EMPLOYMENT TRIBUNALS

Claimant: Mr C Wint

Respondent: Walsall Metropolitan Borough Council

Heard at: Birmingham

On: 18 to 20 November 2024
13 December 2024 and 8 January 2025 in Tribunal deliberations

Before: Employment Judge Edmonds
Mrs W Ellis
Mr J Sharma (by CVP)

Representation
Claimant: In person
Respondent: Mr S Lakha, counsel

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The complaint of harassment related to race is not well-founded and does not succeed.

2. The complaint of harassment related to religion or belief is not well-founded and does not succeed.

REASONS

Introduction

1. The claimant is a support officer at the respondent. ACAS conciliation commenced on 30 August 2023 and ended on 20 September 2023, with the claim form being submitted to the Tribunal on 4 October 2023.

2. This claim relates to an incident between the claimant and Miss Shone which took place on 17 July 2023: the claimant has been on long term sickness absence since 21 July 2023 which he says is a result of the incident. The claimant says that a comment was made to him on 17 July 2023 which amounted to harassment related to both race and religion or belief. As set out in the Case Management Orders following a preliminary hearing on 13 February 2024, the claimant identifies as a Christian black African Caribbean.

3. However, whilst the claimant identifies as Christian, the claim for harassment relating to religion or belief is about whether the comment in question related to Voodoo / Voodooism rather than Christianity. The claimant says that it did, and that he was offended (as a Christian) as a result. He says that he does not follow Voodoo / Voodooism, but that the comment was made because the alleged harasser was aware that Voodoo and witchcraft is in his view prevalent in black Jamaican and African culture.

4. This is therefore an unusual case, in that the claimant does not personally hold the religion or belief on which he relies for the purposes of the harassment related to religion or belief complaint. However, that is no barrier to pursuing such a claim.

Claims and Issues

5. A list of issues had been set out at a Preliminary Hearing on 13 February 2024 before Employment Judge Childe. However during preliminary discussions with the parties before the Tribunal read the relevant documentation and statements, it became apparent that there were some matters that required amendment. Specifically:

    a. There was a lack of clarity between the parties as to whether the religion / belief relied upon was Christianity or Voodoo / Voodooism. We refer to this further below, however ultimately it was determined that the claim as pleaded related to Voodoo / Voodooism (but with the claimant arguing that the effect of the conduct on him was offensive in part because he is a practicing Christian).

    b. The respondent's Grounds of Resistance had included an assertion under section 109(4) of the Equality Act 2010 that it had taken all reasonable steps to prevent discrimination, but this was not reflected in the List of Issues.

    c. The respondent was also arguing in relation to remedy that the claimant had failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures by not following the formal grievance procedure, however again this was not reflected in the List of Issues.

6. In addition, the claimant had made certain references in his witness statement which suggested that he might be seeking to argue direct race discrimination (and not only harassment) however the claimant confirmed that his claim was about harassment and he was not seeking to expand it to include direct discrimination.

7. The issues, as they were clarified to be following those discussions, are set out below:

Harassment related to race and/or religion or belief (Equality Act 2010 section 26)

1.1 *Did the respondent do the following things:*

1.1.1 *Mandy Shone said to the claimant on 17 July 2023 "I should have sent you a voodoo doll with pins in it emphasizing on the pins."*
1.1.2 *Desiree McKenzie-Plummer failing to challenge and intervene in that conversation.*

1.2 *If so, was that unwanted conduct?*

1.3 *Did it relate to relate to race and/or religion or belief of Voodoo / Voodooism? Is Voodoo / Voodooism a protected religion or belief within the meaning of the Equality Act 2010?*

1.4 *Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?*

1.5 *If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*

1.6 *If harassment did occur, did the respondent take all reasonable steps to prevent Miss Shone and/or Mrs McKenzie-Plummer (as the case may be) from doing the acts set out above and/or doing anything of that description?*

Remedy for discrimination

2.1 *What financial losses has the discrimination caused the claimant?*

2.2 *If not, for what period of loss should the claimant be compensated?*

2.3 *What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?*

2.4 *Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?*

2.5 *Was there a failure to follow the ACAS Code? If so should compensated be adjusted and by how much, up to 25%?*

2.6 *Should interest be awarded? How much?*

Procedure, Documents and Evidence Heard

Adjustments

8. At the start of the hearing, we discussed potential adjustments with the claimant in light of his ill health, and it was agreed that he could request additional breaks when he needed them (which he did on several occasions).

9. In addition, due to Miss Shone's ill health (see below) it was agreed that she could give her evidence via video.

Documents

10. We were presented with a bundle (file) of 124 pages and page references in these Reasons are to the relevant page of the bundle (using the paper numbering and not the electronic numbering which slightly differed). We explained to the parties that we would not be reading all of the documents but only those to which we were referred by the parties.

11. At the outset of the hearing, the claimant raised a concern about the bundle, in that he said that the respondent had amended it only around 14 days prior to the hearing and asked him to confirm agreement without asking whether he minded that it had been amended. The respondent explained that the amendments were simply to rename certain documents in the index to make them clearer, and to place some documents which had been exhibited to Ms Dudson's statement into the bundle. Therefore there was no new content, nor was any content removed. In those circumstances we did not consider the respondent's actions to be inappropriate.

Witnesses

12. We heard evidence from the following individuals:

    a. The claimant
    b. Mrs Desiree McKenzie-Plummer on behalf of the respondent (the claimant's line manager, witness to the alleged harassment and alleged to have failed to intervene)
    c. Miss Sarah Gavin on behalf of the respondent (who investigated the claimant's complaint)
    d. Miss Mandy Shone on behalf of the respondent (who was alleged to have made the harassing comment); and
    e. Mrs Ursula Jeffrey on behalf of the respondent, (who had been present when the alleged harassment occurred).

13. Miss Michelle Dudson was also intended to give evidence on behalf of the respondent however her witness statement related entirely to matters relating to remedy and given the time pressures we agreed that remedy would be dealt with separately should the claimant be successful in his claims. On that basis the respondent said that it would no longer call Miss Dudson to give evidence at this hearing (we note that later in the hearing the claimant indicated that he would have wished to have cross examined Miss Dudson about other matters but this was not something that was raised at the time). All of the witnesses had prepared written witness statements.

14. Miss Shone was unable to attend the hearing on its second day, due to having been taken ill that morning with chest pains, an ambulance being called and then and having to go to hospital. The Tribunal was at that stage informed that Miss Shone was in fact on long term sickness absence (since 29 July 2024) due to work related stress, linked to the issues arising in this claim. We agreed to continue with the rest of the evidence on that day, and to see whether she was well enough to give evidence the following day. The Tribunal agreed that her evidence could be given by video in the circumstances. Miss Shone was well enough to give her evidence the following day, however the Tribunal took steps to ensure that she could ask for a break at any stage if she needed one and also asked the claimant to ensure that he was mindful of his tone when questioning Miss Shone.

15. In relation to the claimant's evidence, whilst we have not found that he has lied in his evidence, we do find that he does have a tendency to portray the evidence in a way that best suits his objective. A particular example of this was when he was asked about the reason for his ill health during his first period of sickness absence and he said that during his employment at Rivers House the chairs were atrocious, commented that it was a health and safety issue and that his chair was not fit for purpose. Later that day, after a break, the respondent's representative put it to the claimant that this was false and that the true reason for his absence was because he had hurt his back gardening. At this point the claimant acknowledged that the respondent's representative was correct, but then added that the furniture had contributed but that he had not worded it correctly to the Tribunal. We consider that the claimant was not lying in the sense that we accept that he genuinely feels aggrieved about his work chair, however we also consider that it was a significant and deliberate omission of the truth to give the impression to the Tribunal that the reason for his absence was his work chair. Similarly, we consider that a previous conversation with Miss Shone about going to the gym is being portrayed in a certain way by him (see below) to support his case, rather than him having felt aggrieved at the time.

16. In relation to Miss Shone, we also consider that she used to get along with the claimant but is presenting certain aspects of their past dealings so as to portray the claimant in a particular way. For example, in her witness statement she refers on the one hand to elements which suggest that she and the claimant had a friendly working relationship but then in her oral evidence she gave the impression of the claimant as someone that she felt somewhat intimidated by. Whilst paragraph 16 of her witness statement had referenced a negative aspect of their prior relationship, we consider that her oral evidence sought to accentuate this and her evidence must be interpreted through the eyes of someone who is acting defensively in light of feeling under attack by the claimant. We did not however find her to be untruthful in her evidence. Her statement para 16 references the negative side of relationship but in evidence she accentuated the way she described it. Her evidence is interpreted through the eyes of someone who is defensive in light of feeling under attack by the claimant.

17. We find that both Miss Shone and the claimant used to laugh, joke and flirt in the workplace and both now have gone back and mentally analysed their past interactions and have now interpreted them in a different light in consequence

of the subsequent breakdown of their working relationship. Their animosity towards each other was particularly clear when the claimant made a comment when questioning her in evidence about being on the waiting list for counselling and she responded with "I beat you, I'm having counselling". The Tribunal felt that they were each trying to demonstrate that they were more traumatised than the other by each other's behaviour.

18. In relation to the other witnesses, we had no reason to disregard their evidence and found it to be honest. In relation to Mrs Jeffrey, she did not appear to recall very much of the detail of what happened, and so we bear that in mind when considering her evidence, however equally we consider the fact that she does not recall all of the detail is reflective of her general position that she did not hear anything untoward: had she heard anything she considered to be untoward we consider she would have been more likely to have a detailed recollection. It was also clear to us that she had a good relationship with the claimant and therefore if she had heard something untoward we consider that she would have disclosed this either during the internal investigation and/or to this Tribunal. We consider Mrs McKenzie-Plummer to be a neutral witness who was there at the time to witness the alleged harassment: whilst it is clear that she respected Miss Shone in the workplace and thought highly of her, there is nothing to suggest anything beyond the normal viewpoint one might have of an employee in the team.

19. The claimant submitted that the respondent's witnesses had been colluding in their evidence. We did not identify any collusion or inappropriate conduct on their part. In fact, the version of events put forward by Mrs McKenzie-Plummer and Miss Shone do not quite align (although they are broadly similar), which in fact suggests to the Tribunal that no collusion has taken place otherwise they would have had exactly the same memory of events.

<u>List of Issues / Voodoo / Voodooism as a protected religion or belief</u>

20. At the start of the hearing, it was identified that the List of Issues did not clearly spell out what the nature of the religion or belief relied upon was, or whether that should be a protected belief under the Equality Act 2010. Although the Case Management Orders from the hearing on 13 February 2024 made clear that the claimant himself was a Christian, on reading his claim form it was apparent that his claim related to an alleged religion or belief of Voodoo / Voodooism and that was what the respondent said it had understood to be the religion / belief relied upon (and it was not ready to proceed if it were required to do so on the basis that Christianity was relied upon).

21. At this stage the Tribunal notes that the spelling of Voodoo is different in different cultures (notably in Haiti it is commonly spelt "Vodou"), however we have adopted the spelling "Voodoo" to mirror that used by the parties. That said, we consider that the parties intended to encompass Haitian Vodou as part of Voodoo because they both referred to Haitian Vodou in their submissions to this Tribunal.

