Case Number: 3313602/2019

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms M Smith-Ihionvien v Driver and Vehicle Standards Agency

Heard at: Watford **On**: 1- 4 November 2021 and, in private, 10 December 2021

Before: Employment Judge Hyams **Members:** Mr R Clifton
Mr P English

Representation:

For the claimant: Mr Ben Amunwa, of counsel
For the respondent: Ms Georgia Hicks, of counsel

UNANIMOUS RESERVED JUDGMENT

1. The claimant's claims of harassment within the meaning of section 26 of the Equality Act 2010, contrary to section 39 of that Act, do not succeed and are dismissed.

2. The claimant's claims of discrimination within the meaning of section 13 of that Act because of her race, contrary to section 39 of that Act, do not succeed and are dismissed.

REASONS

Introduction; the claims

1 By a claim form presented on 8 April 2019, the claimant claimed that she had been the subject of direct discrimination because of her race and harassment with the protected characteristic in that regard being her race, contrary to (respectively) sections 13 and 26 of the Equality Act 2010 ("EqA 2010") and section 39 of that Act. The claimant was employed by the respondent from 12

June 2018 to 28 December 2018 as a Traffic Examiner. That post was subject to a probationary period and the claimant was dismissed during that period.

2 The claimant approached ACAS on 14 February 2019 and the early conciliation certificate was issued on 14 March 2019. The claim was therefore in time in respect of conduct which occurred on or after 15 November 2018, including any continuing conduct extending over a period within the meaning of section 123(3)(a) of the EqA 2010.

3 The case was originally listed to be heard on 19-22 January 2021, but the claimant's case was not ready to be presented then, despite there having been a preliminary hearing on 3 February 2020 at which case management orders were made. The respondent therefore applied to strike out the claims, but Employment Judge ("EJ") Bedeau declined to do that, although he awarded costs against the claimant in the sum of £2,000 which, we were told at the start of the hearing before us, had not been paid. The claimant's witness statement at that time was short and apparently incomplete, and one of the orders that EJ Bedeau made was that the claimant provided a "full, comprehensive witness statement" by 30 March 2021. In the event, she did not do that, but she did serve a more comprehensive statement on 14 April 2021. Unless otherwise stated, we refer below to the latter of those witness statements simply as the claimant's witness statement.

4 The main focus of the claim was claimed conduct on the part of the claimant's line manager, Mr Michael Cheeseman. His formal position was that of Traffic Enforcement Manager. He made the decision that the claimant should be dismissed. Unless there was conduct extending over a period which preceded 15 November 2018 or we concluded it was just and equitable to extend time for the making of the claim in respect of conduct occurring before then, in relation to the acts of Mr Cheeseman the claim was only about the claimant's dismissal. It was claimed by the claimant that Mr Cheeseman's decision that she should be dismissed was tainted by direct discrimination because of race within the meaning of section 13 of the EqA 2010.

5 It was the claimant's case that Mr Cheeseman had said certain things which indicated a propensity to discriminate against her because of her race in that they were indicative of racial prejudice. Those things were claimed also to be harassment within the meaning of section 26 of the EqA 2010. Additional things were alleged to have been said by other persons, which were alleged also to be harassment within the meaning of section 26 and in some cases direct discrimination within the meaning of section 13 of that Act. There was an agreed list of issues, which we were satisfied was largely in appropriate terms. It was amended after evidence had been heard by us and before submissions, and we have adapted in order to incorporate it into these reasons. The issues as they stood at the end of the trial were as follows.

The issues

Factual questions

6 Did Mr Cheeseman do any of the following things:

6.1 on 4, 9, 10, 11, 18 October 2018 and 8 November 2018, make the following remarks about the Mozart Estate on the assumption that the claimant lived in the neighbourhood of that estate:

6.1.1 it was a "horrible area", in which "you couldn't park a police car there or someone would drop a fridge on it";

6.1.2 it had "high criminality";

6.1.3 "you could spit on some of those estates near you";

6.1.4 "the kids very often only see the money they can make selling drugs, they're scum";

6.2 make comments on 18 October 2018 and 8 November 2018 that "young black boys are more at risk of exclusion from school, from being arrested and charged with an offence, of being stabbed on the way home from school, than White or Asian";

6.3 on 12 July 2018 and 9 August 2018 tell the claimant that it was not a good idea to take her son to Manchester to stay with relatives while she attended a training course there as "he would be a distraction";

6.4 on 28 June 2018 say to the claimant that she would not be able to wear a hat as her "'air was gonna be a problem";

6.5 in June, July, September, October and November 2018 (in his written closing submissions, Mr Amunwa said that those words should be replaced by these: "2 July, 18 October and November 2018") say to the claimant: "Change yer name or get a divorce"; and/or

6.6 on 18 October 2018 tell the claimant that it would better if she "resigned rather than be fired"?

7 Did Ms Joanne Parker and/or Ms Sharon Galvin on 13 August 2018, 10, 11 and 12 September 2018 and 19, 20 and 23 November 2018 single the claimant out (i) by criticising her for looking at her mobile telephone when other trainees were also looking at their mobile telephones, and/or (ii) by telling her to delete photographs of Powerpoint presentations, whereas her fellow trainees were not told to do so?

8 Did

8.1 Ms Galvin and Ms Amanda Bell and other trainees in August 2018 and Ms Parker and Ms Bell in November 2018 and other trainees make comments ridiculing migrants found hiding in vans crossing the English Channel via ferries and the Eurotunnel during DVSA inspection checks; and/or

8.2 Ms Parker in November 2018 make comments about the attitudes and behaviours of particular drivers entering the UK, based on their ethnic origins rather than what they may have said or done?

Harassment within the meaning of section 26 of the EqA 2010

9 Was such alleged conduct described in paragraphs 6-8 above as the tribunal finds occurred related to race?

10 If so, was it done by the relevant person with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

11 If not, bearing in mind and applying section 26(4) of the EqA 2010, did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

Direct discrimination within the meaning of section 13 of the EqA 2010

12 If any part of the conduct alleged as stated in paragraph 6.3 above is found by the tribunal to have occurred, was it less favourable treatment of the claimant because of race? In this regard, the claimant relies on a comparison of the manner in which Mr Cheeseman acted towards Ms Jackie D'Cruze, who is white, on 26 September 2018, when, it is the claimant's evidence, he permitted Ms D'Cruze to bring her daughters to work and for them to be present at the workplace for two hours during a 2-hour training session. Alternatively, the claimant relies on a hypothetical comparator.

13 If any part of the conduct alleged in paragraph 7 above is found by the tribunal to have occurred, was it less favourable treatment of the claimant because of race? In this regard, the claimant relies on the fact that she was the only black person present and compares her treatment with that of the other attendees, some of whom were white and others of whom were of Asian origin. Alternatively, the claimant relies on a hypothetical comparator.

14 Was Mr Cheeseman's decision that the claimant should be dismissed to any extent less favourable treatment of the claimant because of race? In this regard, the claimant relies on a hypothetical comparator.

Section 136 of the EqA 2010, and in relation to claimed direct discrimination, *Shamoon*

In regard to the claims of harassment and direct discrimination

15 In deciding whether the conduct referred to in paragraphs 6-8 and 12-14 above was either directly discriminatory within the meaning of section 13 or harassment within the meaning of section 26 of the EqA 2010 and therefore a breach of section 39 of that Act, has the claimant proved facts from which the tribunal could, in the absence of an explanation from the respondent, decide that the conduct was such a breach? If so, then has the respondent satisfied the tribunal that the conduct was not such a breach?

In relation to the claim of direct discrimination

16 Alternatively in relation to (1) such of the conduct referred to in paragraphs 12 and 13 above as the tribunal finds occurred and (2) Mr Cheeseman's decision that the claimant should be dismissed, applying the decision of the House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, what was the reason for the conduct?

The evidence which we heard

17 We heard oral evidence from the claimant on her own behalf and, on behalf of the respondent, from Mr Cheeseman, Ms Galvin and Ms Parker. We had before us a hearing bundle containing 1018 pages not including its index. There was in addition a correspondence bundle with 154 pages in which, among other things, there were copies of previous case management summaries and orders. In what follows, where we refer to a page then, unless otherwise stated, we are referring to a page of the hearing bundle. Having heard that oral evidence and read the documents in those bundles to which we were referred, we made the following findings of fact. Where there was a material conflict of evidence (and there many of those), we refer to the parties' evidence before stating how we resolved that conflict and why we did so.

Our findings of fact

The work of a Traffic Examiner and the requirements in practice of the holder of the post of Traffic Examiner

18 On 5 June 2018, the claimant was offered the post of Traffic Examiner, to start on 12 June 2018. The letter stating that offer was at pages 72-80. The job description was at pages 81-84. The "Deliverables" were extensive, and were stated on pages 81-83. The first two rows were indicative of the importance of the role. The first one contained the following bullet points.

"• Carry out roadside checks on UK and foreign vehicles at fixed enforcement sites, other roadside locations, coach parks, motorway service areas, or as part of a Police mobile patrol.
• Inspection of vehicles for compliance with – weight, operators licence, drivers' hours, vehicle excise legislation, driving licence and Construction and Use Regulations.
• Compile reports, collect evidence and where necessary issue prohibition notices, graduated fixed penalties and immobilise vehicles which on occasions may involve handling cash.
• Inspect vehicles carrying Hazardous Goods, check for compliance with regulations on drivers licensing, safety equipment and carriage of relevant documentation."

19 The second row contained the following bullet points:

"• Inspect tachograph records for any anomalies.
• Visit vehicle operator, and other premises to collect evidence, carry out formal interviews and take statements.
• Prepare full reports and papers for prosecution cases to critical deadlines."

20 The rest of the "Deliverables" were of commensurate weight. The next box, for example, included this bullet point: "Prepare for and present cases at Public Inquiry."

21 The claimant's post was (by reason of paragraph 3 on page 73) subject to a probation period of 9 months, and (by reason of paragraph 4 on the same page) the claimant was liable to be "dismissed at any time during the probationary period for failing to satisfy any of the necessary requirements". The post was subject to the following essential requirements, stated on page 83:

21.1 "Full and current driving licence"; and

21.2 "The post holder will be required to travel to various DVSA and other locations from time to time which may on occasion require overnight stays".

22 The probation period was subject to the policy at pages 94-112. On page 95 it was said that the probationer's progress would be formally reviewed at "the end of the 4 month stage ... and again at the end of 8 months". At page 105, however this was said:

"There is no need to wait until the 4 or 8 month review stages. The manager should:

- identify whether there are any reasons for the poor performance which can be addressed by additional support
- set out a plan for improvement if the manager considers that achievement of the required standards by the end of the probationary period is a possibility
- commence possible termination of employment, using the dismissal procedure for probationers if they don't think that the individual is likely to achieve the required standard by the end of the probationary period.

Timescales for improvement should be reasonable and in keeping with the time scale of the probationary period, and review stages. Managers should review progress on at least a monthly basis to assess whether the individual is likely to achieve the required standard."

23 The first day of the claimant's employment (12 June 2018) was a Tuesday. She was due to spend the second week of her employment with the respondent being trained at a location near Manchester. The first day of the training was Monday 18 June 2018 and the training was due to start at 13:00. The "arrangements" for the course were stated in the letter at page 194, which bore the date at the top right hand side of "02/01/2020", but we assumed since it was not challenged that that was the date of printing of that copy of the document and was not the date when it was sent to the claimant. The "Start Time - First Day" was stated in the letter to be 13:00, but these things were also said:

23.1 "(Please arrive 15 minutes early)"; and

23.2 "Please note that if lunch is required this should be taken prior to course commencement time".

24 In fact, the claimant did not attend at all on the first day of the training, 18 June 2018. Mr Cheeseman was on holiday that week. Mr Adrian Elkington was standing in for him. On 21 June 2018, at 21:38, the claimant sent the email at page 196 to Mr Elkington, the body of which was in these terms:

> "As your [sic] standing in for Mick, you ought to know I had a issue with a frozen satnav on the way up on Monday morning which resulted in me getting to Manchester at 14:45 as opposed to 13:00. I had a job finding the hotel as it took me to post code on the other side of the field of the hotel.
>
> Aidan said I didn't miss much and should come in the following day but I did still endeavour to make it. The satnav froze again and I was taken to another part of town.. I haven't used that satnav before but because I was expecting to be travelling up with another trainee, I thought I would have a navigator. I did eventually get there as I wanted to be prepared for Tuesday morning but by the time I arrived Aidan already had left.

