a further written complaint from the claimant about a fellow employee.

74. Further to the extension to her probationary period, a formal probationary review meeting had been due to be held with the claimant in August 2015. However, this had not taken place as the claimant was off sick. On 16 September 2015, Ms Spencer wrote to the claimant inviting her to this formal probationary review meeting.

75. It was the respondent's policy that apprentices who had not yet passed their probation should not be able to book relief shifts for work at the respondent (in other words to do locum work). This policy applied to all apprentices who had not yet passed their probation and not just to the claimant. Those employees of the respondent who were entitled to do relief shifts were put on the respondent's system for booking these shifts, known as "Venloc". In September 2015, it came to Ms Thomson's attention that the claimant might have been booking relief shifts. Having made enquiries, she found that the claimant's name was inadvertently on Venloc. On 22 September 2015, because the claimant had not yet passed her probation, Ms Thomson issued an instruction that she should be removed from Venloc.

76. In preparation for the formal probationary review meeting, the claimant was supposed to fill in and send in her probationary review forms ahead of the meeting. She had not done so by 23 September 2015, which was the day before the meeting was due to take place, and Ms Spencer sent an email asking her to send them to her. The claimant did not do this. The meeting did not therefore take place on 24 September 2015.

77. On the morning of 24 September 2015, the claimant was due to attend a strategy day. She sent Ms Spencer a text saying that she had to leave but that she was going to return. She did not ask for Ms Spencer's authorisation nor did she tell her where she was going or why she was leaving. Ms Spencer informed Ms Thomson. Ms Thomson confirmed to Ms Spencer that this amounted to unauthorised absence which was a breach of the respondent's policies.

78. On 28 September 2015, Ms Spencer met the claimant and informed her that in leaving without authorisation she may have breached the respondent's code of conduct and that she was carrying out an informal fact-finding meeting which might proceed to a disciplinary. At the meeting, amongst other things, the claimant wouldn't tell Ms Spencer where she had gone. The claimant also said that, even if Ms Spencer had told her that she couldn't go, she would have gone anyway, and that she was actually aware that she was required to get manager approval. Her response therefore indicated that she was knowingly and wilfully disobeying the policy.

79. It was only at this tribunal hearing, as indicated earlier, and towards the end of her cross-examination, that the claimant maintained that she had informed Ms Spencer and Mr Coley in advance that the reason she needed to leave the strategy meeting was because she needed to go to prayers in advance of Eid. When this was put to Ms Spencer, she stated that the claimant had not told her anything of the sort. The claimant did not put the allegation to Mr Coley. In the light of the disputed evidence, the fact that the allegation has been raised only at the last minute and the fact that, had the claimant really told Ms Spencer and Mr Coley of this significant religious-related reason for leaving the strategy day at the time, she would have mentioned it at the time, in her claim and in her witness statement, and our assessment of the reliability of the witnesses set out above, we find that the claimant did not say this to either Ms Spencer or Mr Coley.

80. The respondent's managers liaised with HR about the matter. On 28 September 2015, Ms Kirsty-Anne McIntyre of the respondent's HR Department emailed Ms Spencer and Ms Thomson. By that stage, the expiration of the claimant's fixed term contract was only one week away. Ms McIntyre stated that if there was more time before her contract ended, the respondent would proceed to a formal probation hearing. However, in the light of the fact that the claimant's contract was due to end the following week, she advised that Ms Spencer and Ms Thomson inform the claimant that her contract would end as planned but that, however, due to this pending disciplinary matter, they would not be able to pass her probationary period.

81. A consequence of the claimant not passing her probationary period was that she would not be able to do locum work for the respondent going forwards.

82. On 2 October 2015, Ms Spencer held a meeting with the claimant in relation to her probationary period. Ms Henderson was also present. Ms Spencer confirmed to the claimant at the meeting that she was not able to pass the claimant in her probationary period due to the outstanding conduct issue of 24 September 2015. The meeting was not a formal probationary review meeting but, in view of the fact that the claimant's fixed term contract was about to end, was held in order to inform her that the respondent could not pass the claimant in her probationary period. Ms Spencer confirmed the contents of the meeting to the claimant in a letter of 6 October 2015.

83. The claimant's employment with the respondent terminated on 5 October 2015 on the expiry of her one-year fixed term contract.

84. On 30 October 2015, the claimant raised a grievance. The grievance was a lengthy document of over 30 pages. It made allegations of race and religious discrimination. However, in relation to some of the things alleged, there was a lot of detail missing (for example allegations were made about comments allegedly said which went on to form the basis of some of the allegations of this claim, but no details of who was supposed to have made the comments and the context of those comments was given).

