



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Rogers

**Respondent:** Secretary of State for Justice

**Heard at:** Watford

**On:** 4, 5, 6 July 2023, 10, 11, 12, 13, 14 July 2023 and 23, 24 November 2023 (with deliberation on 27 November 2023 and 6, 7, 8 March 2024)

**Before:** Employment Judge McTigue  
Ms G Binks MBE  
Mr D Sagar

## Representation

**Claimant:** Mr R Downey, Counsel

**Respondent:** Mr L Dilaimi, Counsel

# RESERVED JUDGMENT

1. The claim was not presented within the applicable time limit. It was reasonably practicable to do so.
2. The complaint of direct race discrimination is not well-founded and is dismissed.
3. The complaint of direct sex discrimination is not well-founded and is dismissed.
4. The complaint of harassment related to race is not well-founded and is dismissed.
5. The complaint of victimisation is not well-founded and is dismissed.

Mr Sagar wishes to express a minority opinion in relation to Issues 2(a), 2(d), 2(e), 2(g), 2(k) and the issues of whether the claim was presented within the applicable time limit. His reasons appear at appendix A. On all other issues, this is a unanimous decision of the Tribunal.

# REASONS

1. Before providing the Tribunal's substantive reasons, I wish to apologise for the delay in providing these reasons. The reason for the delay is as follows. The parties were last before the Tribunal on 24 November 2023. They were also meant to be before us on 27 November 2023 but the respondent's representative was unavailable. In the event, on 24 November 2023 the parties agreed to make written submissions and the Tribunal met to commence its deliberations on 27 November 2023. At that point in time, the Tribunal informed the parties that the panel had scheduled to meet for 3 days of deliberations on 3, 4, 5 January 2024. That was the first available time all of the panel had availability to meet.
2. Unfortunately due to sickness absence the full panel was unable to meet on 3, 4 and 5 January 2024. Arrangements were immediately made for the panel to meet for deliberations on 6, 7, 8 March 2024 and I sent an email to the Employment Tribunal administration staff in Watford requesting that they communicate that fact to the parties. Unfortunately that email was never sent to the parties by the administration staff in January 2024. An email explaining the position was however sent in March 2024 when I was made aware that my earlier message had not been sent in January 2024.
3. Again, I can only apologise for the delay in providing these reasons which has been occasioned by matters beyond my control. I would also like to apologise for the fact that my initial email in January 2024 was not delivered to the parties despite my efforts.

## Introduction

4. The claimant has been employed by the respondent since 1 November 1999. She was initially employed at HMP Brixton and then as a Custodial Manager ("CM") in charge of F Wing at HMP Pentonville ("the Prison"). Her employment with the respondent is continuing. She claims that she has been subjected to direct race discrimination, direct sex discrimination, racial harassment, and victimisation. ACAS was notified using the early conciliation procedure on 3 April 2021 and the early conciliation certificate was issued on 6 April 2021. The ET1 was presented on 26 May 2021.

## Claims and Issues

5. The Claimant brought the following claims against the Respondent:
  - 5.1. direct race discrimination contrary to section 13 of the Equality Act 2010 ("EqA 2010");
  - 5.2. direct sex discrimination contrary to s.13 EqA 2010;
  - 5.3. racial harassment contrary to s.26 EqA 2010; and
  - 5.4. victimisation contrary to s.27 EqA 2010.
6. The Tribunal had before it a list of issues which had been agreed by the parties before Employment Judge M Warren at a Preliminary Hearing which took place

on 23 June 2023. The list is unwieldy in nature. Indeed, as Employment Judge M Warren noted at paragraph 5 of his Preliminary Hearing Summary, had he and the parties' representatives, "been starting the list of issues from scratch, we would have set things out differently" (pages 564-565 of the bundle). Due to its length, the agreed list of issues is attached as an appendix to this Judgment and Reasons. The agreed list of issues is appendix B.

7. The List of Issues was clarified in the following ways on Days 1 and 2 of the final hearing (4 & 5 July 2023):
  - 7.1. The Claimant confirmed that her race for the purpose of the claims of direct race discrimination and racial harassment is Black African;
  - 7.2. The Claimant confirmed that issue 5 (racial harassment) and issues 6 and 7 (victimisation) were limited to the following factual allegations: Issue 2(k), 2(n), 2(o), 2(p) and 2(q);
  - 7.3. The Claimant confirmed that they were not pursuing a complaint of victimisation in relation to the factual allegations contained in issue 2(l), despite the use of the word 'victimisation' in that issue 2(l) and despite the mention of an alleged protected act. It was confirmed that issue 2(l) only related to claims of direct race discrimination and direct sex discrimination.
8. It was also agreed that the Tribunal did not need to determine paragraph 1 of the List of Issue because this was merely a summary of the claims. It was also agreed that the Tribunal, at this point in time, would deal with liability only and so need not determine paragraph 8 of the List of Issues.

#### **Procedure, documents and evidence heard**

9. We were provided with the agreed bundle of documents, running to approximately 655 pages. We also had an agreed chronology and cast list. We were provided with witness statements and heard oral evidence from:
  - 9.1. The claimant, Ms Hawa Rogers (on 5, 6, 10 and 11 July 2023);
  - 9.2. Mr Darren Hughes, (on 12 July 2023). Mr Hughes was Governing Governor at the Prison from summer 2017 to autumn 2019;
  - 9.3. Ms Ruth Hipwell (on 12 and 13 July 2023). Ms Hipwell was Head of the Security and Intelligence Unit at the Prison (until early 2021), then Head of Residence at the Prison (from early 2021);
  - 9.4. Mr Noel Young (on 13 and 14 July 2023). Mr Young was Wing Governor for E Wing and F Wing at the Prison;
  - 9.5. Mr Vafo Navkarov (on 14 July 2023). Mr Navkarov was Head of Visits and Deputy Head of Security at the Prison from May/June 2020 onwards;
  - 9.6. Mr Steve Dixey (on 23 and 24 November 2023). Mr Dixey was Deputy Governor at the Prison from 2016 until 2021 and also Acting Governor in late 2019; and
  - 9.7. Mr Ian Blakeman (on 24 November 2023). Mr Blakeman was Governing Governor at the Prison from December 2019 onwards.

## Findings of Fact

10. Employees of the respondent are assigned bands which dictate their pay. The relevant bands are as follows:
  - 10.1. Band 2 relates to those employed on the Operational Support Grade (“OSG”).
  - 10.2. Band 3 relates to Prison Officers.
  - 10.3. Band 4 relates to those employed as a Supervising Officer (“SO”).
  - 10.4. Band 5 relates to those employed as a Custodial Manager (“CM”).
  - 10.5. Band 6 relates to individuals employed in non-operational roles.
  - 10.6. Band 7 relates to those employed in a Head of Function (“HOF”) role.
  - 10.7. Band 9 relates to those employed as a Deputy Governor.
  - 10.8. Band 11 relates to the Governor grade.
11. On 1 November 1999, the claimant commenced employment with the respondent as a Band 2 OSG at HMP Brixton. On 10 September 2001, the claimant moved to HMP Pentonville (“the Prison”) and became a Band 3 Prison Officer. During the summer of 2012 she acted up as a Band 5 Custodial Manager. Then, on 1 November 2014, she became a substantive Band 5 Custodial Manager. At all material times, the claimant was employed in an operational role.
12. In 2016 the claimant applied for an acting Band 7 position, but she was unsuccessful at the interview stage. Mr Pete Warren, a white man, was appointed to this role.
13. In 2017 the claimant again applied for an acting Band 7 position. She was again unsuccessful in the interview stage. Mr Richard Hawksworth, a white man, was appointed to this role. After this point in time, no further operational Band 7 roles became available at the Prison with the exception of roles which were filled by individuals on the fast-track schemes. It was only after the claimant moved to HMP Woodhill, in March 2022, that further operational Band 7 roles became available at the Prison.
14. During the course of the Tribunal proceedings, the Tribunal heard evidence on issues which were not directly relevant to the list of issues. However, the Tribunal considers it important to make findings of fact in respect of those matters given the seriousness of the allegations made by the claimant. The claimant alleged that there was a “Gay Squad” at the Prison during the time that she worked there. She said this mainly consisted of staff who had moved to the Prison from HMP Holloway. She alleged that this included Ms Ruth Hipwell. The Tribunal completely rejects that allegation. There was, quite simply, no cogent or credible evidence before the Tribunal that there was in existence at the material times a group of individuals who were lesbian, gay or bisexual, who had control over the Prison or any matters relating to its administration or management.
15. The claimant also alleged whilst giving evidence that there was a “Freemason Squad” in operation at the Prison during the material times. The claimant alleged that this Freemason Squad was headed by Mr Noel Young. When giving evidence, Mr Noel Young freely admitted to his membership of the Freemasons. He was open and honest about this. Indeed, he stated, and we

accept, that he was also open and honest about his membership of the Freemasons when he was at work at the Prison. The Tribunal can find no evidence to support the claimant's allegation that there was in existence a "Freemason Squad" which had control over the operation, administration or management of the Prison.

16. Dizzy Virgo was initially a Band 4 Supervising Officer. She did not enjoy a good working relationship with the claimant. She did not like the claimant and the feeling was mutual. In 2017 and 2018 she worked on F Wing at the prison and her line manager was the claimant. From April 2020 onwards, Dizzy Virgo acted up as a Band 5 Custodial Manager. She then became a substantive Band 5 Custodial manager. Dizzy Virgo is also known by the name Fulvia Virgo.
17. It was apparent to the Tribunal that the claimant and Dizzy Virgo had a very difficult relationship. As to the relationship between the claimant and Dizzy Virgo, we find the evidence of Ms Ruth Hipwell at paragraphs 14 to 29 of her witness statement particularly helpful and find that it accurately reflects their relationship. We therefore find that the claimant and Dizzy Virgo were extremely childish in their behaviour towards one another and that there was a large amount of tit-for-tat retaliation between them. Both were unable to resolve the many issues which existed between themselves or indeed behave professionally in the workplace. Both let their personal dislike of one another spill over into their professional working relationship. Both were equally badly behaved.
18. In February 2018 Ms Dizzy Virgo was placed on a performance management plan by the claimant. This action caused a severe deterioration in the relationship between the claimant and Dizzy Virgo. Both were very strong-willed individuals and, following this point in time, they developed an intense dislike for one another.
19. On 2 March 2018 Ms Dizzy Virgo, left the following comment on the claimant's Facebook page, "It's a shame that beneath the exterior you portray to people the reality is the complete opposite! I hope your conscience can allow you to continue to stand tall!"
20. On 16 April 2018 Dizzy Virgo left a comment on Ms Theresa James' Facebook page. It arose in relation to a comment that the claimant had previously posted on Ms James' Facebook page. The claimant's Facebook name was "BlackDiamond Rogers." In response to a picture Ms James had posted on Facebook, the claimant had commented as follows, "Loose the dummy so you can dance like fairy lol." Dizzy Virgo subsequently posted the following comment, "And some people should have had a dummy in their mouth to stop them from chatting bare lies!! Wouldn't you agree Ms Rogers???"
21. On 28 November 2018, the claimant submitted a grievance against Mr Noel Young. She did this by completing the standard GRV1 form. A copy of that grievance appears in the bundle at pages 87 to 101. In this grievance the claimant complains about the fact that she felt that her concerns and issues were not being dealt with effectively by Mr Young. Concerns which the claimant had raised in relation to Dizzy Virgo feature prominently in this grievance. This grievance was not logged or investigated by the respondent. The grievance

was emailed to Mr Steve Dixey by the claimant on 28 November 2018 (page 102 of the bundle).

22. On 4 December 2018 Mr Dixey emailed the claimant requesting that she come and speak to him about her grievance. Mr Dixey subsequently met with the claimant and asked her whether she had tried to resolve her issues informally with Mr Young. At that meeting the claimant indicated that she had not done so. As a consequence of that, Mr Dixey asked the claimant to try and resolve the matter informally before her grievance was logged and investigated. Mr Dixey also told the claimant that she should return to him if she could not resolve her issues informally with Mr Young. The claimant never went back to see Mr Dixey about that matter. This grievance was not therefore logged or investigated. It was the practice at the Prison that grievances would be dealt with on an informal basis if possible and if they could not be resolved informally, then grievances would be progressed formally and logged.
23. On 4 December 2018 the claimant was invited to a poor performance meeting by Mr Young. A copy of the letter inviting her to that meeting appears at pages 77 to 78 of the bundle. There were a number of legitimate issues relating to the claimant's performance that Mr Young had concerns about. The claimant was invited to a meeting scheduled for 17 December 2018. That meeting did not go ahead.
24. On 10 December 2018, the claimant emailed Mr Dixey asking him for the log number in relation to the grievance she had raised on 28 November 2018. Mr Dixey informed Mr Darren Hughes by email that he had not yet logged the grievance which the claimant had raised on 28 November 2018 because the claimant had not yet tried to resolve the matter informally with Mr Noel Young despite agreeing to do so.
25. In January 2019 the claimant was moved from F Wing of the prison to the Visits section. This was in part driven by concerns about her conduct and performance on F Wing.
26. On 8 February 2019, the claimant made a comment on her friend Randy Smith's Facebook page. The comment stated, "You repping, queen. Stay blessed each and every day xxx." Dizzy Virgo commented in reply, "I hear your blessed too BlackDimond. 🤔🤔". The claimant subsequently filed a corruption report against Dizzy Virgo in relation to this message. A copy of that corruption report appears in the bundle at page 111.
27. On 10 February 2019 Dizzy Virgo emailed the claimant about the Facebook comment that she made on 5 February 2019 and about various other matters. Dizzy Virgo copied in Noel Young and the Governing Governor, Mr Darren Hughes, into that email. The email appears in the bundle at pages 115 to 116.
28. On 11 February 2019, the claimant emailed Mr Steve Dixey and Ms Ruth Hipwell about Dizzy Virgo's Facebook comment that she made on 5 February 2019. Mr Dixey contacted the claimant by means of a reply suggesting that she come and speak to him and Ms Hipwell the following day about the matter.
29. On 1 March 2019, the claimant submitted a grievance against Dizzy Virgo ("the March 2019 grievance"). She did this by sending an email to Mr Dixey attaching

the standard GRV1 form. A copy of that grievance appears in the bundle at pages 119 to 131.

30. On 8 March 2019 Mr Dixey emailed the claimant asking that she come and speak to him about the March 2019 grievance.
31. On 27 March 2019 Mr Dixey forwarded the claimant confirmation that the March 2019 grievance had been logged and asked the claimant if she was happy for that grievance not to be progressed as Dizzy Virgo was on sick leave. Mr Dixey proposed that the grievance should not be progressed until Dizzy Virgo returned from sick leave. The claimant replied by means of an email that same day confirming that she understood the need to wait for Dizzy Virgo's return to work before the matter was progressed.
32. On 30 April 2019 Emma McAulay, a Prison Officer on E Wing, emailed Mr Young to inform him that she felt bullied by the claimant. Mr Young replied that same day stating, "Take a grievance out Emma,, if everyone else does it, it treating you different, I will support you." It is apparent to the Tribunal that there was a culture of grievances being raised at the Prison over relatively minor matters. Large number of grievances were being raised within the establishment over issues which were often trifling in nature.
33. On 9 May 2019 Dizzy Virgo's solicitors sent a pre-action letter to the prison in respect of potential claims that Dizzy Virgo was proposing to bring. These claims related to a breach of statutory duty, negligence, and breach of contract. None of the potential claims were being made in respect of breaches of the Equality Act 2010. A copy of that letter appears in the bundle at pages 527 to 537.
34. On 4 June 2019 Mr Ian Roger, Governor (Investigations), recorded his findings and recommendations in relation to the complaint that Ms McAuley had raised in relation to the claimant. Instead of Ms McAuley raising a grievance against the claimant's conduct, Ms McAuley instead used the local decision log process. This was a more informal process than the grievance procedure. Mr Roger recommended that no further action be taken in relation to the complaint made against the claimant and no findings of bullying were upheld against the claimant.
35. On 12 September 2019 Mr Olugbenga Odejimi, Head of Operations, was suspended. A number of other individuals were also suspended on that date.
36. The majority of the Tribunal find that on 17 September 2019 the claimant met with Mr Dixey to discuss her career progression in general terms. Mr Dixey informed the claimant that he would support the claimant to develop, particularly if appropriate opportunities were to arise. Tribunal member Mr Sagar expresses a minority view that on this date the claimant met Mr Dixey to discuss a potential temporary promotion to Band 7 and that Mr Dixey promised to raise her request for promotion. Mr Sagar also is of the opinion that Mr Dixey failed to raise and action this later as he had promised to do so.
37. On 25 September 2019, the claimant emailed Mr Darren Hughes stating that she had not been supported to develop whilst at the prison. Mr Hughes replied asking the claimant to get in touch with him so that something could be sorted out locally in order to assist with her development.

