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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000088/2022

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Final Hearing
Held in Edinburgh on
18, 19, 20, 24 and 25 April 2023

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Employment Judge A Jones
Tribunal Member Ms Z van Zwanenberg
Tribunal Member Mr A Matheson

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Ms S Stanyte

Claimant
In Person

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The City of Edinburgh Council

Respondent
Represented by
Mr Gibson, of counsel
Instructed by
Ms Drummond,
solicitor

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JUDGMENT

It is the unanimous judgment of the Tribunal that:

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- i. the claimant was discriminated against by the respondent because of her race;
- ii. that she resigned because of that discriminatory treatment;
- iii. that she did not make a protected disclosure;

- iv. that the respondent did not fail to provide her with a statement of terms and conditions;
- v. that the respondent failed to comply with the ACAS Code on discipline and grievances
- 5 vi. and the respondent is ordered to pay to the claimant the sum of £28664.93, including adjustments and interest as compensation for loss of earnings and injury to feelings occasioned by the discriminatory treatment to which the claimant was subjected.

REASONS

10 **Introduction**

1. The claimant lodged a claim on 30 September 2022 complaining of race discrimination, that she had been subjected to detriments for having made a protected disclosure and that the respondent had failed to provide her with a statement of terms and conditions. The respondent resisted the claims and
15 required further particulars of the claim which were then provided. Parties agreed a joint bundle of documents and chronology of events for use at the final hearing. The claimant gave evidence on her own account and called a former colleague Dr Scott. The respondent led evidence from Mr Cross, who had recruited the claimant, Ms Lawrie who was his line manager, Ms Cowell
20 who was for a time the claimant's line manager, Mr Gourlay who conducted the investigation into the allegations against the claimant and Ms Fuller who was the nominated officer and in overall charge of the area in which the claimant and others worked. The claimant made oral submissions at the conclusion of the evidence and Mr Gibson helpfully provided very detailed
25 written submissions.
2. Having heard the evidence and considered the documents to which reference was made and submissions of the parties, the Tribunal found the following facts to have been established:

Findings in fact

3. The claimant was employed by the respondent as a social worker from 1 January 2022 until her resignation with effect from 3 July 2022. She was paid
5 £2030 net per month salary.
4. The claimant qualified as a social worker in Lithuania and is a Lithuanian national. She obtained Bachelor of Science and Masters degrees in Lithuania and has extensive experience of practicing as a social worker in Lithuania.
5. Prior to her employment with the respondent, the claimant had worked in
10 Northern Ireland as a social worker for nine years and was registered during that time with the Northern Ireland Social Care Council ('NISCC'), the regulatory body for social workers in Northern Ireland.
6. The claimant first contacted the Scottish Social Services Council ('SSSC')
15 which is the regulatory body for social workers in Scotland in 2020 with a view to obtaining employment as a social worker in Scotland but did not pursue the matter due to the pandemic.
7. The claimant then applied for a role with the respondent in July 2021. Following an interview, the claimant received a conditional offer of employment. The conditional offer enclosed a contract of employment which
20 provided that the claimant should "submit your completed application for SSSC registration for endorsement to Waverley Court within 14 days of your start date in post....Failure to achieve registration within six months will be dealt with in accordance with the Council's Disciplinary Procedure and may result in dismissal due to contravention of a statutory requirement." The
25 claimant accepted the offer and on 30 August Mr Cross emailed the claimant to ask for information to allow him to complete pre-employment checks.
8. On 11 October a Ms Pollock from SSSC emailed the claimant to ask if she wished to proceed with the qualification assessment she had previously contacted them about. The claimant responded that day and indicated 'I put

things on hold as I didn't have a job in Scotland at the time. I recently got a social work job with Edinburgh council so I would like to proceed with my assessment. Would you mind to let me know where my application stand at the moment? What documents do you need from me?'

5 9. Ms Pollock sent the claimant an email on 12 October setting out all the information which she was required to provide. Her email also contained two links to guidance documents and three attachments with guidance in relation to the assessment process and registration. The claimant responded to that email and in her response reiterated that she had secured a job with
10 Edinburgh Council, who had submitted an application to the PVG on her behalf. It would have been obvious to Ms Pollock that the claimant was referring to a role as a social worker. There was no indication from Ms Pollock that the claimant could not take up work as a social worker with the respondent.

15 10. On 8 November Mr Cross, who had chaired the interview panel and recommended appointment of the claimant emailed the claimant to inform her that he would ask HR to send her an unconditional offer of employment, having confirmed that her PVG checks had been clear. There was some discussion regarding the claimant's starting salary and following a request by
20 Mr Cross, the claimant's initial salary was increased from that originally offered because of her experience.

11. Mr Cross understood that there were two possible routes for the claimant obtaining SSSC registration. He understood either this could happen on the basis that the claimant was already registered in Northern Ireland, and that
25 her registration would be transferred or a more onerous process where the claimant's qualifications from outwith the UK would be assessed by the SSSC to determine whether they met the standard required. He sought advice by reading materials on the SSSC website and then telephoning the SSSC. Having explained the specific circumstances of the claimant during a call to
30 SSSC, he was informed that the claimant would have 12 months from commencing work in which to obtain registration with SSSC as she was

5 already registered in the UK and there was an extra 6 month period in which to register due to the pandemic. Mr Cross communicated this information to the claimant around the middle of September. The claimant reasonably relied on this information as being accurate as she understood Mr Cross to have experience of the recruitment process and requirements and she had no experience of working in Scotland.

12. The English equivalent of the SSSC would not require a social worker who had already been registered with another UK social work regulator to have their qualifications assessed.

10 13. The SSSC requirements in relation to registration of a social worker who is registered with another UK social work regulator but has obtained their qualifications out with the UK is confusing and contradictory.