22. The claimant considered whether to request to amend his claim to include an allegation that the harassment related to his Christian religion, however after

careful consideration declined to make that application. The respondent had made clear that it had not prepared its case on that basis and that if the claimant's claim were amended in that way it would request a postponement of the hearing and potentially its legal costs.

23. As the List of Issues did not specifically address this point but it was clear that the respondent intended to make submissions on it, I explained to the parties that as part of the Tribunal's conclusions as to whether the conduct related to race and/or religion or belief, the Tribunal would consider whether Voodoo / Voodooism amounts to:

    a. A religion; and/or
    b. A religious or philosophical belief

    within the meaning of the Equality Act 2010. The Tribunal explained to the claimant that there were some well publicised cases that he could research online about this: the respondent referred him to the case of **Grainger** (**full citation below in the Law section**) and provided a copy of that Judgment, and the Tribunal also referred him to the case of **Forstater** (**full citation below**). As set out below, we also invited specific submissions on this point, and we advised the parties that the Tribunal intended to look at the Oxford and Cambridge online dictionary definitions as part of our deliberations. We informed the parties that they should not assume any specific knowledge relating to Voodoo / Voodooism on the Tribunal's part, and should direct the Tribunal to any particular website that they wished the Tribunal to look at. Both parties did so, however initially the claimant provided a link to google search results amounting to a large number of sites without any explanation as to the specific relevance of each one. The respondent objected to this and the Tribunal wrote to the claimant prior to deliberations, requiring him to provide more specific material, which he did.

24. In order to determine whether Voodoo / Voodooism is a protected religion or belief, we have had to make certain findings of fact about Voodoo / Voodooism. For ease of reference, we have included these in our Conclusions section (notwithstanding that they are findings of fact), so that they appear alongside our conclusions as to whether they amount to a religion or belief (rather than alongside the factual findings relating to the claimant himself).

Submissions

25. As the claimant was a litigant in person (i.e. representing himself), the Tribunal spent time before his evidence commenced explaining to him what the purpose of submissions are (and how they differ from evidence), and the point at which he would be invited to present them to the Tribunal. In the provisional timetable set at the preliminary hearing on 13 February 2024 it was envisaged that submissions would take place on the afternoon of the second day of the hearing. However, the number of witnesses which the respondent had called had increased from that envisaged at the preliminary hearing and there were also a number of preliminary matters to address before the Tribunal could read the relevant statements and documentation at the outset of the hearing. Therefore that timetable was no longer feasible.

26. In addition, on the second day of the hearing, Miss Shone (a key witness) was unwell and unable to attend the hearing, meaning her evidence could not be heard until the final day of the hearing. We therefore agreed that her evidence would take place at the start of that third day, followed by a break before submissions.

27. Unfortunately the claimant arrived almost one hour late to the hearing on the third day and we could not therefore start until 11.30am. This meant that the evidence ran until just before 1pm on that day. Both parties wished to make oral submissions and having verified with each party how long they needed on their submissions, it was apparent that the hearing needed to re-start by 2pm in order for submissions to be completed that day (and to avoid a further day of hearing with the parties being required). The Tribunal considered that this was sufficient time in the circumstances and that it was not in the interests of justice or the Overriding Objective to postpone the hearing for further preparation of submissions, nor was that requested by either party. We mention this because, after the end of his submissions, the claimant indicated that he did not know about submissions until the second day of the hearing and he found that unfair. However, whilst I cannot comment on what was or was not explained at the preliminary hearing, the timetable set out following that hearing clearly recorded time for submissions and before the claimant started his evidence on the first day of the hearing, the Tribunal explained to the claimant what submissions are. Whilst the Tribunal would have initially proposed to give the claimant longer to finalise his submissions, the reason we did not do so was because he was late attending the hearing on its final day and we remain comfortable that he had a prior understanding of what they were and could have prepared them in large part before evidence was concluded, then adding to them where necessary.

28. The parties were advised that they were permitted to spend 45 minutes each on submissions. The respondent slightly overran, taking 50 minutes (with the Tribunal's permission) and the Tribunal ensured that the claimant was therefore also given 50 minutes for his submissions. The Tribunal also made arrangements for both parties to have the opportunity to send in details of any websites or materials they wished the Tribunal to have regard to when assessing whether Voodoo / Voodooism amounts to a religion or belief within the meaning of the Equality Act 2010, and for each of them to have the opportunity to respond to the material the other had sent in. This was done because the Tribunal considered this to be a matter of some importance to consider and was mindful that neither party had provided significant materials for the Tribunal to consider on this point.

<u>Other general points regarding evidence</u>

29. During the course of the hearing, both the claimant and the respondent's representative spoke passionately about the respective cases that they were putting forward. On occasion the Tribunal felt it necessary to intervene and remind them to maintain a calm tone of voice when speaking to each other.

30. These findings and conclusions do not refer to every single point raised by the parties during the course of proceedings, only to those which we have considered relevant to our conclusions in this case. However, in reaching our decision we have considered the evidence that we heard as a whole.

Facts relating to the Claimant's employment

Background

31. The claimant's employment as a support officer in the housing section based at Rivers House at the respondent commenced on 1 April 2022. His employment was continuing as at the date of this hearing, although he was on long term sickness absence. The claimant is of Jamaican heritage, having been born in the UK to Jamaican parents. He is a practicing Christian and identifies as black African Caribbean. It is relevant to note that the claimant's line manager, Mrs McKenzie-Plummer is also of Jamaican heritage herself and is black.

32. The claimant had a period of sickness absence from 5 June 2022 to 3 March 2023. Initially during his evidence when asked the reason for his absence he said that this was due to the chair at Rivers House not being fit for purpose. However, later in his evidence (after a break during which presumably the respondent's representative had taken instructions on the point) it was put to him that this was not the case, and that actually the reason for absence was because he had hurt his back when gardening. The clamant accepted that, but went onto say that he just had not phrased things correctly and that he hurt his back and the chairs contributed to it. He denied seeking to mislead the Tribunal. We consider that even if the chair was not suitable in some way (we have no evidence on this to decide one way or another nor is it relevant), the claimant knew that the actual reason for his back injury was gardening and that when he said that it was his chair, he knew that he was omitting to reference the core reason for his absence. Whilst he was not lying as such, we consider that he deliberately omitted key information in order to paint the respondent in a poor light.

33. The claimant then returned to work on 4 March 2023 until his next period of sickness absence commenced on 21 July 2023, shortly after the incident to which this claim relates, and at the time of this hearing he had not yet returned to work. Therefore, although he had been employed by the respondent for over 2.5 years at the time of this hearing, in reality he had only attended work for approximately 7.5 months.

34. During his time at the respondent prior to the incident to which this claim relates, a number of matters arose. We refer to these because both parties have brought up past matters in order to seek to demonstrate the nature of the relationship between those involved in the matters in this claim. The issues relate both to the claimant and to other individuals at the respondent.

    a. There was an issue relating to a conversation in which a colleague of the claimant, Andy, referred to a young person's partner's size and compared it to the claimant's size. At the time the claimant said that he was offended by this comment and appeared to view it as being linked

to his race. The matter was addressed informally, with it being explained to the claimant that the comment was about the individual's physical size being similar to the claimant's and the matter was resolved informally. From what we can understand the comment was about size not race and whilst the other individual was black and the fact that he was black may have been referenced as a descriptive term, we are not clear as to why the claimant said that the comment itself was in any way racially motivated.

b. There was an issue relating to a colleague named Kym, whereby the claimant had been upset about the handover of a particular task at the end of her shift. Kym had reported the matter because she felt that the claimant was aggressive in the way he handled the situation.

c. Mrs Mckenzie-Plummer explained in her evidence that there had been an issue about a member of staff trying to find cover for a shift, and the claimant not wishing to take on additional duties. Mrs Mckenzie-Plummer said that she made it clear to the other member of staff that the claimant would not do the extra duties but said that she felt the claimant did not like working with that member of staff. This matter was discussed and recorded in the claimant's supervision notes from 20 May 2022 where it was stated that it had been agreed that Mrs McKenzie-Plummer's intervention was not required (page 84).

d. The claimant commented in evidence that one of the residents would sit outside at nighttime and get a takeaway delivered, and that other employees had noted on the case notes that this person had met drug dealers when in fact it was takeaway that he had received. The claimant said that he felt other staff lacked training and were judgmental.

e. In relation to the relationship between the claimant and Miss Mandy Shone, there were several instances that we were referred to. On the one hand we heard evidence from Miss Shone about an occasion where the claimant asked her to go to the gym with him, where he would then have a sauna and massage, and she said she felt somewhat embarrassed but at the same time a little flattered to be asked. She also referred to them getting on well historically and to a shared interest in cars in her witness statement. However in evidence she referred to finding the claimant generally intimidating, said that the claimant had tried to take advantage of her and that he had asked her out on two occasions (the second time being the suggestion to go to the gym together) and she felt awkward around him. We accept that this happened, however we find that when Miss Shone says in her statement that she was both embarrassed and flattered, this was an accurate reflection of her interpretation at the time. We consider that she did not take action at the time because she did not view it as

serious, offensive or necessarily unwanted given her reference to being flattered.

f. The claimant on the other hand said in evidence that he was in fact sexually harassed by Miss Shone on a number of occasions, including a comment about her not liking condoms, and said that his line manager, Mrs McKenzie-Plummer had witnessed this, although she denied it. He referred to Miss Shone having been tactile and pinching his bicep around the time of his phased return to work. Mrs Jeffrey also said in evidence that she recalled some kind of joke between the claimant and Miss Shone about a hot tub. We consider that, just as Miss Shone was not offended by the claimant's comments referenced above, neither was the claimant offended by Miss Shone's at that time. We find that the nature of their working relationship was such that both felt that this kind of comment was acceptable between them. We find that the claimant did not complain at the time.

g. In addition, in evidence the claimant referred to another incident where he said that Miss Shone had made a reference to "bumbercluff people" which he explained is a Jamaican derogatory term. Miss Shone denied using this word and said that it was not a word that known to her. The claimant says that Miss Shone would have been familiar with the term from having had a Jamaican boyfriend previously, however she said that she had not heard it. We make no finding as to whether or not this comment was made previously and do not consider it necessary to do so in order to determine the issues in this case: however we do note that it was not something that the claimant had referenced in his claim form or witness statement, and we find that he had not raised any complaint within the respondent about this comment previously.

h. In contrast, Mrs McKenzie-Plummer says that there were no past incidents relating to Miss Shone and no complaints about her. She described her as a "*model employee and a pleasure to work with*". We accept that this was her genuine view of the claimant.

35. Overall we consider that the claimant's interpretation of the various events above show a tendency on his part to jump to conclusions about the comments and behaviours of others (for example in particular in relation to the comment about his size). We also find that the claimant was generally vocal in raising things when incidents occurred which upset him, both with the individuals concerned and with management.