38. Around October 2019 a number of individuals, including Ms Samantha Cornberg, Mr Vafo Navkarov, Mr Jack Issac, Ms Lauren McFarlane and Ms Kathryn Lawrence joined the prison via fast-track schemes. There were a number of fast-track schemes in operation in HM Prison Service around this point in time including the Accelerated Development Scheme, which Mr Navkarov and Mr Issac were on, and the Senior Leadership Scheme, which Ms Cornberg was on. Individuals who were on the fast-track scheme were paid as either a Band 7 or Band 8. Individuals on these fast-track schemes were paid and funded centrally by the respondent rather than being paid locally by the prison. These individuals were also often deployed at short notice to the prison and had to be accommodated into appropriate roles. Individuals who were on the fast-track schemes often had little experience of prison environments and had to be given basic training relatively quickly by existing personnel within the prisons they joined. They were then expected to quickly embed themselves into new teams and develop the necessary skills and abilities required to perform their role.
39. The majority of the Tribunal find that on 4 October 2019 the claimant met with Mr Hughes and that Mr Hughes assured her, in very general terms, that he would support her in her future career development. Mr Sagar expresses a minority opinion that the claimant met Mr Hughes on this date and that Mr Hughes promised her specific development opportunities in respect of filling the Band 7 Head of Operations role.
40. In mid to late October 2019 Ms Cornberg became acting Head of Operations. She undertook this role as Mr Odejimi remained suspended from that role.
41. On 15 October 2019 Mr Hughes and the claimant emailed one another about possible development opportunities for the claimant. Those emails appear in the bundle at pages 653 to 654. No agreement was reached between the claimant and Mr Hughes as to which development opportunities would be afforded or offered to the claimant. However, shortly following her emails with Mr Hughes, the claimant emailed Mr Kevin Riley, Prison Group Director for Hertfordshire, Essex and Suffolk, asking that she be allowed to undertake detached duty at HMP Chelmsford in a Custodial manager role for a period of between six to twelve months. The claimant stated in that email that she had discussed this matter with Mr Hughes and that Mr Hughes had agreed to support her. That was incorrect as Mr Hughes had not agreed to this. A copy of that email appears in the bundle at page 159.
42. A detached duty involves a temporary transfer of an individual from their home prison to another prison whilst their existing role is retained. The individual will then return to their previous role a few months later. Detached duties are usually used to cover acute staffing issues which have arisen at the host site. There is a formal process for arranging a detached duty and authority is needed from the governing governor of the releasing site. This is necessary as detached duties have an adverse effect on staffing levels at the releasing site.
43. On 17 October 2019 Mr Kevin Riley replied to the claimant stating:
- “...as you have already discussed this with Darren I have spoken to the governor of Chelmsford who would like to offer you the development opportunity. The Governor (Penny) could also do with some CM level experience at the moment so



this is good timing. I therefore do support you doing this. You should now go via Darren and Penny to make arrangements...”

44. On 24 October 2019, the claimant emailed Mr Hughes stating:

“Following my request to go on detached duty for a period of six months to a year, I am pleased to say that I have been accepted at HMP Chelmsford. I am making arrangements to visit Chelmsford next week. I am also supporting Sam Cornberg here to ensure a smooth handover of the function. I will be grateful if you can confirm my transfer date.”

45. Seven minutes after the claimant sending that email Mr Hughes replied stating:

“Hawa – who has approved this at Pentonville? Whilst we discussed your development a couple of weeks ago, nothing was agreed. Karen (HRBP) is not aware, nor is Steve as Dep Gov; and I have had no communication from Chelmsford. Nothing is approved or sanctioned from my perspective. I cannot at this stage approve anything. Can you speak with me when you are next in please.”

46. The Steve referred to in that email was Mr Dixey. The Karen was Ms Karen Solanki, a HR Business Partner at the respondent.

47. Shortly thereafter Mr Hughes forwarded those emails to Mr Kevin Riley stating, “Hi Kevin – FYI. Not sure what’s going on here. Can you assist at all please.”

48. At 17.34 that day Mr Hughes forwarded the emails to HR stating, “I did not sanction this, nor would I do so at present as I am short of CMs and have no backfill. Naughty...”

49. At 17.52 Mr Dixey replied to the claimant stating that he was aware of discussions that she had had about development internally and opportunities but that he was not aware she was looking at Chelmsford and that such a move would require ratification from Mr Hughes as well as HR.

50. At 17.57 Mr Hughes replied to the claimant stating that:

“I fully support your development, but our discussions were “in the round and about putting a plan in place for you. I didn’t sanction anything, so to receive your email today was a surprise. I can’t approve the move I afraid for a number of reasons. You should have discussed with me/Steve/Karen to clear the way first.”

51. Following this, the claimant’s detached duty to HMP Chelmsford did not progress and she remained at HMP Pentonville.

52. On 14 November 2019, the claimant received her Head of Function Assessment Centre accreditation. This was apparent from pages 176 to 177 of the bundle.

53. On 14 and 15 November 2019 the claimant had a meeting with the respondent’s lawyers in respect of Dizzy Virgo’s potential claims against the respondent. The claimant provided her account in relation to the matters which had been alleged by Ms Virgo.

54. On 22 November 2019, the claimant requested a meeting with Mr Dixey and others regarding her desire to go on detached duty to HMP Chelmsford. Her email in relation to that matter appears in the bundle at page 178. Mr Dixey replied on 27 November informing her that there was no need for a further meeting on this matter and that a move to HMP Chelmsford would be outside policy and could not be supported. Mr Dixey also expressed the view that Mr Hughes was fully within his rights to stop the claimant's attempted move to HMP Chelmsford.
55. On 9 December 2019 Mr Ian Blakeman became Governing Governor of the Prison.
56. Between 15 December 2019 and 15 January 2020 the claimant was on a period of sick leave due to work related stress. When she returned to work on 15 January an occupational health report was commissioned which recommended a phased return to work.
57. In April 2020 Dizzy Virgo began acting up as a Band 5 Custodial manager. She was appointed to the Visits Team; this was the same team as the claimant. This led to a further deterioration in the relationship between the claimant and Ms Virgo.
58. On 14 April 2020 Dizzy Virgo emailed Lydia Sterling, an OSG in the Visits Team, requesting that she use a particular format for a document. Dizzy Virgo also copied the claimant and Ms Hipwell into this email. The claimant replied the following day copying in a number of other individuals and stating that it was her and Mr Cato, another Band 5 in the Visits Team, who should be making decisions of this nature.
59. In approximately June 2020 Mr Navkarov became Head of Visits and a Deputy Head of Security. He also became the claimant's line manager and around this point in time Ms Hipwell became the claimant's Countersigning Manager.
60. On 19 May 2020 Ms Virgo emailed the claimant informing her that she had had to rearrange some lockers. A copy of that email appears in the bundle at page 191. Ms Virgo stated:
- “I just wanted to inform you and kindly ask you communicate to the Visits cleaner Joyce that I have moved her locker from its original position. Without breaching the confidentiality of staff I have rearranged some of the lockers and unfortunately I have had no alternative but to move the locker belonging to Joyce from its original position to the floor....”
61. On 20 May 2020 Ms Virgo emailed the claimant regarding the allocation of staff within the Visits Team. It is apparent that by this point in time there was significant tension between the claimant and Ms Virgo as to which OSGs should be line managed by each other. There was in effect a power struggle between the claimant and Ms Virgo which had a detrimental impact upon the operation of the Visits Team. On this date Ms Virgo interfered with the refurbishment of the Visits section by removing three OSGs and instructing them to go on a 15-minute training session.
62. On 21 May 2020 Ms Hipwell had a meeting with the claimant to discuss various matters including the claimant's complaints about Ms Virgo. Following the

email, the claimant emailed Ms Hipwell with a summary of the meeting. That email appears at page 395 of the bundle.

63. On 24 May 2020 Ms Virgo emailed the claimant to inform her that she had scheduled a rest day on the date that the claimant was arranging a meeting. Ms Virgo copied a number of other individuals into that email. A copy of the email appears at page 194 of the bundle.
64. On 16 June 2020 Ms Virgo emailed Lydia Sterling and Ansar Din, a Prison Officer, regarding time off in lieu which the claimant had supposedly authorised for OSG Simms. Ms Virgo again copied a number of other individuals into this email. A copy of that email appears in the bundle starting at page 206.
65. On 19 June 2020 Mr Noel Young emailed the claimant and others stating that he was dismayed that the claimant had not included either him or his staff in relevant communications regarding the introduction of the centralised booking of video conferences. Mr Young also asked the claimant not to agree any terms that would involve either him or his staff without consulting him. The claimant replied to Mr Young some four hours later and copied in further people into the email chain. She accused Mr Young of making an untrue statement, unjustly accusing her, blaming her and attempting to publicly humiliate her. 20 minutes after receiving her email Mr Young replied again to the claimant suggesting that she come and speak to him. The relevant emails in respect of this appear at pages 203 to 205 of the bundle. We also find that Mr Dixey emailed the claimant and Mr Young asking that they cease email communication regarding the matter and the claimant speak to Mr Young face to face in order to resolve the matter on a one-to-one basis.
66. On 20 June 2020 Ms Virgo moved two members of staff from "Visits Project" duties. On that same day, OSG Simms called the claimant at home in order to inform her that Ms Virgo had instructed her to stop visit duties and redirected her.
67. On 21 June 2020 Ms Virgo emailed the claimant to apologise for disrupting the "Visits Project" the previous day. She also explained in this email why she took the decisions that she did. A copy of that email appears in the bundle at page 205.
68. On 23 June 2020, the claimant submitted a grievance against Noel Young ("the June 2020 grievance"). She did this by sending an email to Ms Hipwell attaching a standard GRV1 form. A copy of that email and the attached grievance appears in the bundle at pages 208 to 221. On that same day Mr Navkarov had a meeting with the claimant about a number of matters including the claimant's working relationship with Ms Virgo. At the meeting it was agreed that the claimant would sit down with Ms Virgo the following day and attempt to resolve matters amicably between them. Mr Navkarov emailed the claimant at 5.55pm that day confirming the arrangement that had been reached, a copy of his email appears in the bundle at page 560.
69. On 29 June 2020 Mr Dixey emailed the claimant requesting that she go and see him about the grievance that she submitted in June 2020.
70. On 30 June 2020 Mr Dixey chased the claimant, again requesting that she come and speak to him about the June 2020 grievance that she had submitted.

Mr Dixey then had a meeting regarding the claimant's grievance with both her and her trade union representative on that day. He also logged the June 2020 grievance on that day, doing so following a request by the claimant.

71. On 2 July 2020 Mr Dixey provided the claimant with the outcome of her June 2020 grievance. The outcome was that her grievance was not upheld. The claimant was informed by Mr Dixey that there was no merit to her grievance and that she was able to appeal his decision.
72. On 18 July 2020 Dizzy Virgo failed to provide the claimant with a handover before going off duty. That same day the claimant filed a corruption report against Dizzy Virgo in relation to that matter. A copy of the corruption report can be found in the bundle at page 241.
73. On 19 July 2020, the claimant emailed Mr Dixey and Ms Hipwell to again complain about Ms Virgo. She stated that boundaries were being crossed by Ms Virgo, that OSGs were being taken from their Visits duties by Ms Virgo, and that the claimant's work was being undermined.
74. On 4 August 2020 Ms Virgo emailed the claimant, copying in a number of other individuals, and asked the claimant to clarify a discrepancy in some information the claimant had provided about visits. Simply, the claimant had incorrectly stated in information that was due to be circulated that children would be allowed to attend prison visits from 24 August 2020. That was incorrect, children would not be allowed to attend. A copy of the email appears in the bundle at pages 249 to 250.
75. On 6 August 2020 Mr Dixey emailed Ms Hipwell regarding a number of concerns he had with the claimant's performance. Mr Dixey made Ms Hipwell aware that the claimant had not been undertaking work that she was expected to do and that other staff, including himself, were having to pick up the work.
76. On 7 August 2020, a trial run was undertaken at the prison in preparation for a new regime in relation to prisoner visits. A new arrangement needed to be put into place due to the ongoing covid pandemic. The claimant had responsibility for undertaking the visits trial and successfully managing it. There were a number of issues with the visits trial which were the fault of the claimant, including the fact that she failed to ensure that adequate staff attended in order to play the role of visitors. She also failed to secure the engagement or attendance of prisoners in relation to the trial on that day. Ms Hipwell expressed her concerns to the claimant in an email which appears in the bundle at page 254.
77. In September 2020 Ms Cornberg became Band 8 Head of Business Assurance. At some point in September 2020 Mr Navkarov held mediation between the claimant and Ms Virgo. This was a further attempt to try and manage the fractious relationship between the two.
78. On 8 September 2020 Ms Virgo emailed the claimant and others stating:

“I appreciate CM Rogers has already confirmed to CM Mostyn that she will ensure all OSGs are in possession of fish knives. I appreciate this cannot wait as it forms part of the uniform policy and is a vital piece of equipment which could save

someone's life. CM Mostyn you may want to check how far CM Rogers has got on with this task..."

By way of background, fish knives are used by members of staff working at the prison in the event that a prisoner hangs themselves. They are used to cut the ligature. A copy of the relevant email appears at page 317 of the bundle.

79. On 9 September 2020 Ms Virgo emailed the claimant asking that she investigate a request made by a prisoner's family member that had arisen in relation to visits. A copy of that email appears in the bundle at page 259.

80. On or around 10 September 2020 the claimant was moved from her office into a shared office with Ms Virgo which was located on the governor's corridor. The claimant has alleged that personal items were disposed of in her absence, we do not accept that. If any personal items of hers were disposed, they were certainly not done so deliberately. On this point, we prefer the evidence of Mr Navkarov who told us that the claimant's old office was extremely untidy when he and Mr Issac went to move in. Mr Navkarov stated that the claimant's office was full of what he thought was rubbish and that so he disposed of that rubbish. We also do not accept that Ms Virgo was informed of the office move before it happened, whilst the claimant was informed after it happened. The claimant took some considerable time to move into the new office by which time Ms Virgo had already moved into it.

81. The decision to move the claimant and Dizzy Virgo into the same office was done so on the basis that it would hopefully improve relations between the two of them. Whilst the tribunal accepts that, it was a somewhat unwise decision to move two individuals, who clearly had a difficult relationship, into the same office.

82. On 12 September 2020 Ms Virgo emailed the claimant asking her to clarify whether or not she was completing a particular piece of work as Ms Virgo did not want to, "undermine work you have already done by repetition". A copy of that email appears in the bundle at page 262.

83. On 27 October 2020 Ms Virgo emailed Ruth Hipwell at 11.36am. She copied in the claimant and a number of others. In this email Ms Virgo complained about the claimant's conduct stating:

"I cannot continue working with a colleague whom continually disrespects me and makes my working day with an already difficult group harder. I have made every attempt to work professionally with Ms Rogers but to no avail. Therefore, can I please ask that this matter is addressed as I am no longer prepared to tolerate bullying behaviour. I do not come to work to be undermined, intimidated or bullied by anyone."

A copy of this email appears in the bundle at page 265.

84. At 6.28pm that same day the claimant submitted a grievance against Dizzy Virgo ("the October 2020 Grievance"). She submitted her grievance by sending an email to Ruth Hipwell attaching the standard GRV1 form. A copy of the email and the GRV1 form can be found in the bundle at pages 266 to 280.

85. On 3 November 2020 Ms Virgo emailed all OSGs in the Visits Team reminding them to take their lunch break at 11.30am for no more than one hour when detailed. A copy of the relevant email appears in the bundle at pages 282 to 283.
86. On 4 November 2020 Nick Walmsley emailed Mr Dixey and Ms Hipwell. His email described how relations between the claimant and Ms Virgo had almost completely broken down. He wrote:
- “Today was ridiculous as both of them came in separately and requested changes to the detail which contradicted the previous ones request. They then approached me together but would not speak to each other, instead they held a conversation through me such as “Mr Walmsley can you tell Miss Rogers ..... and Governor can you tell Miss Virgo ..... This is while they were stood next to each other. Continually they are sniping at each other to anybody who will listen with phrases like “I don’t know what these other managers are doing.” I could list numerous other occasions where I have witnessed unacceptable and unprofessional behaviour and if you talk to other governor grades I am sure they will give you similar examples. I cannot have my staff in SMG continually being pressured into changing details which appear just to be an attempt to get at each other and am now getting to the point of requesting that neither of them is allowed to enter SMG and using my staff to exacerbate their personal battle.” (page 284 to 285).
87. On 4 November 2020, the decision was taken to move the claimant to become a Custodial manager in the Orderly Group. Mr Dixey and Ms Hipwell had a meeting with the claimant on that day and at the meeting they both talked through the reasons why the decision had been taken to move the claimant. The reason for moving the claimant to the Orderly Group was that the Orderly Group had an operational need for a Custodial Manager. Reasons for the claimant’s move to the Orderly Group can also be found in an email which Mr Dixey sent to Ms Hipwell on 5 November 2020. This appears in the bundle at page 285 and states that the claimant was moved for a number of reasons including wanting to do nights, concerns about her visibility, and the fact that between two to three grievances had been lodged by OSGs against the claimant. It is clear to the Tribunal that they were also influenced by Mr Walmsley’s earlier email of the same day.
88. On 4 December 2020, the claimant emailed Ms Hipwell asking for the log number in relation to her October 2020 grievance.
89. On 16 December 2020 Mr Ian Roger emailed the claimant to inform her of the outcomes of his investigation into alleged incidents involving the claimant. No further action against the claimant was recommended in relation to any incident.
90. On 17 December 2020, the claimant’s solicitors sent a lengthy pre-action letter to Mr Blakeman, the Governing Governor, alleging race, sex and age discrimination, harassment, victimisation and constructive unfair dismissal (among other potential claims), The claimant’s solicitors also asked for a detailed response within seven days failing which they stated the claimant might approach the employment tribunal without further warning.