85. The grievance was investigated by Ms Helen Parker. She interviewed several individuals who might be able to give information relevant to the complaints raised. This included Ms Henderson, Ms Spencer, Ms Thomson, Ms Mgbadike, Mr Ali and others. Ms Parker also contacted the claimant by email on 26 November 2015 to request further detail regarding some allegations made within the complaints that were not expressly clear. The claimant did not reply to this request; she merely directed Ms Parker to information on the first page of her complaint and did not elaborate any further.

86. Ms Parker prepared an extremely detailed report going through all of the allegations and a correspondingly detailed outcome letter. She did not uphold any of the allegations of discrimination. The grievance outcome is dated 17 March 2016.

Further Findings of Fact/Conclusions on the Issues

87. We make the following conclusions, applying the law to the facts found in relation to the agreed issues. As indicated, for ease of reference, we also make further findings of fact specific to the particular issues as we go along.

Direct race/religious discrimination/harassment

88. We address below the 25 allegations set out in the list of issues.

Issue 1: in October 2014 was Ms Shire denied the opportunity to work in the St John's project where she was supposed to be based?

89. Within the Substance Use Team, there were four projects: Rosebery Avenue, Wharton Street, St John's Grove and Tufnell Park Road. As noted, there were vacancies for two apprentices at Rosebery Avenue and Wharton Street (the claimant and Mr Williamson were placed in these). There were no vacancies for apprentices at either St John's Grove or Tufnell Park Road and no apprentices were placed there.

90. Ms Aggrey spent some time at St John's. However, this was because the project worker whom she was shadowing was allocated to spend some time at St John's. Ms Aggrey was not recruited for, allocated to or moved to St John's.

91. This allegation is not therefore made out: the claimant was not "supposed to be based" at St John's; nor was she denied the opportunity to work

there because there was no opportunity to work there as there was no vacancy for an apprentice there. This allegation therefore fails.

92. During her evidence, the claimant's case morphed to suggest that she should have been placed at Tufnell Park, which (she alleged) would have given her opportunities to work at St John's too. However, there was no vacancy for an apprentice at Tufnell Park either. If, therefore, this was the allegation (which it was not), it would not have been made out either and the claimant's allegation would have failed if put in this way.

93. In any event, the fact that she was not based at St John's was because there was no opportunity to be based there because there was no vacancy for an apprentice; it was in no way because of or related to the claimant's race or religion. These allegations of direct discrimination and harassment would therefore fail for this reason too.

Issue 2 (a & b): in October 2014 were the following comments made about Somalians/Somalia, and were they directed at Ms Shire: (a) "they have a terror group"; (b) "Mogadishu is the worst city in the world"?

94. It was in her post-employment grievance of 30 October 2015 that the claimant first alleged that these comments had been made (roughly a year after they were alleged to have been made). However, the context of the comments, including who was alleged to have said them, was not given by the claimant in either the grievance, her claim, her further and better particulars or her witness statement; the first time that this information was given was in response to questioning in her cross-examination in front of this tribunal.

95. In her evidence, the claimant said that: an employee of the respondent, Matthew (who is black and of Nigerian origin) was having a conversation with another individual called Christos; Matthew had said that Mogadishu was a "shit hole" and had a terror group; the comment was made in front of another employee called Jackie (who is black Caribbean). The claimant was asked in cross-examination if she had told any colleagues about this and the claimant replied that she had but that she could not remember whom she had told. Even on her own account, therefore, these comments (if made) were not directed at the claimant and the allegation in the list of issues is not therefore made out. Furthermore, in relation to issue 2(b), the claimant's account is different to the allegation in that in her evidence in cross-examination she stated that the comment was that Mogadishu was a "shit hole" rather than "the worst city in the world"; therefore that aspect of the factual allegation is not made out.

96. In the absence of any particularisation, Ms Parker appears to have asked those she interviewed for the purposes of the grievance whether they could shed any light on this. We say this because her conclusion in the grievance states that the comment about Mogadishu was made by a member of staff who was Somali and had previously lived in the city of Mogadishu and who had fled the city and that this was his personal opinion. The respondent's witnesses at the tribunal confirmed that this individual was Mr Ali (who was interviewed by Ms Parker as part of the grievance). In her evidence before the

tribunal, the claimant confirmed that she herself was not from Mogadishu. The claimant obviously had the opportunity to read the contents of the grievance report before she gave her evidence at this tribunal.