36. Mrs McKenzie-Plummer said in her witness statement that only the claimant's assigned work colleague and Mrs Jeffrey wanted to work with him, and that the claimant was the only person that the team was unwilling to work with, and we accept her evidence on that. Miss Gavin also said in evidence that Mrs McKenzie-Plummer had come to her previously to discuss issues relating

to the claimant, and although these did not appear to be documented formally anywhere we again accept that she did so. In fact, in terms of written record of any issues, we only saw one recorded matter from May 2022 (page 84) which did not name the member of staff in question. Initially it was suggested that this was about the situation with "Kym" however it was later clarified that it was in fact about the rota issue referred to above. Nonetheless we accept that various incidents and issues did occur and that they were not recorded in supervision notes either because the matter was resolved and it was not thought necessary to do so or because the claimant went off sick and therefore there was not an appropriate supervision in which to discuss the matter.

The incident on 17 July 2023

37. On 4 June 2023, following a period of annual leave the claimant failed to attend work for his night shift. This was because he made a genuine mistake about the rota.

38. Miss Shone, a Tenancy Support Officer covered the shift. Miss Shone is white but it is relevant to note that she has had a black boyfriend of Jamaican heritage in the past. The reason that Miss Shone covered the shift was because she was on call on that night. The claimant's position is that this was therefore part of her job. Whilst the claimant is correct insofar as, given that she was on call, she would be the person who had to cover if an employee failed to turn up for work, we do not consider that it was a part of the normal day to day tasks for an on call employee to have to attend the workplace and work for a whole shift. Miss Shone's witness statement says that "*if someone does not turn up for work for whatever reason, the person on the on-call rota has to cover their shift"*. It was put in evidence to her that this statement was inconsistent with her position that this was not part of her normal on-call duties. We do not find it to be inconsistent. Ordinarily, the person on call would simply be available to deal with ad hoc matters as they arose and would therefore ordinarily also work the following day as well as being on call the night before. However, if there was a staff shortage, the obvious person to be asked to cover it would be the person on call. On this occasion, Miss Shone was not working the following day because the next day was a weekend.

39. When the claimant was asked about missing his shift in evidence, he accepted that he had got his dates mixed up, but specifically did not accept that he was "at fault" for this. He said that because he had a genuine reason why he did not attend work (mixing his dates up), this meant that this was not his fault. He also said, as alluded to above, that this is what the on call is there for. We find that the claimant's approach to the situation showed a lack of accountability or regret and a failure to acknowledge the impact of his actions on others. The fact that he made a genuine error does not detract from the fact that it was his error and that it had consequences for Miss Shone. It our view, it was reasonable for Miss Shone to be frustrated and annoyed at having to cover the shift, even if the claimant had not deliberately failed to attend work and even though she was on call.

40. A number of weeks later, on 17 July 2023 Miss Shone saw the claimant in the office. This was the first substantive discussion they had had since she had covered the shift – although the claimant says in his statement that he had seen her between those dates, she says that she had not seen him and on balance of probabilities we find that whilst the claimant may have caught sight of her, they had no prolonged discussions during that time. She was not ordinarily based in the same office but would attend from time to time, for example to pick up keys.

41. Mrs McKenzie-Plummer and Mrs Jeffrey were also present. Mrs Jeffrey was sitting at her computer opposite the claimant, with Miss Shone behind her. The office is small and so they were in close proximity. Mrs McKenzie-Plummer was initially on her phone, went into the kitchen and ended her call there, and was in essence in and out of the office where the claimant and Miss Shone were during the conversation. She was therefore not standing directly next to the individuals but she has a clear recollection of what was said (see below), and we find that she was close enough to hear what was being said at the relevant time.

42. Miss Shone made a comment to the claimant about having covered his shift, and asking him where he was on that day. She asked him how he could have forgotten about his shift when he was on the rota. The claimant apologised and said something along the lines of *"Don't go on"*. We find that the claimant was somewhat defensive at the issue being raised with him and wanted to shut the conversation down.

43. A comment was then made by Miss Shone which is the crux of what this case is about. It is accepted by Miss Shone that a comment was made however the precise words used are disputed.

    a. The claimant says that she said "*I should have sent you a voodoo doll with pins in it*", emphasising on the pins.

    b. Miss Shone said in her witness statement that she said something along the lines of "*I am like a voodoo doll to stick needles in my eyes*". During her evidence the Tribunal asked her to clarify this as we were having difficulty interpreting this comment. Miss Shone explained that what she meant was *"I'm like a voodoo doll with needles in her eyes"*, and what she meant by that was that she had been exhausted on the night she covered the shift from having to stay up all night, and was comparing herself to a Voodoo Doll with pins in its eyes to keep them open.

    c. Mrs McKenzie-Plummer says that the comment made was to the effect of "*I would rather have stuck pins in my eyes like a voodoo doll than covered that shift"* and that it was a lighthearted comment which she was confident was not directed at the claimant.

    d. Mrs Jeffrey says that she heard light hearted banter but does not recall what was said, although recalled no negative connotations.

44. It is therefore clear that a comment referencing Voodoo was made although there is an important difference between what the claimant says the comment

was and what Miss Shone and Mrs McKenzie-Plummer say it was: the key difference being that on the claimant's account the comment was specifically directed at the claimant and sending him a Voodoo Doll, whereas in Miss Shone and Ms McKenzie-Plummers accounts the comment was about Miss Shone comparing herself to a Voodoo Doll (although their interpretation of the comment does differ to some extent). The claimant said in evidence that he would be offended whichever version of the comment was made.

45. The claimant says that the comment was targeted at him as a Black Jamaican, and that because Miss Shone had had a black Jamaican boyfriend previously she would be aware that Voodoo was prevalent in Jamaican culture. However, it should also be noted that the claimant also stated in his evidence that Voodoo is such a taboo subject that it is not discussed at all which is somewhat contrary to that position.

46. Miss Shone on the other hand, along with Mrs McKenzie-Plummer, both say that in fact they do not understand Voodoo to be something associated with Jamaicans. Miss Shone says that in fact she would have made the same comment in front of a white colleague, and that she was simply referring to being exhausted because of having to be up all night covering his shift. Both Mrs McKenzie-Plummer and Mrs Jeffrey recall the conversation to have been light hearted.

47. Having considered the three different versions of what was said, we consider that Miss Shone's version is the one that makes the most sense in the context of what happened and what the conversation was about. It is unfortunate that it is only on the witness stand that we first heard her account of what was said, and her account in her witness statement did not make linguistic sense. On balance of probabilities, our view is that the comment was as per Miss Shone's account at the hearing i.e. that she felt like a Voodoo Doll with pins in her eyes, due to her exhaustion. This is in the context of her being tired from covering the shift. Therefore we find that the comment was not targeted at the claimant. Whilst Mrs McKenzie-Plummer's version is slightly different, it is nevertheless consistent in that the focus is on Miss Shone comparing herself to a Voodoo Doll, rather than directing it to the claimant. To the extent that the claimant has interpreted this as a comment directed at him, we find that he is mistaken, as he was previously when he interpreted a comment about his size as being related to his race.

48. Following the comment the claimant says that he replied to the effect that he is covered by the blood of Jesus. In his statement he referred to the comment as being that Miss Shone could not harm him because he is covered by the blood of Jesus, and in his written complaint / grievance he said that "that couldn't harm me" because he was covered by the blood of Jesus. Although in evidence he said that he did not say that Voodoo could not harm him and that he only said that he was covered by the blood of Jesus, we find in light of his comments in his witness statement and written complaint that the allegation is that he said that either Miss Shone or Voodoo could not harm him, and we find that this would be needed within such a comment to give it context. Miss Shone and Mrs McKenzie-Plummer says that they do not recall this comment and Mrs Jeffrey did not mention it in her evidence, saying more

generally that she recalled "light-hearted banter" and that she did not remember any conversation with negative connotations to it.

49. The claimant says that Mrs McKenzie-Plummer then said "Amen". In her witness statement Mrs McKenzie-Plummer denied saying Amen and Miss Shone said she could not recall it, however in evidence Mrs McKenzie-Plummer was a little less forceful, saying instead that she did not recall saying it.

50. We consider the "blood of Jesus" and "Amen" comments together as they are related. We recognise that during the hearing Mrs McKenzie-Plummer was not as certain as she had been in her witness statement that the comment was not made, and whilst these are very specific comments that the claimant says he recalls, we nevertheless find on the balance of probabilities that these comments were not said. Had the comments about "blood of Jesus" and "Amen" been made, we consider that the tone of the meeting would not have been consistent with Mrs Jeffrey's recollection of light hearted banter with no negative connotations, and we consider that Miss Shone and/or Mrs McKenzie-Plummer would have some recollection of the comment as we consider these words, particularly in relation to the blood of Jesus, to be memorable. We have also found (as set out below) that Mrs McKenzie-Plummer did not identify anything of concern during the conversation, either in the comments made or in the reaction of the claimant to it, and had this conversation taken place in the manner suggested by the claimant we consider that she would have at least recognised that the claimant was unhappy about the comment. In addition, had Miss Shone heard comments of this nature we consider that she would also have understood that the claimant was not happy, and therefore when interviewed at a later date, would have understood what the complaint was about (see later in our findings for more information on this point).

51. The claimant also says that he commented that people needed to be mindful, although Mrs McKenzie-Plummer said that she did not recall this being said. The claimant also says that he did not raise the matter at the time because he was trying to diffuse the situation, rather than escalate it. He said that by saying that people need to be mindful, he was trying to simplify things. We find that saying to be "mindful" rather than identifying the specific issue would not be consistent with the claimant's general approach to raising matters within the respondent. We have found him to be someone who is very comfortable to raise issues of concern and to specifically call out any perceived discriminatory comments, as he had done in the past. We consider that if he were offended in that moment by the comment, he would have said so specifically. On balance of probabilities, we find that he did not say that people needed to be mindful in response to this discussion. We also find that if he had said that, it would have been far less clear what the issue was than if he had articulated it clearly, and it would not have suggested that the comment had had an impact on him to the serious extent that he now says it did.

52. The claimant says that Mrs McKenzie-Plummer failed to intervene in the situation. We find that the reason she did not intervene was that she did not perceive that the claimant had been offended or that anything inappropriate

had been said, because she did not understand the comment to have been directed at the claimant. She did not perceive any change in atmosphere at that time, and neither did Mrs Jeffrey.

53. After this conversation, Mrs McKenzie-Plummer and Miss Shone left but the claimant and Mrs Jeffrey remained in the office. Mrs Jeffrey did not notice any change in atmosphere, although she did comment that the office went quieter but we find that this was because there were fewer people in it. She also recalls that the claimant said he had a headache but he did not reference any concerns about the conversation that had taken place. It was clear to us that the claimant and Mrs Jeffrey had a good working relationship and we consider that if he was offended it is more likely than not that he would have raised it with her.

54. Mrs McKenzie-Plummer then spoke to the claimant later that day on the telephone about some purchase card training he needed to complete. She did not raise anything about the earlier incident, which we find would reflect the fact that she did not consider anything untoward to have been said.

21 July 2023

55. The claimant was then on a three day rota'd break until 21 July 2023. On 21 July 2023 Mrs McKenzie-Plummer noted that the claimant did not seem to be focused and spoke to him about it. He said that he had a headache, that he had a lot going on at home and referenced the conversation in the office the previous week. Mrs McKenzie-Plummer says that the claimant referenced having spoken to his family about the matter, however the claimant denies this and says he only spoke with his daughter and did not share the full details with her. We find that something must have happened between him speaking with Mrs McKenzie-Plummer on the phone after the incident on 17 July 2023 and not saying anything about it, to now raising the matter a few days later.