91. On 20 December 2020, the claimant attempted to raise a what is termed a “DIRF” (Discrimination Incident Reporting Form). She attempted to do this by sending an email to Megan Key, who was the Regional Diversity and Inclusion Lead for London prisons. Ms Key replied to the claimant on 21 December explaining to her that DIRFs can only be submitted by prisoners or members of the public and advising the claimant that she needed to submit a grievance instead.

92. The following day, 22 December 2020, the claimant submitted a further grievance (“the December 2020 grievance”). This grievance made allegations against Ms Hipwell and Mr Dixey. The claimant submitted her grievance by sending an email to Mr Blakeman and also Ms Key attaching the standard GRV1 form. A copy of the claimant’s GRV1 form can be found at pages 297 to 310 of the bundle.

93. On 23 December 2020 Mr Blakeman emailed the claimant stating:

“Can you decide whether you are submitting a grievance or a legal claim? At the moment we are responding to a letter from your solicitors. I do not want us to duplicate. My advice would be that you submit the grievance and let that run its course before pursuing legal action.”

94. The claimant responded to Mr Blakeman the following day stating:

“I have considered the pros and cons and I am submitting my complaint as a grievance. May I respectfully request that the issues raised in the legal letter be incorporated in my grievance. I have discussed this with my solicitors and they are in agreement with me.”

95. It is clear that the claimant was in regular contact with her legal representatives at this point as demonstrated by the email of 24 December 2020. That fact is also demonstrated by her email of 21 December 2020 to her legal representative which appears in the bundle at page 292.

96. On 1 February 2021 Mr Blakeman met with the claimant in order to discuss the December 2020 grievance. He also logged the December 2020 grievance.

97. On 16 February 2021, the claimant emailed Ms Hipwell, and Mr Nick Walmsley (Bank 7 Head of Business Assurance-People) in order to complain that Dizzy Virgo had been moving three members of staff without informing her. A copy of that email appears in the bundle at page 325. The following day, 17 February 2021, Mr Dixey emailed both the claimant and Ms Rogers stating that:

“I am aware of an incident last night between you. CMs this morning have already come to see me to say that the behaviour between you both on this matter and others is not acceptable and that it needs to stop as its affecting the group. There are clearly issues both sides (sic) and I’ve explained that both of you need to remain professional at work despite any differences. You are managers and you would not expect this type of behaviour from your staff and I’m asking you to look at the behaviour between the two of you and how it impacts on others. I am willing to arrange proper mediation if that is of benefit but you are both sound managers with experience and it was hoped that you would resolve differences amicably without the need to escalate issues and inflame them. I am not taking sides here... clearly there are historical gripes and grievances between you long before my time but I’ve

tried to be open and fair in my dealings with both of you. You are good managers with potential please use that and work collaboratively. Alternatively if external mediation will help please speak to your line managers.”

98. At 10.08am Mr Dixey emailed the claimant stating that he had spoken to Ms Virgo and that she had already apologised and explained.

99. At 12.29 the claimant emailed Mr Dixey taking issue with the contents of his email. A copy of her email appears in the bundle at pages 323 to 324.

100. On 19 February 2021 Mr Navkarov produced his grievance outcome in relation to the claimant's October 2020 grievance. Mr Navkarov did not uphold the claimant's grievance. The majority of the claimant's October 2020 grievance related to allegations against Ms Virgo and Mr Navkarov commented as follows:

“Finally, as a line manager, I tried and mediated between CM Rogers and CM Virgo on numerous occasions, including formal meeting where they were both present. During this meeting and numerous private conversations, I reiterated the importance of acting professionally as grown up adults and trying to resolve their problems in a professional manner as it is expected of them. I also reminded that without communicating with one another the whole department will be put at risk, given how intertwined the whole department is. To ensure they communicate with one another, they were allocated into the same office. However, despite both committing to act professionally and communicate with one another as Custodial Managers of Ops, they both failed to adhere to it. Should they both acted on good faith and behave in a professional manner communicating with one another, I am certain that many issues could have easily be resolved without resorting to grievances (sic). In my professional view CM Rogers and CM Virgo should never be made part of the same department as it will inevitably lead to unhealthy and highly unprofessional behaviour, given their inherent animosity against one another.”

101. The claimant alleges that on 21 February 2021 she was removed from bed watch. The tribunal has insufficient evidence before it to make a finding of fact that she was.

102. On 1 March 2021 Mr Blakeman emailed Paul Golder, acting Deputy Governor of HMP Belmarsh, requesting that he conduct a fact-finding enquiry in relation to the claimant's December 2020 grievance.

103. On 8 March 2021 Mr Navkarov emailed his grievance outcome to the claimant.

104. On 18 March 2021 Mr Golder had a meeting with the claimant at HMP Belmarsh in relation to her December 2020 grievance.

105. On 25 March 2021 Mr Golder visited HMP Pentonville and had a meeting with Ms Hipwell in relation to the claimant's December 2020 grievance. Mr Golder also had a second meeting with the claimant regarding her December 2020 grievance.



106. On 30 March 2021 Mr Golder produced his report in relation to the claimant's December 2020 grievance. A copy of his report appears in the bundle at pages 363 to 366. Mr Golder found that there was no supporting evidence to find that the claimant had not been supported by Ms Hipwell or treated less favourably than her white colleagues because of her race. Mr Golder also found that there was no evidence that the claimant had raised concerns regarding her workload through her line management. He also found that there was no evidence that Ms Hipwell did not support the claimant during her period of absence or indeed evidence that the claimant had been placed on a performance plan by Governor Navkarov. Mr Golder did however state that there was no evidence to support the fact that the four grievances which had been raised by the claimant had been actioned or recorded appropriately. He recommended that there should be a local register and tracking system to ensure that all grievances are logged, recorded and monitored. He also recommended that professional mediation should be offered and encouraged between Ms Rogers and Ms Virgo. The claimant stated that she was happy with the outcome and with Mr Golder's enquiries. The full version of Mr Golder's letter can be found in the bundle at pages 363 to 366.
107. On 1 April 2021 Mr Golder emailed his report in relation to the claimant's December 2020 grievance to Mr Ian Blakeman.
108. On 3 April 2021 ACAS early conciliation started. The ACAS early conciliation certificate was issued on 6 April 2021.
109. On 13 April 2021 Mr Golder emailed the claimant inviting her to a Middle Manager's Day at HMP Belmarsh and asking her to contact him with some suitable date in relation to mentoring sessions that he was proposing to offer her.
110. On 20 April 2021 Dizzy Virgo emailed Shaun Baker, a Band 5 Custodial Manager, asking him to send Officer Statters to the claimant's hierarchy. There is an email to that effect in the bundle at page 367. Later that same day, at 14.36, the claimant replied to Dizzy Virgo, copying in Ms Hipwell, and taking issue with Ms Virgo asking for the officer in question to be moved to the claimant's hierarchy.
111. On 21 April 2021 Mr Blakeman emailed Mr Golder's report in relation to the claimant's December 2020 grievance to the claimant.
112. On 22 April 2021 Mr Blakeman held a grievance meeting with the claimant in relation to her December 2020 grievance.
113. On 27 April 2021 Mr Blakeman produced the grievance outcome in relation to the claimant's December 2020 grievance. He partially upheld the claimant's grievance in a number of areas. Mr Blakeman commented as follows:

"In addition to the above meeting we also met on 1 February to discuss if you wanted to take the grievance/employment tribunal further or whether it could be resolved informally. You said that you wanted the matter investigated and the illegal actions to stop. I decided that I would have the matter independently investigated and as such appointed Paul Golder, Deputy Governor at Belmarsh, to investigate. He did investigate and discussed the matters with you. I also met with

you on 22 April to discuss the findings and agreed to give you his report which I have done.

You stated that you wanted the matter investigated. I have agreed to this although it is clear the independent report did not agree with all you put forward although did agree that some line management procedures and grievance time scales had not been adhered to.

You also stated that you wanted the illegal practices to stop whilst I am not aware of you being treated illegally, I can confirm to you that I have a string commitment to making sure that people are treated within the rules and fairly.

I am content that I have upheld the grievance in terms of the outcomes although I also am content that the investigation has not found there to be consistent evidence of wrongdoing against you as you have claimed. I also note that the grievance has had some positive outcomes. Paul Golder has offered mentoring services to you and has also offered for you to be part of HMP Belmarsh's Band 5 Development Group. These are very positive steps and afford you a real benefit which I hope will enhance your development and prospects."

114. Mr Blakeman also stated:

"I will reinforce the requirements to answer grievances within agreed time scales with managers at PV and will ask our HR Manager to concentrate on upskilling managers in this area. I will ask if you and CM Virgo will commit to formal mediation. Will discuss with you and your line manager about making a referral to OH."

115. On 7 May 2021, the claimant passed her Silver Command Assessment and received IMSC accreditation. The effect of this was that from this point onwards she was eligible to apply for substantive Band 7 roles. She was also eligible to apply for Band 8 roles.

116. On 12 May 2021, the claimant appealed against the outcome of her December 2020 grievance and produced additional evidence in support of her appeal.

117. On 26 May 2021, the claimant presented her ET1 form to the Employment Tribunal.

118. On 12 April 2021 Mr Ian Bickers (Prison Group Director, London Prisons), Ms Mary Rackley (HR Case Manager) and Mr Stewart McLaughlin (POA Secretary, HMP Wandsworth) held a grievance appeal meeting with the claimant and her trade union representative at HMP Pentonville, This grievance appeal meeting was in relation to the December 2020 grievance.

119. On 26 August 2021 Mr Ian Bickers produced the grievance appeal outcome in relation to the claimant's December 2020 grievance. The claimant's grievance appeal was partially upheld. Mr Bickers stated:

"I have considered the evidence you provided and the input from you during the meeting. It has been difficult for me to be able to uphold any specific issues you raise and make a link to racism based on the evidence you have provided. When I asked you for comparators you are not able to provide any evidence to support the

point in your appeal. It is also difficult to identify specifics that the members of the management team can and should apologise for.

However, the panel heard the issues you raised and when weighing the evidence, it is clear that you have a perception of racist behaviour towards you and that this has had a negative impact on you and your work. This has been difficult to evidence directly, but this does not minimise the way you feel you have been treated and I am sorry for the way this has made you feel.”

120. In his grievance appeal outcome Mr Bickers also raised four specific issues of concern and made six points of action. These were as follows.

120.1. Mr Bickers’ first issue was in relation to the breakdown in the relationship between the claimant, Ms Virgo and Ms Hipwell. In relation to this Mr Bickers recommended that Mr Blakeman would arrange formal mediation sessions between the claimant and Governor Hipwell as well as between the claimant and Ms Virgo. These would take place via the Civil Service Mediation Service.

120.2. The second issue that Mr Bickers addressed was that grievance processes were not being followed at HMP Pentonville. In relation to this, Mr Bickers recommended that Mr Blakeman would conduct a local review of the grievance process and upskill managers.

120.3. The next issue that Mr Bickers addressed was the culture of equalities and the need to drive diversity. In relation to this Mr Bickers made three recommendations for action.

- The first was a check to see whether or not a climate assessment had been commissioned from the Tackling Unacceptable Behaviour Unit and, if not, to arrange for one to be carried out.
- The second action was for Mr Blakeman to facilitate a Climate Assessment and share the results with the Prison Group Director and appropriate parties.
- The third action was for Mr Blakeman to ensure that the Local Equalities Lead was fulfilling their role and that local equalities meetings were taking place with appropriate attendance and support.
- The fourth issue addressed by Mr Bickers was that policies were not being followed at HMP Pentonville, In respect of action in relation to this issue, Mr Bickers recommended that Mr Blakeman would remind the Senior Management Team and Band 5 Managers of effective management practices and that upskilling sessions would be provided to allow for continuous self-development.

121. A full copy of Mr Bickers’ letter appears at page 441 to 444 of the bundle.

122. On 21 March 2022, the claimant became Band 7 Head of Function Operational at HMP Woodhill. She then left HMP Pentonville but continued to be employed by the respondent.

## Observations on evidence

123. On balance we preferred the evidence of the respondent. The claimant's evidence lacked credibility and reliability in a number of areas. In paragraph 53 of her witness statement, she stated, "The common phrase 'Hawa is going down' invented by Noel Young has taken ground amongst the same people in various emails (268-269)." The Tribunal found no evidence that the phrase "Hawa is going down" was used by Mr Young and it certainly does not appear in any of the emails that we were referred to.
124. In paragraph 35 of her witness statement, when discussing the detached duty to Chelmsford incident, the claimant stated, "GG Hughes rejected his boss' appointment of my move." This indicated to the Tribunal that the claimant was of the opinion that Mr Kevin Riley was Mr Darren Hughes's manager. This was incorrect and demonstrated that the claimant had a poor understanding of the management structure of the Prison system.
125. In paragraph 61 of her witness statement, the claimant stated, "I can recall that Ms Fulvia Virgo had some time ago brought a claim at employment tribunal against the respondent claiming £1,000,000.00 and named me as one of the bullies." This was incorrect. At no point in time did Ms Virgo commence employment tribunal proceedings.
126. The claimant made accusations that there was a "Gay squad" at the prison who had significant influence and power. There was quite simply absolutely no evidence to support that assertion. The claimant also made accusations that Freemasons exerted significant influence and power at the prison. Again, there was quite simply absolutely no evidence to support that assertion.

## Law

### Time limits

127. The relevant time limits provided by section 123 of the EqA 2010 are as follows:
- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—**
    - (a) the period of 3 months starting with the date of the act to which the complaint relates, or**
    - (b) such other period as the employment tribunal thinks just and equitable.**
  - (2) ...**
  - (3) For the purposes of this section—**
    - (a) conduct extending over a period is to be treated as done at the end of the period;**
    - (b) failure to do something is to be treated as occurring when the person in question decided on it.**
  - (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –**
    - (a) when P does an act inconsistent with doing it, or**

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

128. Section 140B EqA 2010 provides as follows:

(1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

(2) In this section –

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

#### Conduct extending over a period

129. Section 123(3)(a) EqA 2010 provides that “*conduct extending over a period is to be treated as done at the end of the period.*”

130. ‘Conduct extending over a period’ (also known as a ‘continuing act’) may arise not solely from a policy, rule, scheme, regime or practice but also from numerous alleged incidents of discrimination which are linked to one another and are evidence of “an ongoing situation or continuing state of affairs” (**Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96, CA**, paras 48 and 52 per Mummery LJ, approved by the Court of Appeal in **Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, CA**).

131. In **Coutts & Co plc v Cure [2005] ICR 1098, EAT**, the Employment Appeal Tribunal (HHJ McMullen QC presiding), setting out categories into which the factual circumstances of alleged discrimination may fall, found (albeit obiter) that there are two types of situation in which alleged discrimination may constitute ‘conduct extending over a period’:

131.1. where there is a discriminatory rule or policy, by reference to which decisions are made from time to time; and

131.2. where there have been a series of discriminatory acts, whether or not set against a background of a discriminatory policy.

132. In the former case, conduct will be regarded as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant (**Barclays Bank plc v Kapur [1989] IRLR 387**).

133. In the latter case, the main issue for the employment tribunal tends to be whether it is possible to identify some fact or feature linking the series of acts such that they may properly be regarded as amounting to a single continuing state of affairs rather than a series of unconnected or isolated acts (**Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96, CA**). A single person being responsible for discriminatory acts is a relevant but not conclusive factor in deciding whether an act has extended over a period: **Aziz v FDA [2010] EWCA Civ 304, CA**. In **Greco v General Physics UK Ltd EAT 0114/16**, the EAT held that despite six of seven acts of sex discrimination involving a particular manager, that involvement was not a conclusive factor and the employment tribunal was justified in finding that the allegations concerned different incidents treated as individual matters. Accordingly, they were not considered as part of a continuing act and, in consequence, some were out of time.

134. If an alleged act is found not to amount to unlawful discrimination, then it cannot form part of 'conduct extending over a period', with the effect that "*[i]f a Tribunal considers several constituent acts taking place over the space of a year and finds only the first to be discriminatory, it would not be open to it to conclude that there was nevertheless conduct extending over the year*": **South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168, EAT**, per Choudhury J (at 172-173, para. 33).

#### Discretion to extend time

135. If a claim is out of time, the burden is on the claimant to convince the tribunal that it would be just and equitable to extend time: **Robertson v Bexley Community Centre [2003] EWCA Civ 576, [2003] IRLR 434**. As the Court of Appeal (per Auld LJ) said in **Robertson**, "*there is no presumption that [a tribunal should exercise its discretion to extend time on the 'just and equitable' ground] unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule*" (para. 25). However, the Court of Appeal in **Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327** dismissed any suggestion that Auld LJ's comments in **Robertson** were to be read as encouraging tribunals to exercise their discretion in a restrictive manner.

136. The just and equitable formula gives the tribunal "*a wide discretion to do what it thinks is just and equitable in the circumstances ... they entitle the [employment] tribunal to take into account anything which it judges to be relevant*": **Hutchison v Westward Television Ltd [1977] ICR 279, EAT**.

137. Paragraphs 15.30 and 15.31 of the EHRC Employment Statutory Code of Practice state, in the context of claims under the EqA, that, when a tribunal considers whether to exercise its 'just and equitable' discretion, it is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the circumstances of the case, including the factors set out at section 33 of the Limitation Act 1980 (sometimes known in the employment tribunals as the Keeble factors, after **British Coal Corporation v Keeble [1997] IRLR 336**):

- 137.1. the length of and reasons for the delay;
- 137.2. the extent to which the cogency of the evidence is likely to be affected;
- 137.3. the extent to which the employer had co-operated with requests for information;
- 137.4. the promptness with which the claimant bringing the claim acted once they knew of the facts giving rise to the claim;
- 137.5. the steps taken by the claimant to obtain appropriate legal advice once they knew of the possibility of taking action.