97. We are conscious that the only evidence as to the context of these comments was given by the claimant herself at the tribunal. However we are equally conscious that, given that the individuals whom the claimant said either made the comments or were party to the conversation were not present at the tribunal to be cross-examined (through no fault of the respondent as their alleged identities were not revealed until the claimant's cross-examination), the respondent has had no opportunity to investigate or refute the allegations as now particularised. However, we refer back to the findings that we have made about the reliability of the claimant's evidence in general. Furthermore, we find it highly unlikely that, if these were indeed the identities of the individuals whom the claimant alleges made comments that so offended her, she would not have raised these issues contemporaneously in October 2014, let alone set them out either in her grievance, her claim, her further and better particulars or her witness statement. We note that the claimant was never shy during her employment of making complaints, including about other managers, and often about matters which were far more trivial (for example Ms Mgbadike terminating a call when she was on a busy London street). We therefore find on the balance of probabilities that these comments were not made. These allegations therefore fail on the facts.

98. Whilst that disposes of these allegations, for completeness we would add that, even if they had been made as the claimant in her cross-examination maintained they had been made, the allegations of direct discrimination and harassment would still have failed for the following reasons.

99. In terms of direct discrimination, Matthew did not make the comments "because of" either the claimant's Somali nationality or her religion. They were made in a separate conversation with others which the claimant happened to hear. As they were not made because of the claimant's race/religion, and because they did not amount to treatment of the claimant (as they were not directed to her), the direct discrimination complaints would fail.

100. As to the harassment complaints, the comments are not related to religion (as they are about the city of Mogadishu). They are clearly related to Somalia. However, they are part of a general discussion about a particular part of the world; furthermore, as the claimant did not raise them until roughly a year after they were allegedly made and even then failed to give any details until roughly 4 years after they were allegedly made, we do not accept, as she now maintains, that she was offended by the comments at the time; in short, we do not consider that these comments, if made, had the purpose or effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Issue 2 (c): in October 2014 were the following comments made about Somalians/Somalia, and were they directed at Ms Shire: (c) "are the Somalis black?"?

101. There is a considerable overlap between our analysis in the previous section and our analysis here and we do not repeat all of it but refer to our analysis in the section above in relation to this issue as well.

102. Again, whilst this comment was raised in the claimant's grievance of 30 October 2015, it was not particularised. The particularisation only came in the claimant's cross-examination before this tribunal.

103. The claimant maintained in cross-examination that the comment was made by Jackie (who is black Caribbean) and that Jackie said it in a conversation she was having with two other individuals at the respondent, Matthew (who is black Nigerian) and Mr Williamson (who is black British). It was part of an internal discussion about politics and religion. Again, on the claimant's own evidence, it was a conversation that she overheard and was not directed at her. As it was not directed at her, the allegation as set out in the list of issues is not made out even on the claimant's own evidence.

104. Furthermore, for the reasons set out in our analysis of issues 2 (a & b) above, we find on the balance of probabilities that this comment was not made. These allegations therefore fail.

105. Furthermore, again for the same reasons set out in our analysis of issues 2 (a & b) above, we find that, even if the comment had been made as the claimant in her cross-examination maintained, it would not have amounted to direct discrimination because of race or religion or to harassment related to race or religion.

Issue 3: in October 2014 was Ms Shire denied the opportunity to shadow a colleague because the client did not like immigrants?

106. This allegation was also raised for the first time in the claimant's grievance of 30 October 2014, roughly a year after the comment was alleged to have been made. Once again, no particularisation was given by the claimant either in the grievance, her claim, her further and better particulars or her witness statement. Particularisation was only given when she was asked about it in cross-examination before this tribunal.

107. In her cross-examination, the claimant maintained that the comment was made by Jackie (who is black Caribbean); that Jackie was referring to a client called "Alan"; that the claimant did not hear Alan make any such suggestion himself; and that, based on her own interactions with Alan, the claimant did not think that he was the sort of person who would make such a suggestion and that, therefore, she considered that Jackie was making it up; she also stated that no one was present when Jackie made this comment apart from herself.

108. This is an extremely serious allegation and one which, if true, also had implications for the claimant being deprived of work (because of her race). It is therefore perhaps even more surprising, if the comment had been made, that the claimant did not raise it at the time than that she did not raise the comments at issue 2 at the time. We repeat our analysis from issue 2 above in assessing the likelihood of this comment having been made and find that, on the balance of probabilities, this comment was not made. This allegation therefore fails.

Issue 4: in October 2014 did a staff member say that there will always be a discussion on hijabs, or that hijabs won't get in society?

109. As well as this comment not being raised by the claimant at the time it was alleged to have been made, it was not (unlike the comments in the issues above) even raised in the claimant's grievance of 30 October 2015. Furthermore, once again, particularisation of this comment only came in the claimant's cross-examination before this tribunal when she was asked about it.