56. We accept on balance of probabilities that the claimant did not share information with the entirety of his family, but we do find that he had some kind of discussion with his daughter and that although he may not have shared all the details, he shared some information which led his daughter to make a comment to the effect that she was shocked and appalled at what had happened and to link the comment to his race (as Mrs McKenzie-Plummer has referred to in her witness statement). We consider that this is what prompted the claimant to reflect further and then raise the matter on his return to work, having not raised it on the day of the incident.

57. The claimant says that he asked Mrs McKenzie-Plummer if she would have addressed the issue herself if he had not raised it, and that she said she would at some point, but that Fridays are busy. We do not accept that she said this. We consider first of all that she had not appreciated that there was an issue, and therefore that there would be something to raise. In addition, if she had appreciated that there was an issue, we do not think she would have made a comment to that effect, which would belittle the importance of addressing an employee's issues.

58. The claimant then left work: Mrs McKenzie-Plummer says she sent him home, the claimant says that in fact he said he was not well enough to work. We do not consider it relevant which it was, the key point is that he went home and did not return to work again because he commenced a period of long term sickness absence from that point onwards.

The claimant's grievance

59. On 11 August 2023 the claimant completed the respondent's grievance form (page 62). On the form are tick box sections where the employee is to indicate if this is an informal or formal stage grievance: the claimant ticked neither. This box is because in accordance with the respondent's grievance policy (page 48), grievances should be addressed informally before being considered formally. The respondent's grievance policy includes a flowchart (page 61) which explicitly spells out that the first stage is an informal stage. The content of the policy (page 56) separates out the informal stage from the formal stage, and makes clear that the grievance form should be used at the informal stage. It says that (at para 5.1.1) *"In the first instance all grievances (subject to 5.1.3 below) will be reviewed informally by the line manager to assess the matter and seek to reach a resolution/ provide a response".* Paragraph 5.1.3 says that where the employee is not able to raise the issue with their line manager, then it should be raised with their manager's manager.

60. Therefore, on the face of it, it is necessary under the policy to follow an informal process first and the appropriate person where the line manager is implicated in some way is that individual's line manager as was the case here (see below). However, paragraph 1.7 of the policy also states that the "*Council operates a separate dignity at work policy to raise issues relating to working relationships and cover any situations of alleged bullying and harassment".* We were not presented with a copy of that policy therefore we do not know whether that provides for a separate process to be followed for allegations of this nature.

61. We find that there was no issue in the first instance with the respondent seeking to address the matter informally but as we explain below we consider that steps should have been taken to proactively enable the claimant to move to a formal process as the matter progressed.

62. At this stage the claimant had not discussed the matter with Miss Shone and so she had no idea that the claimant was raising issues about the conversation they had had.

63. Within his grievance document the claimant set out his account of the incident on 17 July 2023 and said that he believed that Miss Shone had made a comment to the effect that she should have sent him a Voodoo Doll with pins in it. He said that she did this because she was aware that Voodoo and witchcraft is prevalent with black Jamaican and African cultures. He said that Miss Shone would not have made the remark if he was white. He said that the incident had severely affected his mental health and that he was on medication, and was off sick with work related stress. He ended the narrative by saying that he felt discriminated against because of his race. He did not

mention religion or belief. We find that at this stage the claimant had not specifically addressed in his mind the exact legal label to attach to the allegation he was making and was referring to race as a generic term rather than a legal one. We do not criticise the claimant for not using the words "religion" or "belief" at this stage in the process.

64. He also said that the outcome he sought was for his grievance to be upheld, for disciplinary action to be taken against Miss Shone, for Equality and Diversity Training, familiarisation with the Equality Act in supervision, and the code of conduct. By this we assume he means training for staff on these matters.

65. Miss Sarah Gavin, Senior Welfare and Housing officer, was appointed by Sarah Szwyd in the respondent's HR team to investigate the claimant's complaint. She was asked to do so informally as the first stage under the respondent's grievance policy. Miss Gavin was Mrs McKenzie-Plummer's and Miss Shone's line manager and is black**.** Although the complaint was dealt with informally, we have no hesitation in finding that his complaint amounted to a grievance.

66. On 15 August 2023 Ms Szwyd and Miss Gavin had a Teams meeting to discuss the find finding process that would be carried out. This was the first grievance fact finding investigation that Miss Gavin had carried out and from the evidence we heard it is clear that she was inexperienced in such matters. Ms Szwyd wrote to the claimant on the same date to acknowledge his "informal grievance" and to explain that he would be invited to a meeting to discuss his concerns, with the right to be accompanied (page 66). Miss Gavin wrote to the claimant on 29 August 2023 to invite him to a meeting on 7 September 2023 to discuss his concerns (page 67). This letter did not specify the right to be accompanied, however he would have known of his right to be accompanied from the previous letter and we assume this was omitted in error.

67. Miss Gavin met with the claimant on 7 September 2023. Before the meeting, the claimant had attended a separate sickness review meeting however he raised no concerns with Miss Gavin at the time to suggest that he was not able to participate fully in this second meeting on the same day. The claimant was accompanied by Ms Miriam Clift as his union representative. The claimant said that Miss Szwyd was also due to attend but failed to turn up, so Miss Gavin called her and was told to carry on without her. Miss Gavin did not recall this specifically, but did not deny that this had occurred. Whilst there was no legal requirement for HR to attend, we consider it unfortunate that there was not greater oversight from HR in the process given Miss Gavin's lack of experience and the flaws in the overall process to which we turn below. We consider the presence of someone from HR during the process and/or having greater oversight could have prevented those flaws.

68. We were provided with handwritten (page 68) and typed (page 72) notes from the meeting. Miss Gavin recalled that the claimant seemed agitated during the meeting and also forlorn. He had also brought the medication that he was taking with him to the meeting to show Miss Gavin.

69. Miss Gavin says that the claimant said at one point that he would "*take this as far as it could go"* and we accept that this was said. He also reiterated his desire for disciplinary action to be taken against Miss Shone, and said that Miss Shone had previously been disrespectful towards both Miss Gavin and Mrs McKenzie-Plummer. This is not in the notes of the meeting however they are not verbatim notes and we accept that it was said, particularly as Miss Gavin herself recalled in her witness statement that the claimant alleged inappropriate past behaviour on the part of Miss Shone. She recalled him saying that Miss Shone had been poorly managed, aggressive and inappropriate in her behaviour. Given that Miss Gavin was at that time Miss Shone's line manager, we can understand why Miss Gavin interpreted that as a criticism of her.

70. During the meeting the claimant gave an account of what he said had happened on 17 July 2023 (which aligns to the claimant's position as we have recounted it in these Reasons). He said that this was the first time that he had been racially abused, that he was offended and in disbelief at what Miss Shone had said (about the Voodoo Doll).

71. Miss Clift commented during the meeting that she felt that this should be investigated formally rather than informally due to the severity of the allegations. It does not appear that any consideration was given to this at the time and we consider that it should have been.

72. On 11 September 2023 Miss Gavin interviewed Miss Shone. Again we saw both handwritten (page 74) and typed (page 76) notes from the meeting. Miss Shone had not seen the grievance letter when she was interviewed, and Miss Gavin did not inform her that an allegation had been made about a comment regarding a Voodoo Doll, although Miss Shone did know that the claimant had made some kind of complaint about her. She was asked open questions rather than specific questions about what happened.

73. The content of the meeting therefore needs to be viewed in that context, as Miss Shone would not have fully understood the nature of the complaint made. She did not refer to the Voodoo Doll comment at all during the interview, and said that she could not fully remember the conversation. In evidence to the Tribunal, Miss Shone has said that she can recall making a Voodoo Doll comment (in the context that she accepts she made the comment we referred to above as her interpretation of what was said, but not in the context alleged by the claimant).

74. The claimant quite rightly notes that there is a discrepancy between Miss Shone saying in this informal grievance interview that she could not fully remember the conversation (and not mentioning Voodoo at all) and the evidence that she has given the Tribunal. However, in the context where she was not told that there was a complaint about the Voodoo Doll comment, we consider that the discrepancy can be explained by the fact that Miss Shone did not realise the relevance of that comment when interviewed by Miss Gavin. The essence of what she said in the meeting suggests that she thought the issue was that she had approached the claimant about the fact that she had to cover his shift. We also find that Miss Shone did not proactively reference the Voodoo Doll comment during her interview because

it had not occurred to her that this comment was problematic to the claimant, because in her mind she had not directed that comment at him. This supports our finding that the comment made was about her own exhaustion and not the claimant.

75. We consider that the fact that the claimant was not at any stage specifically asked if she made a comment about a Voodoo Doll (and the nature of that comment) is a flaw in the investigation and reflects the inexperience of Miss Gavin in dealing with such matters. This was the crucial point to investigate and yet the person alleged to have made the comment was not asked about it and never given the specifics to be able to respond adequately.

76. Mrs McKenzie-Plummer was also interviewed on 11 September 2023 and again we were provided with both handwritten (page 77) and typed (page 79) notes from the meeting. Ms McKenzie-Plummer gave her account of what happened, including her recollection that Miss Shone had said "*I would have rather stuck pins in my eyes like a voodoo doll than to cover that shift*". She said that there was no atmosphere afterwards and she did not think anything of the incident until the claimant spoke to her three days later about it. She said that Miss Shone's comment was jokey and not malicious.

77. Whilst for the most part the typed notes reflect the handwritten versions in Miss Shone and Mrs McKenzie-Plummer, we note that the handwritten versions of both sets of notes include wording at the end which was not included in the typed versions. In Miss Shone's case it said: "*Mandy doesn't feel that anything inappropriate was said during the conversations but if she did cause any offence she was apologetic as that is the last thing she would want to do"* and in Mrs McKenzie-Plummer's case it said *"Desiree stated that she felt bad that Carl had been affected by the conversation at work but didn't feel that there was any ill intent behind what Mandy had said in the office that day."* We consider it unusual that the final sentences in both were missed out, and note that in both cases this is the section which in effect amounts to a regret should any impact have been felt by the claimant. We see no reason for it having been left out, and we do not feel able to say why this was as Miss Gavin was not questioned on this in her evidence. In any case, we find the apology / regret of them both was not an indication of any acceptance of wrongdoing on Miss Shone's part, but rather an expression of regret ***if*** any offence might have been caused.

78. On 14 September 2023 Miss Gavin interviewed Mrs Jeffrey (page 80 for the handwritten notes and page 81 for the typed notes). She recalled a joke about a hot tub (which the claimant has since denied took place) and recalled Miss Shone making a remark about having to cover the claimant's shift but she said that it was jovial. She did not reference Voodoo specifically but said she struggled to remember the shift due to the passage of time, but did not recall any negative connotations.

79. The informal grievance outcome letter was sent to the claimant on 22 September 2023 (page 82). In the letter it said that Miss Shone was unable to fully remember the conversation but that having spoken to the witnesses to it there was no evidence found to support the claimant's claims, and neither witness had felt that anything was said in a malicious or offensive manner.

The letter explained that both Miss Shone and Mrs McKenzie-Plummer had expressed remorse for anything said that caused offence and offered mediation.