138. However, there is no legal requirement on a tribunal to go through the above list in every case, "*provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion*": **Southwark London Borough v Afolabi [2003] IRLR 220** at para. 33, per Peter Gibson LJ. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**, the Court of Appeal (per Underhill LJ) cautioned in strong terms against employment tribunals using the Keeble factors as a framework for a decision: "*“the Keeble factors” and “the Keeble principles” still regularly feature as the starting-point for tribunals’ approach to decisions under section 123(1)(b). I do not regard this as healthy. ... rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion ... The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) “the length of, and the reasons for, the delay.” If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking*" (para. 37).

139. In **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, [2018] ICR 1194**, the Court of Appeal (per Leggatt LJ) gave the following guidance in relation to the just and equitable discretion: "*[f]actors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)*" (1201E, para. 19).

140. The tribunal must weigh up the relative prejudice to the parties: **Pathan v South London Islamic Centre EAT 0312/13**.

141. The merits of the claim may also be a relevant consideration: **Lupetti v Wrens Old House Ltd [1984] ICR 348, EAT**.

142. A delay caused by a claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings is just one

factor to be taken into account by a tribunal when considering whether to extend time: **Robinson v Post Office [2000] IRLR 804, EAT**, approved by the Court of Appeal in **Apelogun-Gabriels v London Borough of Lambeth [2002] ICR 713**. As the EAT said in **Robinson** (para. 25, per Lindsay P): “*as the law stands an employee who awaits the outcome of an internal appeal and delays the launching of an [ET1] must realise that he is running a real danger.*”

143. Where a claim is presented late and it is the claimant’s solicitor’s fault that it has been presented late, that fault should not be attributed to the claimant unless the claimant is responsible for the timing of the presentation of the claim: **Adebowale v Isban UK Ltd UKEAT/0068/15/LA**, para. 39; and **Chohan v Derby Law Centre [2004] IRLR 685**, in which the EAT (per HHJ McMullen QC) held as follows: “*The failure by a legal adviser to enter proceedings in time should not be visited upon the Claimant for otherwise the Defendant would be in receipt of windfall*”: para. 16. As Elias P observed in **Viridi v Commissioner of Police of the Metropolis and anor 2007 IRLR 24, EAT** (at para. 40): “the errors of [the claimant’s solicitors] should not be visited on the [claimant’s] head, as [**Steeds v Peverel Management Ltd [2001] EWCA Civ 419**] and the authorities to which it refers, make abundantly clear. So whatever the reason why the solicitors failed in their duty would be immaterial when assessing the claimant’s culpability, save perhaps for the possibility, which I consider to be wholly fanciful, that they were acting on his instructions and that therefore he was indeed personally to blame for the late submission. ... the blame for the late claim cannot be laid at Sergeant Viridi’s door. That is an important consideration in the exercise of discretion.”

144. While the existence of a potential claim by the claimant against his or her solicitor may be a factor, and sometimes a highly relevant factor, in the exercise of the discretion to extend time, the mere fact that the claimant may have a potential claim against his or her solicitor will not justify the refusal of an extension of time: **Viridi**, applying the principles set out in **Steeds**.

145. In **Benjamin-Cole v Great Ormond Street Hospital for Sick Children NHS Trust UKEAT/0356/09/DA**, the EAT (HHJ Serota QC) observed as follows: “*It seems to me as a matter of general principle, where a client places her case in the hands of an adviser who is held out as competent to conduct proceedings on her behalf, I would not expect that such a litigant would reasonably be expected to do such things in ordinary circumstances as to issue proceedings herself*”: para. 32.

146. In **Robinson v Bowskill UKEAT/0313/12**, the EAT (HHJ Burke QC) observed that an employment judge had erred in concluding that the claimant had not shown any reason why time should be extended when the very fact that she had put the matter into the hands of solicitors showed that she was “*putting forward an explanation which is capable of being a satisfactory explanation for delay in the presentation of the claim*” (para. 49).

147. A tribunal may grant an extension of time under the ‘just and equitable’ test where a claimant has received incorrect legal advice or where the claimant’s solicitors have been at fault, even though such an extension would not have been granted under the stricter ‘not reasonably practicable’ test: e.g. **Hawkins v Ball and Barclays Bank plc [1996] IRLR 258**.

## **Burden of proof**



148. Section 136(2) and 136(3) EqA 2010 provide that the tribunal must take the following approach to the 'shifting burden of proof':
- 148.1. the initial burden is on the claimant to prove facts from which the tribunal could decide, in the absence of any other explanation, that the respondent contravened the provision concerned (i.e. a 'prima facie case');
  - 148.2. the burden then shifts to the respondent to prove that it did not contravene the provision concerned. If the respondent is unable to do so, the tribunal is obliged to uphold the claim.
149. The claimant must show a probability, rather than a mere possibility, that the respondent has committed the unlawful act: **Igen v Wong [2005] ICR 931, CA**. As Elias P put it in **Laing v Manchester City Council and anor [2006] ICR 1519**, "it is for the employee to prove that he suffered the treatment, not merely to assert it, and this must be done to the satisfaction of the tribunal after all the evidence has been considered" (para. 64). As Mummery LJ said in **Madarassy v Nomura International plc [2007] ICR 867**, "[t]he bare facts of a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination" (para. 56).
150. As was confirmed by the Supreme Court in **Efobi v Royal Mail Group Ltd [2021] ICR 1263**, the initial burden is on the Claimant to establish facts from which the tribunal could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination, harassment or victimisation had been committed. In establishing the facts, the claimant can rely on both primary facts and also inferences that can be properly drawn from those facts.
151. The approach was summarised by the EAT in **Qureshi v Victoria University of Manchester and another [2001] ICR 863** per Mummery J at 875C – H; "The process of making inferences or deductions from primary facts is itself a demanding task, often more difficult than deciding a conflict of direct oral evidence. In **Chapman v Simon [1994] IRLR 124**, 129, para 43 Peter Gibson LJ gave a timely reminder of the importance of having a factual basis for making inferences. He said, "*Racial discrimination may be established as a matter of direct primary fact. For example, if the allegation made by Ms Simon of racially abusive language by the headteacher had been accepted, there would have been such a fact. But that allegation was unanimously rejected by the tribunal. More often racial discrimination will have to be established, if at all, as a matter of inference. It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. A mere intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion.*"
152. Where a claimant compares his treatment with that of another person, "it is important to consider whether that other person is an actual comparator or not. To do this the Employment Tribunal must consider whether there are material differences between the claimant and the person with whom the claimant compares his treatment. The greater the differences between their

situations the less likely it is that the difference of treatment suggests discrimination”: **Virgin Active Ltd v Hughes [2023] EAT 130**.

153. The burden of proof rule “*need not be applied in an overly mechanistic or schematic way*”: **Khan and anor v Home Office [2008] EWCA Civ 578, CA**.
154. An employment tribunal may consider all relevant evidence at the first stage of the burden of proof test: **Commissioner of Police of the Metropolis v Denby EAT 0314/16**.
155. If a tribunal can make positive findings as to an employer’s motivation, it does not need to make use of the burden of proof test at all: **Hewage v Grampian Health Board [2012] ICR 1054, SC**.

### **Direct discrimination (s.13 EqA 2010)**

156. Section 13(1) EqA 2010 provides that: “*a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*”
157. The question of whether a person is treated less favourably is a question of objective fact that necessarily involves a comparison with others. The comparator can be either an actual comparator (where there is no material difference in the circumstances of the comparator to that of the Claimant) or as is usually the case, a hypothetical comparator.
158. The key issue in every direct discrimination case is the following question of fact: “*why did the alleged discriminator act as he did? What, consciously or unconsciously, was the [alleged discriminator’s] reason?*”: **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] ICR 1065**, at para. 29, per Lord Nicholls. As Underhill LJ said in **Reynolds v CLFIS (UK) Ltd & others [2015] ICR 1010** (at para.11):

*“As regards direct discrimination, it is now well established that a person may be less favourably treated “on the grounds of” a protected characteristic either if the act complained of is inherently discriminatory (eg the imposition of an age limit) or if the characteristic in question influenced the “mental processes” of the putative discriminator, whether consciously or unconsciously, to any significant extent: we were referred in particular to the discussion in **Ahmed v Amnesty International [2009] ICR 1450**. The classic exposition of the second kind of direct discrimination is in the speech of Lord Nicholls of Birkenhead in **Nagarajan v London Regional Transport [1999] ICR 877; [2000] 1 AC 501**, which was endorsed by the majority in the Supreme Court in **R (E) v JFS Governing Body [2010] 2 AC 728**.”*

159. Once it is established that the treatment is because of a protected characteristic, unlawful discrimination is established and the respondent’s motive or intention is irrelevant (**Nagarajan v London Regional Transport [1999] IRLR 572 HL**).
160. The protected characteristic does not need to be the only reason for the less favourable treatment, or even the main reason, so long as it was an ‘effective cause’ of the treatment: **O’Neill v Governors of St Thomas More**

**Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372, EAT.**

161. In **Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865**, EAT, Elias P (as he then was) said, “*If there is a genuine non-discriminatory reason, at least in the absence of clear factors justifying a finding of unconscious discrimination, that is the end of the matter.*”
162. In some cases it is necessary to consider and exclude subconscious or unconscious discrimination when deciding the reason why an alleged discriminator did a particular act – see, e.g. **Geller v Yeshurun Hebrew Congregation [2016] ICR 1028** – but “*it does not follow from this that in every case an employment tribunal must expressly refer to the possibility of subconscious discrimination in its Reasons and consider this as a separate matter*”: **Kohli v Department for International Trade [2023] EAT 82**, para. 48, per Linden J.

**Harassment (s.26 EqA 2010)**

163. Section 26(1) EqA 2010 provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
164. Section 26(2) EqA 2010 provides that tribunals, when deciding whether conduct has the effect of violating B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B, must take each of the following factors into account:
- 164.1. the perception of B;
  - 164.2. the other circumstances of the case;
  - 164.3. whether it is reasonable for the conduct to have that effect.
165. There are three essential elements of a harassment claim under s.26(1) EqA 2010:
- 165.1. unwanted conduct;
  - 165.2. that has the proscribed purpose or effect, and
  - 165.3. which relates to a relevant protected characteristic.
166. Guidance on how tribunals should approach cases where harassment is alleged has been set out in the context of racial harassment by Underhill P in **Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336**, paras 7-16). In summary, the relevant principles are as follows:
- 166.1. the various elements of the definition give rise to overlapping questions that are likely to be answered by reference to the same findings of fact (para. 11);
  - 166.2. the breakdown of subsection 1(b) into ‘purpose’ or ‘effect’ means that a respondent may be held liable on the basis that the effect of his conduct has been to produce the proscribed consequences even if that was not his purpose (para. 14);

166.3. in determining whether the consequences set out under subsection 1(b)(i) or (ii) have occurred, the tribunal should apply an objective test bearing in mind all the circumstances of the case (para. 15).

167. Some key concepts set out in **Dhaliwal** and **Grant v Land Registry [2011] ICR 1390** are as follows:

167.1. when assessing the effect of a remark, the context is always highly material. Context will also be relevant to deciding whether the response of the alleged victim is reasonable (**Grant**, para. 13);

167.2. tribunals must not “cheapen the significance” of the meaning of the words used in the statute (i.e. intimidating, hostile, degrading, etc.). They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. Being “upset” is far from attracting the epithets required to constitute harassment (**Grant**, para. 47);

167.3. it is not enough for an individual to feel uncomfortable for them to be said to have had their dignity violated, or the necessary environment created (**Grant**, para. 51);

167.4. if a tribunal finds that a claimant was unreasonably prone to take offence, then, even if he did genuinely feel his dignity to have been violated, there will be no harassment (**Dhaliwal**, para. 15).

### **Victimisation (s.27 EqA 2010)**

168. Section 27(1) EqA 2010 provides that A victimises B if A subjects B to a detriment either because B does a protected act, or A believes that B has done, or may do, a protected act.

169. Section 27(4) EqA 2010 provides that the following acts are protected acts:

169.1. bringing proceedings under the EqA 2010;

169.2. giving evidence or information in connection with proceedings under the EqA 2010;

169.3. doing any other thing for the purposes of or in connection with the EqA 2010;

169.4. making an allegation (whether or not express) that A or another person has contravened the EqA 2010.

170. Under the EqA 2010, the tribunal should take a two-stage approach to determining whether there has been victimisation (**Pothecary Witham Weld v Bullimore [2010] IRLR 572 EAT**, per Underhill P at para. 18):

170.1. first, it must determine whether the claimant has suffered detriment and must determine whether the claimant has done a protected act;

170.2. secondly, it must determine whether the protected act was the reason, or part of the reason, for that detriment.

171. In **Warburton v Chief Constable of Northamptonshire Police [2022] ICR 925**, the EAT (Griffiths J) held that the key test of detriment for the purposes of section 27 EqA is as follows: “*Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?*” (para. 50). The EAT went on to note that: “[i]t is not necessary to establish any physical or economic consequence for this question

*to be answered in the affirmative. The requirement that this hypothetical worker is a reasonable person means, of course, that an unjustified sense of grievance would not pass this test. ... | Although the test is framed by reference to “a reasonable worker”, it is not a wholly objective test. It is enough that such a worker would or might take such a view ... It should not, therefore, be particularly difficult to establish a detriment for these purposes” (paras 50-51).*

172. The use of “because” in the definition of victimisation in s.27(1) EqA means that the ‘reason why’ test that applies to claims of direct discrimination will apply equally to claims of victimisation. Therefore, the tribunal must consider the alleged victimiser’s reasons (conscious or subconscious) for acting as he or she did.

173. It is not necessary for the protected act or acts to be the “main motivation” for the detriment, or for the detriment to be “primarily because” of the protected act or acts, so long as the protected act or acts were a “significant factor”: **Pathan v South London Islamic Centre EAT/0312/13**.

174. Paragraph 9.10 of the EHRC Employment Code of Practice states as follows: “*Detrimental treatment amounts to victimisation if a ‘protected act’ is one of the reasons for the treatment, but it need not be the only reason.*”

175. If the person who allegedly inflicted the detriment did not know about the protected act, the detriment cannot be because of the protected act and there can be no finding of victimisation: e.g. **Nagarajan v London Regional Transport [2000] 1 AC 501** (at 519H).

176. Where the person or persons who allegedly inflicted the detriment deny that they knew about the detriment at the relevant time, the question for the tribunal is whether it can find primary facts from which knowledge of the protected act on the part of the person or persons who allegedly inflicted the detriment can legitimately be inferred, despite their denials of having had such knowledge at the relevant time: **Scott v London Borough of Hillingdon [2001] EWCA Civ 2005**, CA, at para. 24. As was said by Balcombe LJ in **Chapman v Simon [1994] IRLR 124** at para. 33(3), “*In order to justify an inference, a Tribunal must first make findings of primary fact from which it is legitimate to draw the inference. If there are no such findings, then there can be no inference: what is done can at best be speculative.*”

### **Combined discrimination (s.14 EqA 2010)**

177. We should briefly mention that there was mention of section EqA 2010 in the claimant’s initial pleadings. Section 14 provides for what is termed combined discrimination. This section is not in force and for the avoidance of doubt, it has formed no part of the Tribunal’s decision making process.

### **Legal Submissions**

178. The claimant and respondent both made written submissions to the Tribunal. We incorporate their written submissions into these reasons by reference.

### **Conclusions**

179. In order to reach its conclusions, the Tribunal turns to the list of issues.
180. In terms of structure, we shall deal first with the issues relating to time, before discussing the relevant claims.

**Issues 3(c), 4(b), 5(d) and 7(c): Was it [the claim] presented in time?**

181. Day A for ACAS Early Conciliation purposes was 3 April 2021. Day B for ACAS Early Conciliation purposes was 6 April 2021. The claimant's ET1 was presented on 26 May 2021, more than a month after Day B. As a consequence of s.140B(3) EqA 2010, the period of three days between Day A and Day B are not to be counted when working out the time limit.
182. The effect of this is that anything which occurred before 24 February 2021 is out of time.
183. The only complaints presented in time by the claimant are
- 183.1. those which relate to Dizzy Virgo's email to Shaun Baker on 20 April 2021 about moving Officer Statters. This appears in the list of issues at 2(l)(o) and is brought as a claim of direct race discrimination and direct sex discrimination)
- 183.2. those which relate to Ms Virgo instructing CM Baker to "send Officer Statters to CM Rogers hierarchy. This appears in the list of issues at 2(n)(v) and is brought as a claim of direct race discrimination, direct sex discrimination, harassment and victimisation. This is the same incident as that complained of at issues 2(l)(o) and so also occurred on 20 April 2021.