110. The claimant maintained that this comment was made by an employee called Katrina Harrigan; and that it was in the context of a radio programme on the radio in the office on which there was a discussion about the hijab; Ms Harrigan made the remark following or in the context of that radio discussion. Again, on the claimant's own evidence, the remark isn't directed at her but is part of a general discussion within the office in the context of the radio programme.

111. We refer again in full to our analysis of the comments at issue 2 above and repeat that here. For the same reasons, we find that, on the balance of probabilities, this comment was not made. This allegation therefore fails.

112. Furthermore, even if the comment had been said, we would have found that the complaints of discrimination/harassment in relation to it would not have been made out. As the comment was not directed at the claimant but was part of a general discussion, it could not have been made "because of" the claimant's race or religion and therefore the direct discrimination complaint would fail. As regards the harassment complaints, whilst the comment does not relate to race, it does relate to religion and specifically to Islam, the religion of the claimant. However, for the reasons set out above in relation to issue 2, and specifically the claimant's failure to bring the issue up until she put in her claim and to particularise it until her cross-examination, we find that she was not in fact, had the comment been made, offended by it. In short, therefore, the comment, if made, did not have the purpose or effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Issue 5: in October 2014 did Kate Thomson ask two other apprentices whether they would like to attend a conference, and not Ms Shire?

113. This assertion was referenced by the claimant in her grievance of 30 October 2015 and addressed in the grievance report.

114. The claimant's evidence was that Ms Thomson passed by her and instead invited two other apprentices to attend a conference with her. Ms Thomson's evidence, which was consistent with her responses in the grievance, was that she asked apprentices generally if anyone wanted to attend a charity learning conference, but that this was addressed to the group as a whole and that it was open to anyone who expressed an interest.

115. For the reasons of respective reliability of evidence which we have highlighted above, we prefer Ms Thomson's evidence. We therefore find that this allegation has not been made out and this allegation fails.

Issue 6: in the week of 17 December 2014 did Kate Thomson tell Ms Shire that an invitation was where people would "go and drink and stuff"?

116. Ms Thomson denied making this statement in her evidence, either to the claimant or at all. She pointed out that this kind of statement would be wholly inappropriate and that she certainly would not have focused on alcohol or drink in reference to an event; this is particularly because the respondent is a very multicultural organisation and she was always sensitive to that; furthermore, given that the apprentice programme was designed for individuals who have experience of homelessness, and may have experienced drug or alcohol abuse or mental health issues, she would not have used such language towards them, particularly the references to alcohol.

117. We have no reason to doubt Ms Thompson's evidence and, for the reasons of respective reliability of evidence outlined above, prefer her evidence to the claimant's and find that this comment was not made. The allegation is not therefore made out and it therefore fails.

Issue 7: in the week of 17 December 2014 did Kate Thomson stop talking and stare at Ms Shire after she accidentally ate some chicken that was not Halal?

118. On 17 December 2014, there was an "away day" held in London for all apprentices. This was an opportunity for the apprentices to get together, review their progress and do some planning. Lunch was also provided. Because of the various cultural backgrounds and religions of the respondent staff, Halal and vegetarian options would always be available. The claimant alleges that, on that day, Ms Thomson stop talking and stared at the claimant with body language that made her feel uncomfortable after she accidentally ate some chicken that wasn't Halal. Ms Thomson's evidence was that she wasn't aware of what the claimant had or hadn't eaten; that what the claimant chooses to eat is no concern of hers; and that at no point did she look at the claimant in a strange way as she alleges or at all. We find it very surprising that Ms Thomson would, as is implicit in the allegation, be taking note of what the claimant was eating and even more surprising that, given the diversity of the organisation and Ms Thomson's experience of working there for well over a decade by that time, that she would change her demeanour in any way in these circumstances. Furthermore, for reasons of respective reliability of evidence set out above, we prefer Ms Thomson's evidence to that of the claimant.

119. We therefore find that Ms Thomson did not stop talking and stare at the claimant. This allegation is not therefore made out and the allegation fails.

Issue 8: did Deborah Spencer criticise Ms Shire's English? (Jan 2015)

120. Having reviewed the numerous notes of supervisory and other meetings between the claimant and her managers, we know that one of the concerns which the respondent had in relation to the claimant was to do with her communication. However, the concerns in relation to this which the respondent had, and which are documented, concern, for example, the claimant choosing to write in capital letters in certain emails (which the respondent told her could come across as shouting or aggressive); getting the spelling of people's names wrong in documents (examples of which we have seen); and not letting the respondent's managers know when she was leaving the office such that they did not know where she was (which was a concern for them given their duty of care in relation to her health and safety).