> Mike Bright, the training manager asked about the issues I had so I explained everything to him. He didn't seem understanding at all. I was too embarrassed to tell him about the stop start issues with the car, but I did tell Aidan McCabe and he gave me some time to call the AA as it happened again on the way home on Tuesday and on the way to class on Wednesday morning.
>
> It turns out that the cruise control (which I am now informed about) was switched on and set itself to 16mph. Even though I checked with Enterprise that the car used unleaded, I was petrified as I was under the impression that I may have filled the tank with the wrong type of fuel, because it would not cut out but continuously rolled along at a snails pace intermittently.
>
> Now that that nighmare [sic] is over, I am enjoying class the principals of legal education are coming in handy. I see what you meant about practical and theory."

25 At 10:00 on the next day, 22 June 2018, Ms Della Read sent the email at pages 198-200 to Mr Cheeseman. In it, Ms Read copied certain other emails, as we describe below. Her email started in this way:

> "Hi Mick
>
> Hope you had a good holiday. There have been a couple of issues with Miriam whilst you have been off. Adrian is aware of it, but I will try and cobble together the events of which I am aware. I have been in communication with John Bright regarding her lateness at the courses. Apologies for the lengthy email but I have tried to include it all in one email to make it easier for you with regard to time-line.
>
> Adrian will explain about the whole phone escapade of Friday before, (he went above and beyond to assist with the lost phone on Friday, to the point of going to Yeading at around 9pm to look for it), but she then did not travel up to Chadderton on the Sunday as she had requested (and booked a room). Adrian found her in Yeading on Monday morning (once more looking for her phone, apparently). So she could have travelled up with Amanda as originally planned anyway. When I spoke to Adrian, it seemed that she was quite dismissive of the time it could take her to get to Manchester on a Monday morning, and I believe she stated that she could do it in 3.5 hours. Anyway — She was late, in fact, she never arrived at all. Amanda called her on Monday, as she was concerned she had not arrived and she said there had been an incident with some liquid and that she had gone directly to the hotel. She was again late on Tuesday and again on Wednesday. She arrived on time on Thursday, but she had been spoken to by both the trainer and John Bright regarding time keeping. She sent

> Adrian a convoluted email on Thursday night, which to me raises questions."

26 As stated in that email of Ms Read, on Tuesday 19 and Wednesday 20 June 2018, the claimant arrived after the start-time of the training day, but on Thursday 21 June 2018, the claimant arrived in time. On Thursday 21 June 2018 Mr Bright sent to Ms Read the email in the middle of page 199, which was in the following terms:

> "She was on time this morning. I understand the AA came out to her hire car yesterday and found no fault on the car."

27 When giving evidence to us, the claimant said that the person who came to check her hire car was employed by the RAC as he had been wearing an orange uniform, and that he had found a fault with the car. We ourselves found it hard to understand how a speed limiting function could have had the effect for which the claimant contended, given

27.1 that the claimant accepted when giving oral evidence that she had switched the car's engine off several times when she was travelling up to Manchester,

27.2 that Mr Clifton works for the manufacturer of the hire car in question (a Vauxhall Mokka) and understands that a speed limit command is ended when the ignition is switched off so that when the engine is restarted, the speed limit function will operate only if it is switched back on, and

27.3 our own experience of the operation of several cars' speed limiting functions, which is to the same effect as that of Mr Clifton stated in the previous sub-paragraph.

28 At 12:41 on Friday 22 June 2018, Mr McCabe sent to Ms Read the email at pages 214-215. It started in this way:

> "Hi Della
>
> An update on the progress of Miriam Smith at the New Entrant TE Training this week.
>
> On Monday 18th June 2018 the course was due to start at 13.00 hours. All delegates except Miriam turned up. Amanda Bell informed me that Miriam had messaged her to inform her that she was running late and was about an hour and a half behind her. Amanda thought that Miriam should arrive about 13.30 as she had arrived at 12.00.

> Miriam did not show, so as I was concerned about her no show, at about 16.00 hours Amanda rang Miriam and spoke directly with Miriam. She said she was at the hotel and had arrived late (about 14.40 hours) and went to the hotel directly to check in! She said she had a problem with her Sat Nay. I asked why she hadn't come to Chadderton and she said that as the Sat Nav wasn't working correctly, she didn't know where it was. She asked if I wished her to come to Chadderton. I informed her that we were due to finish about 16.30, so she'd need to be here before then. She said she would come to Chadderton. I hung around until 16.45, but she didn't turn up."

29 Mr Cheeseman on his return from holiday had a meeting with the claimant and on the day after it sent her the long email dated 26 June 2018 at pages 206-208. It ended with these two paragraphs:

> "We then had a long discussion about what had gone wrong and how we could ensure it doesn't happen again. I explained that it is totally unacceptable to be late and that the indications from the test were that you were not paying sufficient attention to take in all that is requires [sic; probably intended to be "required"]. I emphasised that this is a technical job, that you need to know what you are doing and although you can't know everything you need the basics. This job is one relying on self-motivation and drive and I am worried that you have not shown that up to this point. Turning to what can be done to prevent this happening again, we agreed you would start out from home next Monday morning at a time that would give you plenty of time to get there before 1pm, I suggested a start time of 06:30am. I said we would discuss further if you should travel to Manchester together with Amanda but I know from speaking to her she is concerned you will make her late. We agreed that all assignments will be completed to the best of your ability and handed in on time. We agreed that you will leave the hotel you are staying at early enough to allow you to arrive at Chadderton in plenty of time. We also agreed that you will leave your laptop with me for safe keeping as I suspect it was a distraction.
>
> Miriam, even after speaking to you for the best part of two hours this afternoon I still find your story difficult to believe but I am prepared to give you the benefit of the doubt, don't let us both down."

30 Mr Cheeseman said in oral evidence that he spent much time writing that email, and that it was written with much care. He said that the same was true of all of the other emails to which we refer below which he sent to the claimant after having a meeting with her to discuss her progress. Having considered all of the evidence before us and come back to this aspect of the evidence, we were satisfied without any doubt that the whole of the email at pages 206-208 (including of course the two paragraphs set out in the preceding paragraph above) was written by Mr Cheeseman on the basis of objectively good evidence

and that he would have written the same to anyone else in the same circumstances, no matter what their race. Wherever we state a conclusion on Mr Cheeseman's state of mind, we do so having done the same thing. That is to say, we have, when considering whether any particular act or omission of his was tainted by an unlawful discriminatory motive, first considered all of the evidence before us and asked ourselves whether, particularly when taken as a whole, it suggested that Mr Cheeseman's considerations may have been tainted by an unlawfully discriminatory motivation. We have then returned to the specific act or omission of Mr Cheeseman that we were considering and asked ourselves whether it was so tainted.

31 The claimant was, however, subsequently late on a number of occasions, to which we now turn, during the course of which we mention other concerns which were recorded contemporaneously.

10 July 2018

32 On 10 July 2018, as recorded by Mr Cheeseman in the report which he wrote on 17 and 18 October 2018 of which there was a copy at pages 377-380 (he recorded the date there as having been 10 June 2018 but that was plainly wrong, given his own note copied at page 451), the claimant arrived at her usual base, which was at Yeading, at 07:50. She had been due to go on a pre-arranged road check with the police at Poyle, the starting time for which was 07.00. She had been intended to go with a member of the team to Poyle to arrive there at 07.00. The team waited for her but left without her at 07:30. Mr Cheeseman took her to Poyle with him, arriving at about 09:45. The claimant's explanation for her lateness was summarised by Mr Cheeseman in his contemporaneous note at page 451 as "issues with public transport".

23 July and 6 August 2018

33 On 23 July 2018, the claimant arrived for the start of the training course of that week half an hour late, as recorded by Ms Galvin (and not contested on behalf of the claimant) in the email of that day sent at 16:06 to Mr Cheeseman at pages 300-301. The claimant was also late on the following day as recorded by Ms Galvin in the first page of her email to Mr Cheeseman of 6 August 2018 at pages 298-300. Ms Galvin also recorded on the first page of that email that the claimant arrived early from Wednesday of that week onwards and was ready to start at 9am. In addition, Ms Galvin recorded (on the same page) the following concerns:

33.1 "She takes a lot of notes, and I did have to ask her to decide which electronic device she wanted to use as she appeared to be using 3 one morning. Another delegate also uses a laptop to take notes, which I do not have a problem with. I did make it clear to Miriam and the group that if I found they were not taking notes and doing other things, then I would review this matter. However this was not the case. (She was sat nearest

to me!!) She is engaging in the class, asking mostly relevant questions when she is unsure of something, and interacts with the other delegates."

33.2 "I do have a concern relating to Miriam's understanding of the basic subjects we have covered already and have given plenty of opportunities to her and the group to discuss any issues both in a public forum and privately if needed, however she has yet to take this opportunity to discuss with me any issues relating to her training."

34 Ms Galvin continued (also on page 298):

"I feel that we will have a better understanding of Miriam's abilities once she has completed Driver's hours, Digital and TachoScan training as these are the most complex training of the entire course."

35 Having acknowledged that email at the start of an email in reply to Ms Galvin sent at 15:30 on 6 August 2018 (at pages 297-298), Mr Cheeseman continued:

"Today I was at roadside with her. We encountered a 26000kg flat bed, When asked what type of vehicle it was she suggested a 44000kg artic [i.e. an articulated lorry]. We did get there in the end when I took her to the window and asked her to describe it. Weights I can understand, it means nothing until you understand them but an artic? I then asked her what type of licence the driver would need and got the reply a D1. I didn't really have a response to that.

So I have set her some extra study to research and understand licence categories. I think that's interesting though, she was so far off the mark it suggests to me she is not paying attention to what is being taught or that having not understood it she doesn't ask questions until she has a working knowledge. Additionally, she has been at many roadside checks, so what has she been doing there?"

36 Two days later, Mr Cheeseman sent the email at pages 318-319 to Ms Rebecca Seager, an HR Business Partner employed by the respondent who, we inferred from Mr Cheeseman's evidence, was assigned to advise (among others, of course) him. The email was in these terms.

"Hi Rebecca

I have a new TE Miriam Smith-Ihionvein [sic; the subject line for the email was "Miriam Smith-Ihionvien"] whom I have some concerns about.

She has told me that she has a degree in law and that she worked as a court clerk before joining the DVSA. I'm having real difficulties believing this is the case as her ability to retain knowledge appears poor, basic

information I would have expected her to know is missing and processes and procedures that someone who was a Court Clerk would probably be aware of she is not.

Am I allowed to ask?
When she applied did she say she was a court clerk?
When she applied did she say she had a degree?
If she said she was a court clerk was this confirmed with references?
Have we seen a copy of her degree certificate?

I'm almost embarrassed to ask this but I am perplexed by her lack of legal understanding and her apparent inability to apply herself to study. At the end of her first weeks training the trainer set a question paper to check knowledge and understanding, Miriam did considerably worse than any of the other students. At a road check on Monday this week, when I questioned her about driving licence categories she didn't have a clue, and that has already been dealt with in her training, it's real basic stuff for a Traffic Examiner.

I realise you are off until next week, this is not urgent."

37 Ms Seager's response (at pages 317-318), sent on 14 August 2018, was to advise that Mr Cheeseman focused on "managing [the claimant's] probationary period rather than looking into her past". Mr Cheeseman replied on the same day (on page 317):

"Rebecca

I see this a twofold operation. I will do everything in my power to manage her performance and allow her to reach a satisfactory standard and ultimately pass her probation. I have had some issues and had conversations with Miriam which have all been documented. At this stage I'm unable to fathom if she is lazy and not working hard enough or just cannot absorb the information needed to do the job.

She is away training this week in Chadderton but when she returns I need to conduct a meeting to discuss her progress to date. On Sunday I was copied into an email from her trainer asking why she had not submitted work that she was asked to do.

I mention her degree as I just find it difficult to accept she has studied sufficiently hard to achieve a pass but seems to struggle here."

38 The claimant asserted that that was derogatory of her and implied that Mr Cheeseman would not have said it of her if she had not been black. It was, we

concluded, said in part because of the next relevant development, to which we now turn.

10 August 2018

39 On 10 August 2018, Ms Parker sent the claimant the email at page 310, copying it to Mr Cheeseman. So far as relevant it was in these terms:

> "At the end of your Law 2 course Jon Wood set your group the task of completing your section 9 interview based on the practical element you participated in on the Thursday, as homework.
> This was expected to be completed by the 20/07/2018 and sent by email back to Jon for reviewing and for feedback to be given to yourself.
> Jon has made me aware that he has not as of yet received this and I am contacting you to ask if you could forward this to myself at your earliest opportunity.
> Any problems, please do let me know, I will be in Chadderton next week whilst you are on training."