**Issues 3(d), 4(c), 5(e) and 7(d): If it [the claim] was not presented in time, did it form part of a continuing act of [direct race discrimination / direct sex discrimination / harassment / victimisation] under section 123(3)(a) of the Equality Act 2010 and if so, was that continuing act of [direct race discrimination / direct sex discrimination / harassment / victimisation] presented in time?**

184. The respondent submitted that the discriminatory state of affairs whereby the Claimant was treated less favourably than others in relation to opportunities for promotion or development because of her race and/or sex was still continuing. The respondent's case was that this was because Mr Odejimi had not returned from suspension to his Head of Function role and the practice of filling such role with fast-track candidates and not opening it up to open competition remained.
185. The Tribunal rejects that submission as a rejection of promotion does not amount to a continuing state of affairs. Instead, it amounts to a single act with continuing consequences, and the date of promotion of the comparator is the date on which the alleged discrimination is said to have taken place - **Amies v Inner London Education Authority [1977] ICR 308, EAT**.
186. As stated above, the issues which are in time arise out of the email sent on 20 April 2021. With that in mind, the Tribunal concludes that there was no continuing conduct extending over a period of time which ended on 20 April 2021 in this case. It was clear to us that the claimant's claims were a series of isolated and unconnected acts. The matters complained of concerned different

incidents of different types involving different alleged discriminators. Indeed, this was accepted by the claimant under cross-examination.

**Issues 3(e), 4(d), 5(f) and 7(e): If it was not presented in time, would it be just and equitable for the tribunal to consider the complaint out of time?**

187. We conclude that it is not just and equitable to extend time. We acknowledge that the claimant was pursuing a grievance internally but that is just one factor we take into account when making our overall decision. Our reasons for our decision are as follows.
188. First, the claimant was in receipt of legal advice approximately three months before 24 February 2021. It was clear to us from the claimant's evidence that she first visited her solicitors in around November 2020 and that she also looked at online legal advice during this period. In addition, as early as 17 December 2020 the claimant's solicitors (Chris Solicitors, who still represent her) sent a lengthy and detailed 'Urgent' pre-action letter to the respondent (pages 539-554). Notably, this letter stated, "We ask that you provide a detailed response to this letter within 7 days of the date of this letter. If no response is provided a claim may be started without further warning" (page 539).
189. Second, the claimant was a member of a trade union (the POA) at all material times. During cross-examination the claimant stated that she asked her trade union representative around autumn/winter 2020 for advice about bringing employment tribunal claims.
190. Third, we find that even prior to autumn 2020, the claimant knew about Employment Tribunals and knew that Employment Tribunals had time limits. She accepted that point during cross-examination. She also accepted during cross-examination that she did not search on the internet to find out what the relevant time limits were, and that she did not ask her union this question either.
191. Fourth, the claimant also accepted during cross-examination that there was nothing preventing her from bringing a tribunal claim earlier and that she could have brought her claims sooner.
192. In reaching this decision the Tribunal has also taken into account the fact that Mr Ian Blakeman advised the by email on 23 December 2020 to "submit the grievance and let that run its course before pursuing legal action" (page 312). However, we accept the respondent's submission that Mr Blakeman's advice was given in his capacity as a Governor and was not legal advice. In any event, it was also apparent to us that the claimant did not materially rely on Mr Blakeman's advice and instead relied on the legal advice she received from her own solicitors. This is clear from the claimant's email of 24 December 2020 to Mr Blakeman where she stated, "... I have considered the pros and cons and I am submitting my complaint as a grievance. I respectfully request that the issues raised in the legal letter be incorporated in my grievance. I have discussed this with my solicitors and they are in agreement with me" (page 312).
193. If however we are wrong on the question of time, we now go on to consider the merits of the claimant's complaints. We shall deal first with the issues of whether the claimant did a protected act for the complaints of

victimisation, before working through the list of issues in sequential order and considering the merits of each complaint in turn.

**Issue 6(a): Did the Claimant do a protected act? The Claimant relies upon:  
(a) Providing evidence in support of the Respondent in response to an employment tribunal claim brought by Ms Virgo**

194. The Tribunal accepts the respondent's submission that this cannot be a protected act as Ms Virgo did not bring an employment tribunal claim. It was apparent to us that the claims intimated by Ms Virgo's solicitors in a pre-action letter sent to the Prison on 5 May 2019 were claims of breach of statutory duty (Management of Health and Safety at Work Regulations 1999), negligence, and breach of contract (pages 527-537). Apart from paragraph 61 of her witness statement, the claimant did not provide any evidence to demonstrate this amounted to a protected act. We should also state that we do not accept paragraph 61 to be an accurate representation of the facts as it contradicts the information in the pre-action letter which Ms Virgo's solicitors sent.

195. In reaching our decision, we took into account that the claimant did not allege in either ET1 or in her witness statement that the claim Dizzy Virgo made was under the EqA 2010. We also accept that the respondent has no records of any claim being made by Ms Virgo under the EqA 2020.

196. We therefore conclude that Ms Virgo did not bring, or indeed threaten to bring, proceedings under the EqA 2010. Consequently, it cannot be said that the claimant gave evidence or information in connection with proceedings under the EqA 2010 or that she did any other thing for the purposes of or in connection with the EqA 2010. The claimant did not do a protected act.

**Issue 6(b): Did the Claimant do a protected act? The Claimant relies upon:  
(b) A complaint made on 18 July 2020**

197. We note that paragraph 40 of the claimant's submissions states, "The second alleged protected act relates to information provided on 18 July 2020. As the information cannot be shown to be connected in any way to the Equality Act 2010 it is accepted that this was not a protected act."

198. In light of that concession by the claimant, we did not consider this issue further.

**Issue 6(c): Did the Claimant do a protected act? The Claimant relies upon:  
(c) A grievance lodged on 27 October 2020.**

199. This grievance appears in the bundle at pages 267-280 and we accept that on 27 October 2020 the claimant submitted a grievance against Dizzy Virgo by sending an email to Ruth Hipwell attaching the standard GRV1 form. The Respondent conceded at paragraph 74 of its submissions that this was a protected act.

200. In light of that concession by the claimant, we need not consider this issue in detail save to conclude that this is a protected act.



201. Paragraph 1 of the list of issues was narrative, so we start with issue 2(a). Due to the manner in which the list of issues has been drafted, it is also necessary to have regard to additional issues to address fully the alleged acts of discrimination. In brief the structure adopted involves consideration of:

201.1. Whether the matter complained of occurred.

201.2. If it did, whether it amounts to direct race discrimination.

201.3. If it did, whether it amounts to direct sex discrimination.

201.4. If it did, whether it amounts to harassment related to race (for matters 2 (k), (n), (o), (p) and (q).

201.5. If it did, did it amount to a detriment and, if so, was the claimant subjected to that detriment because she had lodged a grievance on 27 October 2020 (for matters (k), (n), (o), (p) and (q).

**Issue 2(a): She has remained on the position of substantive custodial manager on band 5 grade since 2012 while her white colleagues have been promoted to higher band grades (para 2)**

**Issue 3(a): Did the matter occur?**

202. The claimant did remain as a Band 5 CM from Summer 2012 until she was appointed as Band 7 Head of Function Operational at HMP Woodhill in March 2022.

203. The claimant gave evidence, which we accept, that she applied for an acting Band 7 role in 2016, and that Pete Warren, a white man, was appointed to that role. We also accept that she applied for an acting Band 7 role in 2017, and that Richard Hawksworth, a white man, was appointed to that role.

204. However after Richard Hawksworth was appointed to the acting Band 7 role in 2017, no further operational Band 7 roles (whether acting or substantive) became available at HMP Pentonville until after the claimant moved to HMP Woodhill. The only exception to that was roles which were filled by individuals on fast-track schemes. As the claimant was not on any of the fast-track schemes those roles were not available to her.

205. The fact that the claimant was not promoted during her time at HMP Pentonville was not unusual. Promotion opportunities were infrequent at HMP Pentonville and there were a number of employees seeking promotion. On that point we accepted the evidence of Ms Hipwell at paragraph 11 of her witness statement. We accept that it is not unusual for individuals working within HMP Pentonville to go a long time without promotion. We also accepted the evidence of Mr Blakeman that there was a promotion logjam for accredited Band 5 Custodial Managers wanting to become Band 7s. This was aggravated by the fact that HMP Pentonville had to accommodate a number of people on fast-track schemes who came into the prison at Band 7 (in the case of people on the Accelerated Development Scheme, such as Vafo Navkarov and Jack Isaac) or Band 8 (in the case of people on the Senior Leadership Scheme, such as Samantha Cornberg). Individuals on those fast-track schemes needed to be slotted into available roles at short notice and this could result in them undertaking Band 7 roles which had become available unexpectedly. This was most apparent in the case of Ms Cornberg who undertook Governor Odejimi's role shortly after he was suspended in September 2019.

206. Mr Sagar expresses a minority opinion on this issue in the terms set out in appendix A.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

207. The respondent conceded that not being promoted is less favourable treatment. Consequently, the key issue for the Tribunal is whether that less favourable treatment was because of the claimant's race (or, in the alternative, sex). We do not accept that the less favorable treatment was because of the claimant's race or sex. Our reasons for reaching that conclusion are as follows.

208. In relation to the appointments of Pete Warren and Richard Hawksworth the claimant has not shifted the burden of proof as she had not identified the alleged discriminators who appointed those individuals. In addition, the claimant conceded during cross-examination that the individual(s) who appointed Mr Warren and Mr Hawksworth were probably of the opinion that they were more appropriate candidates for the roles in question rather than the claimant.

209. The claimant also accepted during cross-examination that she was unable to apply for substantive Band 7 roles until 7 May 2021, as it was only at that point in time that she passed the Silver Command Assessment and received IMSC accreditation. That was the accreditation needed to undertake Band 7 roles on a substantive basis. It is also evident to the Tribunal that the claimant was not the only Band 5 CM at HMP Pentonville to be accredited for Band 7 roles and that a number of other individuals had also achieved accreditation and were seeking promotion. On that point, we accept the evidence of Mr Blakeman who stated that CM Sharon Kelly and CM Jeanette Turrell were also accredited Band 5 Custodial Managers looking for promotion to Band 7 roles at that point in time.

210. It was also apparent that the claimant was not an obvious candidate for promotion. We accepted the evidence of Ms Hipwell on that point. It was clear that during her time at HMP Pentonville there were concerns about the quality of the claimant's work. The claimant had also engaged in a petty and prolonged spat with Ms Virgo which disrupted the working environment of the Prison.

211. When Ms Hipwell completed the Readiness for Applying for a Head of Function (Band 7) documentation in November 2021 she observed that the candidate might be ready for a Band 7 role with a further 6 to 12 months development. Ms Hipwell commented, "Hawa will make a competent Head of Function however is aware that she needs to develop her communication skills and ability to get staff and colleagues to work with her. Much of this is her failure to communicate her required outcomes in a manner which leaves staff and colleagues wanting to work with her. As Hawa actively seeks to understand the effects of actions on the establishment as a whole her understanding of required management skills will grow."

212. With the exception of Natalie Adams, the named comparators used by the claimant are not suitable comparators as they were already at Band 7 or Band 8 rank and so cannot be said to have been 'promoted to higher band roles'. Natalie Adams is also not an appropriate comparator as she was employed in a non-operational role and so her material circumstances are not the same as the claimant.

213. We also accept the evidence of Mr Blakeman that at all material times there have been black African members of staff in senior positions at HMP Pentonville. For example, the following individuals have been members of the Senior Management Team: Mr Anthony Adebajo, Mr Oke Oluksengan, Olugbenga Odejimi and Mr Jonas Agyepong.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

214. The respondent conceded that not being promoted is less favourable treatment. The issue was therefore whether that less favourable treatment was because of the claimant's sex. We do not accept that it was. Our reasons for reaching that conclusion are same as appear in our discussion of issue 3(b) in relation to this issue.

215. We also accept that all material times there have been women in senior positions at HMP Pentonville, such as Ms Hipwell and Ms Kat Lawrence (Deputy Governor).

**Issue 2(b): On 27th October 2020 she submitted grievances to her line manager Ms Hipwell but this was not actioned (para 3) and her chasing up this grievances complaint did not yield result**

**Issue 3(a): Did the matter occur?**

216. This alleged act did not occur. It is clear to the Tribunal that the grievance which the claimant submitted to Ruth Hipwell on 27 October 2020 was actioned. Mr Navkarov actioned and investigated the claimant's grievance. We have in the bundle at pages 328 to 344 a copy of the claimant's grievance with Mr Navkarov's findings. The claimant was also informed that she could appeal the findings of Mr Navkarov to Ms Kat Lawrence but she chose not to do so.

**Issue 2(c): On more than 2 occasions the claimant's colleague Fulvia Virgo subjected her to racially motivated bullying, social media/Facebook abuses and harassment. The Claimant relies on the following Facebook/social media comments in particular:**

**i. 02.03.2018 – a Facebook comment “it is a shame that beneath the exterior you portray to people the reality is the opposite! I hope your conscience can allow you to continue to stand tall”**

**ii. 05.02.2019 – a Facebook comment “Blackdiamond Rogers “I hear your blessed too Blackdimond” emojis of laughter and kisses**

**iii. 11.02.2019 – An email to the Claimant copying in the Head of Res “making allegations and rantings” about the Claimant**

**Claimant complained to her line manager Hipwell on 1 March 2019 and no action was taken (Para 6).**

**Issue 3(a): Did the matter occur?**

217. We have already made findings of fact in relation to 2(c)(i), (ii) and (iii). We accept that:
- 217.1. Dizzy Virgo did indeed leave the comment in question on Facebook on 2 March 2018.
- 217.2. On 8 February 2019 Dizzy Virgo left a Facebook comment in reply to a post by the claimant stating, "I hear your blessed too BlackDimond 🙄🤔".
- 217.3. On 10 February 2019 Dizzy Virgo emailed the claimant about the Facebook comment she made on 8 February 2019 and other matters. It is also clear that she copied in Mr Young and the then Governing Governor, Mr Darren Hughes. That email is in the bundle at pages 115 to 116.
218. We do not accept that the claimant complained to her line manager, Ms Hipwell, on 1 March 2019 and no action was taken. What is clear to us is that the claimant submitted the March 2019 grievance by sending an email to Mr Dixey. When Mr Dixey informed the claimant on 27 March 2019 that the March 2019 grievance has been logged, the claimant did not express any disquiet. Instead, when Mr Dixey asked the claimant if she was happy for the March 2019 grievance not to be progressed until Ms Virgo returned from leave, the claimant indicated that she was. That is apparent from page 143 of the bundle.
219. At paragraph 9 of her witness statement, the claimant alleges that she was called a black demon by Ms Virgo. There is no evidence to support that allegation. The Facebook posts to which the Tribunal was referred, specifically the post of 8 February 2019, clearly indicates that Ms Virgo used the expression "BlackDimond". To understand the context of that, it should be explained that the claimant's profile name on Facebook was "BlackDiamond". The Tribunal accepts the submission made by the respondent that the explanation for Ms Virgo using the wording 'BlackDimond' is that it is a typo for 'BlackDiamond'. Spelling and grammatical errors are frequent on social media and it is apparent to the Tribunal that the majority of social media users pay little regard to their spelling or grammar. In respect of this, the claimant has exaggerated the allegations and attempted to interpret words used by Ms Virgo on Facebook in an unreasonable manner.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

220. We do not accept that the less favourable treatment was because of the claimant's race or sex.
221. Mr Dixey's actions in the manner in which he dealt with the claimant's March 2019 grievance were not because of her race or sex. The reason why Mr Dixey dealt with the March 2019 grievance in the manner he did was because Ms Virgo was off work at the time and the claimant consented to the grievance not

being progressed for that reason. Unfortunately, it appears that this grievance was then overlooked and not progressed on Ms Virgo's return.

222. In relation to the Facebook posts in question, none of the comments left by Ms Virgo related to the claimant's race (or sex). In addition, Ms Virgo's email of 10 February 2019 also did not relate to the claimant's race or sex. Quite simply, the reason for Ms Virgo making the Facebook posts in question and sending the email of 10 February 2019 was because of Ms Virgo's intense personal dislike of the claimant. The Tribunal had ample evidence before it, which it accepts, that Dizzy Virgo and the claimant had an intense dislike of one another and that this severely and adversely affected their working relationship. A catalyst for the deterioration in the relationship between the two was the decision by the claimant, in approximately February 2018, to place Ms Virgo on a performance management plan. Both the claimant and Ms Virgo were dominant personalities who were used to getting their own way and were unwilling to back down.

Issue 4a: If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

223. We do not accept that the treatment of the Claimant was because of her sex. Our reasons for reaching that conclusion are same as appear in the above paragraphs.

**Issue 2(d): In October 2019 the claimant took the requisite exam and got the result with pass in January 2020 and waited for promotion to no avail. On 17 September 2019 she had met with Deputy Governor Dixey to discuss her promotion to Governor band 7 and thereafter Mr Dixey did not get back to her (Para 8-9)**

**Issue 3(a): Did the matter occur?**

224. The requisite exam which would enable the claimant to achieve promotion to substantive Band 7 roles was the IMSC accreditation. She did not achieve that accreditation until 7 May 2021. The Tribunal also accepts the respondent's submission that it is not correct to imply that the claimant could have been promoted by waiting for promotion. It was clear to us that promotion was a competitive process at HMP Pentonville and that individuals were required to identify a suitable vacancy and then apply for that vacancy. It is also clear to the Tribunal that there were no suitable vacancies at HMP Pentonville from 2017 onwards until after the claimant commenced employment at HMP Woodhill.

225. The Tribunal accepts that the claimant met with Mr Dixey on 17 September 2019 to discuss a number of matters, including her future career prospects. The majority of the Tribunal accept that the conversation that Mr Dixey and the claimant had was general in nature and that Mr Dixey did not give any indication to the claimant that she would certainly be promoted to a Band 7 role. The conversation was general in nature and Mr Dixey merely indicated to the claimant that he would support the claimant to develop her career and support her with applications should a suitable promotion opportunity arise. This was

an approach that he would adopt with anyone else in the same position as the claimant.