121. However, the concerns raised were not about her spoken or written English. Ms Spencer's evidence to the tribunal was that she did not criticise the claimant's spoken or written English. We have seen no evidence that she did. Furthermore, the examples of the claimant's written English which we have seen in the bundle show that her written English was good and her oral English, presenting her case before the employment tribunal, was also good. For these reasons, we find it unlikely that Ms Spencer would have wanted to, needed to or would have criticised the claimant's English. Furthermore, for the reasons of respective reliability of evidence referred to above, we prefer Ms Spencer's evidence to that of the claimant in relation to this allegation. We therefore find that the allegation is not made out and this allegation fails.

Issue 9: was Ms Shire called for an early review to decide whether her contract should continue? (19 Jan 2015)

122. As we have found, an interim review meeting with the claimant took place on 19 January 2015, at which Mgbadike and Ms Thomson were present. This was a normal mid probation review in line with the probationary policy and procedure of the respondent. Such meetings are not for the purposes of deciding whether to pass probation/extend probation/terminate the apprenticeship, as would be the case with a subsequent formal review meeting.

123. We have seen the documents inviting the claimant to the meeting. There is no reference to any possibility of the claimant's contract being terminated.

124. As to the meeting itself, Ms Thomson's evidence is that the claimant refused to engage in the meeting, stating that she had no confidence in Ms Thomson or Mgbadike, and that she wanted matters addressed in a formal probationary meeting; she did not accept that concerns had been raised with her previously (which clearly they had, as evidenced in the minutes of meetings with her); in light of her request, Ms Thomson discussed the formal probationary review process with her, and highlighted that if they moved to a formal meeting,

as opposed to an informal one, a possible outcome could be that she failed her probation and was dismissed; the claimant accepted this; and the claimant was adamant that she did not want to engage in the meeting with them, and left the meeting on this note.

125. Ms Thomson's account is reflected in a contemporaneous note of the meeting. Furthermore, for reasons of respective reliability of evidence, we accept Ms Thomson's account over that of the claimant. It seems that, being as charitable to the claimant as possible, the claimant appears to have been confused and to have interpreted Ms Thomson's explaining the consequences of a formal probationary review meeting (with the possibility of termination of contract) in response to the claimant's statement about wanting such a meeting as (as the claimant maintains) the informal probationary review meeting itself being for the purpose of deciding whether the contract should be terminated.

126. This allegation is not, therefore, made out. It therefore fails.

Issue 10: did Peter Coley tell Ms Shire that if she didn't get along with her line manager "she would go"? (Feb 2015)

127. Mr Coley's evidence in his witness statement was that he did not make this statement. The claimant did not even put it to him in cross-examination although, in the light of that, the judge did put it to him. Mr Coley again denied that he said it. For the reasons of respective reliability of evidence set out above, we accept Mr Coley's evidence that he did not make this statement.

128. This allegation is not therefore made out. It therefore fails.

Issue 11: did Wilma Henderson falsely accuse Ms Shire of sending her emails in capital letters? (Feb 2015)

129. The claimant had a tendency, as she admitted in cross-examination, to put certain words in her emails in capital letters. We have seen two such examples of emails from her of 27 January 2015 and 7 February 2015 (pages 214 and 218 of the bundle). The second of these was from the claimant to Ms Mgbadike and was copied to Ms Henderson and Ms Spencer. Ms Henderson's evidence was that, while she couldn't remember whether she emailed the claimant or spoke to her in person, she recalled informing her around that time that capital letters came across as aggressive and that there was an approved font and size at the respondent in which to type; Ms Henderson's belief was that the use of capital letters appeared aggressive and gave the impression that the writer was shouting, which was inappropriate email etiquette.

130. The claimant accepts that Ms Henderson did pick up on these things with her (indeed that is her allegation) but her witness statement at paragraph 37 was somewhat vague in that it appeared to suggest she did it on 2 October 2015 at a meeting, albeit that statement itself refers to Ms Henderson addressing it with her in July 2015.

131. In the light of the fact that the emails we were taken to were from January/February 2015; the fact that Ms Henderson's evidence is that she addressed the issue with the claimant shortly after those emails were written; and the unreliability of the claimant's evidence generally, we accept that Ms Henderson addressed the issues with the claimant in early 2015 and not in October 2015.

132. In terms of the allegation under this issue, it is not made out; as Ms Henderson did not falsely accuse the claimant of sending her emails in capital letters because, as we can see clearly from those emails, the claimant did use capital letters, the allegation by her could not have been false. The allegation therefore fails.

133. Furthermore, the reason for Ms Henderson doing so was clearly because of what she considered to be a way of writing emails which came across as rude (and, it is worth noting, we agree that, when one reads those emails, they do come across as rude, due to the capital letters used and generally, and particularly so given that those emails are either written to or copied into the claimant's manager and/or her manager's manager); it was nothing to do with race or religion.

