



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs O Godson

v

Dimensions (UK) Limited

Heard at: Watford

On: 11 to 15 July 2022

Before: Employment Judge Manley
Members: Mr Bhatti
Mrs Bhatt

Appearances

For the Claimant: Mr S Godson, lay representative

For the Respondent: Ms T Burton, counsel

RESERVED JUDGMENT

1. The claimant has not shown facts from which we could conclude that discrimination because of race occurred. Even if she had shown those facts, the tribunal are satisfied by the respondent's explanation and there was no direct race discrimination.
2. The claimant has not shown that there was unwanted conducted related to race that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. There was no harassment related to race.
3. The claimant did a protected act when she sent a grievance on 17 June 2020 but suffered no detriments because she had made that protected act.
4. Many of the claims were brought out of time, do not amount to conduct extending over a period and the claimant has not shown that it would be just and equitable to extend time. The claims would not have succeeded in any event.
5. All the claims brought under Equality Act 2010 fail and are dismissed.

REASONS

Introduction and issues

1. By an ET1 presented on 3 September 2020 the claimant brought claims of direct discrimination and/or harassment because of race. The issues in relation to those matters were the same. She also brought a claim for victimisation relying on a protected act which the respondent accepts does amount to a protected act under the relevant section of Equality Act 2010 (EQA).

The issues

2. The list of issues had been agreed and reads as follows:

- 1 **Jurisdiction**

- 1.1 Are any of the Claimant's complaints of discrimination out of time?

- 1.1.1 The Respondent submits that the complaints at paragraphs 2.2.1 to 2.2.6 outlined below are out of time.

- 1.2 Do the acts amount to a continuous course of conduct extending over a period of time, the last of which is in time?

- 1.3 Would it be just and equitable for the Employment Tribunal to extend time for submission of the claims?

- 2 **Direct race discrimination**

- 2.1 The Claimant identifies her race as Black British of African descent (paragraph 1 of Claimant's Details of Claim document).

- 2.2 Did the Respondent do the following acts and/or omissions (taken from paragraphs 4 a) to 4 h) of the Claimant's Details of Claim document):

- 2.2.1 The Claimant alleges that she was subject to hostile and unfavourable work conditions through the actions of Dawn Tew, Locality Manager, and Jo Howland, Operations Director, between 29 April 2019 and 9 July 2020. The Claimant alleges that she was kept on rota/floor duties primarily undertaken by more junior Support Workers to deprive her of time to carry out her Lead Support Worker duties which the Claimant alleges meant she regularly had to work late and from home in order to complete;

- 2.2.2 On 18 September 2019, Ms Tew and Ms Howland allegedly attempted to terminate the Claimant's employment as Lead Support Worker. The Claimant alleges that Ms Tew informed the Claimant that Ms Howland wanted her to step down from the role with immediate effect;

- 2.2.3 Ms Howland is alleged to have dismissed the Claimant's written complaint submitted on 18 September 2019 about her colleagues Susan Addison, Assistant Locality Manager, and Ms Tew's treatment of the Claimant, without following the grievance procedure;
 - 2.2.4 Ms Tew, with the knowledge of Ms Howland, sent a letter dated 20 September 2019 to the Claimant wrongly inviting her to an allegedly potentially terminative probation meeting;
 - 2.2.5 Ms Tew is alleged to have refused to formally investigate the Claimant's complaint about her colleague, Jocelyn Martin, Relief Support Worker, which the Claimant submitted on 14 April 2020;
 - 2.2.6 It is alleged that on 15 April 2020 Ms Tew sent an email to the Claimant which the Claimant alleges undermined the Claimant by stating that the Claimant has no supervisory role, and failed to support the Claimant's responsibility to challenge poor practice and ensure compliance with standards, as outlined in her job description;
 - 2.2.7 On 14 May 2020 Ms Tew is alleged to have attempted to wrongly discredit the Claimant by falsely claiming she was told by hospital transport personnel that the Claimant had arranged for hospital transport to pick up a resident at their service for the hospital appointment at the wrong time;
 - 2.2.8 On 3 June 2020 Ms Tew, with the knowledge of Ms Howland, forwarded a copy of the Claimant's contract of employment by email in which the Claimant's continuous service date had been altered and brought forward from 16 April 2018 to 27 March 2019.
- 2.3 Did the acts set out at paragraph 2.2 above amount to less favourable treatment of the Claimant compared to the following comparator:
- 2.3.1 The Claimant is relying on a hypothetical comparator, namely a white Lead Support Worker.
- 2.4 Did the Respondent do the acts set out at paragraph 2.2 above because of the Claimant's race?
- 3 Race related harassment**
- 3.1 Did the Respondent engage in unwanted conduct?
 - 3.2 The Claimant alleges that the unwanted conduct was those acts set out at paragraph 2.2 above.
 - 3.3 Was the above conduct related to the Claimant's race?
 - 3.4 Did such conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

4 Victimization related to race

4.1 The Respondent accepts that the Claimant did the following protected act:

4.1.1 Complain about racial harassment and discrimination in a letter dated 17 June 2020 to Jocelyn Alderson, Regional Managing Director and Ms Howland.

4.2 Did the Respondent subject the Claimant to the following detriments (taken from paragraphs 7 to 10 of the Claimant's Details of Claim document):

4.2.1 On 25 June 2020, Ms Alderson appointed David Mackney, Regional Project Manager, to investigate the Claimant's complaint despite being relatively junior in role compared to Ms Howland whom he was to investigate and contrary to the Respondent's Dignity at Work Policy;

4.2.2 Ms Alderson is alleged to have ignored the Claimant's concerns about the appointment of Mr Mackney raised in the Claimant's email dated 25 June 2020;

4.2.3 On 10 July 2020, Nicola Sidgwick, with the authority of Ms Alderson, wrote to the Claimant informing her that she was being temporarily moved from her normal place of work at Sampson Avenue to another service at Chichester Court, and told the Claimant not to return to Sampson Avenue on 12 July when she was next due on shift, which was contrary to the Claimant's wish to continue working at Sampson Avenue;

4.2.4 On 30 July 2020, Ms Sidgwick advised the Claimant via email that Ms Alderson would be hearing her grievance complaint (and not Mr Mackney) which lead to delays in the grievance complaint being concluded;

4.2.5 The management report of the investigation in the Claimant's grievance dated 30 July 2020 sought to allegedly unjustifiably excuse alleged discriminatory acts complained of by the Claimant, and allegedly undermined the Claimant by including irrelevant matters relating to sleep ins which Mr Mackney did not discuss with the Claimant.

