EMPLOYMENT TRIBUNALS

SITTING AT: **LONDON CENTRAL**

BEFORE: **EMPLOYMENT JUDGE F SPENCER**

MEMBERS: **MR A ADOLPHUS**
MS J TOMBS

CLAIMANT **Ms O Asomuyide**

RESPONDENT **Chase Search & Selection Limited**

ON: **20-23 June 2022**

Appearances:

For the Claimant: In person
For the Respondent: Mr D Gorry, Solicitor

This hearing was carried out on CVP (Cloud Video Platform). The parties did not object to it being conducted in this way.

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

(i) The Claimant's claims of direct race discrimination and victimisation are not well founded and are dismissed.

(ii) By concession the Respondent is ordered to pay the Claimant £333 in respect of the Claimant's claim for holiday pay, less any deduction required to be made in respect of tax and national insurance.

REASONS

1. The Claimant worked for the Respondent from 2 September 2019 until 15th June 2020.

2. By a claim presented to the Tribunal on 22 September 2020 she complains of direct race discrimination, victimisation and pay for holiday accrued but not taken.

3. At a preliminary hearing on 16th March 2020 the issues were agreed and identified as follows:

Direct discrimination

3.1 Has the Respondent subjected the Claimant (who identifies herself as black) to the following treatment falling within section 39 Equality Act 2010, namely:

3.1.1 In September 2019, the Claimant's colleague Aaron (surname unknown) was given, by the Operations Manager Ms Ele Jackson, computer devices/a login, while the Claimant was not. Aaron is white.

3.1.2 In March 2020 Aaron and another colleague Ms Nicola Burgess (who is also white) were told they could self-isolate and work from home when members of their family had COVID symptoms, but the Claimant's line manager Danny told the Claimant not to do so when she showed symptoms herself.

3.1.3 On 8 and 12 June 2020, the Claimant said that a government- mandated risk assessment for BAME staff should be carried out and Ms Jackson said she had not heard of it; and

3.1.4 In or around February 2020, Danny gave the Claimant's idea of a programme to deal with mental health issues in the workplace to a white colleague to progress after he had agreed the Claimant could lead on it (the Claimant does not recall the name of the colleague).

3.2 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated the comparators?

3.3 If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic? If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

Section 27: Victimisation

3.4 Has the Claimant carried out a protected act? The Claimant relies upon the following:

3.4.1 Her grievance, emailed to Emma Busby on 24 March 2020: and/or

3.4.2 Asking in a conference call on 12 June 2020 for a risk assessment.

3.5 Did either of these amount to a protected act within the definition at section 27(2) of the Equality Act 2010?

3.6 If it was a protected act, did the respondent invite the Claimant to a meeting and make false allegations of misconduct or poor performance because the Claimant had done a protected act, thereby constructively dismissing the Claimant?

Time limitation issues

3.7 The claim form was presented on 22 October 2020.

3.8 Allowing for any extension as a result of the ACAS Early Conciliation, is there any alleged conduct taking place outside the primary time-limit?

3.9 Was any complaint presented within such other period as the Employment Tribunal considers just and equitable?

Unpaid annual leave – working time regulations

3.10 The Claimant claims that she is entitled to 3 days accrued but untaken leave because she cancelled her holiday before she joined the Respondent.

3.11 How much of the leave year had elapsed at the effective date of termination?

3.12 In consequence how much leave accrued for the year under regulations 13 and 13 A?

3.13 How much paid leave had the Claimant taken in the year?

3.14 How many days remain unpaid?

3.15 What is the relevant net daily rate of pay?

3.16 How much pay if any is outstanding to be paid to the Claimant?

Remedies

3.17 If the Claimant succeeds, in whole or in part, the tribunal will be concerned with issues of remedy.

3.18 There may fall to be considered reinstatement, re-engagement, a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings and/or the award of interest.

4 The Tribunal had a bundle of documents. We heard from the Claimant and, on her behalf admitted into evidence, a statement by her daughter which was not challenged by the Respondent. For the Respondent we heard from Ms Ele Jackson, Project Manager, from Ms Judy Phillips, Recruitment Director and from Ms Emma Busby, Project Director.

Relevant law

5 Section 39 of the Equality Act 2010 prohibits an employer discriminating against or victimising its employees by dismissing them or subjecting them to any other detriment. Section 40 prohibits an employer from harassing its employees.