Issue 12: did Kate Thomson send an email requesting that Ms Shire be removed from a list of four people forwarded for a new project? (27 March 2015)

134. In March 2015, a situation arose within the respondent where funding issues for some of the apprentice posts were identified by an Area Manager, meaning that four apprentice roles within the Islington services were identified as not having the required funding in place. The upshot was that four apprentices needed to be moved elsewhere. Amongst those affected were the claimant, Mr Williamson and Ms Aggrey. Ms Aggrey's position was the one most at risk, as it had the greatest funding deficit, and redeploying her was the first priority given the vulnerability of the funding for her role, and then the other apprentices.

135. On 20 March 2015, Ms Thomson received an email from Mr Simon Hughes, an Area Manager, regarding a vacancy for an apprentice role which was due to begin in April 2015. It was hoped that one of the affected apprentices could transfer to this role. Ms Thomson provided Mr Hughes with the details of the apprentices, including the claimant. She explained that there had been issues with the claimant's team working and communication and that another of the four apprentices in question had had time off sick. She suggested that the claimant be excluded from the process. This was because Mr Hughes was in a hurry to secure someone for the role (which was due to commence in the next couple of weeks); and that in the light of the ongoing issues in connection with the claimant's communication and teamwork and the fact that her probation might need to be extended, Ms Thomson did not feel that it was appropriate to move her; the new role also involved more responsibility than the standard apprentice role, including lone working and an involvement in setting up the service, so it was vital that the person taking up the role was able to work independently and was a strong communicator; furthermore, Ms Aggrey's position was more of a priority; and, finally, Ms Thomson also asked for another

apprentice (TJ, who is white British) to be excluded from the process, as his contract was due to end in June 2015 and as such she did not feel that he was at the right stage in his apprenticeship to make the move.

136. We have no reason to doubt the account given by Ms Thomson in the above paragraph and we accept it. Therefore, whilst Ms Thomson did send an email requesting that the claimant be removed from the list of four people, her reasons for doing so were nothing whatsoever to do with the claimant's race or religion. This allegation therefore fails.

Issues 13-15: prior to April 2015 did Laura Mgbadike refused to assign work to Ms Shire; prior to April 2015 did Laura Mgbadike raise her voice at Ms Shire; prior to April 2015 did Laura Mgbadike ignore Ms Shire?

137. We have not been provided with any evidence of these allegations and the claimant did not address them in her witness statement. Furthermore, in relation to the first of these, we have seen plenty of evidence in the bundle that the claimant was assigned work and indeed work of an appropriate type, both by Ms Mgbadike and others. It is clear from the documents we have seen in the bundle that the claimant had a difficult relationship with Ms Mgbadike and indeed she complained about Ms Mgbadike's management of her even in the early months of her employment. However, she at no stage alleged that any treatment by Ms Mgbadike was because of her race or religion, right up to the point when Ms Mgbadike ceased managing her and left the organisation on 1 May 2015. Furthermore, we have seen a lot of evidence of Ms Mgbadike spending large amounts of time managing the claimant and engaging with her in meetings; the content and tone indicated in the documents we have seen appears always to be supportive.

138. For these reasons, we find that the claimant has not proven any of these three allegations and they all fail.

139. Furthermore, we have not seen any evidence (other than the claimant's assertion) that any treatment of her by Ms Mgbadike was anything whatsoever to do with her race or religion.

Issue 16: prior to April 2015 did Laura Mgbadike and two other staff members speak in their own language before directing an offence at Ms Shire?

140. This is another allegation which was largely unparticularised in the claim. It was raised in the claimant's grievance (again largely unparticularised) and the respondent investigated it. The grievance investigation report states that, when they were asked about whether Ms Mgbadike spoke another language in front of the claimant to other staff members, none of the interviewees could recall this; that one interviewee stated that he may have heard Ms Mgbadike talking in her own language but not to staff and only if she had taken a personal call.

141. Further detail of this allegation was only given by the claimant in her cross-examination at this tribunal; the claimant said that the other employees involved were Matthew and someone referred to as Edame.

142. Given the late particularisation and the concerns which we have about the reliability of the claimant's evidence, we accept the findings in the grievance investigation report and find that Ms Mgbadike did not speak in her own language to other employees in front of the claimant. The allegation therefore fails.

143. Furthermore, even if she did do that, there is no evidence whatsoever (beyond the claimant's assertion) that she did so because of the claimant's race or religion; if she did speak to other employees who shared her first language with her then, even if this amounts to bad office practice, it is likely that she did so for the convenience of doing so as between those three employees and not for any reason to do with the claimant.