14. A representative of the respondent's HR emailed the claimant on 24 November to confirm her starting salary and date of commencement of employment.
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15. The claimant made arrangements to move to Scotland and her first day of work was 5 January. On 4 January the claimant had emailed Ms Pollock to ask whether there had been any progress on her assessment. Ms Pollock responded on 5 January to say that she would follow up with the NISCC that week.
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16. The claimant commenced work in the Drug Treatment and Testing Order Team ("DTTO"). That team was made up of social workers, resources workers, nurses and a GP. Although this was a multi-disciplinary team where some staff were employed by NHS Lothian and others by the respondent, the team was under the overall operational control of Ms Lawrie who reported to Ms Fuller. The medical staff employed by NHS Lothian reported to Ms Lawrie on operational matters and NHS Lothian on clinical matters. The claimant performed well in her role.
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17. The claimant emailed Ms Pollock again on 26 January to ask if there was any further progress on her registration. She indicated that she was currently
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working as a social worker with the respondent. She contacted the SSSC by phone and asked to speak to a manager as she was concerned that matters had not been progressing.

- 5 18. The claimant then sent an email to SSSC on 31 January setting out the summary of her communications with them.
- 10 19. On 4 February, a Ms Mumby from SSSC contacted the respondent and indicated that the claimant had 'suggested that she is already working as a social worker for Edinburgh Council'. The email went on to say that as the claimant's qualification had not been assessed she should not be practising as a social worker and asked that this information be cascaded.
- 15 20. Around the same time that day an email was also sent to the claimant by SSSC. The email started with an apology to the claimant for 'any information which may have caused confusion or mislead you in any way'. The email set out what information was required for the assessment of the claimant's qualification and stated 'Our guidance which we have sent you previously does advise that "you should not apply for employment as a social worker in Scotland until this process is complete and you are fully registered...You have advised us you are currently working as a social worker for City of Edinburgh and therefore you must now inform your employer that you cannot practice as a social worker until the assessment is complete."' 20
- 25 21. The guidance referred to above was included in one of the attachments sent to the claimant in the email of 12 October referred to above. The claimant had not read that attachment and was not aware of that provision. It was in conflict with her understanding and what she had been told by Mr Cross. The document referred to also states under a question 'can I practice as a social worker while my application is being processed?' that it is an offence for a person in Scotland, with intent to deceive another, to in any way hold her/himself out as a registered social worker unless s/he is registered as a social worker by one of the found United Kingdom regulatory bodies." The information which had been provided to the claimant in the email of 12 30 October was confusing and contradictory. Ms Pollock had previously been

made aware that the claimant was applying for and had obtained a role as a social worker and gave the claimant no indication that she could not take up that role.

- 5 22. On 4 February, Ms Fuller who was the Acting Senior Manager at the time contacted Mr Cross to advise him of the terms of SSSC email. Mr Cross responded by explaining that he had sought advice from SSSC at the time of the claimant's appointment and had been informed that the claimant's registration could take place within the first 6 or 12 months of the claimant's employment. He pointed out that this would cause a significant problem for the claimant who had relocated from Belfast to take up the role. He also
10 apologised for his role in the situation arising.
23. Mr Cross was instructed by Ms Fuller to tell the claimant that she could not work as a social worker in the team immediately. Ms Fuller did however agree to Mr Cross' request that he communicate this to claimant in person on the
15 Monday rather than by phone on a Friday afternoon.
24. Ms Fuller had considered phoning the police regarding the claimant having been working as social worker when the SSSC had now said that she should not have been doing so but decided not to do so.
25. Mr Cross then met with the claimant on the Monday and the claimant provided
20 him with the correspondence she had received from the SSSC.
26. Mr Cross sought agreement from Ms Fuller and Ms Lawrie, who was his immediate line manager for the claimant to remain working in the team while the matter of the claimant's registration was resolved. He indicated that the team was very short staffed, that the claimant had only recently moved to the
25 country and that there would be considerable disruption and stress caused to the claimant and the team if she were required to leave the team. That request was refused without discussion with Mr Cross. The request was refused without any effort to have a discussion with the claimant as to what options might be available or ascertain whether the claimant could perform any roles
30 within the team on the basis of her experience or with some training. Mr Cross

was instructed to inform the claimant that she could not remain in the team and that she would hear from Ms Lawrie. Mr Cross was unhappy with this instruction but did as directed.

5 27. Ms Lawrie contacted the claimant by telephone on 8 February and told her that she could no longer be present in the office and had to leave the office straight away. She was told that she would move to another role in another location in the Court and Diversions Team. There was no meeting with the claimant to discuss matters and no attempt by the respondent to discuss options with the claimant or better understand what her skills and experience were which might be relevant to identify duties for her. During the call the claimant indicated that she might have to resign. The claimant was extremely distressed at the way in which she was being treated and went home. She left her laptop and mobile phone in the office as required. The treatment was entirely unreasonable particularly in view of the claimant's limited time in the country, that she was a professional social worker who had been practising elsewhere in the UK for a number of years, that no effort was made to discuss matters with the claimant in person (or by Teams), nor determine whether she had any support in place to assist her in dealing with matters and that Ms Lawrie and Ms Fuller already knew that Mr Cross had explained how the situation had arisen.

20 28. Mr Cross was not at any time subject to a disciplinary investigation or management intervention for his role in the appointment of the claimant or the advice provided in that regard.

25 29. Ms Lawrie emailed the claimant on 9 February instructing her to stay at home and asked her to 'send an email stating that you resigning as of today'. The claimant responded asking for information and stating 'I am aware that people lose their registration during their employment period for some reasons and this can be worked out'. The claimant was aware of a nurse Ms B who worked in the team with her who had lost her registration with the Nursing and Midwifery Council, because she had failed to provide relevant information to them. The claimant was aware that Ms B, who was Scottish had been allowed

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to continue to work in the team. Ms Lawrie did not at that time raise any concerns with NHS Lothian regarding this matter, nor ask for any investigation to be conducted into the matter. She had simply asked for an explanation and then took no further action, nor asked for NHS Lothian to take further action.

5 30. Ms Lawrie then emailed the claimant on 11 February setting out more information regarding the role the claimant was being asked to perform and subsequently sent a further email at the request of the claimant with a job description for the role of Criminal Justice Worker. The role did not require SSSC registration and would involve working with other social workers.

10 31. The claimant agreed to undertake this role as her understanding was that she had no option other than to resign. Ms Lawrie instructed the claimant to pick up her laptop and work phone from her previous office and return home. There was no opportunity for the claimant to speak to her colleagues before her transfer and the claimant's treatment was unreasonable.