6 Section 13 defines direct discrimination as follows:-

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

Race is a protected characteristic.

7. Section 13 focuses on "less favourable" treatment. A Claimant must compare his or her treatment with that of another actual or hypothetical person who does not share the same protected characteristic. In comparing whether the employee has been treated less favourably than another, section 23 of the Equality Act provides that "on a comparison of cases for the purposes of section 13… there must be no material difference between the circumstances relating to each case." Is not necessary for all the circumstances to be the same, provided that the circumstances are materially similar. In other words, for the comparison to be valid, like must be compared with like.

8. As to victimisation section 27 provides that

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because–

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act–

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving information or making a false allegation is not a protected act if the evidence or information is given, or the allegation is made, in bad faith."

9. Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why they has acted in a certain way towards another, in circumstances where they may not even be conscious of the underlying reason and will in any event be determined to explain their motives or reasons for what they has done in a way which does not involve discrimination.

10. The burden of proof is set out at Section 136. It is for the Claimant to prove the primary facts from which a reasonable Tribunal could properly conclude from all the evidence before it, in the absence of an adequate explanation, that there has been a contravention of the Equality Act. If a Claimant does not prove such facts she will fail – a mere feeling that there has been unlawful discrimination, harassment or victimisation is not enough. Once the Claimant has shown these primary facts then the burden shifts to the Respondent and discrimination is presumed unless the Respondent can show otherwise.

11. In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts. That does not, however, mean simply proving "facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination". "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude that on the balance of probabilities the Respondent had committed and act of unlawful discrimination." *(*see *Madarassy v Nomura International 2007 ICR 867* and approved by the Supreme Court in *Hewage v Grampian Health Board 2012 ICR 1054*)

12. It is however not necessary in every case for the tribunal to specifically identify a two-stage process. There is nothing wrong in principle in the tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal pointed out in *Laing v Manchester City Council 2006 IRLR 748* "If the tribunal acts on the principle that the burden of proof may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever."

Findings of relevant fact

13. The Respondent is a provider of contract and permanent people solutions to clients across the UK in the pharmaceutical, healthcare and clinical industries. The Claimant was employed as a Nurse Adviser to work with one of the Respondent's clients, Abbott Nutrition. As such, while undertaking her duties she was managed by a manager from Abbott, Danny Karystinos (DK). The Claimant has no complaints about DK, who she regarded as an excellent manager, but she claims that certain decisions communicated to her by DK had in fact been dictated to him by the Respondent.

14. The Claimant was offered a role as a Nurse Adviser with the Respondent on 23 July 2019. The offer letter made it clear that DBS Enhanced disclosure and a DBS Adult First check was required from the DBS, and

that her employment start date might be delayed due to the need for those checks to be completed. She signed a contract of employment with the Respondent on 2 August 2019.

15. It had originally been anticipated by both parties that the Claimant would start with the Respondent in August. However, there were difficulties with obtaining the necessary DBS checks, such that the Claimant was not able to start until 2nd September 2019. It is the Respondent's case that the Claimant was slow in completing and returning the necessary documents; while the Claimant says that the Respondent was responsible. for the delay. We do not accept that the Respondent was responsible for this delay – DBS clearance was a matter that was outside the Respondent's control.

16. The Claimant has referred the Tribunal to a number of emails from Ms McGonigle of the Respondent, who is responsible for onboarding new recruits. In an email dated 22 October 2019 (91) Ms McGonigle sets out a timeline of the difficulties which she perceived had delayed the Claimant's start date. It also documents that Ms McGonigle called the Claimant several times to prompt her, to enquire about progress, and to offer support with completing the paperwork. We find that the Respondent had reasonable grounds to believe that the Claimant had been slow in dealing with the relevant paperwork.

17. The Claimant has referred to this email and to a number of other emails (98, 103, 107, 114, 117, 144, 146, 148) as evidence from which the Tribunal might infer that the treatment that the Claimant received was influenced by her race. The Claimant refers to these internal emails as racial micro aggressions and creating an environment which was against her in the sense that they contained express or implied criticisms of her.