226. Whilst we accept that Mr Dixey did not get back to the claimant after the conversation, we consider that he was under no obligation to do so. He had made no promise to the claimant that he would get back to her after their conversation of 17 September 2019 as there were no specific matters or issues he needed to follow up with the claimant. Following the meeting of 17 September 2019 the onus was on the claimant to identify suitable promotion opportunities and apply for them in the standard manner. Mr Dixey would then support her with any applications made in such standard manner.

227. Mr Sagar expresses a minority opinion on this point in the terms set out in appendix A.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

228. This was not less favourable treatment on the grounds of race. The discussions that Mr Dixey had were general in nature and he treated the claimant in exactly the same manner as he would any other employee. There was no obligation on Mr Dixey to contact the claimant after their meeting of 17 September 2019 nor had he indicated that he would.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

229. This was not less favourable treatment on the grounds of sex. Again, the discussions that Mr Dixey had were general in nature and there was no obligation on Mr Dixey to contact the claimant after their meeting of 17 September 2019.

**Issue 2(e): On 4 October 2019 claimant met with Governor Darren Hughes during which she indicated her interest in the band 7 position vacated by Mr Odejime which she was already occupying. Few weeks thereafter Mr Hughes brought Ms Samantha Cornberg from HMP Chelmsford and put her into that position and within 7 months promoted her to band 8 (Para 11-12).**

**Issue 3(a): Did the matter occur?**

230. The claimant met with Mr Hughes, the then Governing Governor, on 4 October 2019. By this point in time Mr Odejimi had been suspended and the claimant, along with others, had been covering Mr Odejimi's work in his absence. It is not therefore correct to say that the claimant alone was occupying that role. The Tribunal unanimously accepts that the claimant did indicate her interest in undertaking Mr Odejimi's role to Mr Hughes whilst Mr Odejimi remained suspended. The majority of the Tribunal do not accept that Mr

Hughes assured the claimant she would undertake Mr Oedjimi's role. Instead Mr Hughes indicated to the claimant that he would assist her with her career development in general terms. It was clear to us that for individuals not on one of the Fast Track schemes, appointment to a Band 7 role could only be obtained by taking part in a competitive process.

231. Around mid-October 2019 Ms Cornberg started to undertake Mr Odejimi's role. As a member of the Senior Leadership Fast Track scheme Ms Cornberg was already a Band 8 and so it is not correct that Mr Hughes promoted her from a Band 7 to a Band 8. It is also not correct that Mr Hughes brought Ms Cornberg to the Prison from HMP Chelmsford. We accept Mr Hughes's evidence as to how the fast-track schemes operate. He informed us that individuals on such schemes have their salaries and training funded by the central prison service, rather than HMP Pentonville, so they represent 'surplus' staff additional to the usual staff in post numbers that the Prison is required to find suitable work for. As the Prison has to find suitable work for individuals on the fast-track scheme, the decision was made by Mr Hughes to have Ms Cornberg undertake Mr Odejimi's role as Head of Operations.

232. Around September 2020 Ms Cornberg became Head of Business Assurance which was a Band 8 role. It is not correct for the claimant to state that Mr Hughes promoted her to that position as Mr Hughes left the prison in late 2019. It is also not correct that this was a promotion for Ms Cornberg. By her membership of the Senior Leadership Fast Track scheme, Ms Cornberg was already a Band 8. What happened around September 2020 was simply a reorganisation of work so that Ms Cornberg now undertook work at a level which was equivalent to her Banding.

233. Mr Sagar expresses a minority opinion on this point in the terms set out in appendix A.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

234. Not only did key elements of this allegation not occur but those elements that did do not amount to less favourable treatment because of the claimant's race for the reasons set out above. In particular, Ms Cornberg undertook the roles she did due to her membership of the Senior Leadership fast-track scheme. The claimant was not a member of any fast-track scheme.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

235. Again, those elements that did occur do not amount to less favourable treatment because of the claimant's sex for the reasons set out above. We state again that the claimant was not a member of any fast-track scheme.

Issue 2(f): On 12/08/2019 a new fast-track system of employing governors under the age of 35 was introduced and under this scheme 6 new governors were employed namely: Katherine Lawrence, Samantha Cornberg, Lauren McFarlane, Mr Vaso [sic] Navkarov, Mr Jack Isaac. Later Natalie Adams was promoted from band 4 to band 8 between 2019 and 2022, a position which should have been given to the claimant. The above-mentioned male and female white fast-track governors are degree holders as the claimant yet they were placed above her. The Union complained of lack of diversity in all the promotions and Respondent did nothing about it. Claimant ended up training her “new boss” Ms Samantha Cornberg (para 14 – 15).

Issue 3(a): Did the matter occur?

236. The claimant produced no credible evidence to the Tribunal that a new fast-track system of employing governors under the age of 35 was introduced by the respondent on 12 August 2019 or at any point during the material period. Instead, it was clear to us that a number of fast-track schemes were in operation in the Prison Service around this point in time. These included the Accelerated Development Scheme (which Vafo Navkarov and Jack Isaac were on) and the Senior Leadership Scheme (which Samantha Cornberg, was on). We had clear evidence of the Senior Leadership Scheme at pages 616 to 619 of the bundle. This demonstrated that this scheme was a 3-year development programme designed to fast-track candidates with proven management and leadership experience to become either prison deputy governors or governors.

237. It was clear to us that Kathryn Lawrence, Samantha Cornberg, Lauren McFarlane, Vafo Navkarov and Jack Isaac were on one of the Prison Service’s Fast Track schemes and were posted to the Prison at some point around 2019. In addition, due to their membership of a fast-track scheme, those individuals were already Band 7s or Band 8s when they were posted to the Prison. We accept that budgetary pressures on the Prison meant that senior management had to deploy Fast Track staff into Band 7 or Band 8 roles rather than promoting a Band 5. Not only did these individuals need to be appointed to a Band 7 or 8 role in order to obtain appropriate experience due to their membership of the scheme but they were also centrally funded and so represented a cost-neutral member of staff who could be deployed into a Band 7 or 8 role. This contrasted with the claimant whose deployment into any temporary Band 7 role would need to be met from the local budget of the Prison.

238. With regard to Natalie Adams, the claimant’s representative stated that the list of issues should actually read, “Later Natalie Adams was promoted from band 4 to band 8 between 2019 and 2022, a position which should have been **“open to all”** (emphasis added). The respondent did not object and so we considered the issue using that new form of words.

239. The claimant did not produce evidence that Natalie Adams was promoted from Band 4 to Band 8 between 2019 and 2022. Instead, we prefer the evidence of the respondent on this point who gave evidence that Natalie Adams was employed in a non-operational role as a Band 6 Learning & Skills Manager. It was clear to us from the evidence that the claimant had limited knowledge of the Bands that individual employees were employed on. By way of example, she misunderstood how the fast-track schemes operated and what Bands were assigned to individuals employed on those schemes. When Ms Adams was promoted to a temporary Band 8 role as Head of Reducing Reoffending, that



role was also a non-operational role and so was not suitable for the claimant, as she was an operational member of staff. We had insufficient evidence before us that the Band 8 role was not opened to all relevant staff. We use the term "relevant staff" as there was no need for the respondent to offer a non-operational role up for competition to operational staff. The two roles were distinct from one another.

240. We accept that all the actual comparators that the claimant has named are white. All those individuals were members of one of the Prison Service's fast-track schemes and we accept that due to the manner in which the fast-track schemes operated, the senior management of the Prison had no control over the ethnic make-up of fast-track staff posted to the Prison. Even if there were complaints from the unions, and we have insufficient evidence of such complaints, the senior management of the Prison lacked the power to address the lack of ethnic diversity amongst fast-track staff placed into senior roles.

241. The Tribunal is however concerned about the possible lack of diversity in the Prison Service's fast-track schemes, a point perhaps best illustrated by the overwhelmingly white make up of the individuals contained in the photograph showing individuals on the fast-track scheme at page 616 of the bundle. We would encourage the Prison Service to encourage applications from under-represented groups in future intakes.

242. We do not accept that the claimant ended up training Samantha Cornberg. We prefer Mr Navkarov's evidence on this point. Mr Navkarov gave credible and reliable evidence as to how the claimant ended up assisting him with learning his new role when he became the claimant's line manager in June 2020. At that point in time Mr Navkarov became Head of Visits and as he was learning that role at pace as a fast-track scheme member, he sought guidance from more experienced members of existing staff such as the claimant. In light of that, it is entirely plausible that Ms Cornberg would also have adopted a similar approach and we do not accept that this amounted to wholesale training of Ms Cornberg by the claimant.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren McFarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

243. The Tribunal accepts that the claimant was treated less favourably than those individuals employed on one of the fast-track schemes in operation within the Prison Service at the material time. Those individuals included Kathryn Lawrence, Samantha Cornberg, Lauren McFarlane, Vafo Navkarov and Jack Isaac. In terms of the reason for that less favourable treatment, the Tribunal accepts that the reason for the less favourable treatment was because the claimant was not on any fast-track scheme whilst her named comparators were. Any individual, of any race, not on a fast-track scheme would have been treated in the same manner as the claimant. The claimant was not less favorably treated because of her race or her sex but because she was not a member of any fast-track scheme.

244. It is clear to the Tribunal that the promotion of Natalie Adams did not amount to less favourable treatment of the claimant because of her race, or indeed sex, as Ms Adams was employed in a non-operational whilst the claimant was employed in an operational role. That was the reason for the difference in treatment.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

245. For the reasons given in the preceding paragraphs, the Tribunal does not accept that the treatment of the claimant was because of her sex.

**Issue 2(g): On 17 October 2019, the Claimant requested to be allowed to go on detached duty at HMP Chelmsford and this was initially accepted. This was later frustrated around 8th November 2020 by the Respondent. Claimant suffered insomnia leading to excessive alcohol consumption and her relationship suffered too. (para 16 – 20).**

**Issue 3(a): Did the matter occur?**

246. The majority of the Tribunal do not accept that the Claimant requested to go on detached duty at HMP Chelmsford on 17 October 2019. Instead, we accept that there was a formal process for arranging detached duty and that the claimant did not comply with that formal process. It was clear to the majority that authority would first be needed from the Governing Governor of the releasing site i.e. at that point in time Darren Hughes. We also accept that detached duties affect staffing levels at the releasing site and, in Autumn 2019, CMs were in short supply at HMP Pentonville. From the perspective of HMP Pentonville, there would therefore have been no sound business reason for the claimant undertaking detached duty at HMP Chelmsford. This was further underlined by the evidence given by the claimant when she accepted, under cross-examination, that if she had left the Prison on detached duty an individual in a Band 3 or Band 4 role might have to act up in her absence. That would constitute an increased cost to the Prison.

247. We also have evidence, in the bundle, of emails sent between the claimant and Mr Hughes on 15 October 2019. In those emails the claimant was clearly told by Mr Hughes that detached duty “would need to go through the regional workforce planning committee.” (page 654) In that same email Mr Hughes also stated, “Normally moves are based on compassionate grounds bearing in mind local/regional business need. Otherwise, it is normally through open competition (I know staff who want to come to Pentonville but there still has to be adherence to relevant policies)– do you know if Chelmsford [has] any vacancies? Is there a CM from Chelmsford who wants to come to Pentonville?” This email clearly demonstrates that Mr Hughes did not approve a period of detached duty.

248. What followed that email was that the claimant then emailed Mr Kevin Reilly, the Prison Group Director for Hertfordshire, Essex and Suffolk, on 17 October 2020 stating, “I would be grateful if you can support me in going on detached duty to Chelmsford, hoping to bring with me a wealth of knowledge and experiences. I have discussed my proposal with the current governor, Mr

Darren Hughes and he has agreed to support me.” We find that whilst Mr Hughes may have offered to support the claimant’s career development, he did not approve the claimant’s alleged application for detached duty. He also did not agree to support her undertaking a period of detached duty at the point in time. The majority of the Tribunal find that that it was wrong for the claimant to directly approach Mr Reilly about this matter as she had already been made aware of the correct procedure for requesting a period of detached by Mr Hughes on 15 October 2019. For these reasons, it is not correct that the request for detached had been approved and so therefore neither was it later frustrated by the respondent.

249. We should also state that whether the claimant suffered insomnia and/or relationship difficulties is not relevant to liability and so we do not address that here.

250. As the majority of the Tribunal do not accept that issue 2(g) occurred, we shall not go on to consider issues 3(b) and 4(a) in relation to the same.

251. Mr Sagar expresses a minority opinion in relation to this issue which can be found at Appendix A.

**Issue 2(h): The Claimant took time off work and travelled abroad to recover and on her return both Samantha Cornberg had been promoted to band 8 and Fulvia Virgo had been promoted to band 7.**

**Issue 3(a): Did the matter occur?**

252. This matter did not occur. At all material times, Samantha Cornberg was already a Band 8 due to her membership of the Senior Leadership fast-track scheme. Mr Blakeman gave evidence which we accepted that Ms Cornberg was already a Band 8. The reason we accepted Mr Blakeman’s evidence was due to the fact that we also had evidence in the bundle which described the operation of the fast-track scheme and which accorded with Mr Blakeman’s evidence (pages 616 to 619).

253. It was also clear to us that Ms Virgo was never promoted to a Band 7. On balance we prefer Ms Hipwell’s evidence on this point where she told the Tribunal that Ms Virgo was never promoted to a Band 7. The correct position was that Ms Virgo was initially a Band 4 and then ‘acted up’ to a Band 5. Although she was later appointed as a substantive Band CM, there was no evidence before us that she was promoted to a Band 7 role at any point.

254. We should also state that whether the claimant took time off work and travelled abroad to recover is not relevant to liability and so we do not address that here.

255. As issue 2(h) did not occur, we shall not go on to consider issues 3(b) and 4(a) in relation to the same.

**Issue 2(i): Around 10 September 2020 claimant’s office was taken over by two white males under the instruction of her line manager Ms Hipwell who authorised them to move into her office in her absence without informing her and all her personal stuffs were thrown away such as her family pictures and**

**other personal items. She never recovered them (para 23). The Claimant asserts that a white female would not have been treated in the same manner and relies upon a hypothetical comparator in relation to this act.**

**Issue 3(a): Did the matter occur?**

256. The Tribunal accepts that in September 2020 the claimant was moved to a new office and that two white men, namely Mr Navkarov and Mr Isaac, moved into her old office.

257. The Tribunal does not accept that the claimant was not informed about the move. We accept Mr Navkarov's evidence on this issue. Mr Navkarov gave credible and reliable evidence on this issue. He appeared to us to be an impartial witness and it was clear that the claimant and Mr Navkarov enjoyed a positive relationship with one another whilst working at HMP Pentonville. He certainly bore no grudge against the claimant.

258. Mr Navkarov's evidence was that after being told she needed to move office, it took the claimant a number of weeks to leave her old office and that she had plenty of time to move.

259. We also do not accept that her personal items were thrown away. Again, we prefer Mr Navkarov's evidence. He stated that the claimant's office contained an excessive amount of rubbish and old paperwork when he and Mr Isaac moved in. Consequently, Mr Navkarov and Mr Isaac decided to clear all rubbish from the claimant's old office. We also accept Mr Navkarov's evidence when he stated, "I can certainly say that, had we have found anything that looked like it might have been a personal possession, this would have been put to one side for Hawa. I do not believe that anyone else would have thrown out Hawa's personal possessions before we moved in, not least because it would make no sense to throw out personal possessions but not the rubbish." Mr Navkarov's explanation appeared to the Tribunal to be the most sensible explanation for certain items being removed from the claimant's old office.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

260. We accept that the office move did occur but we do not accept that the reason for the office move was because of the Claimant's race. On this issue we again accept the evidence of Mr Navkarov, specifically that contained at paragraphs 27 and 28 of his witness statement. He described how the office move was designed to increase the visibility of the claimant within the Prison as she was often not readily contactable. The office move was also designed to address concerns that the claimant was not performing her work to a suitable standard. Finally, the office move was designed as a last ditch attempt to improve relations between the claimant and Ms Virgo. We find that those are the reasons for the claimant's office move rather than her race or sex.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would

treat others in circumstances which are not materially different because of the Claimant's sex?

261. For the reasons given in the preceding paragraph, this did not amount to less favourable treatment because of the Claimant's sex.