4.3 If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

5 Remedy

5.1 If the Claimant succeeds in any of her claims, to what compensation is she entitled? In particular:

5.1.1 Is the Claimant entitled to claim an injury to feelings award and if so within which Vento band?

3. Mr Godson, on behalf of the claimant, raised some questions about this list of issues at the commencement of the hearing. He said that we should also take note of matters raised in the details of claim and we have done that when considering this matter, cross checking with the details of claim which occasionally used slightly different wording. In the event, this makes no significant difference to our determinations.

The hearing

4. The tribunal had an agreed bundle of documents and also had witness statements for eight witnesses for the respondent and the claimant.
5. In the event we did not hear from all the respondent's witnesses. Ms Howland, who was Operations Director, unfortunately had an accident after attending the tribunal to observe and was admitted to hospital. She was not therefore put forward for cross examination and the tribunal saw medical certificates in relation to that matter. Partly as a result of the employment judge raising this with the parties, the tribunal also did not hear from Ms Dodgson and Ms Campbell (who, in any event, had tested positive for covid during the hearing).
6. The tribunal have taken the view that they do not need to consider Ms Dodgson's and Ms Campbell's witness statements and have only taken into account very briefly anything that Ms Howland had to say. The main witnesses therefore, as well as the claimant, were the following:-
 1. Ms D Tew, Locality Manager
 2. Ms S Addison, Assistant Locality Manager
 3. Ms N Sidgwick, HR Business Partner
 4. Mr D Mackney, Regional Project Manager, and
 5. Ms J Alderson, Regional Managing Director.
7. We also had a bundle of documents which extended to close to 500 pages.
8. At our request, the respondent's representative sent a short neutral chronology to assist us in considering matters.

The facts

9. The tribunal find the following relevant facts. It is worth stating, at this stage, that we did hear some evidence which does not touch directly either on the list of issues, or the details of claim. We have therefore confined our fact finding to those facts which it was necessary for us to determine the issues before us or where a little further history is needed.
10. The claimant commenced employment as a Support Worker at an associated company of the respondent, Waymarks, on 16 April 2018.

11. The claimant's evidence is that she qualified as a solicitor but had decided not to practice in the legal field but to move into the care sector where she believed she could make use of the caring and empathetic skills that she has.
12. The respondent is a not-for-profit organisation with charitable status which provides support for people with learning disabilities, autism and complex needs, helping them to live ordinary lives in their local communities. The homes they run vary in terms of complexity of needs as well as size and location. It has a number of contracts with local authorities.
13. When the claimant's job with Waymarks came to an end through redundancy the claimant was spoken to about other possible places that she could work. She therefore visited the respondent's Sampson Avenue home in late March 2019. There she met Ms Tew, who is the Locality Manager for that service as well as another service. Sampson Avenue was a home with adults who were high dependency.
14. Although not directly referred to in the list of issues, a matter has been raised in the hearing about the first conversation which the claimant had with Ms Tew upon meeting her in late March. It is agreed that Ms Tew asked the claimant for her email address. Ms Tew says that she also asked her where she lived as she found that to be useful when considering where people might work. The claimant's evidence, which as far as the tribunal can see was not mentioned until the witness statement for this tribunal, is that Ms Tew also asked her where she was from and asked for information about her ethnic origin. The claimant is black British of Nigerian origin and she said something to that effect to Ms Tew. Ms Tew denies that she asked that question. The tribunal does not accept that a question to that effect was asked. This is partly because the claimant did not raise it at all until, as we have said, very late in these proceedings and it seems strange, as she now relies upon it to support a race discrimination claim that she has only chosen to refer to it so late the day.
15. Ms Tew works in an organisation with a large number of people from different backgrounds. We are told that with respect to the team that she leads, there are about 47% who are black or black British; those who identify as mixed heritage are almost 12%, a little over 23% "prefer not to say", and almost 17.65% are white.
16. Ms Tew has also attended various quality and diversity training courses and the tribunal accepts that she would have been very cautious about asking such a question. The tribunal notes, that in any event, this does not necessarily indicate any intention to discriminate but, as a matter of fact, the claimant has not been able to satisfy the tribunal that such a question was asked.
17. The claimant's evidence was that she would have preferred to work elsewhere but then discovered that another job she was interested was no longer available and she decide to take up the post of Support Worker at

Sampson Avenue. Very shortly afterwards Mr Tew informed the claimant that there was to be an opening for a Lead Support Worker at Sampson Avenue and she invited her to apply online. The claimant did apply and was interviewed by Ms Tew with Ms Addison, who was the Assistant Locality Manager, taking notes. Although Ms Tew accepts that the claimant was not her first choice, as that person had decided not to take the job, Ms Tew did decide to appoint the claimant to this role.

18. The tribunal heard considerable evidence about this role and we have seen the document which includes a job description, a person specification and other information about being a Lead Support Worker (page 110). The claimant accepts that she saw this document. It includes a job description which has a number of bullet points. The purpose of the role reads as follows: -

“As a Lead Support Worker, you will assist the Locality Manager and Assistant Locality Manager in maintaining a high quality of support, acting as a role practitioner, coaching and mentoring support workers and relief support workers to ensure the people supported achieve the outcomes identified within their support plans.”