Issue 17: was Ms Shire given demeaning and meaningless tasks and not given clients? (prior to April 2015)

144. This allegation has been very vague throughout these proceedings. Furthermore, we have seen evidence in the bundle, particularly from the meeting notes, that the claimant was given meaningful tasks during her employment. This part of the allegation is therefore not proven and it therefore fails.

145. As to the part of the allegation regarding clients, apprentices were not assigned clients generally if they had not passed their probation, which the claimant had not. Therefore, if the claimant was not given clients, this was because she had not passed a probation; it was nothing to do with her race or religion. This part of the allegation therefore also fails.

Issue 18: in July 2015 did Kate Thomson say to a colleague about Ms Shire "she is Somalian, she does not have an idea how the system works?"

146. Again, this is an allegation that has been made very vaguely. The claimant's evidence at the tribunal was that she did not hear Ms Thomson make this remark; rather, she maintained that somebody else at the organisation told her that Ms Thomson had said this. She would not, when asked in cross-examination, give the name of the person whom she says told her that Ms Thomson said this. Furthermore, Ms Thomson denies having made this statement. In the light of Ms Thomson's experience and the diversity of the organisation in which she was working, it would be highly surprising if Ms Thomson made a remark of this nature. Therefore, for these reasons, and our concerns about the reliability of the evidence of the claimant, we prefer Ms Thomson's evidence and find that the remark was not made. This allegation therefore fails.

Issue 19: did Kate Thomson write to Sam Norwood (sic) to conspire against Ms Shire? (19 August 2015)

147. As we have already set out in our general findings of fact, Ms Northwood contacted Ms Thomson in August 2015 to raise some concerns about the claimant. On 19 August 2015, Ms Thomson emailed Ms Northwood, asking if

she could email her "a brief statement on the recent issues with Nimo which we will include [in] the formal probationary review".

148. Ms Thomson was responding to concerns raised independently, without any prompt from her, by Ms Northwood. It was a legitimate concern that Ms Northwood should have raised such concerns about the claimant and entirely appropriate for Ms Thomson, rather than to ignore them, to seek further details of them. There was no conspiracy, either evidenced by that email or otherwise. The allegation is not therefore made out and therefore fails.

149. In any case, Ms Thompson's email was not in any way written because of or in connection with the claimant's race or religion; rather, it was written in response to the concerns raised by Ms Northwood.

Issue 20: was Ms Shire taken off the locum list? (22 September 2015)

150. As set out in our findings above, the respondent had a policy that apprentices who had not yet passed their probation should not go on the respondent's locum list (on Venloc) (under which employees of the respondent and apprentices who pass their probation could book relief shifts). This policy was applied in respect of all apprentices who had not passed their probation. The reason for it was that it was Ms Thomson's view that having the ability to book relief shifts should not apply to apprentices from the start of their contract, as she did not feel that they would necessarily have the required skills and competence to undertake shifts in other projects, which could pose a risk to them, their colleagues and the respondent's clients.

151. In September 2015, it came to Ms Thomson's attention that the claimant might have been booking relief shifts. She emailed the individual who had charge of the system to check; he replied to confirm that the claimant was on Venloc (which would enable her to book relief shifts) although he wasn't aware that she had worked any shifts. The claimant's name was, therefore, on Venloc in error.

152. Ms Thomson therefore gave the instruction that the claimant's name should be taken off Venloc and this was done with effect from 22 September 2015.

153. The claimant was, therefore, "taken off the locum list" on 22 September 2015. However, this was done, in line with the respondent's policy, because she had not passed her probation; it was nothing whatsoever to do with her race or religion. This allegation therefore fails.

Issue 21: was Ms Shire denied a probationary review?

154. Ms Shire was not denied a probationary review; she was given one by Ms Spencer on 2 June 2015 (at which her probation was extended by two months). This allegation is not therefore made out and it fails.

Issue 22: did Kate Thomson constantly contact Ms Shire for no apparent reason, including when she was on annual leave?

155. We have seen no evidence that Ms Thomson (or anybody else) contacted the claimant for no apparent reason and certainly no evidence that she "constantly" did so. We have seen evidence that the claimant often did not put her appointments in her outlook diary, as she should have done, or told people where she was going; and the respondent had a duty of care to know where she was. In the circumstances, Ms Thomson (and others) sought to contact her. It is also possible that this was done when she was away on leave (if the respondent was unaware of where she was). However, contacting her was done for good reason. Therefore, the allegation is not made out and it fails.