80. The letter did not set out what options the claimant had if he was unhappy with the outcome (in particular to ask for his complaint to be investigated under the formal grievance process). When asked about this in evidence, Miss Gavin accepted that this was not set out, but said that because he had a union representative, they would have known what the next steps were. Regardless, this was still a significant flaw on the respondent's part and this information should have been set out, particularly given the claimant had never asked for the matter to be dealt with informally in the first place and had specifically through his representative suggested it should be dealt with formally. The claimant's evidence was that his representative was confused by the outcome because it was not clear and we can understand why this would be the case, and in any case we consider that it was for the respondent to spell out their own process to the claimant.

81. Overall, we consider that the investigation was flawed because:

    a. Miss Shone was not asked about the Voodoo comment despite this being the key complaint;

    b. The outcome letter did not set out the next steps;

    c. Not all of the content was transcribed from the manuscript to typed versions of the notes; and

    d. Consideration was not properly given to whether to move to the formal stage at an earlier point when the claimant's representative requested it.

82. The claimant felt that the matter was too severe to warrant mediation and he did not respond to the informal outcome. In evidence he accepted that he should have. He said that he felt let down and shut himself off.

<u>The claimant's continued absence</u>

83. The claimant remained off work with work related stress and on medication, ultimately resulting in an Occupational Health assessment on 18 December 2023 (page 102) which found that he was not able to return to work and that there were no adjustments which could facilitate a return. It recommended that redeployment being explored. This aligned with an email the claimant had sent to Mrs McKenzie-Plummer on 19 October 2023 in which he said that he did not think he could return to Rivers House (page 112).

84. After a long period where it appears that no action was taken about his complaint by either party, on 26 June 2024 Ms Szwyd emailed the claimant, including a letter on behalf of Ms Michelle Dudson, Head of Customer Engagement. This was not in the hearing file but was embedded within the claimant's witness statement, as was the correspondence which followed (to which we refer below). In this letter Ms Dudson "reminded" the claimant that

if he felt that the matter remained unresolved, he could raise a formal grievance under the policy. We note first of all that this was not in fact a reminder, but the first time he was informed of this in writing at least. We were not told why the respondent suddenly decided to send this correspondence to him, however we consider on the balance of probabilities that someone within the respondent reviewed the claimant's file and became aware that he had not been formally offered the opportunity to take his grievance to a formal level, and was retrospectively seeking to remedy that.

85. On 1 July 2024 the claimant responded to Ms Szwyd saying that he was not ok, and that it had taken nearly a year for the respondent to reach out to him. He said that he was frustrated and confused that he was now being given opportunity to take the matter to a formal grievance despite the outcome dated 22 September 2023. We find that this was a reasonable response in the circumstances.

86. On 3 July 2024 Ms Dudson responded to the claimant, saying that she was sorry to hear that he was not feeling ok and again reminding him of his right to raise a formal grievance. The claimant responded the following day, asking why it had taken nearly a year for this to be explained to him. We were not presented with any further correspondence, so cannot say if the respondent replied to that question, although we do consider it a valid question for the claimant to have asked.

Law

Religion or belief

87. Section 10 of the Equality Act 2010 provides:

> *(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.*
>
> *(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.*
>
> *(3) In relation to the protected characteristic of religion or belief –*
> *a) A reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;*
> *b) A reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.*

88. Article 9 of the European Convention on Human Rights ("ECHR"), to which we must have regard, concerns freedom of thought, conscience and religion and provides:

> *1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

89. In **Eweida and ors v United Kingdom 2013 IRLR 231, ECtHR**, the interrelationship between the two paragraphs of Article 9 was considered and it was held that:

"Religious freedom is primarily a matter of individual thought and conscience. This aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9(1), freedom of religion also encompasses the freedom to manifest one's belief, alone and in private but also to practise in community with others and in public… Since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9(2). This second paragraph provides that any limitation placed on a person's freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out therein."

90. The Equality and Human Rights Commission Statutory Code of Practice on Employment ("the EHRC Code") provides helpful guidance on what constitutes a religion or belief. The Employment Tribunal is required to have regard to it so far as relevant. It provides (amongst other things) that:

2.53 *….It is for the courts to determine what constitutes a religion.*

2.54 *A religion need not be mainstream or well known to gain protection as a religion. However, it must have a clear structure and belief system…*

2.55 *Belief means any religious or philosophical belief and includes a lack of belief.*

2.56 *"Religious belief" goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.*

2.57 *A belief which is not a religious belief may be a philosophical belief. Examples of philosophical beliefs include Humanism and Atheism.*

2.58 *A belief need not include faith or worship of a God or Gods, but must affect how a person lives their life or perceives the world.*

2.59 *For a philosophical belief to be protected under the Act:*

- *It must be genuinely held*
- *It must be a belief and not an opinion or viewpoint based on the present state of information available.*

- *It must be a belief as to a weighty and substantial aspect of human life and behaviour;*
- *It must attain a certain level of cogency, seriousness, cohesion and importance; and*
- *It must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.*

91. A number of authorities have considered the five points set out in paragraph 2.59 of the EHRC Code. These five criteria are commonly referred to as the "Grainger" criteria (**Grainger plc and ors v Nicholson 2010 ICR 360, EAT**). We refer to this further below.

Religion

92. There is no definition of "religion" in the Equality Act 2010 and in **R (Williamson and ors) v Secretary of State for Education and Employment 2005 2 AC 246, HL** it was suggested (at paragraph 54) that it was not necessary or useful to define it precisely, noting that the trend of authority at that time was towards a "*newer, more expansive, reading"* of religion. In **R (on the application of Hodkin and anor) v Registrar General of Births, Deaths and Marriages 2014 AC 610, SC** (not an employment case but nevertheless relevant), Lord Toulson held that 'religion' could be described as

"a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system".

A common factor will be a clear structure and system of beliefs.

93. There are some limitations on what will constitute a religion. For example, freemasonry has been held not to constitute a religion (**Conway v Secretary of State for the Home Office ET Case No.2205162/13**) and **First-tier Tribunal (Tax Chamber) in United Grand Lodge of England v Revenue and Customs Commissioners 2014 UKFTT 164, TC**). Here it was found that freemasonry was in fact a code of behaviour, in that whilst it required some belief in a supreme being it was for the individual member to choose their own religious belief and it did not claim to explain mankind's place in the universe or relationship with the infinite. Freemasonry was however found to amount to a philosophical belief.

Religious or Philosophical Beliefs

94. Whilst Article 9 of the ECHR clearly protects a person's beliefs as well as their religion, not every belief will qualify for protection, although the bar should not be set too high (**Williamson, above**). As stated by Lord Nicholls of Birkenhead in that case:

"22. It is necessary first to clarify the court's role in identifying a religious belief calling for protection under article 9. When the genuineness of a claimant's

professed belief is an issue in the proceedings the court will inquire into and decide this issue as a question of fact. This is a limited inquiry. The court is concerned to ensure an assertion of religious belief is made in good faith: …. But, emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its 'validity' by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual. As Iaccobucci J also noted, at page 28, para 54, religious belief is intensely personal and can easily vary from one individual to another. Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising…..

23. Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention: see Arden LJ [2003] QB 1300, 1371, para 258.

95. As to the distinction between a religion and a religious belief, a religious belief relates to an individual's own faith and how they live their life. A person may therefore follow a particular religion and hold religious beliefs which are not widely shared by all members of that religion, or which are not a core part of that religion (**Mba v London Borough of Merton 2014 ICR, 357, CA**).

96. Whilst, where possible, steps should be taken to define precisely what the belief in question is (**Gray v Mulberry Co (Design) Ltd 2020 ICR 715, CA**), there will be cases where the belief is so detailed or complex that this is not possible and in those cases a precise definition of those elements of the belief relevant to the claim will suffice (**Forstater v CDG Europe and ors 2022 ICR 1, EAT**).

97. In **Grainger (above)**, the five criteria now reflected in the EHRC Code were set out (at paragraph 24). They are:

    (i) The belief must be genuinely held.
    (ii) It must be a belief and not an opinion or viewpoint based on the present state of information available;
    (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour;
    (iv) It must attain a certain level of cogency, seriousness, cohesion and importance; and
    (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

98. These are modest requirements and it is not for the Tribunal to consider the overall merits and validity of the belief.

99. Under the Equality Act, a lack of belief qualifies for protection: in such circumstances the **Grainger** Criteria may not be applicable. In **Forstater (above)**, it was stated (at paragraph 106) by Mr Justice Choudhury that

    "*A lack of belief may arise from simply not having any view on the issue at all, either because of indifference, indecision or otherwise. It would also include a person who has some views on the issue but would not claim to have a developed philosophical belief to that effect….That lack of belief is protected under s.10(2) EqA irrespective of whether the Grainger Criteria could be applied to it. Indeed, it is difficult to see how the Grainger Criteria could be applied to a person who held no view on an issue at all".*

100. Taking each of the Grainger Criteria in turn:

    (i) Genuineness is a question of fact, however the inquiry is limited and the Tribunal should not stray into judging validity by some objective standard (**Williamson,** above).

    (ii) There must be an actual belief, rather than just an "*opinion based on some real or perceived logic or based on information or lack of information available)* (**McClintock v Department of Constitutional Affairs 2008 IRLR 29, EAT**).

    (iii) It must relate to matters which are more than merely trivial, possess an adequate degree of seriousness and importance and be a belief on a fundamental problem (**Williamson, above**).

    (iv) Whilst not stated in the Equality Act 2010, for a belief to be protected as a philosophical belief it must have a similar status or cogency to a religious belief. It does not however need to constitute a fully fledged system of thought.

    (v) This is the aspect that has been subject to the most recent commentary and therefore we deal with this in detail below.

101. As to the requirement that the belief is worthy of respect in a democratic society, is not incompatible with human dignity and does not conflict with the fundamental rights of others, this fifth **Grainger** principle derived from the earlier cases of **Williamson (above)** and **Campbell and anor v United Kingdom 1982 4 EHRR 293, ECtHR**.

102. In **Forstater (above)**, Mr Justice Choudhury made clear that the fifth Grainger Criteria would only exclude the most extreme beliefs such as Nazism or totalitarianism, or which incite hatred or violence. In contrast, beliefs which are offensive, shocking or disturbing can still qualify for protection. That said, whilst **Forstater (above)** makes clear that the threshold is low, there is nevertheless a threshold which will not always be met (see, for example, **Thomas v Surrey and Borders Partnership 2024 EAT 141**)

Harassment

103. Section 26 of the Equality Act 2010 provides:

(1) A person (A) harasses another (B) if –

a. *A engages in unwanted conduct related to a relevant protected characteristic, and*

b. *The conduct has the purpose or effect of –*

i. *Violating B's dignity, or*

ii. *Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

(2) …..

(3) …..

(4) In deciding whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account –

a. The perception of B;

b. The other circumstances of the case;

c. Whether it is reasonable for the conduct to have that effect.

104. As set out in the Equality and Human Right's Commission's Employment Statutory Code of Practice (the "EHRC Code"), "*unwanted conduct*" can include "*a wide range of behaviour*" (at paragraph 7.7) and it is not necessary for the employee to expressly state that they object to the conduct (at paragraph 7.8). Unwanted means unwanted by the employee (**Thomas Sanderson Blinds Ltd v English EAT 0316/10**).