40 Mr Cheeseman the next morning (Saturday 11 August 2018) asked the claimant in the email at the top of page 310 what had gone wrong, and expressed disappointment. The claimant's reply (sent also at the weekend, during the following morning; it was at the bottom of page 309) was this (and only this):

> "That was the week I had to take emergency leave to sort out my property door."

41 In reply, on the same day (at the top of page 309), Mr Cheeseman responded in these terms:

> "You took three days leave, I don't accept that as an excuse. This is similar to the invoices that I have been asking you for over the past several weeks. It seems to me you don't do what is asked until pressed. You can take this as an informal warning of poor performance, it will be recorded as such in the quality assurance register.
>
> As a functional traffic examiner you will be asked to produce reports to a deadline. This is not looking good.
> You have a degree in law and said at the team meeting your [sic] were a court clerk, how did you manage that responsibility?
>
> You've let yourself down and you've let me down. I'm very disappointed. When you return from your training we will speak about this in more depth. I need you to understand how important producing work within a timescale is.

> As I have said before I, and the rest of the team together with Jo and Sharon, are here and willing to help. If you were struggling with the task you only needed to ask. You spent valuable time mucking about with your computer when you could have been doing this. You have no excuse.
>
> I hope you enjoy the coming weeks training. Get as much as is possible from it."

42 We were satisfied without any doubt that Mr Cheeseman, who himself said that he was in the habit of being direct, would have used the same words to any other trainee in the same circumstances, no matter what the race of such other trainee. The same was true of the words which we have set out in paragraphs 36 and 37 above.

Training course of 10-14 September 2018

43 The claimant attended a further training course on 10-14 September 2018. On 12 September 2018, Ms Parker responded to Mr Cheeseman's emailed query for an update on the claimant's progress of the same day at pages 325-326. Ms Parker's response was on page 325 and reported that the claimant had so far that week been "generally late by 5-10 minutes", arriving between 09:00 and 09:10, when everyone else had arrived between 08:30 and 08:40 and had been ready to start at 09:00. Ms Parker also reported that (1) the claimant seemed to be "very distracted by something/someone" and that she was "struggling to keep up with the rest of the group" and (2) she, Ms Parker, was "aware of one incident where she was using her phone, IPad and Laptop at the same time to take notes, [and] the trainer was forced to question which device she was using to undertake the task."

44 Mr Cheeseman forwarded that email to Ms Seager and another employee of the respondent, Mr Graham Owen. Ms Seager responded later on that day, in her email at page 324, among other things saying:

> "As discussed previously, you don't need to wait for the 8 month probationary period to be complete in order to consider dismissal, it can be at any time as long as the standards required have been explained and support given."

Performance review meeting of 17 September 2018

45 Mr Cheeseman held a further performance review meeting with the claimant on 17 September 2018. He told us (and we accepted) that all of his emails sent after a performance review meeting held with the claimant contained a summary of what was said at the meeting, i.e. they were not verbatim records of what was said at the meetings. Mr Cheeseman recorded a summary of what was said at

the meeting of 17 September 2018 in the email on pages 328-329. At the bottom of page 328, Mr Cheeseman recorded the following two positive things:

> "I understand from Jo Parker that you volunteered to come into the training room an hour early last Thursday to get some additional tuition, I think that is a positive, I also understand from Jo that when Laura Great-Rex came into your class you were asking pertinent question [sic] and were fully engaged, again a positive. You need to keep that up."

46 The three preceding paragraphs, were, however, less positive. Again, however, we were completely satisfied that what Mr Cheeseman said in those paragraphs was factually well-founded and would have been said to any person in the same circumstances, i.e. irrespective of the race of the person in question.

47 On the next page, page 329, Mr Cheeseman recorded that he had discussed with the claimant that her four month probationary review was "getting close" and told the claimant that at that stage he would not be able to mark her as satisfactory. Mr Cheeseman also wrote this:

> "You have agreed not to be late for your training, that means being ready to go 15 minutes before the class starts as written down in your joining notes. You have agreed not to be late for road checks when they are scheduled. I have set you a task of studying driving licence categories, and using the DVSA booklet 'Rule on Drivers Hours and Tachographs' (Good vehicles) you will study the basic rules as they apply to drivers on EU journeys. Concentrating on the areas we discussed, breaks, daily rests periods, weekly rest periods and compensation. This will be reviewed with a short verbal test and discussion in two weeks.
>
> ...
>
> ... You need to work harder, you need to pay close attention to your time keeping, I will help by ensuring you get more exposure to road checks and that you have an opportunity to be more proactive.
>
> [Word obscured: So?] in reality the ball is in your court, you need to really apply yourself to the task in hand and work hard in order to make the grade. I will do all I can to help, any problem please ask. Completing your probation is on the line."

4 October 2018 performance review

48 On 4 October 2018, Mr Cheeseman held a further meeting with the claimant. In the email of that date at pages 343-344, Mr Cheeseman recorded what was said at the meeting. The claimant's timekeeping was still causing problems, as Mr Cheeseman recorded in the first paragraph, saying also that "Planning and

timekeeping are important elements of the job". In the second paragraph, Mr Cheeseman recorded the questions which he had discussed with the claimant as he had said two weeks previously he would ask her, and that the claimant's initial response was that he was "wrong to ask [her] these questions as when [they] spoke [on 18 September 2018 he] had said [that he] would review [at their] meeting in three weeks but had written to [her] in an email stating it would be two." Mr Cheeseman continued that he was confident that he had said that the review would be in two weeks rather than three but that if the claimant was unclear then she should have said so after she had received the email. Mr Cheeseman then recorded this:

> 'We spent a good while with me testing your knowledge of Operator Licencing, Driving Licence legislation and drivers hours regulations. This was just a verbal test with me throwing questions at you like, "Who needs an operator's licence" and "What is a split rest period" and "Who can claim exemptions to EU regs" and "Types of Operator Licence's", we also discussed road maintenance and recovery vehicles, you really struggled to answer even the most simple questions, your answers were not even close. I explained that your next training session is your digital drivers hours week when at the end you have an exam that you need to pass in order to be issued a control card, without that card you cannot download tachographs, the mainstay of our business. In order to give yourself the best chance of passing you really need to study hard during that week but I would suggest you are lacking some of the most basic knowledge that your classmates probably have so would be wise to complete extra study between now and then to give yourself a fighting chance."

49 The final paragraph at the bottom of page 343 was of particular importance, given what the claimant claimed had been said by Mr Cheeseman on 18 October 2018 as recorded in paragraph 6.6 above. The final paragraph on page 343 was in these terms:

> "I pointed out to you that your job is at risk and that your four month review is looming, at this stage, based on the evidence so far, I could not show you as satisfactory but you still have a couple of weeks to demonstrate that you can change and make a valuable team member. You asked me how much notice you need to give to leave the civil service, I said it was 30 days but that you shouldn't make any hasty decisions and that you should think carefully about what you are suggesting."

50 The next two paragraphs were also highly material in that if they were written sincerely then they showed that Mr Cheeseman was genuinely trying to enable the claimant to pass her probation period:

> "We went on to discuss the way forward. I agreed to allow you more 'hands on' training and that I would speak to the team and in particular your mentor

> to ensure this happens. You agreed to undertake additional study in the areas of operator licencing and drivers hours. I did say that I'm not asking you to do that in your own time, you just need to plan it into your working week, you do have the time it just takes planning.
>
> I know what I was saying was upsetting but I really believe the ball is in your court, as I said, I will give you all the help I am able to give. If you want to discuss something you have been studying or any other issues then I can make time to help you, you only have to ask."

51 Mr Cheeseman told us that it was hard to recruit persons of sufficient ability to the post of Traffic Examiner, and that he was keen to see the claimant succeed in her training and become competent in that post. He said that three years later, i.e. at the time when he was giving evidence to us, the team which he managed, which had had 10 Traffic Examiners, was down to six such examiners, but that some new recruits were currently being trained and in marked contrast to the claimant, one of them had completed her probation period in six months and was now, after six months, sufficiently competent to work alone and had been "signed off" to do so. We accepted all of that evidence of Mr Cheeseman. We also concluded that what he had written in the extract set out in the preceding paragraph above was sincere.

Further lateness of the claimant on 10 and 17 October 2018

52 On 10 October 2018, the claimant appears to have thought that she was due to accompany Mr David Cox, a Traffic Examiner, at an interview at Yeading at 09:00. In fact, the interview was to take place at 07:00, but Mr Cox did not (as he acknowledged in his email of 10 October 2018 to Mr Cheeseman at the top of page 354) make that clear: he merely told her that it was "early". The claimant arrived at Yeading at 09:45 because, she told Mr Cox, "Bakerloo line trains [were] delayed." The claimant was also late to arrive at work on 17 October 2018, as recorded in the email and text message at pages 369 and 370.

Mr Cheeseman's conclusions on 18 October 2018 and his communications of that day and 19 October 2018

53 On 18 October 2018, Mr Cheeseman carried out the formal four month review of the claimant's probationary period. He did so by speaking to the claimant and then, at 15:14 on that day, sending her the email at page 376 and the formal report enclosed with it at pages 377-380. Mr Cheeseman recorded on page 379 his judgment that the claimant's "Overall attitude / conduct" was "Unsatisfactory". In an email to Ms Read and a Mr Russell Simmons sent on the following day, 19 October 2018, Mr Cheeseman wrote (pages 384-385) that he had spelt it out to the claimant that he thought that "her continued employment [was] untenable". He was leaning towards cancelling her next training course, as he wrote at page 385, and asked for a view on that proposal. However, as he recorded in the email of the same day at page 383, he decided not to do so because if he cancelled

the training then it would look as if he had already made the decision to dismiss the claimant.

54 Mr Cheeseman then, shortly afterwards on the same day, sent Ms Parker the email at page 386, in which he informed her of the situation and said this:

> "I don't want anyone to think I have already made the decision, which I have not, but it is very close.
> So, please keep an eye on her, I hope she will try to prove me wrong and be a modal [sic] student, one of my biggest issues with her is her timekeeping so would appreciate some feedback on her timekeeping while with you.
> Additionally how she does in the end of week test would be helpful. I have spoken to her and emphasised how important the digital week is and the test at the end."

55 At the end of that day (19 October 2018), Mr Cheeseman sent the claimant the email at page 388 enclosing the letter at pages 389-390 in which he required her to attend a hearing on 8 November 2018 at which her "continued employment [would] be considered". That was for the reasons summarised in the letter, principally her timekeeping and her ability to retain the knowledge delivered in her formal training and provided to her by her peers.

56 In fact, the hearing was put back to 27 November 2018 because of the unavailability of the claimant's trade union representative before then.

The claimant's note in her pocket book of what was said on 18 October 2018

57 At pages 982-983 there were photographs of 4 pages of what appeared to be (and we accepted was) the claimant's pocket book with entries made on 16-18 October 2018. The pocket book was a notebook of the sort used by members of police forces to take notes on a contemporaneous basis of issues relating to enforcement. Mr Cheeseman said that the pocket book was not expected or intended to contain a note of what was said in a meeting about the personal situation of the person whose pocket book it was. One part of the record was in these terms (it was in capital letters, but we have put it into ordinary, i.e. lower case, letters):

> "14:35 Told to resign or face termination as a letter will be written recommending termination of contract due to not meeting satisfactory performance and line manager does not think I will attain to the satisfactory performance in nine months.
> Spoke to mentor who advised he had no problem with me and advised me to continue training as conscientiously as possible. Other team member [sic] also advised training takes time."

58 Mr Cheeseman's evidence in regard to that entry was in paragraphs 146-148 of his witness statement, which he stood by firmly in cross-examination. He said that he had not said "that it would be better if she resigned rather than being fired". His explanation of what was said was in paragraph 148 of his witness statement, which was in these terms:

> "Miriam brought up the subject, asking how much time she needed to give in notice if she were to resign. I told her that she should not make any rash decisions. We covered this in the eventual probation hearing on 27 November 2018 and I recounted this account of events to Miriam and her trade union representative. They did not dispute this at the time. [474]"

59 The notes at the top of page 474 confirmed the accuracy of the last two sentences of that paragraph. They were as follows (with no record after them showing either the claimant or her trade union representative to have contradicted what Mr Cheeseman said as recorded there):

> "Miriam: I remember a conversation saying I wouldn't make a good TE and you said should consider resigning.
> Mick. No I said I had to give serious consideration if you are capable of carrying out the role, you also asked how much notice you needed to give, I said don't make any rash decisions."

60 We saw that the words used by the claimant in her pocket book were inaccurate in so far as they referred to a letter recommending termination, since it was Mr Cheeseman himself who was going to make the decision whether or not the claimant's employment should be continued, so he did not need to make a recommendation in that regard. In so far as the note recorded that if the claimant did not resign then she would face a recommendation that her employment be ended, it was not a record of the claimant being told "resign or be dismissed". In fact, it was possible that there was a conversation about resignation and that Mr Cheeseman said that the claimant's employment might yet be continued but that he was going to consider whether or not it should be terminated. If so then the note recorded something which was true and innocuous.