156. In any event, the reasons for contacting the claimant were nothing whatsoever to do with her race or religion.

157. These allegations were very vaguely put; however, even as pleaded by the claimant, the allegations of Ms Thomson contacting the claimant all appear to have been in relation to a period prior to 23 September 2015. (We make this finding as it is relevant to the jurisdictional issues which we will come to, as any allegations in relation to events prior to 23 September 2015 were presented prima facie out of time.)

Issue 23: was Ms Shire subject to more supervisions than other apprentices?

158. In her evidence, the claimant accepted that she was not complaining about the number of supervision sessions which she had but that her complaint was in fact about how she was, as she alleged, "closely managed". Therefore, the allegation as pleaded (which is about the number of supervisions which she had) fails.

159. Whilst this is not the allegation before us, we nonetheless consider the allegation that the claimant was "closely managed". We have seen that, as is the nature of the apprentice programme, a lot of management time was spent in supervising the claimant; furthermore, some constructive criticism was made of her, in particular in relation to her communication issues. However, the evidence of the respondent's witnesses, which we accept, is that other apprentices were also closely supervised and were also, when necessary, picked up on workplace issues. Furthermore, other apprentices who did not meet the standard also failed their probation period. We do not, therefore, find that the claimant was treated less favourably than other apprentices in this respect and the claim therefore fails.

160. Furthermore, there is no evidence that the treatment of the claimant in this respect was anything whatsoever to do with her race or religion. Rather, for example, she was picked up on communication issues because (as is clear from the documents for example with regard to writing in capital letters) she had such communication issues.

161. This allegation therefore fails.

162. In terms of the pleaded allegation, all of the supervision sessions were prior to 23 September 2015 and therefore the allegation was presented prima facie out of time.

Issue 24: was Ms Shire referred to Human Resources three times within a short period of time?

163. Ms Shire was at no stage referred to HR in the sense that she was sent to see HR, so the allegation as pleaded fails.

164. However, at times during her employment, when issues came up, various managers at the respondent asked HR for advice as to what to do in relation to the claimant. This was quite proper and is what the HR department is there for. The reasons that the managers sought advice from HR were because of the issues which came up in relation to the claimant in the workplace; they were nothing whatsoever to do with her race or religion. Therefore, even if it had been pleaded in this way, this allegation fails.

165. In terms of the reference to 3 times within a short period, the only time at which the respondent's managers contacted HR a number of times within a short period was in the summer of 2015. This was before 23 September 2015 and therefore this allegation was presented prima facie out of time.

Issue 25: did Kirsty-Anne McIntyre participate in Ms Shire's mental distress towards the end of her contract?

166. This too was an extremely vague allegation. The claimant appears to have an issue with Ms McIntyre, who is one of the members of the respondent's HR Department from whom the claimant's managers took advice. However, we have seen nothing unusual in the communications between the managers and Ms McIntyre or indeed in any communications between the claimant and Ms McIntyre and certainly nothing which could reasonably be taken as Ms McIntyre seeking to cause or causing the claimant mental distress. This allegation therefore fails.

167. In any event, none of Ms McIntyre's communications were anything to do with the claimant's race or religion; rather, they were, entirely properly, responding to and dealing with HR issues which had arisen in relation to the claimant.

168. We have seen some emails from Ms McIntyre which date from the period from 23 September 2015 onwards (for example one on 2 October 2015). Therefore, however vaguely it was made, this allegation was presented in time.

169. In summary, therefore, all of the 25 allegations fail.

Time Limits

170. The only one of the 25 allegations which was prima facie presented in time was allegation 25. However, allegation 25 failed.

171. All of allegations 1-24 were prima facie presented out of time. As allegation 25 failed, there was no successful in time allegation to which the out of time allegations could be linked as being conduct extending over a period such as to bring those allegations in time. Therefore, each of allegations 1-24 was presented out of time.

172. We turn to the question of whether it would be just and equitable to extend time in relation to any of allegations 1-24. The burden of proof to demonstrate this is on the claimant. However, the claimant has not addressed the issue. In fact, the claimant admitted that she had contacted both a trade union and sought legal advice earlier in the summer of 2015, albeit she said that there had been no discussion of time limits with either. This is, therefore, further evidence that there was no reason why she could not have brought these complaints sooner. We do not, therefore, consider that she has proven that it is just and equitable to extend time in relation to these allegations. We do not, therefore, find that it is just and equitable to extend time.

173. The tribunal does not, therefore, have jurisdiction to hear allegations 1-24 and they are therefore struck out. It does have jurisdiction to hear allegation 25; however, as we have set out earlier, that allegation fails.

_____
Employment Judge Baty

Dated: 9 April 2019

Judgment and Reasons sent to the parties on:

10 April 2019

…….....
For the Tribunal Office