105. A single incident can be sufficient provided it is sufficiently serious (**Bracebridge Engineering Ltd v Darby (1990) IRLR 3**).

106. In order to determine whether the conduct is related to the protected characteristic, it is necessary to consider the mental processes of the alleged

harasser (**Henderson v General & Municipal Boilermakers Union [2016] EWCA Civ 1049**). This may be conscious or unconscious: as stated by Underhill LJ in **Unite the Union v Nailard [2018] EWCA Civ 1203***:*

"it will of course be liable if the mental processes of the individual decision-taker(s) are found (with the assistance of section 136 if necessary) to have been significantly influenced, consciously or unconsciously, by the relevant protected characteristic."

107. Whilst the mental processes (both subconscious and subconscious are relevant), in *Carozzi v University of Hertfordshire 2024 EAT 169 is was held that:*

"There is no requirement for a mental element equivalent to that in a claim of direct discrimination for conduct to be related to a protected characteristic. Treatment may be related to a protected characteristic where it is "because of" the protected characteristic, but that is not the only way conduct can be related to a protected characteristic, and there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser.

Take, for example, a person who unknowingly uses a word that is offensive to people who have a relevant protected characteristic because it is historically linked to oppression of people who have the protected characteristic. The fact that the person, when using the word, did not know that it had such a meaning or connotation, would not prevent the word used being related to the protected characteristic. That does not necessarily mean the person who used the word would be liable for harassment because it would still be necessary to consider whether the conduct violated the complainant's dignity. If the use of the word had that effect but not that purpose, the Employment Tribunal would go on to consider the factors in sub-paragraph (4) of section 26 [Equality Act 2010]. That said, there could be circumstances in which, even though word was used without knowledge of the offensive connotations, having considered the factors in sub-paragraph (4), the perception of the recipient, other circumstances and whether it is reasonable for the conduct to have that effect, the use of the word would nonetheless amount to harassment under section 26 [Equality Act 2010]."

108. "Related to" is a broader concept than "because of" (**Hartley v Foreign and Commonwealth Office Services 2016 ICR D17, EAT**).

109. The claimant is not required to possess the protected characteristic relied upon, provided that the unwanted conduct is related to the characteristic, nor does the conduct have to be directed at the employee. For example, harassment can occur where someone is associated with someone who has the relevant protected characteristic (**EBR Attridge LLP (formerly Attridge Law) and anor v Coleman 2010 ICR 242)**, where someone is perceived to possess a relevant protected characteristic but does not, or where the characteristic is attributed to the claimant in the knowledge that they do not

possess it (**Thomas Sanderson Blinds, above**). In **Moxam v Visible Changes Ltd and anor EAT 0267/11**, it was held that *"it does not matter what racial group the claimant comes from, for she is entitled to be offended and to bring claims where she suffers as a result of any discriminatory language and conduct"* (in this case, references to "immigrants" despite the claimant not being an immigrant).

110. When looking at the effect of harassment, this involves a subjective and objective test. The subjective test is to assess the effect that the conduct had on the complainant, and the objective test is to assess whether it was reasonable for the conduct to have that effect (**Pemberton v Inwood 2018 ICR 1291, CA**). The conduct complained about must however "*reach a degree of seriousness"* in order to constitute harassment, so as not to *"trivialise the language of the statute"* (**GMB v Henderson [2015] IRLR 451, at 99.4**).

111. In relation to the subjective element, different individuals may react differently to certain conduct and that should be taken into account. However, as set out in **Richmond Pharmacology v Dhaliwal 2009 ICR 724** by Mr Justice Underhill (as he was then named):

"if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question." ; and

"*…[N]ot every racially slanted adverse comment or conduct may constitute the violation of a persons dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and Tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct, or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred, it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."*

112. The context in which a comment is made is relevant and, even where conduct is unwanted, the effect will not necessarily be one of harassment: the significance of the words in the Equality Act 2010 must not be cheapened, and trivial acts causing minor upsets should not be caught by the concept of harassment (**LandRegistry v Grant (Equality and Human Rights Commission intervening) 2011 ICR 1390, CA)**. In **Heafield v Times Newspaper Ltd EAT 1305/12**, in the context of an article being prepared about the Pope, a newsroom editor shouted to colleagues "*Can anybody tell me what's happening to the fucking Pope?"*. The Employment Appeal Tribunal held that the comment was evidently not ill-intentioned, anti-Catholic or directed at the Pope or Catholics, and that:

"*No doubt in a perfect world he should not have used an expletive in the context of a sentence about the Pope, because it might be taken as disrespectful by a pious Catholic of tender sensibilities, but people are not perfect and sometimes use bad language thoughtlessly: a reasonable person would have understood that and made allowance for it.*"

113. In considering whether the unwanted conduct had that effect, it may be relevant to take account of an apology made shortly after the conduct is brought to the employer's attention (**Forbes v LHR Airport Ltd UKEAT/0174/18/DA**).

114. Section 109(4) of the Equality Act provides that:

> *"(4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A –*
> *(b) from doing that thing, or*
> *(c) from doing anything of that description.*

115. This will involve a two stage test. Firstly, were there any preventative steps taken by the employer. Secondly, were there any further reasonably practicable preventative steps that the employer could have taken. The EHRC Code suggests that (at paragraph 10.52) reasonable steps might include implementing an equality policy, ensuring workers are aware of the policy, providing equal opportunities training, reviewing the equality policy as appropriate, and dealing effectively with employee complaints. In **Allay (UK) Ltd v Gehlen 2021 ICR 645, EATBU**, it was acknowledged that this was a high threshold, and it was held that training which had taken place two years prior to the harassment was "stale". It is for the employer to show that it has taken all reasonable steps, and this is limited to the actions taken before the discriminatory act occurred (**Mahood v Irish Centre Housing Ltd EAT 0228/10**).

Burden of Proof

116. Section 136 of the Equality Act (burden of proof) states that:

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
> *(2) 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.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

117. Put simply, the claimant must show facts from which the Tribunal could infer that discrimination took place, in the absence of other explanation. If the claimant cannot do that, the claim fails. If the claimant does show such facts, then the burden shifts to the respondent to show that discrimination did not take place (**Igen v Wong, above, Royal Mail Group v Efobi [2021] UKSC 33**). In deciding whether the burden has shifted, the Tribunal should consider all of the factual evidence provided by both parties (although not the

explanation for those facts). Although the burden of proof is most commonly referred to in the context of direct discrimination complaints, it applies also to harassment complaints (in particular to assessing whether the unwanted conduct was related to a protected characteristic).

118. Although the burden of proof is a two stage test, there are cases where an Employment Tribunal can legitimately proceed directly to the second stage of the test (see, for example, **Laing v Manchester City Council and anor 2006 ICR 1519, EAT**).

Conclusions

Religion or belief

119. We have considered first of all whether Voodoo / Voodooism would qualify as a religion or belief under the Equality Act 2010. We have not been able to find any authority on the point, and neither party was able to point us to any. We were however pointed to some commentary from "Harvey on Industrial Relations and Employment Law" which, when referring to the European Court of Human Rights caselaw on what became the fourth and fifth Grainger criteria, commented that "*This serves presumably to exclude witchcraft, voodoo and the like."* However this appears to be the writer's personal interpretation of the caselaw on other purported beliefs and we would respectfully disagree in so far as it relates to Voodoo / Voodooism, for reasons we set out below.

120. As to the definition of the religion or belief relied upon, both parties referred to "Voodoo" and/or "Voodooism" in discussions with the Tribunal: we consider that in reality Voodoo is asserted to be a religion and Voodooism is asserted to be a religious belief (although we do not consider that anything turns on the different in terminology between the two things: our conclusions would apply equally had we assessed Voodoo as a religious belief and Voodooism as a religion). Neither party specifically sought to rely on the Voodoo Doll as a separate belief within or separate to Voodooism itself. However, we do add some comments on this further below.

121. We were not pointed to any one specific authoritative definition of what Voodoo / Voodooism is, however we set out below what we have distilled about it from the information that was provided to us. We should add at this stage that this is an unusual case in that neither party purports to be a follower of Voodoo / Voodooism: in a case where one of the parties was asserting that this was their own religion or belief, we anticipate that we may have been pointed to other authorities on the point. Given the extensive information available online about Voodoo, and given the varying degrees of reliability of the various sources, we decided that the parties should point the Tribunal towards the material that they considered was relevant and should be considered. We therefore reach the conclusions below in full knowledge that a different Tribunal might be provided with different material on which to base their own conclusions. We note in particular that we have relied heavily on information within Wikipedia, which we recognise is not of the same level of accuracy as formal textbook or other authoritative guidance, however it is material which both parties referred us to. In the absence of any authoritative

descriptions from either party we have felt it necessary to based our decision on the generalised online articles to which we were referred.

122. We would add that it is not for the Tribunal to express any views on Voodoo / Voodooism itself, and nothing in these Reasons is intended to represent the personal views of the Tribunal itself. Rather, the Tribunal's role is to apply the legal principles based on the information about Voodoo / Voodooism which was provided to it by the parties.

Religion

123. Turning first to the question of religion, we reviewed several online dictionary definitions of Voodoo:

    a. The Cambridge Dictionary defines Voodoo as "*a religion, influenced by traditional African religions, that involves magic and attempts to communicate with spirits and dead people, common in parts of the Caribbean, especially Haiti, and in parts of the southern United States"*, alternatively as "*magic or a curse"*, *"relating to or used in the practice of the religion voodoo"* and "*a religion involving magic that began in African and developed in Haiti"*.

    b. The Oxford English Dictionary defines Voodoo as "*a religion practised in parts of the Caribbean (esp. Haiti) and the southern United States, combining elements of Roman Catholic ritual with traditional West African magical and religious rites, and characterised by belief in sorcery and spirit possession. Occasionally also denoting the West African religion from which the practices of the Caribbean and southern United States have developed. Sometimes passing into a broader sense of 'witchcraft, magic, superstition', often with pejorative implication, cf. sense. The forms Vodou and Vaudou are now often used to designate the form of religion practised in Haiti*" and *"Activity, behaviour, etc., likened in some way to voodoo, typically in being thought to be based on magic or superstition. Frequently in pejorative use: nonsense, mumbo-jumbo"*. The definition also goes onto refer to it being used to refer to a "*magic spell, typically one causing harm or misfortune, a curse, a jinx*".

124. We were specifically referred by both parties to the Wikipedia articles on Haitian Vodou, and this in turn contained a link to the Wikipedia article on Louisiana Voodoo. Both describe it as an "*African diasporic religion"*. We would also mention that the respondent's Grounds of Resistance also referred to it as a religion, although at the hearing it was submitted that this was an error and should not have been conceded, which we accept.

125. The fact that online materials refer to Voodoo as a religion is not determinative as this is a question for the Tribunal to decide, although we do consider it to be relevant that the material we were referred to by both parties (including the respondent who seeks to argue that it is not a religion) describes it in that manner.