61 We concluded that what Mr Cheeseman recorded in his email of 4 October 2018 at page 343 as having happened on 4 October 2018 (as set out in paragraph 49 above) did in fact happen on that day. There were therefore three possibilities arising from the fact that the claimant had put the note in her pocket book that we have set out in paragraph 57 above. One was that the claimant on 18 October 2018 raised the issue of resignation again with a view to confirming the position about the required notice period from either party and then recorded inaccurately in her pocket book what was said by Mr Cheeseman on 18 October 2018. The second was that the words had in fact been said by Mr Cheeseman as written by the claimant. The third was that Mr Cheeseman said nothing on 18 October 2018 about the claimant resigning and she made a record of him having on that

day said something like what he had in fact said on 4 October 2018, which she thought would be problematic for the respondent. Our conclusion was that the only thing that Mr Cheeseman said about the claimant resigning was what he recorded in paragraph 49 above, i.e. he said that, and only that, and said it on 4 October 2018 only. We arrived at that conclusion in part because the claimant had put something else in her pocket book on 18 October 2018 which was in our view clearly written with a view to using it as ammunition at a later date. We now turn to that something else.

The impact of the claimant's double-barrelled surname

62 At page 983, as part of the claimant's notes of what occurred on 18 October 2018, there were these words:

> "Overheard conversation regarding making my job easier because of incorrect spelling."

63 That reason for that note was not obvious. However, there was in Mr Cheeseman's email to the claimant of 14:04 on 19 October 2018 at page 387 something which in our view showed what the note was about. On page 387, among other things, Mr Cheeseman wrote this:

> "I have again this morning been into [sic] our IT people trying to sort out your lotus notes. Seems we are no further forward but don't worry, it doesn't affect your work."

64 The issue of the claimant's name was relevant because of the allegation recorded in paragraph 6.5 above, and Mr Cheeseman's response to that allegation was in the following paragraphs of his witness statement:

> '226. [The claimant] also says that I said "Change yer name or get a divorce". Again, I did not say this. I am not sure that I was ever even informed of Miriam's marital status – I just knew that she was a single mother. The only discussion I remember having with Miriam about her name was when I asked her to clarify the spelling of her first name as her personal email address had her name spelt with a 'Y' she responded telling me I had the right spelling and at some stage phonetically spelt out her surname so I could get the pronunciation right.
>
> 227. On the point of Miriam's name, there had been some issues with Miriam's email address being incompatible with LotusNotes because of the hyphen in her surname (being double barrelled). My view of this was that the IT team needed to find a solution that worked for Miriam. I think that this – and the fact that I supported Miriam with regards to issues that a double barrelled surname

caused for our systems – is self-evident in the email exchange from page 393 – 394.'

65 That email exchange (which took place principally on 19 October 2018) showed that Mr Cheeseman had (as he told us orally) become very frustrated at the fact that the (rather old) Lotus Notes software that was used by the respondent could not cope with double-barrelled surnames (not just the claimant's) and had told the respondent's IT staff to "Stop telling [him] there [was] a problem with Lotus Notes and look for a solution." What Mr Cheeseman told us was that the Lotus Notes software was used to notify members of the respondent's staff when a case was sent to them, and that because the software could not cope with hyphenated surnames, if he sent a case to the claimant then she did not receive an email from the system stating that, and if she sent one to him then he would not receive an email from the system stating that she had done so. He said (and we accepted) that the lack of such emails did not have any impact on the work done on the cases.

66 The impact of saying what the claimant alleged ("Change yer name or get a divorce") was, however, not at first sight clear, unless it was being alleged that it was disrespectful to the claimant. In this regard, this was said in paragraphs 62-65 of Mr Amunwa's submissions:

> "62. As part of SC's investigation interview on 14 May 2019, C commented:
>
> *MSI - He found it difficult to spell he said why don't you change it or get a divorce. He was speaking with IT to put me on Lotus Notes. He said yeah well erm, this makes my life much easier now. It's done and dusted and that's that.*
>
> 63. MC repeatedly made this joke about C's name. For example, on 2 July 2018 when C was in the office and unable to log on to the computer (see C's witness statement § 32) and twice during meetings on 18 October 2018 (§§ 73 and 79). These appear to be further examples of MC making comments aimed at mocking C's ethnicity.
>
> 64. MC's witness statement (§226) denies this and claims he was aware that C was a single mother but unaware of her marital status.
>
> 65. However, the evidence demonstrates that MC was particularly frustrated with the IT-related issues around the hyphen in C's name [393]. He used his own brand of unprofessional humour in response."

67 The first time that the claimant alleged that Mr Cheeseman said anything like "Change your name or get a divorce" was in the meeting with Sharon Collyer of 14 May 2019 to which we refer in paragraph 90 below, as recorded at page 645,

where there was this passage, which includes the quotation set out in paragraph 62 of Mr Amunwa's submissions and puts it in context:

> "17. SC — You mention walking past MC office and hearing a derogatory comment being made about your name (October 2018). Who was he talking to?
>
> MSI — He was in touch with different people in IT. He was talking about the hyphen in my name. He was on the phone.
>
> SC — what makes it offensive?
>
> MSI — He found it difficult to spell he said why don't you change it or get a divorce. He was speaking with IT to put me on Lotus Notes. He said yeah well erm, this makes my life much easier now. It's done and dusted and that's that.
>
> SC — What do you think he meant by that?
>
> MSI — nothing at the time."

68 There was here no room for misunderstanding. Either Mr Cheeseman said what the claimant alleged, or he did not. We accepted his evidence that he did not recall being told whether or not the claimant was married. That being so, it was unlikely that he said "Change your name or get a divorce" unless he was doing it disrespectfully on the assumption that the claimant was married. If (as the claimant told Ms Collyer) the claimant did not think that what he said was offensive at the time, then it was difficult to understand why she had recorded it in her pocket book on 18 October 2018 that she had "Overheard conversation regarding making my job easier because of incorrect spelling." That in itself made us consider whether the claimant was, by making that note and the one about resignation, i.e. in the pages photographs of which were at pages 982 and 983, looking for a basis for a claim of discrimination.

69 Having said that, we found it difficult to see how saying "Change your name or get a divorce" could reasonably be said to be "aimed at mocking C's ethnicity". That was because it could have been said to anyone with a double-barrelled surname, i.e. irrespective of their race. In any event, we concluded, having heard and seen both witnesses give evidence and bearing in mind the facts that (1) the claimant's own statement when she first mentioned it to Ms Collyer on 14 May 2019 was that she thought that Mr Cheeseman meant "nothing" by it "at the time", (2) Mr Cheeseman's oral evidence to us which we describe in paragraph 65 above was consistent with the text in the email which he sent on 19 October 2018 which we have set out in paragraph 63 above, and (3) when the claimant first mentioned the matter of Mr Cheeseman referring to her name, she did so on the basis that he had done so offensively only once, in October 2018, but

(see paragraph 6.5 above) at the start of the trial she was saying that he had done so in "June, July, September, October and November" and by the time of written closing submissions, that he had done so on "2 July, 18 October and November 2018", that

69.1 Mr Cheeseman did not say at any time (as first recorded at page 645, as set out in paragraph 67 above) "why don't you change [your name] or get a divorce", or "Change [your] name or get a divorce"; and that

69.2 whatever he did say about her name was, as he said in paragraph 227 of his witness statement, which we have set out in paragraph 64 above, said to the respondent's IT staff and was said (and said only) in connection with the inability of Lotus Notes to cope with a hyphenated surname in an email. Thus, it was in no way related to the claimant's race.

The claimant's performance on the course of 22-26 October 2018

70 On 26 October 2018, Ms Parker sent Mr Cheeseman the email at pages 401-402, which included this passage:

> "Miriam has been a model student this week, she has arrived every day early for her course and has participated well during the day.
> Miriam has passed her digital exam, 75% is the pass mark and Miriam achieved 78%.
> Miriam has only 2 more courses until the end of her basic training and [I] only wish that she had applied this level of dedication from week 1."

The claimant's failure to attend a Public Inquiry at Eastbourne on 31 October 2018

71 On 2 November 2018, Mr Adrian Elkington sent Mr Cheeseman the email at page 402, enclosing the document at pages 403-404, which Mr Elkington ended at the bottom of page 404 with these words: "These are notes I made whilst cover for Mick."

72 On page 403 there was this record:

> "• Wednesday 31/10/2018.
>
> Miriam to attend Public Inquiry at Eastbourne 10am start
>
> 09:56, I received communication from Traffic Examiner David Cox informing me that Miriam had not arrived for the Public Inquiry.
>
> 13:58, I received a text message from Miriam informing me that she was late for the PI, as the car had low oil and fuel and she was stuck on the

> m25 for 40 minutes in slow moving traffic. When she arrived at Eastbourne her battery on her phone had gone flat so couldn't call. And there was a long queue to enter the car park.
>
> I contacted Martin Cook to confirm what time Miriam arrived at the PI, Martin spoke to Carol who is the person that let Miriam into the building, Carol informed Martin that her arrival time was around 11:50, after the PI had concluded.
> Martin stated that the PI started at 10:05am and lasted for 1 hour 40minutes."

73 When that passage was put to the claimant in cross-examination, she accepted that she had missed the public inquiry as she had arrived there at 12 noon instead of the intended arrival time of 9am.

The claimant's lateness on 2 November 2018

74 On page 404 there was this passage in Mr Elkington's notes:

> 'Friday 02/11/2018
>
> Miriam contacted me 07:24 and asked where I was. I said at Denham as I'm on a road check at its [sic] starts at 07:00am.
> She was under the impression it started at 08:00am – not according to the program as no times stated. She said she was on her way and arrived at Denham at 08:00am in the Enterprise hire car.
>
> I sent Miriam a text message at 07:31, stating "there is no start time listed for todays roadcheck so therefore the roadcheck starts at 07:00am. The only occasions a start time is listed is usually when members from the southmimms team are joining us as they have some great distance to travel."'

75 When that passage was put the claimant in cross-examination, she accepted that she arrived at the road check an hour late.

The discussion of 8 November 2018

76 On 6 November 2018, the claimant responded to Mr Cheeseman's four month probation review report to which we refer in paragraph 53 above. She did so in the email at page 413, which she sent at 23:56. At the end of that email, she wrote this:

> "It appears a lot of what is being alleged is based on unconscious as well as conscious bias. If [sic] reflects as extremely personal."

77 Mr Cheeseman saw that email at 06:57 the next morning and replied (in the email at the top of page 413) that the claimant had not responded in the manner required, by writing the comments on the form itself, which, he implied, she needed to do. He said specifically that she needed to sign and date the form as, he said, "I have to upload it to shared services". He nevertheless went on to read what she had put in her email and, at 07:43, in his email on page 412 to Ms Seager and one other recipient, he wrote this:

> "I have just read her comments and note the last line is making a claim of bias.
>
> It is not specific but before I ask her to be more specific I thought I would seek your views. As I understand it the only reason for her to appeal any procedure for potential termination of her contract in her probation is to claim descrimination. [Sic] It looks like that maybe [sic] where she is going with this.
>
> What should my next move be, I cannot just ignore that allegation and feel I need to probe it as she needs to lay her cards on the table. I am satisfied that there is no substance to her allegation and I can provide sufficient evidence to counter it.
>
> If she is making a claim of discrimination do I still have a meeting?"

78 By "a meeting" we understood Mr Cheeseman to mean a meeting to decide whether the claimant's employment should be terminated. That was in part because on 8 November 2018 Mr Cheeseman had a further meeting with the claimant and called it in the email following the meeting (sent at 16:21 on that day) a "Catch up meeting". In that email (it was at pages 416-417) Mr Cheeseman recorded that he and the claimant had had a discussion about the events of 31 October 2018 and 2 November 2018 to which we refer in paragraphs 71 to 75 above, together with a further instance of lateness by "a few minutes" on 1 November 2018. Mr Cheeseman also recorded that he and the claimant had "discussed the way forward" and that he had said to the claimant that he wanted her to "continue to concentrate on improving [her] time keeping and to play a more proactive role in the road checks", which was consistent with Mr Cheeseman's oral evidence to us that he had continued to hope that the claimant's performance would improve. As we record in paragraph 131 below, Mr Cheeseman told us, and we accepted, that he believed that he had had "quite a good relationship" with the claimant, and that it was only when he read the papers in this case that he saw that the claimant had a different view of their relationship from his.