**Issue 2(j): Claimant had submitted the following grievances/complaints and none of them had been logged let alone investigated as provided under their policy.**

**(i) 28.11.2018 – Grievance against Noel Young**

**(ii) 01.03.2019 – Grievance against Dizzy Virgo**

**(iii) 23.06.2020 – Grievance against Noel Young**

**(iv) 27.10.2020 – Grievance against Dizzy Virgo**

**(v) 22.12.2020 – Grievance against Ruth Hipwell and Steve Dixey**

**But the claimant had the following complaints made against her and all of them had been fully logged and investigated, and dismissed (para 27). The Claimant relies on a hypothetical comparator in relation to these acts.**

**a. OSG Jay Wayman – allegation of bullying, heard by Gov. Pete Warren in 2019.**

**b. OSG Magella Sewell – work attendance & performance investigated by Gov Ian Rodger on 16/12/2020**

**c. Unknown OSG – allegation of leaving P2 gate open –investigated by Gov Ian Rodger on 16/12/2020**

**d. Officer Emma McAulay – bullying for passing through Claimant's office during a meeting to toilet - investigated by Gov Ian Rodger on 16/12/2020**

**e. OSG Oluyadi – sick absence being investigated (7mnths off work).**

**f. OSG Oyeleke – reported to Ms Hipwell.**

**g. CM Kelly wrote a confidential Intelligence report accusing Claimant of fraud. Terms of reference required the investigator "To investigate the attendance of CM Rogers from 01/01/2017 – 07/07/2017 to ascertain if there is evidence or not to support to the contents of CP IR CPCR00099103 that CM Rogers is not attending for work but recording that she is".**

**Issue 3(a): Did the matter occur?**

262. In respect of issue 2(j)(i), we accept that on 28 November 2018 the claimant submitted a grievance against Noel Young. She did this by filling in the standard GRV1 form and attaching it to an email sent to Mr Dixey (pages 86 to 101 of the bundle). This was never investigated. The reason for the lack of investigation of this grievance was due to the fact that Mr Dixey asked the claimant to speak with him about this grievance. This was entirely in line with the grievance policy (pages 516 to 526), specifically paragraph 2.2 which states, "The expectation is that grievances will be dealt with at the lowest possible level within the organisation". In light of this, Mr Dixey asked the claimant to try to resolve her issues with Mr Young informally before proceeding down the formal grievance route. At this point in time, the claimant had not tried to resolve the matter informally with Mr Young. There was an email in the bundle, dated 13 December 2018, from Mr Dixey to Mr Hughes which demonstrated that Mr Dixey had not logged the claimant's grievance at that point in time as she had not attempted to resolve the matter informally. Mr Dixey also said in that email, " I have asked her to do this.. if this cannot be resolved then to place the grievance in formally." The claimant never got back in contact

with Mr Dixey about her attempts to resolve the matter informally with Mr Young and so Mr Dixey did not log her grievance.

263. In respect of issue 2(j)(ii) the claimant's grievance against Ms Virgo dated 1 March 2019 (pages 118-131) was logged by Mr Dixey on 27 March 2019. That is confirmed by documentation in the bundle at page 143-144. The fact that the grievance had been logged was also communicated to the claimant on 27 March 2019 (page 143). As Ms Virgo was on sick leave at the time, it was decided that an investigation could not proceed until her return to the prison and could be interviewed. That fact was discussed between the claimant and Mr Dixey and then confirmed by email to the Claimant. The Claimant indicated by email that she understood the need to wait for Ms Virgo's return (page 143). This grievance was not investigated following Ms Rodgers' return to work.
264. In respect of issue 2(j)(iii), the claimant's grievance against Noel Young, dated 23 June 2020 (pages 206-221) was logged by Mr Dixey on 30 June 2020. Mr Dixey communicated that fact to the claimant by means of an email of the same day at 16.01 (page 224). This grievance was then investigated but not upheld. The claimant admitted during cross-examination that she did not appeal the grievance outcome.
265. In respect of issue 2(j)(iv), the claimant's grievance against Ms Virgo dated 27 October 2020 (pages 267-280) was logged and investigated by Mr Navkarov. Mr Navkarov provided a detailed outcome in relation to the claimant's grievance which appears at pages 334 to 348 of the bundle.
266. In respect of issue 2(j)(v), the claimant's grievance against Ms Hipwell and Mr Dixey dated 22 December 2020 (pages 297 to 311) was logged late. We accept that this was due to severe staff shortages within HMP Pentonville during late December 2020 and January 2021 caused by Covid. Mr Blakeman, the Governing Governor, gave evidence which we accepted that he and Mr Dixey, the Deputy Governor, both had to serve meals to prisoners on Christmas Day 2020 because staff absences were so severe. As a consequence of these staff shortages, the claimant's grievance was not logged until 1 February 2021 and registered by Shared Services on 5 February 2021 (page 319). Following the grievance being logged, it was investigated by Mr Golder, Governor at HMP Belmarsh and a copy of his investigation report appeared in the bundle at pages 363 to 366. Mr Blakeman then produced a grievance outcome following Mr Golder's investigation report (pages 373 and 381). Following that the claimant appealed the grievance outcome and Mr Bickers, Prisons Group Director for London, chaired her appeal. A copy of his appeal outcome appears in the bundle at pages 441-444).
267. In respect of the complaints made against the claimant, we accept that these were not formal grievances and so there was no need for them to be logged and investigated. Indeed the claimant accepted when giving evidence that the matters listed at issue 2(j)a to 2(j)g were not formal complaints. The claimant also did not provide documentary evidence in relation to the complaints of OSG Oluyadi and OSG Oyeleke at issues 2(j)e and 2(j)f respectively.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack

Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

268. The claimant's grievance against Ms Virgo dated 1 March 2019 (pages 118-131) was not investigated following Ms Rodgers' return to work. We conclude that this was not investigated due to poor administration. It was apparent to us that the grievance procedure was being misused by staff at HMP Pentonville. In respect to the complaints of racial motivated bullying and harassment made via Facebook, the claimant exaggerated the allegations and attempted to interpret words in an unreasonable manner. We also accept that staff were raising a large number of grievances often for somewhat trivial issues. Mr Blakeman described how he saw more grievances in a six-month period at HMP Pentonville than he had in his previous eight and a half years as a Governing Governor. We accept that all other grievances of the claimant were logged and investigated appropriately. It is for these reasons that we conclude that the failure to investigate the claimant's grievance against Ms Virgo dated 1 March 2019 was not because of her race. It was simply due to poor administration caused in part due to the significant pressure the grievance system was under.

269. Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

270. For the reasons given in the preceding paragraph, this did not amount to less favourable treatment because of the Claimant's sex.

**Issue 2(k): In relation to moving her out of her office, Claimant states that Ms Virgo was informed earlier while claimant was not informed until 2 days later because she is a friend of her line manager Hipwell. Claimant states that this is a set-up knowing that there were unresolved issues of facebook abuses which she has complained against Ms Virgo as well as her obstruction of claimant's work. She has also complained of her being always on phone (discussing private matters and disrupting claimant's work). Her friend Michael Lawlor was always in their office discussing their personal matters. Ms Virgo would get together with her friend Michael Lawlor and they would divert claimant's trained staff from the Claimant's section, the staff that she needed to work. The Claimant complained to Ms Hipwell and Deputy Governor Dixey on 19.07.2020 and they did not take any action.**

**Issue 3(a): Did the matter occur?**

271. Ms Virgo moved into the new office before the claimant did but there is no evidence that Ms Virgo was informed about the office move any earlier than the claimant.

272. Ms Virgo is not a friend of Ruth Hipwell. On this point we accepted the evidence of Ms Hipwell who informed the Tribunal that her relationship with Ms Virgo was purely professional.

273. We do not accept that the office move was a set-up. On this issue we again accept the evidence of Mr Navkarov, specifically that contained at paragraphs 27 and 28 of his witness statement. He described how the office move was

designed to increase the visibility of the claimant within the Prison as she was often not readily contactable. The office move was also designed to address concerns that the claimant was not performing her work to a suitable standard. Finally, the office move was designed as a last-ditch attempt to improve relations between the claimant and Ms Virgo.

274. We accept the respondent's submission that it is an exaggeration to say that Ms Virgo was always on the phone and/or that Michael Lawlor was in the shared office discussing personal matters. We accept this may have happened on occasion but was not continuous or indeed close to being continuous.

275. It is correct that Ms Virgo would divert OSGs to other duties from time to time but what is not correct is to describe those OSGs as being the claimant's staff. It was apparent to the Tribunal that these individuals were staff who were expected to be divided as appropriate between the Claimant and Ms Virgo as work needs dictated. On that point, we preferred Ms Hipwell's evidence at paragraph 51 of her statement where she stated, "Part of Dizzy and Hawa's responsibilities were to ensure that certain functions were properly staffed on any given day. Sometimes, issues arise (for example, an incident within the prison or unexpected sickness absence) which require the reshuffling of staff. This is perfectly normal and not indicative that Dizzy was attempting to "frustrate and undermine" Hawa."

276. It is correct that the claimant raised certain issues with Ms Hipwell and Mr Dixey on 19 July 2020 (page 242) but she did not describe the matter as a complaint or request that Ms Hipwell take action. We accept Ms Hipwell's reasons for not getting back in touch with the claimant where she stated at paragraph 47 that, "Although Steve and I did take steps to try to resolve the issues between Hawa and Dizzy generally, I did not intervene into specific allegations made by either of them. This was because they would undermine each other at every point and I did not consider their complaints warranted individual intervention by a senior manager. Hawa in particular made allegations against Dizzy on a fairly regular basis. The vast majority of Hawa's complaints related to operational issues that were within her job remit to resolve herself. If a complaint about a specific incident had have warranted further investigation and action, I would have done this."

277. It is also not correct that Mr Lawlor, a Band 3 Prison Officer, would divert the claimant's staff. We had insufficient evidence to support that allegation.

278. Mr Sagar expresses a minority opinion in relation to this issue which can be found at Appendix A.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

279. We do not accept that any of the above amounted to less favourable treatment. If we are wrong on that, such treatment was not because of the Claimant's race. We accept the reasons given by Mr Navkarov for the office move. Ms Virgo's use of OSGs was in the main due to Ms Virgo's genuine requirement for OSGs to undertake legitimate work within the Prison. On any



occasions where Ms Virgo sought to take an excessive share of OSGs, we accept that she probably did this due to her intense personal dislike of the claimant as a person and the fact that the claimant had earlier placed her on an improvement plan. We do not however accept that the diversion of staff was because of the Claimant's race.

280. We also note that the Claimant alleged during cross-examination that she had been treated less favourably than all other CMs. As three CMs in the claimant's department were black Caribbean, i.e. Byfield-Johnson, Augee and Cato, the claimant's allegation that she has been less favourably treated because of her race lacks credibility.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

281. For the reasons in the preceding paragraph we also do not accept that the claimant was treated less favourably because of her sex.

Issue 5(a): If the matter occurred, was it unwanted conduct?

Issue 5(b): If so, was it related to race?

Issue 5(c): If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

282. For the reasons given above, we do not accept that the treatment of the claimant was related to race.

Issue 7(a): If the matter occurred, did it amount to a detriment?

Issue 7(b): If so, was the Claimant subjected to that detriment because she had done one or more of the protected acts alleged at paragraph 6 above?

283. For the reasons given above, we do not accept that this amounted to a detriment. If we are wrong on that, there was insufficient evidence before us to conclude that the matters complained of by the claimant were because she had raised a grievance on 27 October 2020.

**Issue 2(l): After the claimant gave evidence or information in connection with proceedings Ms Virgo brought against the Respondent which resulted in Ms Virgo losing much of her claim, she took revenge in form of victimisation against the claimant (para 30) by way of the following:**

**a) 14.04.2020 at 16:04 – Email from DV to Lydia Sterling and Ruth Hipwell (pages 189 and 190 Hearing Bundle)**

**b) 19.05.2020 at 14:16 – Email from DV to Claimant (page 191 Hearing Bundle)**

**c) 20.05.2020 at 20:40 – Email from DV to Claimant (page 192 Hearing Bundle)**

**d) 24.05.2020 at 20:25 – Email from DV to Claimant (page 194 Hearing Bundle)**

**e) 16.06.2020 at 18:23 – Email from DV to Lydia Sterling and Ansar Din (page 206 Hearing Bundle)**

- f) 21.06.2020 at 14:31 – Email from DV to Claimant (page 205 Hearing Bundle)
- g) [left blank on purpose]
- h) 08.09.2020 at 19:55 – Email from DV to various (page 317 Hearing Bundle)
- i) 09.09.2020 at 20:38 – Email from DV to Claimant (page 259 Hearing Bundle)
- j) 12.09.2020 at 15:02 – Email from DV to Claimant (page 262 Hearing Bundle)
- k) 27.10.2020 at 11:36 – Email from DV to Ruth Hipwell and Vafo Navkarov (page 265 Hearing Bundle)
- l) 03.11.2020 at 13:18 – Email from DV to OSGs (pages 282 and 283 Hearing Bundle)
- m) [left blank on purpose]
- n) [left blank on purpose]
- o) 20.04.2021 at 13:27 – Email from DV to Shaun Baker (page 367 Hearing Bundle)
- p) On 18 July 2020 CM Virgo failed to give the Claimant a handover before going off duty.

**Issue 3(a): Did the matter occur?**

284. It is worth noting again that the claimant's Counsel clarified that the claimant has pleaded no claim of victimisation in relation to the factual allegations contained in issue 2(l), despite the use of the word 'victimisation' in Issue 2(l) and despite the mention of an alleged protected act. Rather, issue 2(l) only relates to claims of direct race discrimination and direct sex discrimination.

285. None of the emails referred to in issues 2(l)(a)-(o) or the conduct at issue 2(l)(p) constitute Ms Virgo taking revenge on the claimant. We have examined all the emails and accept Ms Hipwell's evidence at paragraphs 66 to 69 of her witness statement. At paragraph 67, Ms Hipwell stated, "The vast majority of these emails seem to me to simply relate to Hawa and Dizzy's work. Of the complaints made about each other, they form part of the continuing behaviour between them. I believe that Hawa was just as unpleasant towards Dizzy as Dizzy was towards Hawa." At paragraph 69 Ms Hipwell stated, "Hawa seems to be saying that part of the way in which Dizzy 'victimised' her was by copying people into her emails. Dizzy often copied many people into her emails, and this was not just limited to Hawa. I do not think there was anything malicious in this. Hawa also frequently copied in large amounts of unnecessarily individuals to her emails, as did other members of staff." We accepted Ms Hipwell's evidence on this point as it accorded with the documentary evidence we had sight of. From that documentary evidence, it was apparent to us that both the claimant and Ms Virgo had a tendency to copy in excessive numbers of staff into their emails to others.

286. In respect of the one issue which is in time, issue 2(l)(o), this email cannot sensibly be said to represent Ms Virgo taking revenge on the claimant. It is simply an email from Ms Virgo to Mr Baker, a Band 5 CM, stating, "Hi Shaun, Just a quick one, Can you please send Officer Statters to C.M Rogers hierarchy. Also can you please send me Officer Swans Covid Risk Assessment? Kind Regards,C.M Virgo."

287. In respect of the conduct at issue 2(l)(p), the claimant's allegation is that Ms Virgo did not provide her with a handover before going off duty on 18 July 2020. However, Ms Virgo did give provide a handover to Ms Turrell as is apparent from the claimant's own report of this incident at page 241 of the bundle. This cannot sensibly be categorised as Ms Virgo 'taking revenge' on the claimant. Indeed, by this point in time, relations between the claimant and Ms Virgo were so strained that the use of a third party was probably the most effective means of securing an effective handover between the claimant and Ms Virgo.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

288. None of the emails mentioned at issues 2(l)(a)-(o) can sensibly be described as revenge and so they do not amount to less favourable treatment. The conduct described at issue 2(l)(p) can also not sensibly be described as revenge and so also does not amount to less favourable treatment.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

289. This was not less favourable treatment for the reasons set out in the preceding paragraph.

**Issue 2(m): On 21 February 2021 the claimant was removed from her assigned bed watch in favour of Mr Paul Noakes (a white male).**

**Issue 3(a): Did the matter occur?**

290. The claimant has not provided the Tribunal with sufficient evidence to demonstrate that this event took place. The documents which the claimant refers to in her witness statement regarding this allegation (pages 441-445) make no reference to this incident. The Tribunal concludes that it did not take place.

**Issue 2(n): Around April/May 2020 Ms Virgo was promoted from band 4 to band 5 putting her on the same level as the claimant and she started acting as if she is the claimant's boss. Virgo would go outside her remit to conduct inspection of claimant's area and make damaging reports to the Deputy Governor and Claimant's line manager Hipwell and nobody called her to order despite claimant's complaints made both orally and to Ms Hipwell on 21 May 2020. The damaging reports complained of were made in emails as follows:**

(i) On 20 May 2020 Ms Virgo shut down the visits refurbishment in the afternoon by removing the 3 OSGs to go for a 15mins training.

(ii) On 20.06.2020, Ms Virgo instructed OSG Sims to stop visit duties as they were being redirected.

(iii) On 14 April 2020 Ms Virgo instructed Lydia Sterling in the staff details office that with immediate effect from Sunday the 19th of April 2020 you use the original format which shows the Staffs start times

(iv) On 3 November 2020 Ms Virgo CM Virgo sent an instruction to all OSG's if you are detailed under the umbrella "Visits" you will be expected to take your lunch break at 11:30hrs and then you will need to cover Main Gate or Roman Way Gate (as detailed) so that your colleagues can go to lunch at half past twelve

(v) On 20 April 2021 Ms Virgo instructed CM Baker to "send Officer Statters to C.M Rogers hierarchy

(vi) In an email on 9 September 2020 MS Virgo instructed the Claimant on how to do her job

(vii) On 19 May 2020 Ms Virgo re-arranged all the staff lockers without any consultation causing disruption and arguments with staff leaving the Claimant to deal with the aftermath

(viii) On 8 September 2020 Ms Virgo wrote to CM Mostyn stating "I appreciate CM Rogers has already confirmed to CM Mostyn that she will ensure all OSGs are in possession of Fish Knives. I appreciate this cannot wait as it forms part of the uniform policy and is a vital piece of equipment which could save someone's life. C.M Mostyn you may want to check how far C.M Rogers has gotten with this task."

### Issue 3(a): Did the matter occur?

291. In respect of the first sentence, it was agreed by Counsel for the claimant that this was narrative rather than an issue to be determined.