19. The job description includes 14 bullet points and then an additional 5 points. In essence, these points include work that a support worker would be expected to do with some additional tasks or responsibilities. It refers, for instance for the lead support worker to be a *“role model of good practice”*. Some relate to things that would appear to be work of any support worker, for instance *“help people learn the skills they need to live the life they choose”* whereas some appear to be more of an additional kind so, for instance, *“contribute and co-ordinate the wider team approach in meeting the needs of people use support”*.
20. The claimant’s case is that she was told by Ms Tew that she would tell Ms Addison that the claimant should be allowed some time *“off rota”* to carry out the extra responsibilities of a lead support worker. Ms Tew denies saying this. Our understanding is that lead support workers are expected to carry out any of these additional responsibilities in any quiet time they can find on their shift. They are paid an extra salary but they are not expected to need any time *“off rota”*. The tribunal does not accept that Ms Tew told the claimant that she would ask Ms Addison to find some off rota time for the claimant and Ms Addison was certainly never asked to do that.
21. The claimant’s case is that therefore she was not allowed sufficient time and she had to work very hard to carry out the lead support worker role. The tribunal find, not only that she was not told that there would be some time off rota but that she was aware of that from a very early stage and continued to work in that role even when she was finding it challenging. She could not have believed that she was going to get any time off and she had provided no evidence that any other lead support worker got that time off save for

some things she was told by somebody she shadowed who was in a different sort of service.

22. In any event, the claimant commenced her employment as lead support worker towards the end of April 2019. There has been a significant dispute about what support the claimant received from Ms Tew. The tribunal has seen documents which suggest there was some support and communication about how the claimant was getting along.
23. The first area of dispute is that the tribunal has seen an induction document which runs to seven or eight pages which has some differences from a support worker induction document. Each section is signed at the side by a manager. Most of the signatures are Ms Tew's although, on occasions, there are other people who seemed to have signed to indicate that the claimant has been inducted in that particular aspect. The dispute arises because the final page of that induction document shows a signature which is said to be the claimant's and the date, as well as Ms Tew's signature and the same date. The claimant's case is that this is a falsified document and she received no induction whatsoever. The claimant has produced some evidence by way of somebody who asserts they are an expert about her signature being forged. The tribunal is not able to come to a conclusion on that but we have to be aware that the claimant disputes that she signed the document. We cannot say how that has come about and certainly cannot go so far as to say somebody has forged her signature. We are not sure why the respondent would seek to do that as it does not fall squarely in the list of issues. However, for completeness, the tribunal has had to think about the validity of the claimant's claims about this.
24. The tribunal cannot accept the claimant had no induction into the support worker post. We accept that she may not have seen this induction form and, on her evidence, she may well not have signed it. However, that does not mean that she did not receive induction as suggested by not only Ms Tew's signatures but other managers' signatures and various dates.
25. The claimant bears the burden of proving that that is a falsified document and the tribunal does not accept there is sufficient evidence to come to that conclusion. The induction process might not have been as thorough as the document suggests but there certainly seems to have been a considerable amount of training and assistance.
26. The next area where there is, again, a dispute, is the level of one-to-ones which the claimant had with Ms Tew. Again, there are some disputed documents here. The claimant does not dispute that she had some one-to-ones and we have seen a number of emails where Ms Tew forwarded the one-to-one document. We can also see that, on occasions, the claimant made some changes to them so that sometimes there is more than one copy of a one-to-one. Some of them do seem a little strange in that they appear to have some contradictory information but that may have happened because Ms Tew filled some of it in and the claimant filled other parts in. The tribunal does not find these to be forgeries or falsified documents but

rather that they are a little inconsistent in helping us decide what level of one-to-ones there were. There is no doubt that Ms Tew spoke to the claimant about how she was getting along and about how she was managing some of the challenging aspects of the role.

27. In summary then, the tribunal has taken the view that the claimant found the role challenging, as indeed it was, and that she struggled with some aspects of it, so that Ms Tew and Ms Addison had some concerns about her performance. Nothing really happened of any real significance though between her commencement in April 2019 and things that began in September 2019.
28. In early September 2019 a patient fell out of bed in the night. When the claimant attended the next day for her day shift, she did not seek medical attention for the patient because, in her view, she did not appear to be harmed by what had happened. When Ms Addison heard about the incident, she asked the claimant about it. The claimant said that she had not called the doctor and Ms Addison's view was that she should have sought medical attention. She was shocked and disappointed by the claimant's reaction to the incident. Ms Addison's view was that the claimant should have been aware because of a team meeting on 23 July where it was recorded that this patient should always have medical attention because they had had some previous falls. The tribunal have seen the notes of this meeting. The claimant seems to be suggesting that she was not present although there is a signature on that date which suggests that she was present (this is 23 July meeting page 123 and 124). The tribunal cannot say for sure whether the claimant was at the meeting or indeed recalled what was said about needing to seek medical attention for this patient. In any event, the claimant did then ring the GP although there was then some confusion about what she said to them about the patient's fall.
29. Ms Tew had been on holiday and when she returned on or around 18 September, she had a conversation with the claimant about how she was getting along and wanted to address this particular incident. She was concerned that the claimant had failed to seek medical assistance and said that to the claimant.
30. It seems that it was also in this meeting that Ms Tew raised some concerns about how the claimant was managing. Her evidence is that she said something to the effect that she appreciated the role was a difficult one and said that there would be no shame if the claimant decided to step down. There was no mention of Ms Howland, the Operations Director in that conversation according to Ms Tew.
31. The claimant now says, in line with the list of issues, that Ms Tew and Ms Howland attempted to terminate her employment. Indeed, when the claimant included reference to this in an email of 18 September to the respondent which we shortly come to, she did not put it as strongly as that. What she says is:

“Dawn has asked me to consider stepping down from the lead support worker role saying (as also suggested by Sue on Monday 16th September that I am underperforming on the role and lacking in managerial skills).”