15 32. On 16 February, Ms Lawrie emailed the claimant to say that she would receive communications regarding the new role and to tell her about 'the investigation that is about to commence.' Ms Lawrie spoke to the claimant on the phone about these matters and read some of a letter which was being sent out to her. Ms Lawrie said that the investigation was to consider how to 'improve
20 recruitment'. Ms Lawrie made no effort to meet with the claimant in person or by Teams to discuss the matter and misrepresented to the claimant the nature of the investigation which was to commence.

33. The letter which had been written by Ms Fuller was then sent to the claimant informing her that an investigation was to commence into an allegation
25 against her which could amount to gross misconduct. The allegation set out in the letter was a statement of fact in relation to the current situation. It did not set out what it was the claimant had been said to have done which could amount to gross misconduct. The behaviour was said to potentially amount to 'Theft and Fraud', failure in respect of regulatory bodies, failure to follow
30 employee code of conduct, professional registration requirements and legal and regulatory compliance. The letter informed the claimant that her move to

another role was as an alternative to suspension. She was also informed that she could not discuss the matter with anyone other than her new line manager, whom she had not met and who was to be on leave for 10 days from 18 February.

5 34. The decision to instigate a disciplinary investigation was that of Ms Fuller after consultation with Ms Lawrie and HR. Mr Cross expressed his view to Ms Lawrie that this was not an appropriate course of action and that the matter should be dealt with informally. He was of the view that the claimant was not being treated with dignity.

10 35. Ms Fuller decided she would be the nominated officer in overall charge of the disciplinary procedure and would decide in the matter. She appointed Mr Gourlay as investigating officer. She was aware that this was the first investigation Mr Gourlay had conducted. She directed him on how to conduct the investigation and who to contact. She advised him to contact the SSSC in
15 the first instance to determine whether they would provide him with their correspondence with the claimant. She did not suggest to him that he should contact the claimant first for her consent or let her know that such contact would be made.

20 36. The claimant was contacted Mr Gourlay by email on 9 March. She was asked to attend an investigatory interview on 16 March. The letter incorrectly indicated that the claimant could only discuss the matter with Mr Cross.

37. The claimant asked for an agenda for the meeting and more information regarding it.

25 38. The claimant first met with Ms Cowell, her new line manager and point of contact in relation to the investigation on 11 March for a 1:1 meeting. Ms Cowell was shocked that the claimant was being subjected to a disciplinary investigation. She had no knowledge in advance of the investigation, what it was to involve or why it was being conducted. The claimant informed Ms Cowell on 11 March that she wished to raise a grievance in relation the
30 recruitment process and how she had been treated. Ms Cowell had a stage 1

informal meeting with the claimant on that day to discuss her concerns in line with the respondent's grievance procedure. As Ms Cowell could not give any information in relation to these matters, she contacted Ms Fuller. Ms Fuller informed Ms Cowell that the claimant could raise her concerns at the disciplinary investigation meeting with Mr Gourlay. The claimant was unhappy with that proposal and subsequently completed a stage 2 grievance form which was submitted to Ms Fuller.

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39. The respondent did not follow its procedure in relation to the claimant's grievance and no stage 2 meeting took place. The respondent's procedure indicates that stage 1 is an informal stage and stage 2 is a formal stage. Ms Fuller wrote to the claimant on 15 March indicating that "initiating an investigation in response to your grievance at the time, would only duplicate the Disciplinary Investigation that is already underway. I therefore intend to let the Disciplinary Investigation process to conclude before considering what action to take in respect of your Grievance Submission." Ms Fuller did not inform Mr Gourlay that the claimant had raised a grievance, nor ask him to investigate the terms of the claimant's grievance. Ms Fuller did not address the claimant's grievance once the disciplinary investigation was concluded nor ever make reference to the matter to the claimant's grievance again.

20 40. Mr Gourlay emailed the claimant on 14 March in response to her request for more information. He indicated that his role was to gather information and that he was expected to report back by the end of the month. He also asked if the claimant would be willing to give consent for email or correspondence between her and the SSSC to be provided to him. In fact, Mr Gourlay had already contacted the SSSC directly on the instruction of Ms Fuller on 9 March asking for a record of their correspondence/contact with the claimant as he was seeking to determine what advice she was given at what time in relation to her SSSC registration application process. He also said 'I'd be grateful if you could send this on asap as I need to complete this investigation within a particular timeframe.' Mr Gourlay had been informed by SSSC that information could not be released without the claimant's consent.

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41. The claimant was advised by email on 18 March by the SSSC that the outcome of her qualification assessment would be reached by mid-April at the very latest and the claimant forwarded this email to Ms Gourlay on 21 March.
- 5 42. The claimant met with Mr Gourlay on 22 March. She was accompanied by Ms Cowell and the meeting took place via Teams. A note of the meeting was taken, the terms of which were amended by the claimant and returned to Mr Gourlay before 30 March.
- 10 43. The claimant sought clarification from Mr Gourlay as to what information he wished to have in relation to communications between her and SSSC. Mr Gourlay indicated in an email of 30 March that he wished to ‘get confirmation of the advice you received from SSSC and was planning to ask them for copies of any correspondence you had with them to this end’.
- 15 44. The SSSC contacted the claimant on 30 March indicating that Mr Gourlay had “requested that we share with him all communications between staff within our organisation and yourself.”
45. The claimant emailed Mr Gourlay on 5 April asking what stage the investigation was at and whether the minutes of her meeting with him were now agreed. She indicated that she wished the minutes agreed before she provide correspondence from SSSC.
- 20 46. The claimant obtained registration with SSSC on 19 April and provided a copy of this to Ms Fuller by email as she understood Mr Gourlay was on leave at that time. Ms Fuller responded by letter dated 19 April indicating that the disciplinary investigation would continue and that the claimant would be moved back to her substantive role. Ms Fuller did not make any effort to meet with the claimant or discuss the situation with her.
- 25 47. The claimant did not wish to return to her substantive role at that time as she felt she would be isolated and would have no one with whom to discuss the disciplinary investigation.