79 It was of particular significance that the final two paragraphs of Mr Cheeseman's email of 8 November 2018 at pages 416-417 were in these terms:

> "We discussed the comment you made in the email to me regarding conscious and unconscious bias, I asked if you had any examples when I have shown a bias toward you, you were not able to give me any examples. We had a general discussion around bias.
>
> If you disagree with anything I have written or wish to add anything to this note of our discussion feel free to respond."

80 The claimant did not then respond by saying that, for example, she thought that Mr Cheeseman was biased against her because of her race. Nor did she respond by saying that his note was to any extent inaccurate. We understood that she might not have wanted to annoy Mr Cheeseman, who was going to decide whether or not her employment should be terminated. However, Mr Cheeseman told us, and we accepted, not least because of the content of his email which we have set out in paragraph 77 above, that he raised the issue of discrimination in general terms, so he could be taken to have "broken the ice" in regard to the issue.

The claimant's penultimate training course

81 The claimant attended a further training course on 12-16 November 2018. On 19 November 2018, Ms Galvin sent Mr Cheeseman (copying in Ms Parker; all emails to which we refer in this section were copied to Ms Parker) the email at pages 433-434, which was in these terms:

> "Some feedback on Miriam last week.
> As you are already aware, she was late one day last week. The rest of the week she was in at 0830, although the rest of the class were in by 0820 and laptops on. I did see a difference in her last week regarding being more interactive with the group, and joining in. She was asking questions and seeking clarification when she didn't understand something. She said she found it useful going to the road check and seeing how other examiners works. [Sic] Her knowledge check results came in at 54%. I feel one of the reasons for this low score is failing to read the questions properly, which has become apparent over all the courses. When consolidating the course with the answers, she is quick to confirm she knows where she went wrong. However, a concern is if she is reading memos/esp/policy etc in the same manner, she could potentially interpret the information incorrectly.
>
> Please could you advise if you are aware of what her plans are for attending the course this week."

82 Mr Cheeseman responded on the same day in the email in the middle of page 433 as follows:

> "Thanks for this. I have heard nothing from Miriam so I assume she is attending for the whole week. 54% sounds quite poor, how does that compare with the others in her class? I share your concern, a good deal of our job is analysing information and being able to interpret it to formulate an understanding then presenting it in a report form for Public Inquiries, courts or merely just operators. This worries me that she will make mistakes and damage her reputation bringing down the agency reputation with it.
> Please keep me up to date. Miriam is under a good deal of pressure so needs our close attention to ensure she is coping with that pressure without it having a damaging effect on her personally. Although I struggle with her ability I still care about her personally, as I know you do."

83 Ms Galvin responded later that day in the email at pages 432-433, saying this:

> "I had a couple that fell below 75%, one I can put down to a personal issue they were dealing with that was unexpected. Normally as a whole, everyone is above 75%."

84 Mr Cheeseman responded (in the evening of 19 November 2018, in the first full email on page 432):

> "So did anyone get as low as 54%?
>
> That sounds bad!"

85 Ms Parker then responded to that email, with the email of still later that evening, at the top of page 432, which was in these terms:

> "We had one that fell just below Miriam's, however they had a few personal problems going on in the background that week. They made us fully aware of the issues at the start of the week.
> I am currently looking at creating a space somewhere in the diary to re run tachoscan as there are a couple of existing examiners that have asked for some basic training another trainee who had to leave the course as their [word describing the relative blanked out] was rushed into hospital so did not complete the course.
> Miriam is aware of this and has asked if she will need to re do this course, I have said that I would be making that recommendation to you but as it is not a pass or fail course then it would be for you to decide."

Alleged ridiculing of migrants

86 What happened after the claimant was dismissed was of peripheral relevance only, so the parties did not (and we do not) refer to it except in so far as the

claimant only after she had been dismissed started to make specific allegations of discriminatory conduct of the sort which she then pressed before us.

87 The claimant first stated in writing that Mr Cheeseman had acted in a biased manner in her email which stated her wish to appeal and contained some detailed reasons for appealing. That email was dated 7 December 2018 and was at pages 503-507. The substantive part of that email started in this way:

> "The reasons Mick gave in support of his allegations, were deliberately embellished to portray me in the worst light possible. I believe this type of conscious bias is totally out of line with the Civil Service Code that all staff are expected to act in accordance with. Namely, honesty and impartiality based on the tenets of the Nolan Principles, which all Civil Servants in spite of their grade are supposed to adhere to."

88 Nowhere in that email did the claimant say that Mr Cheeseman had discriminated against her because of her race (or any other protected characteristic). Nor did she say anything about the manner in which anyone acting on behalf of the respondent had acted towards migrants or drivers who were based abroad. The first time that the claimant alleged that anyone acting on behalf of the respondent had said or done anything inappropriate towards migrants or drivers who were based abroad was in her email to Mr Matthew Barker of 25 January 2019 at pages 526-529, stating further reasons for her appeal against her dismissal, where (at page 527) she said this:

> "Making stereotypical comments alluding to the attitudes and behaviours of particular drivers entering the UK by relating accounts of encounters highlighting their ethnic origins rather than beginning an examination on what they may or may not have done wrong."

89 Mr Barker held an appeal hearing on 14 March 2019. It was recorded in the document at pages 533-555, which had been the subject of comment by the claimant, so that she had plainly had had an opportunity to respond to it. At pages 544-545 there was this unchallenged sequence (with the references to "JM" being references to the claimant's trade union representative, Mr John Moloney, and the references to "MSI" being references to the claimant):

> "JM Tell him about the comments about drivers.
>
> MSI That was in training.
>
> JM What did the trainer say.
>
> MSI Some of them work in Kent, and get clandestine people in the back of trucks, what do you do if you discover illegals, someone said we get them all the time.

JM He said the F'ing word.

MSI The trainer said we used to get them all the time, they were sitting down begging they all seemed to find it funny.

JM If it was technical, in some places we have to look for stowaways.

MSI It wasn't on the power point, they just said they go down on their knees and beg they probably do other things.

JM That's another thing it was said you don't go socialising.

MSI Yes that's another thing if they go out drinking, I'm not going to get into that.

MB Did you feel segregated that you didn't go out.

MSI No I just don't like the banter.

JM Is that the only period that was the only comment of a racial nature.

MSI That was the only occasion, one was in Dover, a lot were ex police and said what had happened. They didn't ask me they just had loud conversations."

90 Mr Barker then, having heard from the claimant, caused Ms Sharon Collyer, whose job title was "Quality Assurance Business Partner", to carry out an investigation of the allegations of unlawful discrimination that the claimant had made to him. That investigation of Ms Collyer followed on from the email from Ms Justine Williamson of 26 March 2019 to Ms Collyer at page 560. Ms Collyer then interviewed, among other people, the claimant. She interviewed the claimant on 14 May 2019. At page 647, there was this record of part of that interview:

'20. SC — Who made the "stereotypical comments" about drivers entering the UK? Where and when?

MSI — Jo Parker. There were eight others there to start with.

SC — This was in training?

MSI — Yes. They were talking about encounters with migrants. Jo said I hate it when they get on their knees begging. You have to watch the foreigners and clandestines. This was during a training session. Jo initiated

> it and others joined in. They didn't seem embarrassed about it. It felt like it was normal conversation for them".

91 The claimant then, in her first witness statement (it was undated and unsigned; but it was clear from the case management summary of EJ Bedeau at page 138 of the correspondence bundle that it was sent to the respondent on 19 January 2021) said in paragraph 6 merely this:

> "I was treated less favourably and detrimentally during the entire training compared to Caucasian trainees. During one of the training sessions. The trainer and some trainees ridiculed refugees who had apparently stowed away in vehicles coming across the Channel. See Page 523 of the Bundle".

92 In the witness statement that the claimant then (as we describe in paragraph 3 above) sent and which was her evidence in chief to us, the claimant said this (and this only) about the matter, in paragraph 94:

> "Between 19 & 23 November 2018 somebody in the training room took a photo of me without my knowledge or permission and posted it around all social media. Sharon Collyer, Quality Assurance & Improvement Manager emailed it to me but declined to answer my query over how she obtained it. During this training course the senior trainer ridiculed migrants found hiding in vans. She also made derogatory comments about foreign drivers entering the UK."

93 By the start of the hearing before us, the claimant was asserting the things stated in paragraphs 2g and 2h of the then-agreed list of issues (and that paragraph numbered 2 started by asking whether the following things were done by the respondent) in the following manner:

> "g. Make comments ridiculing migrants found hiding in vans crossing the English Channel via ferries and the Eurotunnel during DVSA inspection checks. The Claimant alleges that these comments were made in November 2018 by Joanne Parker, Sharon Galvin and other trainees;
>
> h. Make comments about the attitudes and behaviours or [sic; presumably this should have been "of"] particular drivers entering the UK, based on their ethnic origins rather than what they may have said or done. The Claimant alleges that these comments were made in November 2018 by Joanne Parker".

94 In footnote 1 of Mr Amunwa's detailed opening written submissions which he amended subsequently (albeit in only relatively minor ways) so that as amended

they were his closing submissions, he referred to the then-agreed list of issues (to which he referred as the LOI) in this way:

> "C has one clarification to the LOI. Allegation 2.g. should refer to (i) an allegation that Susan Galvin and other trainees ridiculed migrants during training in August 2018; and (ii) an allegation that Joanne Parker and other trainees ridiculed migrants during training in November 2018."

95 By the end of the hearing before us, the claimant's case was that the claimed comments of August 2018 to which paragraph 2g of the list of issues referred were made by Ms Galvin, Ms Bell and other trainees. It was also the claimant's case that the claimed ridiculing of migrants during training in November 2018 was done by Ms Parker, Ms Bell and other trainees. Thus, in both cases there was now an identified "other trainee", namely Ms Bell.

96 Ms Collyer interviewed Ms Bell on 24 May 2019. The notes of the interview were at pages 699-705. At page 703 this exchange was recorded:

> "Did you ever hear a trainer talking about foreign lorry drivers in a derogatory manner (begging?)
> AB: No. There was a conversation where it was said that drivers will do anything they can to get out of being given a fine. This was not only regarding International drivers this was drivers in general. Although there was a specific story regarding an international driver who had attempted to hang himself in the back of his trailer having pleaded with them not to give a penalty.
> SC: So the trainers were just giving examples of what you would find on the job?
> AB: Yeah."

97 In paragraph 13 of her witness statement, Ms Galvin said this:

> "I never made comments ridiculing migrants. During training, and more when we deliver roadside enforcement training we explain what they should do in the event that migrants are found in vehicles, but they certainly are not ridiculed. This is not something that I would do and would go against the civil service behaviours."

98 In paragraphs 20-24 of her witness statement, Ms Parker said this:

> "20. Miriam claims that during a training session in November 2018, either Sharon Galvin or I made comments '*ridiculing migrants found in vans crossing the English Channel via ferries during DVSA inspection checks.*' In November the session was facilitated by our external solicitor, Justin Davies with myself in attendance. I cannot recall this kind of conversation taking place nor can I see any relevance of this

alleged discussion relating to the topics that Justin would have been discussing on the day.

21. She also claims that in November 2018 Sharon Galvin or I '*made comments about the attitudes and behaviours or particular drivers entering the UK, based on their ethnic origins rather than what they may have said or done*'. Again, I cannot recall this kind of conversation taking place.

22. There are 'roadside' course modules that do discuss these matters. It is necessary to explain to TEs what they should do in the event that migrants are found, or suspected to be, hiding in vehicles. I have not ever ridiculed migrants as part of that course, nor have I ever experienced trainers doing so.

23. There is also content that I have taught that covers the need to respect and understand that international drivers from some cultures have different ways of thinking. I have explained in training that drivers from some Eastern European cultures can find it offensive for a female TE to be carrying out a roadside check. I explained this based upon my previous experience of this happening to me in order to ensure that female delegates are equipped with how to deal with these issues in case it happens to them. This was solely to prepare TEs for what to expect on the job and was not inappropriate.

24. Any discussion that even touched the subjects that Miriam alludes to would have therefore been entirely factual, not ridiculing or derogatory. Further, none of these things were said because of Miriam's race, or anyone else's race, nor were they intended to violate Miriam's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. I also do not think that they could reasonably have had this effect."

99 As we say above, we heard both Ms Galvin and Ms Parker give evidence. They were both adamant that they had not, and would not have, made the alleged comments. Ms Parker said that it would not be easy for her to drop to her knees for physical reasons. Both she and Ms Galvin seemed to us to be measured and very professional in their approach, and we could not envisage them saying disrespectful things about migrants or foreign drivers. We certainly could see them referring to circumstances in which migrants were discovered in vehicles, but that was because it was plainly appropriate to prepare trainee Traffic Examiners for that situation. In addition, we could see that some drivers might well beg not to be prosecuted, and Ms Galvin said something about that in answer to a question asked by EJ Hyams, who asked whether she had ever experienced migrants begging. In answer, she said (as noted by EJ Hyams and tidied up for present purposes) this:

> "Not a migrant no. A driver might say please don't fine me; that is not just international drivers; it could be said by any driver who would not like being fined."