32. Towards the top of that email, she says that she has decided to send the email *“in particular in view of Dawn’s suggestion during the conversation that you no longer having confidence in me as lead support worker”*. This is a different emphasis than that which is placed upon it in this tribunal. The claimant has not shown that there was any attempt to terminate her employment as lead support worker nor did Ms Howland say anything to that effect.
33. As indicated, the claimant sent an email to Ms Howland dated 18 September and it appears at pages 152 to 154 of the bundle. The subject heading was, *“Re clarification regarding recent incidents”*. It was copied to Ms Tew and to Ms Addison. It set out the claimant’s case with respect to the fall and what the claimant decided about medical attention and then what happened when she did phone the doctor. The claimant raised some concerns about the suggestion that she might step down and what colleagues had said about Ms Addison’s attitude to the claimant. The claimant is adamant that she wished to continue in the lead support worker role and raised the question of having time of the rota to carry out the tasks. She also raised an issue with respect to Ms Addison’s comments about some food preparation which the tribunal have heard a little about (page 153). The claimant concluded in saying that she wishes Ms Howland to review the conditions under which she was working and she concluded *“I await your feedback in this regard and thank you for your anticipated assistance”*.
34. The tribunal do not believe that necessarily amounts to a grievance nor did the claimant seem to suggest that at the time.
35. Ms Howland decided to deal with the matter when she visited Sampson Avenue on 23 September. The claimant now complains about a meeting that was held then although there does not seem to have been any particular complaint at the time. The tribunal was shown some notes of that meeting which looks relatively short. There was a discussion about the claimant’s email and the patient fall and Ms Howland and Ms Tew mentioned some concerns they had about the claimant’s communication. The claimant’s perception, as she puts it now, is that she felt dismissed and that Ms Howland was there just to support Ms Tew and Ms Addison. Ms Tew and Ms Howland said that the claimant was very quiet while they discussed the role of lead support worker but that it was explained to her that there was no possibility of time off the rota as administrative duties should be carried out in quieter times. The tribunal does not accept that Ms Howland dismissed the complaint or that she needed to follow the grievance procedure.

36. Rather unfortunately in terms of the timing of these events, Ms Tew had, on 20 September, forwarded to the claimant a letter inviting her to a probation meeting on 30 September. The tribunal accepts that Ms Tew made a mistake in that she believed, as the claimant was in a new post, there would be a probationary period. She therefore wrote, having received some standard letters from HR, and used the template to send the letter to the claimant. The standard letter sent by HR included a section about the right to be accompanied but it also included a part where there is a reference to "*The outcome could be any action up to and including a dismissal*". The letter sent to the claimant had that section removed so that it reads, "*The outcome could be an extension to your probation*". The claimant now suggests that that it was a potentially terminative meeting. The tribunal does not agree, in view of this deliberate decision of Ms Tew to remove the mention of dismissal.
37. On 26 September the claimant sent an email to Ms Tew saying that there must be an error as her contract was not subject to a probationary period as she had already completed that at Waymarks. She asked for further clarification about the meeting asking, "*Whether an appraisal meeting was intended as opposed to a probationary review meeting which appears inconsistent with the employment contract and the probation policy in the circumstances*". The next day Ms Tew replied that she had understood that the position would be subject to probation, "*However after consulting with HR this appears not to be the case*". She said that there should still be a meeting which would be a "*performance appraisal*".
38. In fact, that meeting was an annual review meeting and the tribunal have seen a form which was completed either at or after that meeting. The tribunal is not sure whether the claimant accepts that is a genuine document but she certainly accepts that there was such a meeting and that there was a discussion about an action plan (page 169). This contains various action points about training and so on. It was also suggested and agreed that the claimant might benefit from shadowing an experienced lead support worker and this was set up for 7 October 2019.
39. No further matters that the claimant raises between these events and the matters we come to next in April 2020. The tribunal is not satisfied on the evidence before us that the claimant has shown that she was subject to hostile and unfavourable work conditions by being kept on the rota as that was, on the evidence before us, the job which she was engaged to carry out. There was really no change in that position from the commencement of her employment as lead support worker until she left to go to another service in July 2020.
40. On 14 April 2020 the claimant sent an email to Ms Tew having witnessed an incident between a support worker and an agency member of staff. This email is at page 197 of the bundle and the subject heading is "*Escalated incident on Sunday 12th April morning shift*". In essence, the claimant says that the member of staff named Joyce shouted at a member of agency staff called Lupi, and that, when the claimant spoke to her about it, she

responded rudely. She also mentioned a matter of a medication error with respect to this member of staff and continued by suggesting this was part of a pattern of bad behaviour. She went on to state how “*competent reasonable and dependable*” agency staff don’t want to attend the service because of this behaviour. She said: “*It is for this reason that I am escalating this recent conduct of (Joyce) to you for full and formal management investigation with a view to ensuring appropriate action is taken and assurance from the staff where necessary that such behaviour would not happen again*”. She also raises something about the confusion about shifts.

41. Ms Tew responded to this email the next day. She said:

“Good morning Funmi.

Firstly thank you for bringing this incident to my attention and I will look into it further. It is indeed unacceptable be shouting at anyone including an agency worker. I will be addressing that with Joyce if that is the case as it is in breach of code of conduct. “

42. She then went on to respond to some of the matters the claimant raised and challenged the claimant’s comments. She answered some of the points the claimant had raised about agency staff and Ms Tew reminded her that “*you are not management and this is not within your role of lead support worker.*” She also suggested the claimant should not be deciding “*When and with whom I formally investigate.*” She reminded the claimant she was not in a position to supervise staff and that she was “*you are there as practice lead, supervisory instructions come from either myself or Sue.*” She also went to ask questions about the medication error. She ended by saying she would be looking further into matters.
43. These two emails form the basis of the claimant’s complaints at 2.2.5 and 2.2.6. The tribunal’s view is that this does not appear to have been raised as a grievance and it is not suggested to be one. A grievance is more often a complaint about one’s own situation rather than concern about how another member of staff behaves towards somebody else. It reads to the tribunal much more like a suggestion that there should be a disciplinary investigation. However, when Ms Tew was giving evidence, she said that she accepted that it was a grievance or that it seemed to be one but it is clear that she took no action under the grievance procedure. Ms Tew’s evidence is that she spoke to the people involved about this. Her evidence was that she did speak with Joyce about it and that she was reminded about the code of conduct. She also investigated the medication error.
44. As for Ms Tew’s response to the claimant, it does seem to be a little critical of the claimant. That might well be because the claimant appeared to be stepping over the line between what leading the team looks like as opposed to supervising and that is a difficult line to draw. Ms Tew could have given more support to the claimant given the information that she was providing,

but she obviously felt the claimant needed to be reminded of her own role and that of the managers.