48. Ms Cowell sent an email to Ms Fuller on 21 April requesting that the claimant remain in her team until the disciplinary investigation was complete and the claimant's grievance had been considered. She explained that the claimant could only discuss the situation with her, and that Ms Cowell was concerned that if the claimant was moved again, she would be isolated. She also indicated that the claimant could remain with her team and provide cover in court for reviews for the DTTO team to assist with the long-term absence of another social worker.
49. Ms Fuller informed Ms Cowell by email on 22 April that the request for the claimant to remain in Ms Cowell's team was refused and that the claimant should return to the DTTO team on the next working day, which was a Monday. Ms Fuller did not contact the claimant to discuss the matter, nor determine how the claimant would cope with another move. Ms Cowell was to remain the claimant's contact person for support, but Ms Fuller did not explore the practicalities of that given the claimant and Ms Cowell would now be based at different offices, and that both had demanding duties. Ms Fuller confirmed her decision in an email to the claimant on 22 April.
50. The claimant returned to the DTTO team on 25 April as instructed. Mr Cross met with the claimant on 25 April. Following that meeting the claimant emailed Ms Fuller to inform her that Mr Cross had sought to discuss the investigation with her and that she had to tell him four times she couldn't discuss this.
51. The return to the DTTO team caused the claimant additional stress. She did not have the support of Ms Cowell there, could not speak to anyone else about the investigation and was concerned at Mr Cross trying to discuss the matter with her. The claimant was quite unwell by this point and only remained at work as she discovered she would not be entitled to occupational sick pay.
52. The claimant provided Mr Gourlay with correspondence from SSSC on 26 April.
53. The claimant emailed Mr Gourlay on 9 May to request an update on the progress of his report.

54. Although Mr Gourlay was meeting with Ms Fuller and HR regularly to discuss his investigation and the various drafts of his report which he provided to them for feedback and comment, no one was responsible for providing the claimant with an update on the timescales for the report being concluded.
- 5 55. Mr Gourlay emailed the claimant on 16 May indicating that he had submitted a draft of his report and that he believed 'it is quite close to being concluded'. However, he asked the claimant to confirm whether the zipped file of correspondence the claimant had sent him was all the correspondence and queried whether there was further correspondence between 9 November and
10 5 January or the letter the claimant said she had received with attachments. He was asked to obtain this information by Ms Fuller. Other than the email of 12 October (which was the email with attachments the claimant had been sent), which he already had albeit not in email format, this was a fishing exercise on the part of the respondent. The claimant did not withhold any
15 information from the respondent and at all times acted reasonably and transparently.
56. The claimant resigned from her employment with the respondent in a letter of 30 May and set out in detail her reasons for resigning. She stated "Being a young woman from Lithuania I had to explain myself why I was appointed to
20 my post." She indicated that her grievance had not been considered, the disciplinary investigation had not been concluded, no time frames had been provided and that the levels of stress being experienced by her had not been acknowledged."
57. Ms Fuller responded to the claimant's letter by letter of 31 May. She stated
25 "It's disappointing to hear you report you felt stressed and unsafe". The letter did not make any offer to meet with the claimant to discuss her concerns or deal with her grievance and said that Ms Fuller was confident the disciplinary investigation would be concluded before the end of the claimant's employment. The letter simply sought to justify the actions taken by Ms Fuller.
- 30 58. The claimant was absent from work because of work related stress from 6 June until the termination of her employment.

59. Mr Gourlay produced an investigation report on 20 June. It was not provided to the claimant. The claimant only had sight of the report on 21 December 2022 after she had made a subject access request of the respondent and then raised the failure of the respondent to deal with her request with the Information Commissioner.
60. Ms Fuller wrote to the claimant on 27 June to advise her of the outcome of the investigation. The letter upheld the allegation but made no reference to the specific allegations of theft and fraud which had originally been made or set out in what, if any, way the claimant had breached the various codes previously referred to. Ms Fuller suggested in her letter (without any evidence to do so) that the reason the SSSC had not informed the claimant that she could not work as a social worker was probably because the claimant had not been explicit that she was applying 'for a Social Worker post', but rather a social work post'. The letter indicated that having considered the mitigation, Ms Fuller had decided not to proceed to a disciplinary hearing. The letter also stated "I also understand that you are currently on leave and may only be in work on one day, Friday 1 July 2022 prior to leave. This limits what I can recommended (sic) by way of an outcome to this disciplinary investigation. Had you remained in our employment, I would have recommended management intervention, particularly around your role and responsibilities in relation to SSSC registration requirements and the City of Edinburgh's Employee Code of conduct, to avoid further breaches." Ms Fuller did not specify what that management intervention would involve or why it might be appropriate. Ms Fuller made no reference to the claimant's grievance although she did state that she had liaised with colleagues in the recruitment team and recruitment managers to raise awareness of the SSSC process.
61. The claimant was deeply impacted by her treatment by the respondent and had difficulty sleeping and eating and lost weight. She attended her GP once she had managed to register with a GP. She was unable to work for a time after the termination of her employment and then registered with an agency and commenced agency work in September. She started applying for a

permanent role in December 2022 and expects to commence in a permanent in June or July 2023. She took reasonable steps to mitigate her losses.

Observations on the evidence

5 62. The Tribunal found the claimant to be an entirely truthful and credible witness. While she was clearly upset and finding it difficult to compose herself throughout almost the entire hearing, she sought to give her evidence in a straightforward manner. In submissions the respondent invited the Tribunal to accept that the claimant had not been truthful in her evidence and had been
10 willing to conceal evidence. The Tribunal entirely rejected that submission. While it was true to say that on occasion the claimant had difficulty in answering questions put to her in cross examination, that was at least in part due to the structure of some of the questions. English is not the claimant's first language and while her English is excellent, she was clearly upset
15 throughout the proceedings and indeed looked quite unwell to the Tribunal. These factors together with the way in which questions were often framed was the cause of any confusion in the claimant's evidence.

63. Dr Scott was a straightforward witness whose evidence was entirely credible and reliable. The Tribunal accepted his unchallenged evidence as to the
20 management structure of the DTTO and the circumstances surrounding the nurse in the team who lost her registration.

64. The Tribunal found Ms Lawrie to be generally credible. However, she was unable to remember certain matters, which was not surprising given she is now retired from her former role. The Tribunal did find her evidence that the
25 disciplinary investigation was for the benefit of everyone including the claimant to be unconvincing and not genuine. Ms Lawrie did not appear to have any insight into the impact of her communications with the claimant on the claimant. It appeared to the Tribunal that she seemed unconcerned regarding the claimant's wellbeing when she was transferred from her roles
30 at short notice with no consultation. The Tribunal found this surprising given

the role of Ms Lawrie who also indicated that she had no concerns regarding how the claimant had been treated throughout the process. The Tribunal did not accept her evidence that the respondent was bound to conduct a disciplinary investigation because of the communications received from the SSSC. The SSSC did not at any stage raise the matter of an investigation and indeed indicated subsequently that the allegations against the claimant were not clear. Further Ms Lawrie's did not ask NHS Lothian for any investigation to be conducted into the nurse who lost her registration and simply asked for an explanation as to how the situation had arisen which was accepted by her.