18. The Claimant complains, for example, about

    a. an email dated 27th August 2019 in which Ms McGonigle tells Ms Busby that the Claimant had been rude to her during a telephone call, when she told Ms McGonigle that she "*had no time for this admin and it isn't urgent"* and that the Claimant was falling behind in admin and unwilling to cooperate. (108)

    b. Ms McGonigle's email to Ms Busby of 8th October when Ms McGonagle comments that she was "*a bit concerned about Kemi's lack of urgency to complete any admi*n" and "*she seems to want to do it when it suits her*".

    c. a further email on 11th October when Ms McGonigle, in an email to Ms Busby and Ms Jackson, states that it seemed to her that the Claimant had "*no clue how to do her expenses which is worrying*", that the Claimant had been rude when she told Ms McGonigle to "*calm down and chill*" and that she [the Claimant] could be "*irrational in how she views people asking her to do stuff."*

19. Nurse Advisers working for Abbott are issued with a laptop and other IT equipment for use in their work. The IT equipment is issued by Abbott. The Claimant attended a training workshop on 10 September 2019. By

the time of the workshop, she had not been issued with her laptop and other equipment.

20. The training was also attended by Aaron Bowley, who is white. Mr Bowley had his laptop with him at the training. It is the Claimant's case that the Respondent treated the Claimant less favourably than her white colleague Mr Bowley in its failure to provide her with a laptop and other IT equipment, and that this was less favourable treatment because she is black.

21. The laptop and equipment to be used by nurses working for Abbott were provided by Abbott and not by the Respondent. Further we accept the Respondent's evidence that it was commonplace for there to be a delay between the start date of employment and receipt of a laptop and other equipment. Mr Bowley began his employment with the Respondent on 12 August 2019. He received his laptop on 3rd September – some 3.5 weeks later. The Claimant began her employment with the Respondent on 2nd September and received her laptop on 3 October 2019- some 4 weeks later.

22. The Tribunal is satisfied that there was in fact no less favourable treatment. The difference between 3.5 weeks and 4 weeks is trivial. Both the Claimant and Mr Bowley had experienced a delay between the start date and the receipt of their IT equipment. The reason why Mr Bowley had a laptop at the workshop on 10th September, and the Claimant did not, was because he had started his employment earlier than the Claimant. Further, this was a matter for Abbott and not for the Respondent.

23. It is the Claimant's case that the Respondent should, and could, have organised for her to receive the laptop in time for her start date. She had signed her contract on 2nd August and there was no need to wait for her to have DBS clearance before ordering the equipment. She says that, as she and Mr Bowley were recruited at the same time, they should have had their IT equipment at the same time. However, it was not for the Respondent to dictate to Abbott the timing of the receipt of the IT equipment. Further it was reasonable for Abbott to wait until an employee had started work before ordering the IT equipment, and it is clear that they did so in every case - so that there was no less favourable treatment. There was no material from which we could infer that the delay in the provision of a laptop to the Claimant was related to her race. We do not accept that the relatively short delay in providing the Claimant with her laptop equipment was setting her up to fail. Her training was "in person" and, as Ms Busby explained, a laptop was not necessary for the training. She was treated the same as others**.**

24. The Claimant complains that on 23rd October 2019, 7 weeks after she started in employment with the Respondent, Ms Jackson told her that she was behind with her admin, and that while she had received good reports about the Claimant's clinical work in the field, she was behind in her paperwork. The Claimant says that Ms Jackson threatened her that "it was a disciplinary matter", and the Claimant was then required to meet with

"the big guns" i.e., Ms Jackson and Ms Jackie Swannick, Abbott's national nurse manager to discuss this.

25. The Claimant refers to this meeting as evidence to support her claim of race discrimination and refers to her colleague Dawn. She says Dawn had told the Claimant that she was "getting a lot of things wrong" but was not "summoned" to see Jackie. The Claimant had not called Dawn to give evidence, and had not referred to Dawn as a comparator either in her particulars of claim or at the case management hearing. The Tribunal has no evidence what Dawn was getting wrong and whether those matters were comparable to the difficulties that the Claimant had. However, documents in the bundle evidence that the Claimant was not in fact completing her administration on time, so that the Respondent's concerns were valid. It was reasonable for her to be asked to meet them and Ms Swannick to explain any difficulties that she had and whether she needed extra training on any areas. Equally Ms McGonigle's emails, while undoubtedly critical of the Claimant, were the result of genuine difficulties which she had encountered in dealing with the Claimant's onboarding process and administration.