45. On 14 May there was some confusion about a service user who needed to go to the hospital. The claimant had arranged with the hospital for transport at the time they decided they needed to collect the service user and she had sent an email to Ms Tew about that matter. Ms Tew did not see the email at the time. The claimant did not enter it in the communication book and Ms Tew heard from other people at Sampson Avenue, the claimant not being on shift, that they did not know what time the service user was to be collected. Ms Tew attempted to contact the claimant but was unable to do so and so she rang the hospital and got a confusing answer about when the patient was to be collected. When the claimant attended for her shift, Ms Tew said that she had booked the wrong time for the service user to be collected. The claimant therefore rang the hospital and it was clarified that the right time had been arranged.
46. Although that was the end of the matter, the claimant clearly had the impression that Ms Tew had been unduly harsh on her and it is perhaps unfortunate that Ms Tew did not apologise for initially suggesting that she had done something wrong in this situation. The tribunal does not accept that this was done to discredit the claimant or anything false in what Ms Tew had said but there was considerable confusion. Ms Tew was in considerable stress at this time because by this time the pandemic had begun and one of the respondent's residents had died. She told the tribunal she was concerned about the lack of communication by the claimant about the issue.
47. There were then discussions about arrangements which had to be made to incorporate sleep-ins at Sampson Avenue because things had changed. Members of staff were spoken to, including the claimant, about being able to do sleep-ins. The claimant's employment contract provides for support workers to carry out sleep-ins. Ms Tew wanted to clarify what the position was and asked HR to forward a copy of the claimant's contract so she could check the position. She started this process before she spoke to the claimant about it. In any event, the contract which was sent had the wrong start date for the claimant on it. The start date was the date that the claimant had started as lead support worker rather than when her continuous employment started which was in 2018 with Waymarks. The tribunal accept that Ms Tew did not notice this when she sent it on to the claimant after it had been forwarded by HR. When it was looked into later, this seems to have happened because there was no copy of the contract on file and another one had been printed off with the field completed incorrectly for when the claimant started the lead support work role rather than the start of her employment. There is no question that the start of the claimant's employment was April 2018 and not April 2019. When the claimant raised this issue on 12 June it was forwarded to HR to respond but they did not manage to do so before the claimant sent a bullying and harassment complaint on 17 June.

48. On 17 June 2020 the claimant sent a long and detailed letter which is between pages 243 and pages 250. She made six complaints as follows:

“1. Wrongful alteration and or falsification of the start date of continuous employment on copy of employment contract on 3 June 2020 with the effect of unfairly reducing the length of continuous employment in the company whilst undermining trust and confidence.

2 Wrongful attempts to terminate employment as Lead Support Worker by being verbally asked to step down on 18/09/2019 and through letter dated 20/09/2019 seeking to undertake inappropriate terminative probation procedure.

3 Subjection to overwork and or unfavourable work condition since commencement of Lead Support Worker role on 29/04/2019 in a bid to undermine my effectiveness.

4 Unfair and wrongful denial of management redress and or grievance investigation of matters raised in the emails of 18/09/2019 and 14/04/2020.

5 Making of false allegations by DT on 14/05/2020 with regards to, my arrangement of hospital transport for a resident's hospital appointment On the day, in order to undermine and or discredit.

6. DT's undermining of supervisory responsibilities that come with my role as Lead Support Worker and failure to recognise and or support the same as evidenced in her email of 15/04/2020”

49. The claimant then provided further details of each allegation. A number of times she referred to “*falsification*” and concluded as follows:

“It is therefore believed that the falsification of the continuous date of employment on my employment contract with the effect of reducing the length of continuous employment amounted to further act of harassment and bullying on the part of JH and DT. Further all the acts of harassment complained of on the parts of JH and DT are prima facie racially motivated in circumstances where these acts were perpetrated by White managers on a Black employee, and further corroborated by the failure of JH to investigate the racial harassment by SA reported to her in the email of 18/09/2019 and justified at a subsequent meeting by DT”.

50. That was sent to Ms Alderson, the regional managing director. Ms Sidgwick who is the HR Business partner, and who is responsible for supporting Ms Alderson, then began to communicate with the claimant. There have been criticisms made because Ms Alderson did not communicate directly with the claimant but nothing really flows from that as it is quite common practice for arrangements to be made through HR.
51. Furthermore, the tribunal is, of course aware, that this was the middle of the Covid-19 pandemic and Ms Alderson, who is senior in the respondent's

business, was part of the emergency response team with respect to pandemic measures. Ms Sidgwick therefore wrote to the claimant acknowledging the grievance and giving information about how matters should progress. Ms Sidgwick looked for someone to investigate matters on behalf of Ms Alderson and considered that, as the complaint was partly against Ms Howland, she might look outside the region. She initially suggested Amy Nicholas who, although was not as senior as Ms Howland, was very experienced in grievance investigations. When Ms Sidgwick heard that the claimant took issue with Ms Nicholas not being senior enough, she looked elsewhere. She tried to reassure the claimant and then she confirmed that Mr Mackney, a Regional Project Manager, would investigate the grievance. Although he is in a more junior role to Ms Howland, he is in a different part of the organisation. The tribunal accepts, as the claimant's representative could not do, that this is in line with the policy. This states:

"Before proceeding to a grievance hearing, it may be necessary to carry out investigations of any allegations made by you. The confidentiality of the grievance process will be respected as far as reasonably practicable.