65. The Tribunal found Mr Cross to be credible and reliable. It was clear that he had considerable sympathy with the claimant and did not believe that she should have been subject to any disciplinary investigation. He evidently regretted that he may have contributed to the difficulties experienced by the claimant and understood why the claimant became suspicious of him. Mr Cross indicated that the claimant's nationality had been an indirect cause of her treatment as the situation would not have arisen in relation to a Scottish national. He had been of the view that the claimant should remain in the team. He was genuinely concerned at the impact the claimant being transferred out of the team would have on her and was uncomfortable with the whole situation. He also indicated that he had been required to deal with the situation when a nurse in the team had lost her registration and was of the view that the nurse who lost her registration was more responsible for her lack of registration than the claimant yet had not been subject to any detrimental treatment.

66. Ms Cowell was also an impressive witness who gave her evidence in a straightforward manner and was clearly shocked at the claimant being subject to a disciplinary investigation. She showed genuine concern for the claimant throughout her involvement with her and did what she could to support the claimant.

67. The Tribunal found Mr Gourlay to be generally credible. It appeared to the Tribunal that he simply followed the instructions of Ms Fuller in relation to the

investigation he conducted. This was particularly given his evidence suggested he was aware of general data protection principles, yet he contacted the SSSC seeking correspondence between them and the claimant without seeking consent of the claimant. The Tribunal concluded that he had contacted SSSC on the instruction of Ms Fuller to whom he reported. His investigation was wholly influenced by Ms Fuller who provided direction on the course it should take and the content of the draft reports provided to her.

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68. Ms Fuller's evidence as to events was largely credible. The Tribunal did not however accept as credible her evidence regarding her reasons for taking the action she did and the instructions she gave to others. Ms Fuller's evidence that she considered reporting the claimant's situation to the police was particularly illustrative of her approach towards the claimant. The Tribunal found it astonishing that consideration could be given to reporting an experienced social worker to the police because they had not obtained registration. While it is an offence for a person in Scotland with an intent to deceive another to hold themselves out as a social worker if they are not registered as such by one of the four UK regulatory bodies, there was nothing to suggest that the claimant had attempted to deceive anyone in that regard, and in any event the claimant was registered with the NICC. Indeed, Ms Fuller did not put forward any cogent reason for the decision to subject the claimant to a disciplinary investigation. She suggested that she wished an investigation to be conducted into the claimant to determine whether she had misled the respondent. She did not however inform the claimant that was what she was doing. At the time she took the decision to instigate a disciplinary investigation, she had a clear explanation from Mr Cross as to how the situation had arisen. She had a letter from the SSSC apologising to the claimant and a chronology of events from the claimant. There was nothing to suggest that the claimant had sought to mislead anyone. The Tribunal did not accept as remotely credible her evidence that she had no option but to instigate a disciplinary investigation alleging gross misconduct against the claimant in order to investigate how the claimant had come to be appointed when she was not yet able to practice as a social worker.

69. The areas of dispute on the evidence as to what had occurred were in the event largely irrelevant to the issues to be determine. There was some dispute as to who first raised the possibility of the claimant resigning and whether that was the claimant or Ms Lawrie. The claimant was under considerable stress during her conversations with Ms Lawrie, which were only on the phone. There was therefore considerable room for misunderstanding and while the Tribunal concluded on balance that the claimant probably raised the matter first, it was not material to its findings.

70. There was also some dispute as to whether the claimant had informed Ms Cowell that the SSSC had suspended its assessment of her qualifications and were going to refer her to their fitness to practice team. There was however no dispute that neither of these events actually happened and the Tribunal concluded that a misunderstanding had arisen, no doubt in part due to the health of the claimant at the time.

15 **Issues to determine**

71. The Tribunal was required to determine the following issues:

- (a) Did the respondent discriminate against the claimant because she was Lithuanian?
- (b) If the respondent did discriminate against the claimant, had it taken all reasonable steps to prevent such discrimination occurring?
- (c) Did the claimant make a protected disclosure and if so, was she subjected to any detriment as a result?
- (d) Did the claimant resign because of discriminatory treatment and was she entitled to treat herself as having been dismissed in those circumstances?
- (e) Did the respondent fail to provide the claimant with a statement of terms and conditions of employment in terms of section 1 Employment Rights Act 1996?

(f) If the claimant succeeded in any claims, what compensation should the Tribunal award and should the Tribunal make any recommendations?

(g) Has the claimant taken reasonable steps to mitigate her losses?

5 (h) If the claimant was awarded compensation, should that compensation be subject to an uplift because of any failure of the respondent to deal with the claimant's grievance?

Relevant law

Race discrimination

10 72. Section 9 of the Equality Act 2010 ("EA") provides that the protected characteristic of race includes nationality and ethnic or national origins.

73. Section 13 provides that a person will be discriminated against if, because of a protected characteristic he is treated less favourably than others have or would be treated.

15 74. Section 19 EA sets out the requirements of indirect discrimination and the basis on which any treatment found to have been discriminatory can be justified.

20 75. Section 23 EA provides that where a comparison is made in a discrimination case there must be no material difference between the circumstances relating to each case.

76. Section 136 EA sets out the requirements of the burden proof and provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

25 Protected disclosures

77. Section 43B of the Employment Rights Act 1996 ("ERA") sets out the definition of a protected disclosure:

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

- 5 (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- 10 (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be
15 deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

20 (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not
25 a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

78. Section 43C provides that a qualifying disclosure can be made to an employer.

5 79. Section 47B provides that person has the right not to be subjected to any detriment on the ground that the person has made a protected disclosure.

80. Section 103A ERA provides that:

(a) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

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Unfair dismissal

81. Section 95 of ERA sets out that a person will be dismissed where an employee terminates the contract under which he is employed with or without notice in circumstances which he is entitled to terminate it without notice by reason of the employer’s conduct.