26. While the Claimant and the Respondent have provided different versions of the meeting that took place on 23rd October 2019, the Claimant's own notes record that she was told that the meeting was to support her, that Ms Jackson encouraged her to come and speak to her and to Ms Swannick if she needed any support and that the meeting ended on a positive note.

27. In January 2020 formal well-being /mental health training was given to staff working for Abbott by an external training provider. The Claimant says that she was proactive in the meeting - answering a lot of questions and asking a few. The individual giving the talk joked that the Claimant should be the one giving the lecture. After the lecture the Claimant gave her manager, DK, a few ideas about staff welfare and DK suggested to the Claimant that she could take a lead on those topics. The Claimant complains that a few weeks later she found out that Wendy, who is white, had been given the "staff welfare project" to lead on.

28. The Claimant made no formal complaint at the time (though she refers to DK having promised her a lead in an email to Ms Swannick dated 6th May 2020) but following submission of the Claimant's claim to the Employment Tribunal the Respondent asked DK for his account. In an email dated 12 May 2021 DK explains that after the external training he had run a 15-minute session on mental well-being as part of the clinical supervision for the team. Wendy, who, like the Claimant, was a mental health nurse, had said in her 2019 appraisal that she wanted to run a mental well-being session. Wendy was a clinical supervision lead for the team alongside with the Claimant and Josie. Wendy had been with Abbott for more than a year. It was Abbott's policy for individuals to have completed a year of employment before they could undertake extra roles or have additional in-house training. He had however offered the Claimant the opportunity to cooperate with Wendy and discuss how to support the nurses but, as the

Claimant was fairly new and settling down, this was just an informal verbal discussion. The Claimant elected not to do so.

29. There was no evidence before us to support the Claimant's contention that the Respondent influenced DK in selecting Wendy to lead the well-being session. DK's line manager was Jackie Swannick, and he did not report to the Respondent on day-to-day business. He gave an explanation for his action which was not related to race.

30. Further the Claimant did not challenge the factual basis underlying DK's explanation as to why he asked Wendy to lead the session – simply saying that it *"must have been*" because of her race and that Danny would never make a decision like that without referring back to the management of the Respondent.

31. In early March 2020 the Claimant alleged that some members of the team (Nicola Burgess and Emma McCann) had been bullying and harassing her and that this was driving her to resign (173). A grievance hearing took place on 16th March. The Claimant complained that 2 colleagues had asked her to cover for them and had put undue pressure on her when she said that she could not undertake that cover. In an email of 9th April 2020, the Claimant was informed that her grievance was not upheld.

32. The Claimant appealed on 16th April and, following a hearing on 4 May 2020, the grievance appeal outcome was sent to the Claimant on 18 May. The appeal was not successful. The Claimant does not now complain about the grievance itself, nor is it referred to as an act of direct discrimination; but the Claimant relies on her grievance as a protected act for the purposes of her victimisation claim.

33. In her grievance the Claimant does not suggest that the treatment she received was influenced by her race. She does not refer to her race at all. Nothing in the Claimant's written grievance, her appeal or the note of the grievance hearing (180) suggest that the Claimant was complaining of discrimination. In evidence the Claimant said that the grievance hearing notes at page 180 were totally false, but has not provided her own note or indicated in what specific way the notes were inaccurate. In cross-examination she accepted that she had not referred to discrimination in her grievance or appeal.

34. On 23 March 2020 the first national lockdown began. On 30 June 2020 the Claimant texted her manager DK as follows (429) "*hi Danny. I have got this patient Troubleshoot. Balloon water evaporating. I started coughing yesterday and my chest is slightly tight so I am not sure if I can go and see them face-to-face. I was going to watch it today and do over the phone consultation but this has to be face-to-face. It is Sally. Can I go wearing the mask?"* DK responded "*Hi Kemi. Yes please wear mask and gloves. Please explain to the husband is for your and their protection too. It doesn't look coronavirus symptoms but yes please keep an eye*."

35. The Claimant duly met the patient. In the afternoon, she attended her appointment, but the patient's wife met the Claimant on the pavement where the Claimant gave her instructions and left equipment for the patient. The following day the Claimant was not required to attend any

face-to-face appointments. On 1st April the Claimant reported that she had been advised to self isolate by her GP and was allowed to do so.