Within 14 calendar days of raising a grievance, you will be invited to a hearing chaired by a manager who has not had any previous involvement in the issue. This may be the next most senior manager in the organisation or someone from a different part of the company. An HR representative may also be present. The timescale may be extended if more time is required to complete any investigations".

52. The claimant has sought to argue that the disciplinary process should in some way have been applied to this process but there are no grounds for that to be argued. In any event, Mr Mackney was to carry out the investigation and the tribunal have no doubt that he was senior and experienced enough to do so and certainly separate from the part of the business about which the claimant complained.
53. Ms Alderson's evidence was that she always intended to pick up and hear the grievance after Mr Mackney had investigated but that was not communicated to the claimant. With hindsight, it might have been better if it had been as that might have allayed her fears about whether the investigator was junior or not. It seems to the tribunal that it makes very little difference to how the process proceeded.
54. In any event, the claimant discussed matters with Mr Mackney over the phone on 10 July and he prepared a report which covered the matters the claimant raised. He completed the report on 30 July. He had 22 appendices which included a number of matters raised by the claimant, but he also referenced the question about being asked to carry out sleep-ins, which was not something she had raised in her complaint.
55. Mr Mackney had spoken to the claimant, Ms Tew and with Ms Howland. He provided short summaries under his conclusions which it is not

necessary for us to go in to. Suffice it to say that he did not find any discriminatory behaviour. He did raise some concerns about the failure to investigate further the claimant's emails of 18 September and 14 April (page 277) and suggested that those matters warranted further investigation. The question of the sleep-ins which is only a few sentences says that it is a matter which remains unresolved.

56. The next part of the process was for there to be a hearing and the claimant was then told that the hearing would be before Ms Alderson who was the person the claimant wanted to deal with the grievance all along. For some reason, the claimant believed this added to the delays but the tribunal cannot see that from the timeframe which is as follows:

- i) The management report was 30 July.
- ii) Ms Alderson was on holiday but arranged for a first meeting with the claimant on 17 August.
- iii) The claimant could not attend the whole day, even though it was by phone, and it had to be re-arranged which could not happen until 10 September.
- iv) As well as those two meetings Ms Alderson spoke to a number of people and the grievance outcome was provided on 27 October.

57. The outcome was later appealed but that was unsuccessful.

58. However, that matter was ongoing when another matter occurred which the claimant raises an issue about. This is that the respondent decided to move the claimant from Sampson Avenue to Chichester Court. Part of the claimant's contract reads:

"The Company's main address is Second Floor, Building 1430, Arlington Business Park, Theale, Reading, Berkshire. RG7 45A Your normal place of work will be Sampson Avenue. The Company reserves the right to require you to work at other locations as we may reasonably determine during the course of your duties either on a temporary or permanent basis. This will be directed by local management in accordance with the needs of the people we support and/or business requirements.

59. This decision had been made because, at the telephone meeting with Mr Mackney, he had asked the claimant whether anything else had happened since the grievance. She made reference to two other matters which she accepts were not anything to do with her race and this had led the respondent to be concerned about the claimant remaining at Sampson Avenue and the integrity of the investigation.

60. The claimant accepts that Chichester Court, where she was asked to move to, is much closer to her home and involves less lifting by hoists which had been affecting the claimant's back. She was to remain as a lead support

worker (although she has lately said that she did not do any work in that role) and she retained the salary. She was told that it was a temporary move and the tribunal accepts that, at that time, it was a temporary move. As indicated, the grievance was ongoing. The claimant presented this employment tribunal claim on 3 September 2020

61. The claimant was informed that she was to be permanently transferred to Chichester Court on 18 December 2020 and she resigned from the respondent on 3 February 2021.

Law and submissions

62. The claims arise under the Equality Act (EQA), under sections 13, 26 and 27, for direct discrimination, harassment and victimisation. The relevant parts of those sections reads:-

13 Direct discrimination

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

26 Harassment

(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.

27 Victimisation

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

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

(4) This section applies only where the person subjected to a detriment is an individual.

63. Under section 136 EQA, the burden of proof rests on the claimant to prove facts from which we could conclude that there has been a breach of any of those sections. If and when she does so, the burden will shift to the respondent to explain any such matters. If the respondent fails to give a satisfactory explanation, the tribunal will find there has been discrimination.
64. For all the claims the tribunal must make findings of fact and then apply the correct tests. For the direct discrimination complaint, namely less favourable treatment contrary to section 13 EQA, the tribunal is mindful that it is unusual for there to be clear, overt evidence of direct discrimination and that it should consider matters in accordance with section 136 EQA. The tribunal accepts the guidance of the Court of Appeal in Igen V Wong [2005] IRLR 258 which confirms that given by the EAT in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] IRLR 332, concerning when and how the burden of proof may shift to the respondent, as modified and clarified in other recent cases. The test is: are we satisfied, on the balance of probabilities that this respondent treated this claimant less favourably than they treated or would have treated a white employee (or an employee from some other racial group). We are guided by the decision of Madarassy v Nomura International plc 2007 IRLR 246 reminding us that unfair treatment and a difference in race does not, on its own, necessarily show discriminatory treatment. Royal Mail Group Ltd v Efobi [2021] UKSC 33

more recently clarified the law on section 136 EQA stating that facts which show the tribunal could conclude there was discrimination may come from the claimant or the respondent and the burden of proof would then shift.