126. We do not consider it possible to define Voodoo precisely, given that there appear to be a number of interpretations of it. However, we set out below some other relevant information which we took from the sources we were referred to:

    a. Voodoo has been described as Haiti's "national religion" by some;
    b. It derives from traditional religions of West and Central Africa and was brought to the Caribbean and the Southern United States through slavery;
    c. It can be practised alongside Roman Catholicism, and followers of Voodoo may also consider themselves to be Roman Catholic. However we consider Voodoo and Roman Catholicism to be distinct and separate, although one person may practice both;
    d. It does not have a single leader, central institutional authority or developed body of doctrine or code of ethics.
    e. However, Haitian Vodou does have:

        i. A divinity, known as "Bondye", which is described as the "*ultimate source of power, the creator of the universe and the maintainer of cosmic order"*;
        ii. Spirits, known as "Iwa". Followers of Haitian Vodou believe that each individual is connected to a specific Iwa which informs their personality. Serving the Iwa is central to Haitian Vodou;
        iii. Temples, known as "Ounfò*";*
        iv. Priests, known as "oungan";
        v. Congregations, known as "pititt-cave"
        vi. There is a soul, known as "nanm" or "espri" which is divided into two parts;
        vii. A belief in destiny is promoted;
        viii. Although there is no code of ethics, there is a concept of morality. There is no clear division between good and evil, however morality is linked to living in tune with the Iwa (spirits) and reinforcing the power of Bondye.

    f. Louisiana Voodoo has some related but different features however in these Reasons we have focussed on the Haitian interpretation as that is the one primarily referred to by the parties, and in both there are deities and spirits.
    g. Although Louisiana voodoo was never banned, its practice was restricted through certain laws.
    h. In Jamaica, there is a separate practice named Obeah, which is similar in some ways to Voodoo. Obeah practices are currently illegal in Jamaica, although there have been calls to decriminalise it (Obeah: Resurgence of Jamaican 'Voodoo' - BBC News).

127. On the one hand there is no single leader, central institutional authority or developed body of doctrine or code of ethics. It is also clear from the material we were provided with that there have been, both historically and more recently, negative connotations attached to certain concepts associated with Voodoo, such as the Voodoo Doll and curses. However, in line with the EHRC Code we consider whether there is a clear structure and belief system. There are temples, priests, a divinity and spirits, which provides a clear structure.

There is a clear belief system in Bondye (in Haitian Vodou) and what that divinity represents, along with spirits, with morality being focussed in large part on the interrelationship with the Iwa and respect for the Bondye's power.

128. We conclude that this is a spiritual belief system which is held by a group of adherents (and on a worldwide basis we note that there are a large number of people who follow Vodou / Voodoo, some openly and some less so). It explains mankind's place in the universe and relationship with the infinite by reference to its divinity and spirits. Whilst there is no clear definition of what is good and what is evil set out centrally in any code or text, there is clear teaching that adherents should live their lives in conformity with the Iwa and what they represent. Applying **R (on the application of Hodkin and anor) (above)** we consider that Voodoo / Vodou is a religion.

129. In addition, we would comment on some of the negative connotations associated with Voodoo. We have been referred to a description of it as "*one of the world's most maligned and misunderstood religions"* (Wikipedia article: Haitian Vodou). We were also provided with a link to the Wikipedia article titled "Voodoo Doll" which clarified that, despite its name, the Voodoo doll was not prominent in either Haitian Vodou or Louisiana Voodoo. Rather, the suggestion is that the Voodoo Doll has become associated with Voodooism through popular culture, for example films such as Indiana Jones and the Temple of Doom. We saw a quotation from Louisiana Voodoo High Priest Robi Gilmore, in which he said:

"*It blows my mind that people still believe [Voodoo dolls are relevant to Voodoo religion]. Hollywood really did us a number. We do not stab pins in dolls to hurt people; we don't take your hair and make a doll, and worship the devil with it and ask the devil to give us black magic to get our revenge on you. It is not done, it won't be done, and it never will be done".*

130. We also note that the Wikipedia article on Haitian Vodou contains no reference whatsoever to the Voodoo Doll (and although the article on Louisiana Voodoo does reference it, it is to explain that the Voodoo doll has little to do with Louisiana Voodoo.

131. From the material we have seen, we conclude that there are certain misconceptions within society about Voodoo / Vodou, and specifically about the Voodoo Doll. The respondent has submitted that Voodoo is about invoking the devil, Satan and/or evil spirits, however we conclude that in fact that relates to the Voodoo Doll, which is not a true representation or manifestation of Voodoo / Voodooism.

132. We conclude that Voodoo amounts to a religion within the meaning of the Equality Act 2010. We do not consider the Voodoo Doll to be an authentic element of that religion.

Religious or philosophical belief

133. In light of our conclusions above, we consider the Voodoo Doll to be separate to the concept of Voodoo more generally. In considering the question of religious or philosophical belief, we consider both Voodooism as a belief

system in itself (notwithstanding that Voodoo has already been determined to be a religion above) and the concept of a Voodoo Doll as being part of a religious or philosophical belief, noting that beliefs may vary between persons of the same religion. We also bear in mind that Voodoo may form part of the belief system of certain Roman Catholics, particularly in those regions where Voodoo is prevalent.

134. Turning to the **Grainger** criteria, the first is whether the belief was genuinely held. Here, the first issue to raise is that the claimant does not hold a personal belief in Voodooism, nor in Voodoo Dolls. To the extent that he lacks a belief, then the Grainger Criteria may not apply in any event. Here, whilst the claimant is certainly not indifferent to Voodooism / Voodoo Dolls (he says that he is offended as a Christian by the notion of Voodoo being used against him in some way), equally he has not asserted that he has a specific developed religious or philosophical belief which is contrary to it (save of course to his reference to being a Christian which we considered as a preliminary issue and determined that an application to amend would be required to pursue that as the stated religion or belief).

135. The claimant is also not alleging that he was harassed for a reason related to a lack of belief, or indeed that he was harassed because he found Voodoo to be offensive. He says that he was harassed because it would have been known by Ms Shone that (in his words) Voodoo and witchcraft are prevalent with black Jamaican and African culture (we note for completeness the point raised in evidence that in fact Jamaicans do not tend to follow Voodoo).

136. What the claimant in fact argues is that he was harassed for a reason related to the religious belief of Voodooism (not lack of belief, or any kind of opposite belief), but that he personally does not share that characteristic as he personally does not follow that religion / belief system. Given that the legal authorities are clear that a person who is harassed does not need to share that characteristic, this is a perfectly permissible argument to make. However that then leads back to the difficulty of how to assess whether a belief is genuinely held, when a person does not hold that belief themselves (albeit they argue that it is a genuine belief held by others).

137. We consider that this must be treated akin to the absence of belief referred to in paragraph 106 of **Forstater (above)**, and that the **Grainger** Criteria cannot be applied in full, notably the first criteria that the belief is genuinely held. Notwithstanding this, and recognising that the second to fifth elements of the **Grainger** Criteria can arguably be applied to scenarios such as this one, we go onto consider the other elements of the **Grainger** criteria below.

138. We would add for completeness that it is clear to us that there are many people who do have genuinely held beliefs in Voodooism and we note that an objective standard is not in any case required. In addition, the claimant himself whilst not holding that belief, does submit that others genuinely believe in it.

139. As for Voodoo Dolls, we have identified misconceptions about the fact that Voodoo Dolls are in fact distinct from Voodooism (to which neither party drew our attention). Without specific evidence on the point we would be unable to

reach a conclusion as to whether any belief in Voodoo Dolls would be genuinely held, even taking account of the limited nature of the enquiry we must make. However given that the stated religious belief is Voodooism we do not consider this to be an issue that we are required to determine.

140. Therefore, for all the reasons set out above, we consider that the first part of the **Grainger** Criteria does not need to be applied, but if it did (but with reference to what others genuinely believe), the first part of the test would nevertheless have been satisfied in relation to Voodooism.

141. Turning to the second of the **Grainger** Criteria, it is clear to the Tribunal that a belief in Voodooism is a religious viewpoint on which many individuals agree, even though there are various permutations of the belief system itself. It is more than just an opinion or viewpoint. However, in relation to the Voodoo Doll itself, we do consider that this is in fact not about a religious or philosophical viewpoint in which one actually believes, but rather a viewpoint or practice arising in large part or at least derived from popular culture and misunderstanding. The Voodoo Doll in itself would therefore not satisfy the second stage of the **Grainger** Criteria, although Voodooism would.

142. As to the third **Grainger** Criteria, namely that it be a belief as to a weighty and substantial aspect of human life and behaviour, we conclude that Voodooism is, for the reasons we concluded earlier when analysing whether Voodoo amounted to a religion. For example, it has a concept of morality and explains mankind's place in the universe. Again, the Voodoo Doll alone would not meet that threshold as it is not a belief on a fundamental problem in our view, nor is it about a weighty and substantial aspect of human life and behaviour.

143. Turning to the fourth **Grainger** Criteria, that of it attaining a certain level of cogency, seriousness, cohesion and importance. Again, for the reasons we referred to in our conclusions on religion, we find that Voodooism does meet that threshold. It is practiced in various forms in a number of countries. Whilst there are differences in different countries, it is nevertheless coherent as a belief system with similarities across those practices, is intelligible and capable of being understood. Voodooism is important to such an extent in Haiti in particular that Voodoo has been referred to by Wikipedia as the majority religion. Voodooism attains the required level of cogency, seriousness, cohesion and importance.

144. In relation to the Voodoo Doll itself, it is stated to be a belief in doing ill will to others through magic and witchcraft. We are mindful that the threshold is modest and we must not assess it using logic or science to challenge it: it is not relevant if we consider the scientific foundations of the belief to be weak (**Forstater (above)**). It does not have to be a fully fledged system of thought. Whilst the concept that sticking pins in a doll could cause ill will to an individual is one that many would struggle with, it is nevertheless clear and understandable. It is also serious and important in the sense that the concept of injuring others is of clear importance (in a negative sense, but important nonetheless). On that basis, we consider that it does attain the required level of cogency, seriousness, cohesion and importance (although in any case a

belief about the Voodoo Doll would not have met other aspects of the Grainger Criteria as we have explained above and below).

145. Turning finally to the fifth **Grainger** Criteria, of being worthy of respect in a democratic society, and not incompatible with human dignity or in conflict with the fundamental rights of others. Again, we separate Voodooism itself from the concept of the Voodoo Doll. The respondent has submitted that Voodooism promotes invoking the devil, Satan and evil spirits to do harm to others including death and serious injury, and on that basis that it does not satisfy the fifth **Grainger** Criteria. We respectfully consider that the respondent has confused the notions of Voodooism with that of the Voodoo Doll. We consider that a belief in the Voodoo Doll is indeed about seeking to harm others, through curses and/or witchcraft (by pricking the eyes of the doll), and as such would be one of those rare beliefs which would fall foul of the fifth **Grainger** criteria. It incites hatred and/or violence.

146. However, Voodooism is entirely different. Whilst no written code of ethics, it has a moral compass, involves serving the Iwa, and is not based on the material provided to this Tribunal founded on a general concept of doing ill will to others. We refer to our findings on it as a religion above. We conclude that is it worthy of respect in a democratic society, not incompatible with human dignity and does not conflict with the fundamental rights of others.

147. Therefore, in conclusion, Voodoo is a religion and Voodooism is a religious belief. A belief in the power of the Voodoo Doll is not however a religious or philosophical belief under the Equality Act 2010.