36. At that time the government guidance was that the most common symptoms of coronavirus were recent onset of a new continuous cough and/or high-temperature.

37. The Claimant complains that she was encouraged to see patients face-to-face, while her white colleagues, Nicola and Aaron had earlier been told to self-isolate because Nicola's daughter and Aaron's wife had symptoms. It is also her case that this difference was at the behest of the Respondent and that DK was acting on instructions from the Respondent. In her particulars of claim she says that she was "not allowed" to self isolate. In evidence she says that she had expected DK to tell her to self isolate as she was coughing.

38. We do not accept that the text that DK sent was at the behest of the Respondent. As we have said the Respondent did not get involved in day-to-day matters, unless there were issues which Abbott needed the Respondent to raise with an employee. Further DK did not tell the Claimant that she could not self isolate—he responded to a request that the Claimant made "can I go wearing the mask?" which indicated that the Claimant's view was that she thought that she could go.

39. On 22 April 2020 the Claimant began a period of annual leave, which was followed by a period of sick leave with work-related stress from 1 May. She returned to work on 8th June. Ms Jackson held a return-to-work meeting with the Claimant during which she said that she been asked to facilitate a virtual meeting between Claimant and Nicola Burgess, following the outcome of the Claimant's grievance against Nicola. The Claimant declined to meet with Nicola. (311) The next day the Claimant emailed Ms Jackson in terms which are unclear, but which does refer generally to racism being everywhere. (310)

40. On 9 June 2020 the Claimant enquired with the Respondent about a risk assessment for BAME staff. Ms Phillips responded (314) thanking her for raising the question and noting that a survey was going out the following day to support the nurses working on the Abbott project. The Claimant responded that she was particularly concerned about BAME (rather than all nurses) working on the Abbott project because Covid disproportionately affected the BAME group.

41. A nurse risk assessment questionnaire was sent out on 10 June to all nurses. On 11th June the Respondent sent an email to its staff noting that the Covid pandemic had had a specific and serious impact for BAME communities and offering them the opportunity to have a confidential discussion with their line manager or with the Respondent regarding concerns they may have associated with any underlying health conditions.

42. The Claimant's case is that she was subjected to less favourable treatment because of her race when Ms Jackson told the Claimant that she had never heard of a government mandated risk assessment for BAME staff. When the Tribunal asked the Claimant what specifically she had been referring to when she spoke about a "government mandated risk

assessment for BAME staff", the Claimant said only that "there should have been a specific risk assessment for black people".

43. The Respondent submits, and we accept, that this claim is misconceived. First if Ms Jackson had not heard of such a government mandated risk assessment, then she was responding to the Claimant with a statement of fact. This could not amount to a detriment for the purposes of a direct discrimination claim. Secondly, the Claimant has not provided any evidence that any government mandated risk assessment existed at the time, so that if Ms Jackson had not heard of it, this was a reasonable response.

44. On 10th June the Claimant sent a group text to the Nursing team (322) in which she was critical of what she said was "a failure by the team to welcome her back after being on sick leave".

45. While the Claimant had been away the Respondent had received a number of complaints relating to the Claimant. One was a complaint that on 17th April the Claimant had failed to respond to an urgent referral, or to flag up that she would be on annual leave from 22 April, so that the referral could be passed on to a colleague.

46. The documents before the Tribunal evidence that on 17th April at 17.40 the Claimant had received an urgent patient referral (410) asking her to prioritise a particular patient for Monday or next working day. The Claimant had not responded, and the customer had complained (247). On 22nd April DK referred the matter to the Respondent stating that the Claimant had read the referral, that on the following Monday (20th April) the Claimant was working but self isolating at home, which would have given her time to manage the referrals and to handover anything outstanding. (The Claimant says that she thought she was on leave on the Monday that she could not recall. We do not accept that, as the company records show that the Claimant did not go on leave till the 22nd April.)

47. DK had also complained that the Claimant had not followed his instructions (295, 317) to complete her nursing activity in time (363). There had also been issues in respect of the Claimant's lone worker safety tracker, and the company that provided the Claimant with the safety tracker device "SoloProtect" had complained about the Claimant's behaviour. Issues also had arisen with the Claimant's IT setup, which had meant that a meeting for pump training had to be rearranged.