65. The claimant also complains of harassment. The tests are as set out in section 26 EQA as above with the burden of proof resting on the claimant to show unwanted conduct related to race. She also has to show that the unwanted conduct had the purpose or effect of violating his dignity or creating an intimidating etc environment. Here we consider matters in accordance with section 26 (4) EQA and considering the perception of the claimant and other circumstances, whether it is reasonable for the conduct to have the effect.
66. There are also allegations of discrimination by way of victimisation, contrary to section 27 EQA. Here the burden rests upon the claimant to prove that she has performed one or more of the “protected acts” defined at section 27 (1) b). Thereafter we move on to the second stage and determine whether there have been any detriments because the employee had committed the protected act(s). Two cases give guidance on the question of causation. They are Chief Constable West Yorkshire Police v Khan [2011] UK HL48 and St Helens Metropolitan Borough Council Derbyshire & others 2007 RLR 540. These cases remind us that we are concentrating on asking why the respondent took the action they took when assessing whether it was because the claimant had carried out protected acts. This is a question of subjective intention. Everything set out above in respect of the shifting of the burden of proof and the drawing of inferences applies here too.
67. Section 123 EQA provides for claims of discrimination to be brought within three months. That section also allows for matters which amount to “*conduct extending over a period*” to be brought within three months of the end of that period. The tribunal may also a claim brought after that period to proceed if it is just and equitable to do so. There is guidance in Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530 (using the language from previous anti-discrimination legislation) where it was said “*The question is whether that is “an act extending over a period” as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed*”. The later case of Ma v Merck Sharp & Dohme Ltd [2008] All ER 158 also assists where it was said that the claimant must have a “*reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs*”.
68. Finally, as with all claims brought under EQA, guidance is contained in the EHRC Code of Practice on Employment (2011).
69. Both representatives provided written submissions before we deliberated. There is very little dispute on the legal tests to be applied as set out above. There are many cases which the tribunal can look to for guidance, some of which the representatives referred us to.

70. The claimant's representative sent a detailed closing statement on behalf of the claimant. He reminded us about the evidence we had heard submitting that should lead us to the conclusion there had been "*sustained harassment, discrimination and victimisation*". He submitted that the earlier acts complained of were conduct extending over a period because they involved Ms Tew and said, in the alternative, that it would be just and equitable to extend time because of the delay in the grievance being addressed. Some of the matters the claimant discussed in this document were outside our considerations as they did not relate to the issues in the case, as set out above, or, indeed, to the particulars of claim. He did cover the detail of the allegations and submitted we should find in the claimant's favour.
71. The respondent's representative reminded us of the legal tests and pointed to the evidence as supporting the respondent's position that there had been no discrimination, harassment or victimisation.

Conclusions

72. The tribunal gives its response to the claimant's claim by reference to the list of issues (having checked the details of claim that there is nothing of significance missing from them).
73. The first question we have to address is whether the claimant's complaints have been brought out of time. The respondent submits that those between 2.2.1 and 2.2.6 are out of time. The tribunal does not accept that 2.2.1 is out of time. That allegation is said to have occurred between April and 9 July 2020. Although from our facts it is clear that there was no such treatment, we do not say that that allegation is out of time.
74. Those items between 2.2.2 and 2.2.4 have clearly been made out of time. They relate to matters in September 2019 and there is then a gap between those and that at 2.2.5 which is in April 2020.
75. The tribunal's view is that those matters are out of time. Although it is arguable that they might amount to conduct extending over a period because they involve Ms Tew, there is really no explanation for the gap between September and April 2020 and the matters complained in both time periods about are dissimilar. However, given that we have considered these matters it seems safest for us to answer the questions that follow, in case we are wrong about them being out of time so we do give our answers to each of the issues above as if they did form part of conduct extending over a period.
76. As to those matters between 2.2.5 and 2.2.8, the tribunal finds they are either in time or do form part of conduct extending over a period, not least because they involve Ms Tew and matters fairly closely connected.

77. We then turn to consider the issues raised in paragraph 2.2 but we answer them together with those at Issue 3.2 in relation to harassment. We first have to decide whether the following acts or omissions occurred.
78. Taking first paragraph 2.2.1, the tribunal has made it clear that we do not accept that the claimant was subjected to hostile unfavourable work conditions. Part of her job was to be on the rota with some additional duties which she was expected to be able to carry out within the same time. Whilst that might have been challenging and difficult, it was what the job was and we have heard nothing to the effect that any other lead support workers could not manage to do it or that it comes close to anything considered to be hostile and unfavourable work conditions. That allegation is not made out.
79. As far as paragraph 2.2.2 is concerned, the tribunal has found that neither Ms Tew nor Ms Howland attempted to terminate the claimant's employment. There was just a suggestion that, if the claimant was finding it difficult, she could consider stepping down but that is not an attempt to terminate her employment as lead support worker.
80. As to paragraph 2.2.3, the tribunal does not accept that Ms Howland dismissed the claimant's complaint. Although the grievance procedure was not followed, it was not put forward as a grievance, and there was no need for it to be taken forward under that procedure. Ms Howland attempted to address the claimant's concerns at a meeting.
81. As far as paragraph 2.2.4 is concerned, Ms Tew did send a letter inviting the claimant to a probation meeting but it is not correct to say that it was potentially terminative.
82. As far as paragraph 2.2.5 is concerned, Ms Tew did investigate the claimant's complaint about her colleague. Whether or not that amounted to a formal investigation is not entirely clear. It was not followed as a grievance because it was not one, even if Ms Tew said, during this hearing, that she thought it was. We come back to this when we look at matters as a whole.
83. As far as paragraph 2.2.6 is concerned, the claimant partially makes this out. Ms Tew's email was not as supportive as it might have been given that the claimant was raising something which appeared to be important. However, the tribunal does not accept that this was to undermine the claimant but to remind her of what her role involved.
84. As for paragraph 2.2.7, this was an unfortunate incident and it is regrettable that Ms Tew suggested to the claimant that she had booked the wrong time for the hospital transport, particularly in view of the fact that the claimant had sent her an email. However, the fact that the claimant had not put it in the communication book and that Ms Tew had not been able to contact her contributed to the problems, as well as confusing information from the hospital. To some extent, this is made out but the tribunal do not accept

that it was an attempt to wrongly discredit her or that it was a false claim but rather that it was incorrect at the time based on confusing information.