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Submissions

The respondent provided detailed written submissions which were of considerable assistance to the Tribunal. It would be an injustice to the care with which Mr Gibson drafted those submissions to seek to summarise them. In essence, it was submitted that the claims should be dismissed.

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Discussion and decision

Race discrimination

82. There was no dispute that the claimant was Lithuanian. For the purposes of the EA, this is a protected characteristic. The Tribunal was required to determine in the first instance whether the respondent treated the claimant

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less favourably than it did or would treat others because of that protected characteristic.

- 5 83. The treatment complained of was the decision to subject the claimant to a disciplinary investigation, transfer her to and from her post at short notice and the conduct of the investigation all of which resulted in the claimant's resignation.

Was there less favourable treatment?

- 10 84. It is necessary in the first instance to consider whether the claimant has demonstrated less favourable treatment. The claimant relied on two comparators, Ms B and Mr Cross. The Tribunal concluded that these were not actual comparators in that their circumstances were materially different from that of the claimant. In relation to Ms B, she was subject to the Nursing and Midwifery Council registration process rather than SSSC. In Mr Cross' case, while he had provided inaccurate information to the claimant on which she
15 relied, his registration was not an issue.

- 20 85. While the Tribunal did not accept that the claimant could compare her treatment directly with either individual, it found the circumstances of both individuals relevant to construct a hypothetical comparator. Ms B, while subject to a different regulatory body and employed by NHS Lothian rather than the respondent, was under the management control of Ms Lawrie and Ms Fuller for operational matters. The Tribunal accepted the evidence of Mr Cross and Dr Scott that Ms B was culpable in her registration lapsing and that rather than subjecting her to a disciplinary investigation or transferring her, she was permitted to continue working in the team with some restrictions until
25 her registration was regained. She was not investigated or transferred from her post at all. While the respondent may not contractually have been entitled to carry out such an investigation, there was no reason to suggest that it could not ask or require NHS Lothian to do so. It seemed to the Tribunal that as the respondent had overall management responsibility for the project, it must
30 have been a matter of concern to them that there was a member of staff who

required registration with their professional body and was working without that registration.

5 86. In relation to Mr Cross, he admitted providing what transpired to be inaccurate information to the claimant which resulted in her working as a social worker when she ought not to have been doing so. He was not at any time subject to any disciplinary investigation or management intervention. Had the respondent genuinely believed that the claimant practising as a social worker without registration to be as serious a matter as it suggested in relation to the claimant, the Tribunal concluded that it would have taken action against Mr
10 Cross for allowing the situation to occur. The Tribunal recognised that the responsibility of registration itself lay with the claimant, but the respondent also had obligations to ensure that it did not allow staff who did not have appropriate registration to work with them.

15 87. On this basis the Tribunal concluded that the claimant had been subjected to less favourable treatment.

Burden of proof

20 88. The Tribunal then went on to consider the application of the burden of proof. The Tribunal was mindful that the application of the burden of proof should not be approached in a mechanistic manner and that its application is more likely to be relevant when there is room for doubt as to the facts about a respondent's motivation. The shifting burden of proof is not relevant when there is no real dispute about the respondent's motivation. In that regard the Tribunal had in mind in particular the Supreme Court judgment of **Efobi v Royal Mail Group Ltd 2021 ICR 1263** and the comments of Mr Justice Elias
25 as he then was in **Laing v Manchester City Council and anor 2006 ICR 1519** that "if the tribunal is satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, "there is a nice question as to whether or not the burden has
30 shifted, but we are satisfied her that even if it has, the employer has given a

fully adequate explanation as to why he has behaved as he did and it has nothing to do with race.”.”

5 89. The shifting burden of proof can be relevant as it is a rare case where discriminatory treatment will be obvious. It is now recognised that those who subject others to discriminatory treatment are often entirely unconscious of their motivation. As stated by Lord Nicholl in **Nagarajan v London Regional Transport 1999 ICR 877 HL**, “All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we not always recognise our own prejudices. Many people are
10 unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant’s race. After careful and thorough investigation of a claim, members of an employment tribunal may decide that the proper inference to be drawn from the evidence
15 is that, whether the employer realised it at the time or not, race was the reason why he acted as he did.”

20 90. The Tribunal recognised that simply being satisfied that the respondent’s conduct was unreasonable was not enough of itself to raise an inference of discrimination and engage the concept of the shifting burden of proof (see for instance **Commissioner of Police of the Metropolis and anor v Osinaike EAT 0373/09**). In the present case the Tribunal was certainly of the view that the respondent’s conduct was entirely unreasonable. The Tribunal was astonished that any employee would be treated by a local authority in the way in which the claimant was treated, still less an experienced professional social
25 worker who had only recently moved to this country. Therefore, the Tribunal had no hesitation in concluding that the claimant was treated in an entirely unreasonable manner from the decision to subject her to a disciplinary investigation to the decision making throughout the investigation and the way in which its outcome was communicated to the claimant. However, when
30 taken together with

(a) the circumstances of Ms B and Mr Cross;

(b) in view of the evidence of Ms Fuller and Ms Lawrie that they could not countenance that there was anything unreasonable or unfair in how the claimant had been treated,

5 (c) the failure of the respondent to comply with its own grievance procedure in relation to the grievance raised by the claimant,

(d) the control taken by Ms Fuller over all decision making and the investigation into the claimant,

10 (e) Ms Fuller's failure to provide the claimant with any updates on the investigation, to meet with her or arrange for anyone else to meet with her to determine how she was coping, or discuss any alternatives to her being transferred out of the DTTO team and then back in again all at very short notice,

(f) To continue with the investigation despite the claimant obtaining registration within 6 months.

15 the Tribunal was satisfied that the burden of proof shifted to the respondent to explain why the claimant had been treated in the way in which she had.

91. The Tribunal did consider whether, although not argued by the respondent who maintained that the claimant was treated fairly and reasonably
20 throughout, the reason for the respondent's conduct was simply incompetence or a failure to consider the impact of its treatment on the claimant and was therefore not in any way discriminatory. However, it formed the view that the treatment was so wholly unreasonable in so many respects on so many occasions, that incompetence or a lack of compassion or
25 understanding was not the reason for the treatment.