100 We therefore reviewed the above sequence of events concerning the allegations of the ridiculing of migrants. The first oral reference by the claimant to the allegations of ridiculing of migrants was (see paragraph 89 above) made at the prompting of the claimant's trade union representative, Mr Moloney. He referred to only one person as having made "comments", and he referred to that person as "he". The claimant did not correct Mr Moloney by saying that the trainer who had made the comments was in fact female. In the sequence set out in paragraph 89 above, the claimant said that there was only one racial comment, and that it was made in Dover. That was different from the first allegation, which we have set out in paragraph 88 above, in that that allegation referred to the activities of drivers, not migrants whom they were transporting. What the claimant said to Ms Collyer as recorded in paragraph 90 above was that what had been said was said by Ms Parker, and it was only about what migrants did, not drivers, despite the claimant being asked about 'the "stereotypical comments" about drivers entering the UK?'. "[O]thers" present were alleged there (i.e. in the passage set out in paragraph 90 above) to have "joined in". In the claimant's first witness statement, she made only the assertion set out in paragraph 91 above, referring now to refugees rather than migrants, but not to anything that the (now un-named) trainer was alleged to have said about foreign drivers. Now, however, "some trainees" had also "ridiculed refugees who had apparently stowed away in vehicles coming across the Channel". That was not materially different from what was said as recorded in paragraph 90 in relation to migrants. However, in paragraph 94 of the claimant's second and final witness statement, set out in paragraph 92 above, the claimant referred in addition to "the senior trainer" (but no one else) making "derogatory comments about foreign drivers entering the UK."

101 By the time that a list of issues was agreed (see paragraph 93 above), the comments about "the attitudes and behaviours [of] particular drivers entering the UK, based on their ethnic origins rather than what they may have said or done" were said to have been made by Ms Parker, in November 2018. The "comments ridiculing migrants found hiding in vans crossing the English Channel via ferries and the Eurotunnel during DVSA inspection checks" were now said to have been made by "Joanne Parker, Sharon Galvin and other trainees" in November 2018. By the start of the hearing, however (see paragraph 94 above), those comments ridiculing "migrants" were said to have been made by Ms Galvin and other trainees in August 2018 and by Ms Parker and other trainees in November 2018. Thus the claimed comments were now alleged to have been made on two occasions, and not just one. By the end of the hearing, as stated in paragraph 95 above, Ms Bell was identified as one of the "other trainees" who was alleged to have joined in making the comments about migrants.

102 In those circumstances, we were inclined to prefer the evidence of Ms Parker and Ms Galvin to that of the claimant. Before coming to a firm conclusion in that regard, we considered a further factual dispute which required determination, which was what was said to the claimant by both Ms Galvin and Ms Parker during training sessions about the use of information and technology ("IT") equipment. We therefore turn to that question.

What was said to the claimant about the use of IT equipment during training courses provided by the respondent?

103 The claimant first complained about the manner in which she was treated in regard to the use of IT equipment during training courses provided by the respondent in her email of 25 January 2019 at pages 526-529, stating her further reasons for her appeal against her dismissal. That was in the following passages on pages 527-528:

> 'n. Being singled out for reading notes on mobile when other trainers and trainees in class were also looking at their phones.
> o. Being told to delete photos of PPT's which other trainees took photos of but they were not told to do the same.
> ...
> q. Being singled and out somewhat harassed for using my laptop, P by phone [sic] when other trainees and a trainer in the same class were using theirs.
> ...
> x. Other trainees were typing as the training was being delivered. The trainers only stood behind me on various occasions.
> y. Singled out as only I was asked to "close your laptop" even though I explained I was waiting to connect to the DVSA Wi-Fi to receive the emails from my line manager.
> ...
> aa. Having trainers station themselves directly behind me in class whilst I made training notes whilst not standing behind any other trainees."

104 By the end of the hearing, this issue was framed as stated in paragraph 7 above. That was an allegation of direct race discrimination within the meaning of section 13 of the EqA 2010 and of harassment within the meaning of section 26 of that Act. Ms Hicks' closing submissions responded to this allegation in the following manner.

> '80. The Respondent has three points to make. First, the Claimant raised no complaints against Jo Parker or Sharon Galvin during the course of her employment, or during the appeal process. In fact, during the appeal process, Matt Barker asks the Claimant whether she felt she was bullied or harassed by the trainers, to which she replied, "*No,*

Mick Cheeseman…" [547]. Again, during the appeal investigation (on 14 May 2019) when Ms Collyer asks the Claimant whether she is unhappy with "the agency" (i.e. the Respondent), the Claimant replies, *"No, just the way I have been treated by Mick*" [671].

81. Second, the Claimant was not treated less favourably as:

    (i) All delegates were asked to switch off their phones during training sessions. As Ms Parker explains in her statement [JP §12.3]:

        > "As part of the housekeeping that is discussed at the beginning of all courses, delegates are asked to turn off or silence their phones. It is appreciated that there may be a need to take an urgent personal call and so it is requested that where necessary they take this call outside the room. All trainees are treated the same."

        These points were repeated in oral evidence.

    (ii) No one else was taking notes on their phones or using several devices at once as Ms Galvin explains: "*I do not recall anybody using their phone for note taking apart from Miriam. The vast majority of people within training sessions use pen and paper to take notes*" [SG §8]. Again, this evidence was repeated by both Ms Galvin and Ms Parker during oral evidence. During oral evidence, both Ms Galving [sic] and Ms Parker emphasised that this rule was in place to prevent trainees relying on out-of-date legislation; they are encouraged to use the resources on the intranet instead.

    (iii) Course delegates were specifically asked not to take photos of the slides as: (a) the PowerPoint slides were not up-to-date; (b) notes were available on DVSAnet; and (c) taking photos during class was distracting [JP §12]. Contrary to the Claimant's suggestion, Ms Parker was not aware of anyone else taking photos of these slides, should she have been, "*they too would have been asked to delete any photographs*" [JP §12]. See also the evidence of Sharon Galvin, in similar terms [SG §11] and the evidence of both witnesses given before the tribunal on day 3.

82. This accords with Ms Parker's evidence as part of the appeal process: see [622].

83. Third, it was entirely appropriate that the Claimant be told not to use her phone during training, especially given the Claimant's use of her

laptop, phone and tablet was distracting to the trainers as well as other trainees. The Respondent refers the Tribunal to the following:

(i) Ms Parker's concerns during the September training: "*She takes a lot of notes on her computer and I am aware of one incident where she was using her phone, iPad and Laptop at the same time to take notes, the trainer was forced to question which device she was using to undertake one task*" [325];

(ii) Ms Parker's concerns during the November training [440];

(iii) Ms Parker's evidence at [JP §12.1] and before the tribunal on day 3;

(iv) Sharon Galvin's evidence [SG §7] and before the tribunal on day 3;

(v) Amanda Bell's comments about the Claimant's use of devices [702], [703-704];

(vi) Feedback from a fellow trainee about the Claimant's use of devices [436-437].'

105 The documents at pages 325 and 440 were emails written by Ms Parker on, respectively, 12 September 2018 and 26 November 2018. The latter email was about the final week's training which the claimant undertook before being dismissed on 27 November 2018 in the manner to which we refer below. The email contained this passage:

> "Miriam has made improvements in her time keeping and is being more pro-active in the group with asking relevant questions, however, we still have had the same issues relating to the amount of electrical equipment she requires to take notes, this week I, yet again, had to ask her if she was taking notes of which she informed me she wasn't so I asked her to close her laptop down. She ignored my 1st request but adhered reluctantly to my 2nd request.
> As trainers we are able to see written notes to ascertain if the delegate has a) interpreted the information correctly b) has a good understanding of the subject c) correct misunderstandings that have been noted.
> Delegates are not obliged to show us their notes and this is done by the trainer observing during the modules. As Miriam has been typing her notes onto a 'word document' we have been unable to ascertain what she has been noting.
> She has participated in this week's course, however her lack of commitment to her learning from the beginning of training has shown in the outcome.

> Miriam has been given verbal feedback on her performance in the 'Examiner in Court', this consisted of reminding her to listen to the question that is being asked, if she is not sure of what is being asked to ask them to repeat and to read her materials properly, under prepared examiners leave themselves open for un-necessary interrogation from the magistrates, judges, defence solicitors and TC's which potentially will reflect on the agency.
> Miriam scored 60% in her final knowledge check, this is the lowest score of the group, and there is a difference of 14% between this score and the next lowest, reflecting on her exam papers it is clear that she has not read the questions correctly. The delegates had their notes to assist them and Miriam appeared to be using hers during the exam.
> Reflecting on her previous knowledge check scores, Miriam is consistently one of the lowest in the group, her results in TachoScan is worrying as this is an important tool we use for analysis and if not used correctly could result in incorrect prohibitions and fixed penalties being issued or not being issued when needed."

106 Ms Bell's evidence given to Ms Collyer included this answer given, on page 702, to the question "Were the trainers picking on her at all?":

> "No not at all. During the training she was constantly typing on her laptop distracting us. She kind of barricaded herself in on her desk by putting bags and folders around her laptop so people couldn't see what she was doing, she also had a privacy screen. The trainers in the end asked her to put her laptop away and to hand write the notes. We as a group started to get annoyed about it as it was so distracting, I took a photo of her as was appalled by this behaviour during a course of such high importance (this was the final week TE in court session based at chaderton). She never paid attention to any of the presentations and the trainers constantly had to repeat stuff for her benefit. She was definitely doing other work on her lap top —she wasn't paying attention. She was asked politely on only a few occasions, initially to close the laptop but she would continue to do whatever it was she was doing within a few minutes, and therefore I think the trainers just stopped asking her."

107 At the end of the next answer given to Ms Collyer, at the top of page 703, there were these words in italics, showing that they were a description of what then happened, after the answer was given:

> "AB then showed SC a pic of MSI's laptop being barricaded in as mentioned before. AB also mentions that it was a work laptop being used."

108 Ms Collyer's question numbered 11 and the answer given to it by Ms Bell were recorded on pages 703-704 in the following manner:

> "Did you witness the trainers having to deal with any disruptive or negative behaviour from any of the trainees?
> AB: Not really no. Well, Trevor said he was struggling being sat next to MSI with all the typing. She had been asked, on previous occasions to put her bags down off the desk put her laptop away and to stop taking photos of the presentation. On One occasion Jo was in the room and requested Miriam to close her laptop as it wasn't needed this was done quietly and politely by jo, but Miriam started to argue with jo regarding this, Jo eventually did back down though and let her keep her laptop on the desk. We were all really unhappy with that."

109 The email from the "fellow trainee" to whom Ms Hicks referred in paragraph 83(vi) of her closing submissions at pages 436-437 was sent at 08:38 on 26 November 2018 to Ms Parker and was in these terms:

> "Hi Jo
>
> I would like to extend a huge thank you to you and all involved in our training throughout the courses, the training was made fun and enjoyable where possible and it is all undoubtedly going to make an immediate impact on my career. I was particularly inspired by the passion for the job that all trainers exhibited and their dedication to help everyone learn regardless of ability, nobody was left behind. Everyone at some point had topics they excelled at and others that were more challenging the trainers were brilliant at spotting this and providing extra support and ensured everyone was brought up to an equal standard. The trainers style and approach helped make the group cohesive and generated a team work atmosphere. All in all the team were highly professional, dedicated and enthusiastic which made for an extremely rewarding and enjoyable experience.
>
> The training in part was a little tainted by Miriam who dedicated quite a lot of her effort into negativity and disruptive behaviour. Having a background in training I know it's not uncommon to have one or two people in a group that are somewhat disruptive, but I have never come across someone who repeatedly ignores instructions and just general class etiquette for such an extended period of time. I would like to say all trainers have been extremely polite throughout to her despite her constant disruptions and rudeness towards them, I witnessed yourself having to politely ask her to close her laptop last week (which she was not using to take notes) and she tried to ignore you and you had to ask a second time both times adding please. Miriam was also rude to hotel staff in various hotels in her manner when she asks for things, whilst in uniform too. As a group we tried to include Miriam as much as possible and invite her to anything going off but she was not interested. I am not sure if there are things going off in the

> background affecting Miriam but I thought I must send an email to say how tolerant and polite all trainers were when having to deal with the constant disruptive actions and behaviour of Miriam. It is such a shame as I personally tried to help Miriam and get her to gel with the group more on the hours week but she was not interested, I know others in the group also did the same trying to get her to participate in the group."