85. As far as paragraph 2.2.8 is concerned, Ms Tew, but not with the knowledge of Ms Howland, did forward a contract where the date of commencement of employment was wrong. We do not accept that it had been altered, by Ms Tew or anyone, and have accepted the explanation that there had been a mistake before it was sent to Ms Tew.
86. We therefore answer issue 2.3 (and 2.3.1) which is whether those matters which we find to have occurred were less favourable treatment compared to a hypothetical white lead support worker. Many of the matters have not been made out at all. Those that are made out are as follows: - the invitation to the probation meeting; a lack in fulsome support of the claimant; the allegation that she had wrongly booked the wrong time for the hospital transport and the wrong date of commencement of employment. The claimant has not been able to show facts from which we could conclude that any of that treatment was because of her race. She is not able to show that a white lead support worker would have received any different treatment. The claimant is unable to shift the burden of proof to the respondent with respect to those matters which are made out, at least in part. However, if we are wrong about that, the tribunal has considered the respondent's explanation for those matters and we are satisfied that, whilst there have been some mistakes and the difficulties with the claimant's work relationships, none of that relates to her race.
87. The direct discrimination claim therefore fails.
88. We therefore are looking at issue 3 and consider whether the respondent engaged in unwanted conduct in any of the matters as found above. Again, these matters are much more in the nature of imperfect things that happen in workplaces and can lead to employees feeling dissatisfied. They are not unwanted conduct which relate to the claimant's race. The tribunal accepts that, for some of those matters, the claimant's perception was that they had that effect. When the tribunal considers that and applies the legal test, considering all the circumstances, we find it was not reasonable for them to have the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
89. The claimant's claim for race related harassment fails.
90. Turning then to the victimisation claim, we accept that there is a protected act in the claimant's letter of 17 June 2020. We therefore consider whether the claimant was subjected to the detriments she sets out.
91. As far as paragraphs 4.2.1 and 4.2.2 are concerned, these all relate to Mr Mackney being the investigator of her complaints. This is said to be contrary to the respondent's Dignity at Work Policy which the claimant has been unable to show. Neither is it contrary to the Grievance Policy. The claimant's representative submitted that we need to look at the Disciplinary

Policy because the Dignity at Work Policy refers to it. The tribunal cannot agree. This was not a disciplinary investigation. The tribunal's findings are that there was nothing untoward about Mr Mackney's appointment as he was clearly sufficiently senior to carry out an investigation into matters raised by the claimant. In any event, he did not determine the grievance.

92. Turning then to paragraph 4.2.3, the tribunal accepts that the claimant did not want to move from Sampson Avenue but that has not led us to find that it was a detriment. The claimant accepted that Chichester Court was closer to her home and involved less travelling and that she was moved temporarily as a lead support worker so there was no financial loss to her. Late evidence has suggested that she did not carry out that role, but that is nothing that we are able to determine and it is not in the list of issues. Although the tribunal accepts that there was late notice of the move, it does not accept that it was a detriment. We consider below under our conclusions under paragraph 4.3 whether it was connected to the protected act, in case we are wrong about this conclusion.
93. As far as paragraph 4.2.4 is concerned, the claimant cannot show that there was any detriment in Ms Alderson hearing the grievance complaint even though she suggests that this led to delays. There is no evidence that Ms Alderson's involvement led to any delays as we do not know, if the matter had stayed with Mr Mackney, when it would have been concluded. We accept that there was a fairly lengthy delay in the claimant's grievance but there are good reasons for that, not least that, there was an investigation and a long outcome letter. By the time the claimant presented this claim form, it was only a few weeks beyond 30 July. The tribunal has taken into account that the Grievance Policy suggests a 14-day outcome, but its experience is that this can be difficult for most employers to manage. We take into account this was a particularly difficult time when those involved are dealing with care homes in the Covid-19 pandemic. We do not accept there was any detriment in Ms Alderson hearing the claimant's grievance.
94. Turning then to paragraph 4.2.5, the claimant here raises that the management report "*sought to allegedly unjustifiably excuse alleged discriminatory acts*" and "*allegedly undermined the claimant by including irrelevant matters relating to sleep-ins which Mr Mackney did not discuss with the claimant*". Mr Mackney has not stated, in his management report, that the claimant was right to consider these matters to be discriminatory acts. The tribunal is prepared to accept that this disagreement could amount to a detriment although we do not accept that his very short reference to sleep-ins can be a detriment as it did not undermine her in any way as is suggested.
95. We therefore have a number of matters which do not really appear to be detriments at all but we look at issue 4.3 and consider whether, if there are detriments as perceived by the claimant, whether they were because the claimant had done the protected acts.

96. Our conclusion is that the tribunal cannot see a causative link between any of these matters, even if there are some matters that might amount to detriments. For instance, the claimant cannot show that the appointment of Mr Mackney was an attempt by the respondent to find a junior person to deal with her complaint. The respondent did appoint Mr Mackney, but it is not because of the claimant's grievance that he was appointed (rather than anyone else). It follows that an investigation was needed but that does not show any causal connection. Even if we put the claimant's concern about being moved to Chichester Court at its highest, that it was because she had put in the grievance, she has accepted that what was mentioned to Mr Mackney after that grievance which precipitated the move, were not on account of race. The move was for other operational reasons. Lastly, the fact that Mr Mackney did not agree there was any discrimination and mentioned the sleep-ins was not because she had made the grievance. It came after the grievance but that was what he had decided on investigation. It was not because she had done a protected act.
97. The claim for victimisation fails.
98. In summary, the claimant has not made out any of her claims for the reasons set out above and they are dismissed.

Employment Judge Manley

Date: 31 August 2022

Sent to the parties on: 8.9.2022

GDJ
For the Tribunal Office