48. Mrs Swannick asked the Respondent to investigate these issues. A meeting was arranged for 12th June by Teams with Ms Busby, and Ms Phillips was in attendance. The meeting was recorded, and the Tribunal has listened to a part of the tape. The Claimant does not emerge well from the recording. Ms Busby tries to raise the various issues of concern with the Claimant but is continuously interrupted by the Claimant, making it difficult for Ms Busby to speak. Towards the end of the meeting, the Claimant becomes extremely loud and, as the meeting progressed, repeatedly accuses the Respondent of being evil, racist, and trying to kill her and challenges them to sack her.

49. Ms Busby remained calm in the face of the outburst and decided to pause the meeting for 15 minutes. During the break Ms Busby and Ms Phillips decided that the Claimant should be suspended on full pay while the issues were investigated. A suspension letter was sent to the Claimant the same day (380) which outlined the areas of concern that the Respondent wished to investigate.

50. On 15 June 2020 the Claimant emailed a letter of resignation, referring to the constant harassment and victimisation that she had received on her return to work.

51. In respect of holiday pay, the Claimant's pro-rata allowance for the holiday year 2019 was 7.5 days. The Respondent's policy is that employees may not carry forward any unused entitlements to the next holiday year. On 22nd November the Claimant (and all other members of the nursing team) were sent an email from Ms McGonigle reminding them to take any unused leave. DK also sent the Claimant an email on 10th December reminding her to take her remaining annual leave for 2019 by the end of December. The Claimant was subsequently permitted to carry 2 days forward into January, but was not permitted to carry forward the remaining 2.5 days of unused leave.

52. The Claimant's case was that the Respondent should have made an exception for her. She had anticipated starting work with the Respondent in August, so she had cancelled a prearranged holiday which she had intended to take in August. In the end, as a result of the delay in her DBS checks, she had not begun work with the Respondent until 2nd September. She therefore says that the Respondent should have allowed to carry forward her remaining days as a "special circumstance" which would allow the Respondent to deviate from their normal policy.

53. At the end of the hearing the Respondent accepted that the Claimant had attended and been paid for 4 hours training in August 2019 and that in consequence the Respondent would be prepared to pay the Claimant the 2.5 days lost holiday notwithstanding that the claim was out of time. The Claimant's response to this concession was that she did not want the Respondent's money. However, I have made an order that the Respondent pay the relevant amount by consent. If the Claimant wishes to waive her entitlement to that money she may do so, by informing the Respondent in writing not to pay her, which will discharge the Respondent's obligations in relation to holiday pay.

Conclusions

Direct discrimination

54. It will be apparent from our findings of fact set out above that the Claimant's claims of direct race discrimination cannot succeed. We do not accept that the Claimant was treated less favourably than Mr Bowley in the provision of her laptop and other IT matters. The issues at 3.1.1 and 3.1.4 were matters for DK and not for the Respondent. There was no detriment to the Claimant when Ms Jackson told the Claimant that she had never heard of a "government mandated risk assessment for BAME staff.

Victimisation

55. As we have explained above, we find that the Claimant's grievance contained no allegation – express or implied – that she was concerned with bullying and harassment related to race or to any other protected characteristic. As such her grievance does not amount to a protected act.

56. Equally, a request for a BAME risk assessment to be carried out does not amount to doing something or making an allegation in connection with the Equality Act.

57. On that basis alone, the Claimant's claim for victimisation must fail.

58. However, for completeness, we are satisfied that the Respondent invited the Claimant to a meeting to discuss genuine concerns which had been raised by the client, DK, and others. We do not accept that the Respondent was making false allegations. They were acting in good faith on the basis of information that they had been given and wanted to get the Claimant's response. The invitation to attend a meeting with the Respondent had nothing to do with her grievance or her request for a BAME risk assessment. Unfortunately, the Claimant's response was neither measured nor reasonable. Their actions in calling the Claimant for a meeting to discuss those concerns did not amount to a breach of trust and confidence which would entitle the Claimant to resign and claim that she had been constructively dismissed.

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Employment Judge Spencer
30 June 2022
JUDGMENT SENT TO THE PARTIES ON

30/06/2022.

FOR THE TRIBUNAL OFFICE