110 In paragraph 7 of her witness statement, Ms Galvin said this:

> "[I]t is true that, on one occasion, I asked Miriam to choose just one device to take notes on but I can not recall which training course this was during. This is because she was often using three different devices and at times seemed to have an obsession with connecting her devices to the internet, which was particularly difficult to do at our training locations as we did not have corporate Wi-Fi."

111 However, at page 298 there was the email from Ms Galvin to Mr Cheeseman of 6 August 2018 to which we have referred in paragraph 33 above, where Ms Galvin said what we have set out in paragraph 33.1 above. Thus, Ms Galvin's recollection was borne out by that contemporaneous document, which she had written.

112 When that document was put to the claimant in cross-examination by Ms Hicks referring to it and saying that Ms Galvin had referred to the claimant using several electronic devices, the claimant said this (as recorded by EJ Hyams):

> "I was not using them at the same time; I had a phone; a tablet and the DVSA laptop so when the battery in the laptop died and I was not near a plug I used a device that had power; [I was] not using 3 devices at the same time."

113 We found that evidence difficult to believe. We found the email from the fellow trainee at pages 436-437 set out in paragraph 109 above to be powerful independent evidence (which was apparently unsolicited; it was not put to Ms Parker that it was solicited by her, and it appeared on its face to have been unsolicited) which corroborated that of both Ms Galvin and Ms Parker about what had happened during the training courses in regard to the use by the claimant of IT equipment.

114 Ms Bell was said by Mr Amunwa in oral closing submissions to have been (as noted by EJ Hyams) "an absent presence at this trial". However, the acts of Ms Bell were not impugned by the claimant before the trial except that the claimant complained that Ms Bell had (1) commented on the claimant not eating, and (2) complained about the claimant's typing, saying that it was "getting on [her] f***ing nerves": those things were said in the interview of the claimant carried out by Ms Collyer on 14 May 2019, recorded respectively at pages 642, 660, and 676.

Our conclusions on the factual circumstances referred to in the issues stated in paragraphs 7 and 8 above

115 Given all of the factors to which we refer in paragraphs 86-114 above, we preferred (by a considerable margin) the evidence of Ms Galvin and Ms Parker to that of the claimant in regard to the matters which were the subject of the issues stated in paragraphs 7 and 8 above. We therefore concluded that the claimant was not treated any differently in regard to her usage of IT equipment during training courses at which Ms Galvin and Ms Parker were present from the manner in which a person of any other ethnic or racial origin would have been treated in that regard. For the avoidance of doubt, we concluded that those things which Ms Galvin and Ms Parker said to the claimant about her usage of IT equipment were in no way connected with the claimant's race.

116 We also accepted that what Ms Galvin and Ms Parker said about migrants and (in the case of Ms Parker) drivers was in no way disrespectful, and was in no way connected with the protected characteristic of race.

117 We were not persuaded by any evidence before us that Ms Bell said anything that was in any way disrespectful of migrants and we accordingly concluded that she had not done so.

The things that the claimant alleged Mr Cheeseman to have said as recorded in paragraphs 6.1 to 6.4 above

Paragraph 6.1.1: did Mr Cheeseman say 'it is a "horrible area", in which "you couldn't park a police car there or someone would drop a fridge on it"?

118 In his oral evidence to us (as we record in paragraph 122 below), Mr Cheeseman said that during the time that he was the claimant's line manager he had not known where she lived. He also said that the claimant had said to him that her sister lived on or close to the Mozart Estate and that her (the claimant's) son had to go onto the estate to get to her sister's house. It was Mr Cheeseman's evidence that that was said in connection with the question of what arrangements the claimant might need to make in relation to her son when she was away from home, at a residential training event attended by her for the purposes of her post with the respondent. The claimant said (for the first time) in cross-examination that Mr Cheeseman confused her sister with another person in the team, although she did not say who that other person was. It was the claimant's case that Mr Cheeseman had brought up the subject of the Mozart Estate without reason. In paragraph 221.2 of his witness statement, Mr Cheeseman said this in direct response to the allegation stated in paragraph 6.1.1 above:

> "I do not think I ever referred to the estate as a 'horrible area'. It is a fact though that the Mozart Estate has a bad reputation and so I may have said words to that effect. As an ex-police officer I am very aware of the risks of parking a marked police car on, not just that estate, but many inner London estates irrespective of the level of racial diversity on an estate. The comment is taken out of context, we were having a conversation during which I was responding to her comments that she didn't want her son to associate with youths on that estate. I was accepting of the difficulties in living near to the estate with a young son."

119 When it was put to Mr Cheeseman that it was not appropriate for him to be discussing the area in which the claimant lived in the context in which it the subject was brought up, Mr Cheeseman said this (as noted by EJ Hyams and tidied up for present purposes):

> "Of course it was. Miriam brought up the fact that her son would have to be left alone in the school holidays and that she had concerns about the Mozart estate. It is my job to take some note of my staff's domestic circumstances and the issues which they are going to cause them at work. She feared for her son's safety so that is where the discussion came from."

120 As we say in paragraph 118 above, it was only in cross-examination that the claimant said that Mr Cheeseman had confused her sister with another member of the team, and she did not then say who that other member of the team was. In paragraph 63 of her witness statement, the claimant said this about what had happened on 4 October 2018:

> 'Later that day Mick called me to his office again to have a catch up. However, he decided to make irrelevant conversation about where my family and I live and then proceeded to retell incidents of vandalism and criminality which took place there when he used to enforce in the nearby neighbourhood as a former Metropolitan Police. He said, "you could spit on some of those estates near you. Lisson Grove is terrible. Mozart estate. When we used to enforce there we always had to be careful of our cars as when we would return to them a fridge would have been dropped on them. The kids very often only see the money they can make selling drugs, they're scum. They walk around with their latest designer trainers and girls hanging from their arms." He then said, "I bet your lads like that and wants to be in the latest fashion." I replied "he does not and is not likely to because that is not how he was brought up."'

121 The claimant did not there say that neither she nor her family lived in the area of the Mozart estate: rather, she implied that she did. The claimant's witness statement also contained this passage in paragraph 25:

> "He said, I know where you live, you have a red door. I used to enforce in that area. It's not far from the Mozart Estate. I found it the weirdest thing, to point out where I live and the colour of my door."

122 We saw that in that paragraph, again, the claimant did not say that she did not live near the Mozart Estate. When that passage was put to Mr Cheeseman, he said that he did not know the colour of the claimant's front door as he did not know where the claimant lived, i.e. her address. We searched the hearing bundle for references to the claimant's home address. Even the ET1 had been redacted so that the claimant's home address was not shown. However, we saw that the dismissal letter of 28 November 2018 at pages 482-487 was sent to the claimant's home address. Nevertheless, that was the first letter, chronologically speaking, in the bundle to the claimant with her home address on it. That supported Mr Cheeseman's recollection that he did not know the claimant's home address at the time of the claimed conversations about the Mozart Estate. In any event, we accepted his evidence about what he did say in that regard during those conversations and about the context in which he said those things, and given the factors to which we refer in this and the four preceding paragraphs above, we preferred his evidence to that of the claimant. We also concluded that whatever he did in fact say, it was in no way connected with, or said because of, the claimant's race. We concluded that he would have said the same thing to a white woman in the same circumstances.

<u>Paragraph 6.1.2: did Mr Cheeseman say it has "high criminality"?</u>

123 Mr Cheeseman's response to this allegation was in paragraph 221.3 of his witness statement: "I may have said this. It is a matter of fact that there is a lot of crime on the Mozart estate."

124 We concluded that

124.1 this was precisely the same sort of thing as saying that the estate had a bad reputation, and

124.2 it too was in no way connected with, or said because of, the claimant's race, and

124.3 Mr Cheeseman would have said the same thing to a white woman in the same circumstances.

<u>Paragraph 6.1.3: did Mr Cheeseman say "you could spit on some of those estates near you"?</u>

125 In paragraph 221.6 of his witness statement, Mr Cheeseman said this:

> "I never said this. I believe that I may have said that estate is within spitting distance of where you live, meaning it was close by."

126 Saying "you could spit on some of those estates near you", if it was said, was not far from saying that you could spit on the estates near you, if a reference to spitting on estates near the claimant had been made. However, it would be surprising if Mr Cheeseman had referred to more than one estate being within spitting distance, and in any event we accepted his evidence about what he had in fact said. We concluded too that it too was in no way connected with, or said because of, the claimant's race, and that Mr Cheeseman would have said the same thing to a white woman in the same circumstances.

Paragraph 6.1.4: did Mr Cheeseman say "the kids very often only see the money they can make selling drugs, they're scum"?

127 Mr Cheeseman's evidence in his witness statement in response to this was in the following passage:

> "228.1 ... I did not say that kids on the Mozart estate were scum. I do recall discussing the problems around drug dealing on the Mozart estate in the context of a conversation that Miriam and I had about her wanting to protect her son from the criminality that a minority of people on the estate are involved in and which the estate is notorious for.
>
> 222. I should be quite clear that all of these conversations were with sympathy and intended to be supportive.
>
> 223. Miriam is suggesting we had many conversations about the Mozart Estate, that is not the case. We may have discussed it on the odd occasion but it was always within the context of her worrying about her son and how it was difficult to know everything young adults get up to. I was bought up in a council house in Lewisham, South London and have also policed several inner London estates. Whilst I didn't have first hand experience of living in or around the Mozart Estate, I understood the concerns that Miriam expressed and was only trying to empathise with concerns that Miriam expressed."

128 Mr Cheeseman told us that the "make up of the estate like many inner London estates is very varied", that he would not use the word "scum" to describe anyone, and that he and the claimant discussed the fact that the estate had many issues, for which it was "pretty well known". He said too that it was "a fairly infamous area in West London" and that when he said that he was not referring to (and did not expressly refer to) drugs and knife crime: rather, he was saying that the area was infamous in that it was "known as an area for crime."

129 We accepted that evidence of Mr Cheeseman also. We also concluded that what he said in this regard was in no way connected with, or said because of, the claimant's race, and that Mr Cheeseman would have said the same thing to a white woman in the same circumstances.

Paragraph 6.2 above; did Mr Cheeseman say on 18 October 2018 and 8 November 2018 that "young black boys are more at risk of exclusion from school, from being arrested and charged with an offence, of being stabbed on the way home from school, than White or Asian"?

130 Mr Cheeseman's primary response to this allegation was in paragraph 225 of his witness statement, which was in these terms:

> 'Miriam also claims that I said "young black boys are more at risk of exclusion from school, from being arrested and charged with an offence, of being stabbed on the way home from school, than White or Asian." I simply did not say this. I may have expressed a view that the criminal justice system did not always work in favour of young people of colour. I make that observation from anecdotal evidence, not from any facts I am aware of. Again, this was as part of an adult conversation where we were both discussing our experiences. As far as I was concerned, at no time did Miriam and I have, what I would call, a 'bad relationship'. We had friendly, informal discussions that people who work together have on a day-to-day basis and Miriam did not express or raise any concerns about these at the time. Following her dismissal, these discussions are now being portrayed as racially biased or discriminatory but that is just not true, they are general observations and opinions that people discuss when among friends and colleagues which Miriam is seeking to twist.'

131 Mr Cheeseman told us in addition when this issue was put to him in cross-examination that he thought that he had had "quite a good relationship" with the claimant, and that it was only when he saw the papers in this case that he realised that he had been mistaken. We accepted that oral evidence of his. We thought, however, that he might well have said something about "young black boys" being more at risk of exclusion from school, since that is something about which there had to our knowledge (which we indicated during the hearing) been reports in the media. However, we concluded that whatever he did say in this regard, it was not intended to be in any way disrespectful to the claimant. We also concluded that whatever he did in fact say, it was in no way connected with (within the meaning of section 26(1) of the EqA 2010), or said because of (within the meaning of section 13 of the EqA 2010), the claimant's race.

Paragraph 6.3 above: did Mr Cheeseman on 12 July 2018 and 9 August 2018 tell the claimant that it was not a good idea to take her son to Manchester to stay with relatives while she attended a training course there as "he would be a distraction"?

132 Mr Cheeseman sent the claimant the email of 9 August 2018 at pages 307-308 about the issue of what she did about the care of her son during the following week's training. It started with these sentences:

> "As I said, it's not for me to dictate how you care for your children. As long as this does not impact on your training then I cannot object, I fear having him with you will be a distraction so you need to be aware of that."