Respondent's reason for the treatment

92. The Tribunal then considered the reason put forward by the respondent. Ms Lawrie indicated that the respondent 'had no alternative' but to conduct a disciplinary investigation into the claimant because of the letter from the

SSSC. That evidence was not accepted as there was nothing in the letter from the SSSC which suggested that such an investigation was necessary, never mind appropriate. Ms Fuller indicated that a disciplinary investigation was the only option open to her to determine how the claimant had come to be appointed. The Tribunal rejected this evidence. It appeared to the Tribunal that Ms Fuller followed the respondent's policies and procedures on her own terms. In the Tribunal's experience as an industrial jury, there was nothing to prevent Ms Fuller asking for an investigation to be conducted into the circumstances which led to the claimant's appointment. She chose instead to subject the claimant, and only the claimant, to a disciplinary investigation alleging gross misconduct because she appeared to think that the claimant had been dishonest. However, she did not ever suggest to the claimant that she had been dishonest. This was not the reason put forward for the treatment at the time and indeed at the point of commencement of the investigation there was nothing to suggest that the claimant had been dishonest in representing her qualifications and experience to the respondent. The Tribunal concluded that there was no cogent reason advanced by the respondent for subjecting the claimant to a disciplinary investigation, or the decisions following thereon, that the respondent has failed to establish a non-discriminatory reason for the treatment of the claimant in subjecting her to a disciplinary investigation and transferring her out of the DTTO team and the unreasonable manner in which the investigation was conducted and therefore the Tribunal is bound to find that this conduct amounted to discriminatory treatment in terms of section 13 EA.

93. In the present circumstances, the Tribunal concluded that the reason Ms Fuller subjected the claimant to a disciplinary investigation, insisted she be transferred to another team and then transferred back without notice, continuing the investigation after the claimant obtained registration and the way in which the investigation was conducted was all because the claimant was Lithuanian.

94. The Tribunal concluded that Ms Fuller displayed a mindset towards the claimant where it appeared that she did not believe what she was being told

and that this mindset was on the basis of the claimant's nationality. It was notable that Ms Fuller never made any attempt to meet with the claimant and appeared to act immediately and decisively in the way in which she treated the claimant, all of which was predicated on consideration of involving the police when there was no reason to do so. It seemed to the Tribunal that Ms Fuller was unconsciously motivated by the claimant's Lithuanian nationality as it could not determine any other reason for the treatment. It seemed to the Tribunal as incredible that Ms Fuller would have acted in a similar manner towards a Scottish social worker with the experience of the claimant where an issue with that person's registration arose and where they were provided with an explanation as to how that had arisen. The Tribunal could not accept that the respondent would have had the same disregard for the welfare of a social worker in such circumstances were the person from the UK.

95. Therefore, the Tribunal did not accept as genuine the reasons put forward by the respondent for the treatment of the claimant. In these circumstances, the Tribunal was bound to find that the respondent had discriminated against the claimant.

96. Having determined that the respondent's treatment amounted to direct discrimination, it was not necessary to consider whether it had amounted to indirect discrimination.

Reasonable steps defence

97. The respondent argued that in the event any of its employees had been found to have discriminated against the claimant, it was not liable for conduct on the basis that it had taken all reasonable steps to prevent them from behaving in a discriminatory manner.

98. The Tribunal found that it was Ms Fuller who was responsible for the discriminatory conduct, although Ms Lawrie carried out the decisions on the instructions of Ms Fuller.

99. The Tribunal heard evidence from Ms Fuller that she had completed e-learning modules on avoiding discrimination made available by the

respondent that were mandatory. No information on the content of those modules was provided. The Tribunal also heard that around the time of the relevant events, Ms Fuller took part in a session run by an organisation called the Human Library, where she was in a group of staff who spoke to a person who had autism and one who had been abused as a child. The purpose of the training was said to be to understand the benefits of a diverse workforce and to understand unconscious bias. No further evidence was provided in relation to any material or learning outcomes of that training. Ms Fuller said that she had seen the respondent's diversity and inclusion policy and 'would have been aware' of the respondent's equality and diversity framework document.

100. In order to establish a reasonable steps defence, the onus is firmly on an employer. In considering whether the defence has been established, a tribunal ought to consider what events took place before the acts complained of. The Tribunal was aware that Ms Fuller had completed what she referred to as mandatory training in November 2021. It had no information as to what that training involved. The Tribunal was also aware that Ms Fuller had taken part in the Human Library training in February 2022, but it was not clear whether this was before or after the decision to subject the claimant to a disciplinary investigation had taken place. Ms Fuller said she 'would have been aware of the respondent's equality and diversity framework document. There was no evidence led from anyone as to how that was implemented. There was no evidence that Ms Fuller had undertaken any training specifically on race discrimination or unconscious bias which might arise in such cases.

101. Mr Cross' evidence was that he had undertaken some training on avoiding prejudice in the recruitment process but otherwise had not had any training in equality and diversity. He did not recognise the respondent's diversity and inclusion statement or equality and diversity framework document. He was a team leader responsible for a number of staff. The Tribunal therefore did not accept that the respondent widely enforced any equality opportunities policy it operated.

102. Ms Lawrie said that she had undertaken the respondent's mandatory diversity and inclusion training but had also undertaken a certificate at Heriot Watt university in 1998. She was familiar with the documents referred to above, but again no evidence was led as to the content of the training.

5 103. In all of these circumstances, the Tribunal concluded that the respondent had failed to establish that it had taken all such steps as were reasonable to prevent the conduct from occurring. The Tribunal recognised that preventing unconscious bias in decision making is a difficult task. There was no evidence to suggest that Ms Fuller had undertaken any training which should have
10 prevented her acting in the way in which she did. The respondent is therefore liable for the discriminatory conduct found to have been established.

Protected disclosure

104. The Tribunal then went on to consider whether the claimant had made a protected disclosure.

15 105. It was not clear to the Tribunal what the claimant alleged was the protected disclosure she made. She informed the SSSC that she was working as a social worker with the respondent, but when she did so she was not herself aware that the respondent had failed to act in line with its legal obligations. Therefore, this cannot amount to a protected disclosure.