Harassment

Did the respondent do the following things:

Mandy Shone said to the claimant on 17 July 2023 "I should have sent you a voodoo doll with pins in it emphasising on the pins"

148. We have found that the comment was not made as alleged, but that a separate comment was made about a voodoo doll which was "I'm like a voodoo doll with needles in her eyes". Whilst a different comment, as this also referenced a voodoo doll, we have gone on to consider whether the comment that we have found on the balance of probabilities was in fact made amounted to harassment related to race and/or religion or belief.

Desiree McKenzie-Plummer failing to challenge and intervene in that conversation.

149. She accepts that she did not challenge or intervene because she says (and we have accepted) that she did not understand anything inappropriate to have been said. On that basis, Mrs McKenzie Plumber did not challenge or intervene. As to whether it was a failure to do so, we consider that it is only if we go onto find that the comment was in some way harassment related to race and/or religion or belief that she should have recognised the issue and challenged or intervened, and so we will revert to this issue in the event that we determine that the comment that was made amounted to harassment.

If so, was that unwanted conduct

150. The fact that the claimant did not expressly raise the issue at the relevant time does not mean that the conduct was not unwanted. By four days later, it is clear that he viewed the conduct as unwanted (after he spoke to his daughter). Whilst we conclude that at the time of the incident he was not upset or offended by it (or he would have complained at the time), we nevertheless find that it was unwanted as he went onto discuss it with his daughter (which suggests that he had some unease about the conversation as a whole at least), and following that conversation it became clearer in his mind that it was unwanted.

151. Whilst the claimant is someone that would generally raise things promptly and is not afraid to do so, equally it is clear that he was unhappy and defensive about being challenged for not coming into work for that shift. So, whilst there is a separate issue as to whether he perceived the comment in isolation (bearing in mind also that it was not said in the manner alleged) as harassing and/or discriminatory, the conversation with Miss Shone as a whole was unwanted in that he was being challenged about missing his shift and we have found that he was defensive about that. Therefore, the conduct was also unwanted in the sense that it was about him having missed his shift and he did not want to discuss that.

152. In relation to Mrs McKenzie-Plummer's alleged failure to challenge and intervene, whilst in theory such conduct could be unwanted, we have found that where the claimant has faced unwanted conduct, he will challenge that. We consider that it was not until his spoke to his family that he decided that he wanted to challenge the conversation that had taken place. Therefore her failure to intervene in that moment was not unwanted. Some time later, when he spoke to his daughter, it retrospectively became unwanted conduct in his mind. Nonetheless, we have gone onto consider the other aspects of the test for harassment in relation to this point given that it did become unwanted conduct at a later stage.

Did it relate to race and/or religion or belief?
Is Voodoo / Voodooism a protected religion or belief within the meaning of the Equality Act 2010?

153. We refer to our conclusions above as to whether Voodoo / Voodooism is a protected religion or belief: it is.

154. Given the explicit reference to the Voodoo Doll within the comment, we consider that this is a case where it is not necessary to deal with the burden of proof sequentially as the very fact that the comment itself refers to Voodoo Dolls would be sufficient in our view to shift the burden of proof in any case.

155. We acknowledge that we have concluded above that Voodoo / Voodooism and Voodoo Dolls are distinct concepts, and the comment made by Miss Shone related to a Voodoo Doll (and therefore not to Voodooism in its true form). That said, in wider society there is a perception that Voodoo Dolls are related in some way to Voodoo, and for that reason we conclude that the

comment made was related to Voodoo / Voodooism, and therefore to that religion / belief.

156. Alternatively, it could be argued that there is an incorrect perception that the Voodoo Doll is a manifestation of the Voodoo belief system. In considering the mental processes of the alleged harasser, it is not clear to the Tribunal whether the claimant is saying that Miss Shone mistakenly thought he did practice Voodooism, or whether he considers that she knew that he did not but was nevertheless aiming to offend him by implying that he did, but that does not matter: what matters is that it related to Voodoo / Voodooism.

157. The claimant's race is black African Caribbean. The Caribbean is an area of the world where Voodooism is practiced. The claimant is of Jamaican heritage and it was put to him that Voodooism is not prevalent in Jamaica (where Obeah is practised instead), and we accept that Voodoo is more prominent in Haiti and Louisiana. However, having regard to the claimant's race as it was described in the Case Management Orders of Employment Judge Childe dated 13 February 2024, his race is specifically described as black African Caribbean, and not Jamaican. The respondent did not at any time assert that this was incorrect (whilst it did make assertions as to the religion relied upon, as outlined above). In his claim form the claimant had referred to both Jamaican and African cultures, therefore whilst he did reference Jamaica he also referenced wider African cultures, which would include those practised in the Caribbean.

158. In any case, if the respondent (mistakenly) perceived that those of Jamaican heritage were more likely to believe in, or be offended by, Voodoo / Voodooism, that would be sufficient to render the comment as being related to race even if race were specified only as Jamaican.

159. Even if we did apply the burden of proof sequentially, we would conclude that because the comment explicitly referenced a Voodoo Doll, the burden of proof has shifted to the respondent. We do not accept the respondent's submission that it did not relate to religion but rather to covering a shift. The context may have been about covering the shift, but the comment itself was about a Voodoo Doll and the respondent has not shown that the comment was not related to race and/or religion or belief. As per **Carozzi (above)**, a comment can be related to a protected characteristic even if the maker of the comment did not realise that.

160. We conclude that the Voodoo Doll comment related to both race and religion or belief.

161. Turning to Mrs McKenzie-Plummer's alleged failure to act, we have found that the reason she did not act was because she did not perceive there to be any issue that required intervention. It would flow from that that, if the comment itself related to race or religion / belief, then her lack of intervention about that comment would also relate to race or religion / belief. It would not matter if this was subconscious on Mrs McKenzie-Plummer's part.

Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

162. Given our conclusion that the comment was not made as alleged, and our finding that the comment was actually about Miss Shone being exhausted from having to cover the shift, we conclude that it did not have that purpose. It was simply intended to convey the extreme tiredness that Miss Shone says she felt at that time. This is particularly so given that Miss Shone did not even reference the Voodoo comment when interviewed as part of the claimant's internal complaint, as she had not realised that to be a relevant issue (whereas, had her purpose been to harass the claimant then we consider she would have fully appreciated that this might be the substance of his complaint).

163. In relation to Mrs McKenzie-Plummer's alleged failure to intervene, this was because she had not identified any issue herself. Therefore it did not have that purpose.

If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

164. This aspect requires consideration of the claimant's subjective viewpoint. The claimant in particular says that the conduct had that effect because, as a practicing Christian, he found reference to Voodoo Dolls offensive.

165. We have considered whether we think the claimant misunderstood the comment made or whether he heard it correctly but has changed the context of it when discussing it. We do not conclude that he has deliberately twisted what was said, rather we consider that he heard the words "Voodoo Doll" and applied his own context to it, without appreciating what was actually said. He then discussed it with his daughter, and following that discussion the true context of the actual comment was lost. At the time the comment was made, we consider that he was not offended by it and did not perceive it to be harassment or we consider he would have said something there and then. However, afterwards he reflected and had some disquiet about it, hence him raising it to his daughter. By that time we consider that he has misremembered the actual comment and put the personal slant on it, and then having discussed it with his daughter (in the context of what he by then thought had been said) he was genuinely offended by it.

166. One point raised by the respondent is that, because Miss Shone and Mrs McKenzie-Plummer apologised for any upset caused at their respective investigation meetings, this should be taken into account, relying on **Forbes (above)**. However, there was no apology at the time of the comment itself (given that no one appreciated that the claimant was in any way concerned by it). In addition, when Miss Shone did apologise, she did so without actually knowing what she was apologising for (as she did not at that time realise that the issue was about a Voodoo Doll comment). Mrs McKenzie-Plummer's later apology was an apology if any offence was taken, not for what was said itself.

167. In contrast, the investigation into the claimant's allegations was so flawed that we consider this actually points the other way, in that his concerns were not taken seriously by the respondent or investigated properly. The offer of a formal grievance process was not made to him until a number of months later. Therefore, we do not consider that the purported apologies assist the respondent when the context is taken as a whole.

168. We do however take into account the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect more generally. We do accept that the claimant is a practicing Christian and this was evident from the answers he provided during oral evidence, where on occasion he quoted specific Bible passages. We also note that the claimant has been on long term sickness absence since the week following the incident, which he says is because of what happened.

169. However, we also note that the comment was not directed at the claimant but about Miss Shone's own exhaustion (although this is not in itself determinative). We also note that, despite the claimant's general approach being to raise matters promptly, he did not raise the matter until a number of days later after speaking to a family member, nor did Mrs Jeffrey notice any change in his behaviour save for his headache which she did not attribute to what happened (and the office being quiet which would be logical given that the other individuals had left). His relationship with the individuals concerned was one where there had been historic banter between them. This was a standalone isolated comment and there was no suggestion that Voodoo had been discussed at any time previously (although we note that an isolated comment can amount to harassment). We have also found more generally that the claimant is quick to jump to conclusions, which are not always correct.

170. If the comment had been made as he has suggested it was (i.e. that it was to the effect that Miss Shone should have sent a Voodoo Doll with pins in the eyes to the claimant), then we would have had concluded that it would be reasonable for such a comment to have the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

171. That was not however the comment that we have found was made. The claimant says that he would have been offended in any event by a comment to the effect that Miss Shone compared herself to a Voodoo Doll. Here, the comment was a generalised comment in the context of tiredness.

172. As to whether that was reasonable, and taking into account his perception and the other circumstances of the case:

    a. He misheard / misremembered the comment. The context of the comment was that Miss Shone was referring to having been tired because she had to cover his shift.
    b. We accept that he believes that Voodoo is contrary to his beliefs as a Christian.

c. We also conclude that Voodoo is a sensitive subject for some and therefore it was perhaps ill advised for Miss Shone to refer to it in the workplace.
d. Equally however, we must not trivialise the concept of harassment and not every adverse comment which relates to race and/or religion or belief will amount to harassment. We consider that in accordance with **Heafield (above)** a reasonable person would have understood that people are not perfect and sometimes use language thoughtlessly, and that it is akin to an "unfortunate phrase" as found in **Dhaliwal (above)**.
e. In addition, whilst the claimant says that the same comment would not have been made to a white person, given that we have found that the comment was about Miss Shone and not about the claimant, we conclude that it would. Likewise the fact that he was Christian formed no part of her rationale. We consider that, if the claimant had heard the comment correctly, it should have appreciated that it was not directed at him and was instead a poorly judged throwaway comment.

173. We conclude that the conduct did not have the effect of harassing him, taking into account his perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

174. As to the effect of Mrs McKenzie-Plummer not intervening, we consider that at the time of the incident this did not have the alleged effect, as he would have said something if it did. Again, he has retrospectively felt offended by this a few days later. Again, bearing in mind the points raised above and in particular the fact that the comment was not made as alleged and that it should have been obvious to him that it was not directed at him, we do not conclude that it would have had the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

175. The claimant's claim is therefore unsuccessful and it is not necessary to consider whether the respondent took all reasonable steps to prevent harassment.

Employment Judge Edmonds

Approved on 29 January 2025

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