133 That was not a reference to the claimant's son staying with relatives, but, rather, her having him with her. It was clear from the following passage in the email that he was there referring to her son staying in her hotel room (and not with relatives):

> "I stick by what I said yesterday, it's the school summer holidays so I can cancel the training for next week and look at rescheduling it if this is going to compromise your sons safety or your ability to concentrate. I wouldn't want to think he is being left in a hotel room for the day while you are training.
>
> I hope you are being honest with me, I worry you are desperate to do the training and maybe not thinking straight."

134 The claimant's comparator was Ms Jackie D'Cruze, who is a white woman with children. Ms Hicks' closing submissions dealt with the circumstances of Ms D'Cruze in this way:

> "75. [T]he Claimant has not shown that actual comparators in materially similar circumstances were treated any differently. In the list of issues (but not her witness statement), the Claimant claims that white colleagues were given permission to bring their daughters to work. It is not until her second witness statement that the Claimant claims that Jackie D'Cruze attended a two-hour training session with her two primary school aged children, leaving them in the office for the entire duration [C WS §58]. She does not aver that Ms D'Cruze was comparable or treated differently because of race. In any event, the Respondent:
>
> (i) Disputes this version of events. Mr Cheeseman's evidence is that Ms D'Cruze "*came in with her children to pick up some documents in order to take some documents to work from home. This would have taken around 20 minutes*" [MC §92]. This is not a comparable situation.
>
> (ii) Invites the tribunal to find the Claimant's version of what occurred as implausible. As the panel noted, the 26 September 2018 was a

> Wednesday during term time. It is highly unlikely that Ms D'Cruze's children would have been on holiday (whether for inset, training or otherwise) as the Claimant suggests. Whilst the date of 26 September 2018 was mentioned in the appeal hearing, the detail of the 2-hour training did not emerge until her second witness statement drafted in April 2021. By this time, her recollection will have faded.
>
> 76. In any event, even if Ms D'Cruze did bring her daughters into work for two hours, there is nothing to suggest Mr Cheeseman would not have expressed the same reservation about them being a distraction and have expressed concerns for the safety of two children left unsupervised in the office for two hours.'

135 We saw that at page 646 the claimant was recorded to have said to Ms Collyer that Ms D'Cruze had brought her children to the office during school holidays. In any event, we concluded that the claimed comparable circumstances were not actually comparable: even if Ms D'Cruze did leave her children at the office for two hours (rather than, as Mr Cheeseman recalled, 20 minutes) that would have been very different from the claimant taking her son to stay with friends or relatives during the week of residential training for the claimant.

136 We saw that after the email at pages 307-308 the claimant responded to Mr Cheeseman in the email at page 307 sent by her at 9 August 2018 in these terms:

> "[Word obscured] Mick,
> I am being open and honest with you because you are [m]y line manager, you u [sic] have life experience and I can tell you want to help."

137 Mr Cheeseman then asked the claimant whether she needed to stay at a hotel on Sunday evening too, evidently at the respondent's expense. She said "Yes please" and it was, it was clear, arranged by Mr Cheeseman. That was, obviously, helpful to the claimant.

138 In those circumstances we concluded without any doubt that all that Mr Cheeseman said and did about where the claimant's son stayed while she was being trained at residential training away from home, i.e. both in July and in August 2018, was said and done by Mr Cheeseman without any connection in his mind with the claimant's (or anyone else's) race, and that it was not less favourable treatment of her because of race. For the avoidance of doubt, we saw the email of 9 August 2018 at pages 307-308 as being fair, balanced, and supportive. We saw nothing in it to which the claimant could reasonably have objected, and certainly nothing in it from which we could have drawn the inference that what was said in it was less favourable treatment of the claimant because of her race, or connected with the protected characteristic of race. We

concluded that Mr Cheeseman would have said precisely the same thing to a white woman in the same circumstances.

Paragraph 6.4 above: did Mr Cheeseman on 28 June 2018 say to the claimant that she would not be able to wear a hat as her "'air was gonna be a problem"?

139 Mr Cheeseman's evidence in respect of this allegation was principally in paragraphs 52-55 of his witness statement. His main response was that he did not believe that he and the claimant ever had a conversation about her hair or her wearing a hat.

140 In paragraph 29 of her witness statement, the claimant said this:

> 'On or around 28th June 2018, in response to picking up a "Stoppers Hat" which was on my desk in our open plan office, Mick said, "no! You can't wear that! Anyway, your 'air [sic] is gonna be a problem. Then turning to a colleague (Jacqueline D'Cruze) who stood by my desk in our open plan office and said, "er air [sic] is going to be a problem."'

141 Mr Cheeseman's response included this, in paragraphs 54 and 55 of his witness statement:

> "54. Stoppers are individuals that go out in marked cars to undertake the role of stopping vehicles by the roadside. Miriam was not a stopper, so I would not have called her one.
>
> 55. Stoppers are issued with a cap to make them more visible to oncoming traffic when stopping at the side of the road. Not all Traffic Examiners are Stoppers. Only two of the team at the time were Stoppers, we also have a permanent Stopper who is the grade below the Traffic Examiners and that is all they do."

142 It was put to Mr Cheeseman in cross-examination that Ms D'Cruze had said that it got really cold in winter and that the claimant had referred to a hat in a catalogue and a stopper's hat. Mr Cheeseman said that he did not recall that and when it was put to him that he had then said that the claimant's hair was a problem he said: "No; a stopper's hat is a cap a bit like a policeman's hat with a white top but the hat that the claimant wore was a woollen beany hat with a crest on it." It was then pointed out to him that he had not said that in his witness statement. However, there had been no apparent need to refer to the claimant wearing a beany hat before then, given that the agreed list of issues had not referred to the issue of the need to wear a hat in winter. It was not then put to Mr Cheeseman that the claimant did not wear a woollen beany hat.

143 Given all of those factors, and having heard and seen both the claimant and Mr Cheeseman give evidence, we accepted Mr Cheeseman's evidence that he had

not at any time said to the claimant that she would not be able to wear a hat as her hair would be a problem.

The decision that the claimant's employment should be terminated

144 Mr Smith described his reasons for deciding that the claimant should be dismissed in paragraphs 186-219 of his witness statement. We accepted those paragraphs in their entirety in so far as they were a description of the things that were in his conscious mind at the time and his conscious reasons for deciding that the claimant should be dismissed. The latter included the contents of the documents which we have set referred to and in part set out in paragraphs 81-85 and 105 above.

145 Mr Cheeseman held a meeting with the claimant on 27 November 2018 at which he considered with her, as he put it in his letter dated 28 November 2018 at pages 482-487 at page 482, "[her] current level of performance/attendance during [her] probationary period". That letter was detailed and, in our judgment, an accurate statement of the events which it described. The reason for deciding that the claimant should be dismissed was stated on page 487 in the following manner:

> "I have taken your mitigation into consideration, however, ultimately, I do believe that your conduct and performance are unsatisfactory and therefore, my decision is to dismiss you from the establishment.
>
> The reasons for your dismissal are:
>
> - Your timekeeping record throughout your probation period to date is wholly unsatisfactory. Even taking your mitigation around the technical problems you have had, you have still had a numerous number of lateness's which is unsatisfactory. During this lateness communication has also been poor, which makes it difficult for other team members to prepare.
>
> - Your ability to retain the knowledge delivered in your formal training and provided by your peers has not been absorbed. This view is supported by your trainers. This evidence was reviewed at the hearing.
>
> - You have failed on several occasions to follow reasonable management instructions. Your 4 month review has still not been returned despite many requests. You have not completed any journals for the past four weeks. You attended work without your pocket book, yesterday you were asked to sign in your old pocket book which you said was at home, and today you forgot it. You

> were asked by Jon Wood to submit some work as part of your training, you failed to deliver it on time."

146 There were at pages 466-474 notes of the meeting of 27 November 2018 at the end of which Mr Cheeseman informed the claimant that she was being dismissed. At the start of the meeting, Mr Cheeseman was noted to have said these things (in the course of which it was also recorded that the claimant was using a laptop at the meeting and said that it was to take notes):

> "My main concerns are your poor time keeping, I suspect partly as a result of poor preparation. ...
>
> A failure to demonstrate you can work to a deadline and follow instructions.
>
> A failure to demonstrate that you are able to work well as part of a team.
>
> An inability to retain knowledge given you in training."

147 At page 472 there was a record of Mr Cheeseman saying this:

> "Finally I want to speak about your apparent inability to retain the knowledge you have been given in training."

148 The passage which followed, all on the same page, showed the claimant failing to acknowledge that she was at fault in any way.

149 The only thing in the three bullet points that we have set out in paragraph 145 above which was not wholly fair was the sentence in the third bullet point: "Your 4 month review has still not been returned despite many requests." That was not completely fair because (see paragraphs 76 and 77 above), while the claimant had not returned the form itself, she did respond to it in her email at pages 464-465. However, the claimant had plainly not responded in the required manner to the 4-month review, and there was, we concluded, a practical need for her to do so, with the result that the criticism had some justification.

150 When it was put to Mr Cheeseman in cross-examination that if the claimant had been white then he would not have terminated her probation period and so dismiss her on 27 November 2018, he denied that. Of course, if he had accepted it then the claim would not have been defended, which is why section 136 of the EqA 2010 was enacted. But what he said then was in our view highly material, and it was not challenged. It was that there were two other probationer Traffic Examiners who started at around the same time as the claimant, neither of whom were white, and, Mr Cheeseman said (as noted by EJ Hyams and tidied up for present purposes),

> "they struggled slightly too but they put in a lot of work to convince me that there was a chance that they would achieve what I and the DVSA required at the end of the day. It was all about effort; nothing to do with colour."

151 We saw from paragraph 1.8 of Ms Collyer's investigation report of 5 June 2019 (the report was at pages 738-757; paragraph 1.8 of it was on page 740) that the claimant was one of "four new entrants [to the "diverse team of Traffic Examiners at Yeading, comprising of twelve members of staff"] within the last year." The whole of that paragraph was relevant and it needed to be read as a whole. It was in these terms:

> "MC [i.e. Mr Cheeseman] is responsible for a diverse team of Traffic Examiners at Yeading, comprising of twelve members of staff. The team includes males and females and a mixture of ethnicity, including Sikh, Muslim, Mixed race African/Indian. Including MSI, there were four new entrants within the last year. They had varying ability and some needed additional time and support to complete their probations. Two were very competent and did well having brought skills from previous employments."

152 That was not inconsistent with what Mr Cheeseman said about the other two probationer Traffic Examiners (whom he named), and in any event the fact that there were two other non-white probationer Traffic Examiners whom Mr Cheeseman saw as struggling (albeit only "slightly") but who were retained because they put in a lot of effort to convince him that there was a chance that they would achieve what he and the respondent required, was significant evidence and was not challenged.

153 In all of the circumstances, in other words as we have in paragraphs 18-152 above found them to be, we concluded that Mr Cheeseman's decision that the claimant should be dismissed had nothing whatsoever to do with her race.

Our conclusions on the claimant's claims, stated in paragraphs 6 to 14 above

The claim of harassment within the meaning of section 26 of the EqA 2010 stated in paragraph 9 above read with paragraphs 6-8 above

154 Given our conclusions stated in paragraphs 61, 69 and 115-143 above, we concluded that the claimant's claim stated in paragraphs 6-8 above read with paragraph 9 above was not well-founded on the facts: none of the things which we found had actually happened was in any way related to the claimant's race within the meaning of section 26(1) of the EqA 2010. For the avoidance of doubt (since we have not stated this expressly so far), we concluded that what Mr Cheeseman wrote as set out in paragraph 49 above was in no way related to the claimant's race.

155 Thus, the claimant's claim of harassment within the meaning of section 26 of that Act did not succeed.

The claim of direct discrimination because of race stated in paragraph 12 above

156 Given our conclusions stated in paragraph 138 above, the claim stated in paragraph 12 above of direct discrimination because of race in regard to what we concluded Mr Cheeseman did in fact say about or in relation to where the claimant's son stayed while the claimant was receiving residential training away from home in July and August 2018 did not succeed.

The claim of direct discrimination because of race stated in paragraph 13 above

157 Given our conclusion stated in paragraph 115 above, the claim stated in paragraph 13 above of direct discrimination because of race in relation to what was said to the claimant about her use during training sessions of IT equipment did not succeed.

The claim of direct discrimination because of race stated in paragraph 14 above

158 Given our conclusion stated in paragraph 153 above, the claimant's claim that Mr Cheeseman discriminated against her because of her race by dismissing her did not succeed.

<u>In conclusion</u>

159 For all of the above reasons, the claimant's claims did not succeed and were dismissed.

_____

Employment Judge Hyams

Date: 21 December 2021

SENT TO THE PARTIES ON

11 January 2022

FOR THE TRIBUNAL OFFICE