Dismissal

20 106. For the claimant's dismissal to amount to an act of discrimination, the Tribunal must be satisfied that the reason for the claimant's resignation was an act of discrimination. The Tribunal was satisfied that the claimant resigned because of the disciplinary investigation, the failure to address her grievance and her
25 transfers at short notice. The Tribunal has found that all of these acts were acts of discrimination, the claimant resigned in response to these acts and therefore her dismissal amounted to act of discrimination.

Statement of terms and conditions

107. The claimant complained that the respondent had failed to provide her with an updated version of her terms and conditions following her transfer to the Court team. The Tribunal has determined that this claim is without foundation.
5 There was no dispute that the claimant was provided with a contract of employment which included all the requirements set out in section 1 ERA. There is no duty on an employer to provide another copy of the same terms and conditions simply because an employee has temporarily changed role. Therefore, there was no failure by the respondent in this regard.

10 **Remedy**

70. The Tribunal then went on to consider what compensation should be awarded to the claimant. The claimant has been undertaking agency work from September 2022 where she earns a similar amount to her previous salary but does not receive pension contributions. The Tribunal did not have specific
15 information in relation to the claimant's earnings during this period and the extent to which they exceeded her income and pension contributions when employed by the respondent.

71. However, the Tribunal did accept that the claimant had a loss of earnings between July and September of £5075, net.

20 72. The claimant sought compensation for job seeking expenses and relocation expenses but did not produce any vouching in that regard and therefore the Tribunal made no award. In addition, there was no loss of statutory rights.

Injury to feelings

25 73. The Tribunal then went on to consider the question of injury to feelings. The Tribunal was of the view that it was not an exaggeration to say that the claimant had been traumatised by how she was treated. She was a successful professional who had worked internationally and travelled to a new country to advance her career. She did not have a support network and relied on making contacts with the Lithuanian community in Glasgow and Edinburgh once her

work situation became difficult. She was given no support from the respondent other than from Ms Cowell. While she was given numbers of helplines to call by the respondent, there appeared to be no acknowledgement on the part of the respondent that the claimant would have no knowledge of the types of services offered in this country or what that might involve. There was no effort made to explain these to her. The respondent nominated Ms Cowell as support for the claimant without determining that she was on annual leave for the first week of the claimant's transfer to her team. There was no consideration given to the impact on the claimant of transferring her to a location away from Ms Cowell.

74. The claimant was treated almost like a criminal by the respondent. She was transferred from and back to a role with little notice and no opportunity to speak to her colleagues. She was told to leave the office immediately and leave her laptop and phone. The claimant had not even registered with a GP at the point at which she was told to work from home. She became isolated from colleagues. The Tribunal accepted Ms Cowell's evidence that the claimant lost weight, reported difficulties sleeping and eating and appeared obviously unwell during her time in her team. Ms Cowell indicated that colleagues who had no knowledge of the investigation to which the claimant was subject had approached her to voice their concerns for the claimant's wellbeing and the Tribunal accepted that evidence.

75. The claimant was humiliated by her treatment and is clearly still significantly impacted by the treatment, given her presentation during these proceedings. The Tribunal was of the view that the claimant's presentation during the proceedings, during which she was on the verge of tears or in tears throughout went far beyond the usual stresses claimants experience in representing themselves in Tribunal proceedings.

76. In these circumstances, the Tribunal is of the view that an award in the upper middle band would be appropriate and makes an award of £20,000.

Recommendations

77. The Tribunal did give consideration to making recommendations in this case, but as the treatment appeared to be directed against the claimant in highly unusual set of circumstances, it was of the view that it was not appropriate to make any recommendation. That said, the Tribunal did hope that the respondent would reflect on the impact the situation had on the claimant and take steps to avoid such circumstances arising in the future.

Adjustments

78. The Tribunal then considered whether there should be any adjustments to the compensatory award or award in respect of injury to feelings. The respondent argued that the award should be reduced on the basis of the claimant's contributory conduct. The Tribunal rejected that submission, on the basis that even if such a reduction could be made in circumstances where the claimant was subject to discriminatory treatment and resigned in response to that treatment, there was no basis on which she could be said to have contributed to her treatment.

79. The claimant sought an uplift in any compensation awarded on the basis that the respondent had failed to follow the ACAS code by failing to deal with her grievance. The respondent's position was that the grievance was addressed. As a matter of fact, that was not accurate. Although there was a stage 1 meeting in relation to the claimant's grievance, the claimant then lodged a stage 2 grievance. The grievance at stage 1 could not be dealt with in any meaningful manner as Ms Cowell had no knowledge of the facts. Stage 1 is recognised in the respondent's procedure as being an informal stage. The ACAS code states that "Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received." The respondent failed to comply with the code. There was no formal meeting at all with the claimant. The Tribunal was of the view that had the claimant's grievance been addressed then she may not have resigned. The disciplinary

investigation was an investigation into the claimant's conduct. It did not consider the extent to which any member of the respondent's staff or indeed the SSSC contributed to the situation the claimant found herself in. The disciplinary investigation was into allegations of gross misconduct against the claimant. It was entirely specious to suggest, as Ms Fuller did, that the two were the same. This is even more the case given that Ms Fuller did not tell Mr Gourlay that the claimant had raised a grievance or ask him to investigate the matters she raised in the grievance.

80. The Tribunal was of the view that an uplift of 5% was appropriate to both the compensatory award and the award for injury to feelings.

81. The award for injury to feelings is therefore £21,000 and the compensatory award adjusted to £5328.75.

Interest

70. Interest on the award for injury to feelings is calculated on the basis of a daily rate of £4.60 (being $8\% \times £21000 \div 365$). The date of the discriminatory treatment is 7 February 2022 and the calculation date is 4 May 2023 which is 451 days, giving a total interest of £2074.60.

71. Interest on the compensatory award is calculated from the mid-point and therefore is calculated on the basis of a daily rate of £1.16 ($£5328.75 \times 8\% \div 365$) and as this is calculated from the mid-point amounts to £261.58.

72. Therefore, in summary the respondent is ordered to pay to the claimant:

	Compensatory award (including uplift)	5328.75
	Interest on compensatory award	261.58
5	Award for injury to feelings (including uplift)	21000.00
	Interest on injury to feelings	2074.60
	Grand total	£28,664.93

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15 **Employment Judge: A Jones**
Date of Judgment: 05 May 2023
Entered in register: 10 May 2023
and copied to parties