292. The Tribunal does not accept that Ms Virgo would go outside her remit to conduct inspections of the claimant's area. The claimant provided no evidence that she had either a literal or metaphorical area that Ms Virgo would inspect. We accept the evidence of Ms Hipwell and Mr Dixey that Ms Virgo and the claimant had joint responsibility for Visits.

293. We have examined what the claimant alleges are "damaging reports" and accept Ms Hipwell's evidence at paragraphs 57 to 58 of her witness statement. We accept that they demonstrate that Ms Virgo was merely doing her job when these emails were sent or when the alleged incidents were said to have taken place. We also accept Mr Navkarov's evidence at paragraph 34 of his witness statement on this issue.

294. It is not correct that that nobody called Ms Virgo to order. The evidence we heard demonstrated that Mr Dixey and Ms Hipwell both spoke to Ms Virgo in an effort to ensure that she enjoyed a good working relationship with the claimant. It should also be noted that the same conversations were had with the claimant by Mr Dixey and Ms Hipwell.

295. We note that issue 2(n)(v) is in time. However, we conclude it also is not a damaging report by Ms Virgo to Steve Dixey or Ruth Hipwell. Ms Virgo did not send the email in question to Mr Dixey or Mrs Hipwell, nor did she copy either of them into the email. This is simply an email from Ms Virgo on 20 April 2021 sending Officer Statters to C's hierarchy and can be found at page 367 of the bundle. It was an entirely appropriate email for Ms Virgo to send as she had responsibility for staff including Officer Statters.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack

Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

296. The emails and incidents referred to do not amount to less favorable treatment of the claimant. They were not damaging reports and, in addition, the claimant provided insufficient evidence to demonstrate that she had suffered less favourable treatment because of her race in relation to the same.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

297. The emails and incidents referred to do not amount to less favorable treatment of the claimant. They were not damaging reports and, in addition, the claimant provided insufficient evidence to demonstrate that she had suffered less favourable treatment because of her sex in relation to the same.

Issue 5(a): If the matter occurred, was it unwanted conduct?

Issue 5(b): If so, was it related to race?

Issue 5(c): If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

298. The emails and incidents referred to at issues 2(n)(i) to 2(n)(viii) were not related to race. Race was not mentioned in any email or in any of the alleged incidents. In addition, even if these emails or incidents related to race (which they did not), they did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

Issue 7(a): If the matter occurred, did it amount to a detriment?

Issue 7(b): If so, was the Claimant subjected to that detriment because she had done one or more of the protected acts alleged at paragraph 6 above?

299. For the reasons given above, we do not accept that this amounted to a detriment. If we are wrong on that, there was insufficient evidence before us to conclude that the matters complained of by the claimant were because she had raised a grievance on 27 October 2020.

**Issue 2(o): On or around 20 June 2020 Ms Virgo moved staff members under claimant's section to other departments, an action which only claimant's line manager or duty governor is authorised to take. Ms Virgo contacted claimant's staff in her absence contrary to procedure just to frustrate and undermine the claimant. The Claimant complained but was ignored.**

300. We accept that on 20 June 2020 Ms Virgo moved two members of staff from "Visits Project" duties. Indeed, on 21 June 2020 Ms Virgo emailed the claimant to apologise for disrupting the "Visits Project" the previous day. She also explained in this email why she took the decisions that she did. A copy of that email appears in the bundle at page 205.

301. It is incorrect to state that only the claimant's line manager or duty governor was authorised to take that action. By this point in time, both the claimant and

Ms Virgo had joint responsibility for Visits and they shared a team of staff. Part of both their responsibilities was to ensure that key functions relating to Visits were properly staffed on any given day. As issues arose within the Prison, a reshuffling of staff might however be necessary. Such a reshuffle might be needed if staff were absent due to ill health or if there was an incident within the Prison. The Tribunal concludes that the movement of the two staff members on 20 June 2020 was an entirely normal part of Ms Virgo's role and there is no evidence that its purpose or effect was to undermine or frustrate the claimant. Indeed not only did Ms Virgo apologise to the claimant for moving these two members of staff, she also explained her rationale for moving them in her email of 21 June 2020. Ms Virgo explained that moving the two members of staff was necessary in order to enable external contractors access to the Prison.

302. It is also incorrect to state that the claimant's complaints regarding this were ignored. The evidence we heard demonstrated that Mr Dixey and Ms Hipwell both spoke to Ms Virgo in an effort to ensure that she enjoyed a good working relationship with the claimant.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

303. The incidents referred to in this issue do not amount to less favourable treatment of the claimant. In any event, even if they did, the claimant provided insufficient evidence to demonstrate that she had suffered less favourable treatment because of her race in relation to these incidents.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

304. The incidents referred to in this issue do not amount to less favourable treatment of the claimant. In any event, even if they did, the claimant provided insufficient evidence to demonstrate that she had suffered less favourable treatment because of her sex in relation to these incidents.

Issue 5(a): If the matter occurred, was it unwanted conduct?

Issue 5(b): If so, was it related to race?

Issue 5(c): If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

305. We accept that the conduct of Ms Virgo was unwanted but it was not related to race. Even if it did (which we do not accept), the conduct did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It would not be reasonable for the unwanted conduct to have the required effect in this instance.

Issue 7(a): If the matter occurred, did it amount to a detriment?

Issue 7(b): If so, was the Claimant subjected to that detriment because she had done one or more of the protected acts alleged at paragraph 6 above?

306. For the reasons given above, we do not accept that this amounted to a detriment. If we are wrong on that, there was insufficient evidence before us to conclude that the matters complained of by the claimant were because she had raised a grievance on 27 October 2020. There was also insufficient evidence before us that Ms Virgo had knowledge that the claimant had raised a grievance on 27 October 2020.

**Issue 2(p): On 4th August 2020 Ms Virgo sent emails to claimant's line manager and copied external project managers just to present the claimant as incompetent and her line manager did not restrain Ms Virgo.**

**Issue 3(a): Did the matter occur?**

307. Ms Virgo did send an email to the claimant's line manager, Mr Dixey, and copied in external project managers. The text of the email read as follows:

Dear C.M Rogers,  
Many thanks for your email providing us all with valuable information regarding the launch of visits. However, I have noticed a discrepancy with the below information you have provided concerning the attendance of children. You have confirmed that "children will be allowed on visits from 24/08/2020". I do not know if you are aware but the Governor has communicated in his daily briefing that "Children will not be allowed to visit until 7th September" Therefore, can you confirm the correct dates please so that we can confidently provide the prisoners the correct information.  
Many Thanks in advance,  
Regards,  
C.M Virgo

308. Whilst we did not have the benefit of evidence from Ms Virgo, we are not satisfied that her intention in sending this email was just to present the claimant as incompetent. It was clear to us that the claimant's earlier work contained an error which Ms Virgo was reasonably drawing to her attention. Whilst we accept that a number of people were copied into this email, we accept Mr Young's evidence at paragraph 25 of his witness statement that "Everyone copied into the email had some involvement with prisoner visits and would need to know the answer to the question Dizzy had asked."

309. We also accept the respondent's submission that while it is technically correct that Ms Virgo's line manager did not restrain her from sending this email, it is difficult to know how a line manager could restrain an employee from sending an email unless they constantly monitor the employee's drafts folder or unless they insist on every draft email being sent to them for approval. That is clearly not practical or indeed desirable.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

310. The incident referred to in this issue does not amount to less favourable treatment of the claimant. In any event, even if it did, the claimant provided insufficient evidence to demonstrate that she had suffered less favourable treatment because of her race in relation to this incident.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

311. The incident referred to in this issue does not amount to less favourable treatment of the claimant. In any event, even if it did, the claimant provided insufficient evidence to demonstrate that she had suffered less favourable treatment because of her sex in relation to this incident.

Issue 5(a): If the matter occurred, was it unwanted conduct?

Issue 5(b): If so, was it related to race?

Issue 5(c): If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

312. We accept that the conduct of Ms Virgo was unwanted but it was not related to race. Even if it did (which we do not accept), the conduct did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It would not be reasonable for the unwanted conduct to have the required effect in this instance.

Issue 7(a): If the matter occurred, did it amount to a detriment?

Issue 7(b): If so, was the Claimant subjected to that detriment because she had done one or more of the protected acts alleged at paragraph 6 above?

313. For the reasons given above, we do not accept that this amounted to a detriment. If we are wrong on that, there was insufficient evidence before us to conclude that the matters complained of by the claimant were because she had raised a grievance on 27 October 2020. There was also insufficient evidence before us that Ms Virgo had knowledge that the claimant had raised a grievance on 27 October 2020.

**Issue 2(q): During claimant's duty as duty manager (16.02.2021), Ms Virgo would pull off some staff under her without her permission all in attempt to frustrate her. In all these the Respondent ignored claimant's complaints thereby allowing her work colleague to victimise her for the reasons of her giving evidence in favour of the Respondent.**

**Issue 3(a): Did the matter occur?**

314. As put, this matter is factually incorrect. There is evidence in the form of emails between the claimant and Mr Dixey relating to this issue at page 325 of the bundle. For the reasons previously given, It is not correct that the claimant had staff belonging solely to her. It is also not correct that Ms Virgo required the claimant's permission to reallocate staff. As previously detailed, both the



claimant and Ms Virgo had joint responsibility for Visits and they shared a team of staff. Part of both their responsibilities was to ensure that key functions relating to Visits were properly staffed on any given day. As issues arose within the Prison, a reshuffling of staff might however be necessary. The claimant has not provided sufficient evidence to demonstrate that Ms Virgo moved staff in an attempt to frustrate her. Further, the allegation that Ms Virgo did this in order to victimise the claimant is groundless.

315. It is also not correct that the respondent ignored the complaint made by the claimant by means of email on 16 February 2021. Her email was sent at 21.31 on 16 February and Mr Dixey replied to her email the following morning at 10.08.

Issue 3(b): If it occurred, did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navkarov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's race?

316. There is insufficient evidence to support the claimant's allegation that this matter was less favourable treatment because of her race.

Issue 4(a): If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?

317. There is insufficient evidence to support the claimant's allegation that this matter was less favourable treatment because of her sex.

Issue 5(a): If the matter occurred, was it unwanted conduct?

Issue 5(b): If so, was it related to race?

Issue 5(c): If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

318. We accept that the conduct of Ms Virgo was unwanted but it was not related to race. Even if it did (which we do not accept), the conduct did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It would not be reasonable for the unwanted conduct to have the required effect in this instance.

Issue 7(a): If the matter occurred, did it amount to a detriment?

Issue 7(b): If so, was the Claimant subjected to that detriment because she had done one or more of the protected acts alleged at paragraph 6 above?

319. For the reasons given above, we do not accept that this amounted to a detriment. If we are wrong on that, there was insufficient evidence before us to conclude that the matters complained of by the claimant were because she had raised a grievance on 27 October 2020. There was also insufficient evidence before us that Ms Virgo had knowledge that the claimant had raised a grievance on 27 October 2020.

**Decision**

320. For the reasons above the claimant's claim is dismissed in its entirety.

---

Employment Judge McTigue

Date: 15 April 2024

RESERVED JUDGMENT & REASONS SENT TO THE  
PARTIES ON 19 April 2024

FOR EMPLOYMENT TRIBUNALS

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

## **Appendix A**

### **Minority reasons of Mr Sagar**

#### **Issue 2(a):**

It was accepted by R (“the Respondent”) that C (“the Claimant”) applied for roles but had been rejected in favour of white employees. The claimant then specifically asked to be given the “acting up” role in HMP Pentonville after Governor Odejimi was suspended and to be sent to a Band 7 detached duty at HMP Chelmsford in September/October 2019. She was not given the former role, it was kept vacant between approximately 12 September and late October 2019 when Ms Cornberg (white) arrived from another prison under a fast-track scheme and while being Band 8 got the Band 7 role. The latter was not facilitated after her 2 managers, Mr Dixey and Mr Hughes, felt due process had not been followed by C. However, they then showed no follow-through on the matter. Mr Dixey and Mr Hughes did not appear to be convincing witnesses; their accounts were rather general until taken to relevant specific contemporaneous documentation or in answer to questions in the Tribunal. I made the following inferences from the evidence: the 2 managers had an intense dislike of C (could have arisen for work reasons), so much so that they never explained the rejections or any decisions to the C, and moves of the type she had requested took place many times with white employees being the beneficiaries; white employees including Ms Virgo (white), whom C had supervised for some time and had complained about, had moved up. On the evidence I concluded C received unfavourable treatment to others and that R could not show a plausible reason for that which was not connected to race. Apart from 1 appraisal document which showed R could have had work related reservations no evidence existed when it had told C why she could not move up. I concluded this was direct race discrimination.

#### **Issues 2(d) and 2(e):**

C produced contemporaneous documentation that she had discussed “acting up” to Governor Odejimi’s role with Mr Dixey and Mr Hughes. Neither gave her any reason why she could not do so when she believed that she was effectively in charge of the relevant section after Governor Odejimi was suspended. After some weeks of keeping the role vacant Ms Cornberg came in and took it. First, it was accepted by R that “acting up” was a decision that Mr Dixey or Mr Hughes could take and such issues occurred many times and were handled without a formal application process, sifting and interview panels as for permanent promotions. Second, Mr Dixey said in evidence Governor Odejimi could have returned in “2 or 3 days”. This was not credible since he knew that a whole team of about 8 had been suspended after what appeared were allegations concerning all. (Governor Odejimi, R said, had eventually returned after over a year.) Third, Ms Cornberg was a fast-track employee who came in from HMP Chelmsford but apart from a general scheme document no documentation was produced regarding her arrival into HMP Pentonville. Against that C specifically alleged Mr Hughes was mentoring Ms Cornberg and brought her in. Fourth, R accepted Ms Virgo, among others, had been acting up in at least 1 role. Thereafter in spite of C’s interest no effort was made to explain the moves to her. On the evidence I concluded that C received unfavourable treatment to comparable others and that R did not show a plausible reason for that which was not connected to race. I do not believe R would treat any

white employee in a similar position like that. I concluded this was direct race discrimination.

Issues 2(g):

C produced contemporaneous documentation showing she had discussed being supported in her career development with Mr Dixey and Mr Hughes and specifically moving to HMP Chelmsford to do “detached duty”. Mr Hughes had written back asking her questions along the lines of if she knew if HMP Chelmsford could give her a role. Both Mr Dixey and Mr Hughes had told her also they wanted to support her career development. C then fixed up a role for herself on “detached duty” at HMP Chelmsford by speaking to the Regional Head Mr Reilly; C also showed us policy documents where the prison service encouraged employees to be proactive with regard to career development. However, when she informed Mr Hughes and Mr Dixey they put a stop to it on the basis that due process had not been followed. But they made no efforts to see if due process could be facilitated by them. An agreed meeting to communicate with her on all the relevant issues never took place. Mr Hughes went on sick leave and Mr Dixey cancelled the meeting. On the evidence I concluded that C received unfavourable treatment to comparable others and that R did not show a plausible reason for that which was not connected to race. I do not believe R would treat any white employee in a similar position like that. I concluded this was direct race discrimination.

Issues 2(k):

In September 2020 C returned from leave and found that her old office had been given to 2 white fast-track employees including Mr Navkarov and she had been moved to a shared office with Ms Virgo in the administrative block next to other managers such as Ms Hipwell and Mr Dixey. She found Ms Virgo had been working there in her absence and the move meant she lost a relatively large office close to the prison entrance with many multicultural staff in favour of a shared office next to staff who were white. R did not explain the move to her; it knew that C and Ms Virgo did not get on at all and had been complaining about each other. I inferred from evidence that Ms Hipwell, their line manager, got on much better with Ms Virgo and although R’s witnesses found Ms Virgo demanding they generally valued her work more than C’s. In evidence it was accepted by R that Mr Lawlor (white), a friend of Ms Virgo’s, would visit that office and share unsavoury comments loudly with her in the presence of C. On the evidence I concluded that C felt humiliated (in the prison environment losing an independent office and sharing with a person you supervised in the past would be well understood), offended and degraded by the sharing of the office in these circumstances. These feelings were reasonable for an average employee to have and I do not believe R would have treated a white employee in comparable circumstances like that. I concluded this was harassment based on race.

Time limitation:

For the above complaints I would extend time for justice and equity. Discrimination is a serious issue and, for many, such complaints are not easy to make. They are also more difficult and serious when confronting a large employer. I think the interests of justice are served by accepting these 3 claims. Also, C was a continuing employee with natural reservations about taking her employer to court.

**Case No: 3310719/2021**

In addition, her manager Mr Blakeman specifically advised her in December 2020 to complete the internal grievance process before litigation. In those circumstances it was reasonable for C to delay consideration of a legal claim. I think it is equitable to extend time for these 3 claims for her. I also believe that given the intense dislike 3 senior managers, Mr Hughes, Mr Dixey and Mr Young, had of C all their actions with regard to C were a continuing act.

## **Appendix B** **Agreed List of Issues**

1. The Claimant alleges that the Respondent:
  - a) directly discriminated against her because of race;
  - b) directly discriminated against her because of sex;
  - c) Harassed her by engaging in unwanted conduct related to her race
  - d) subjected her to victimisation (the “Equality Act Claims”).
  
2. The matters relied upon by the Claimant to support her Equality Act Claims are (with reference to the relevant paragraphs of her FBP):
  - a) She has remained on the position of substantive custodial manager on band 5 grade since 2012 while her white colleagues have been promoted to higher band grades (Para 2).
  
  - b) On 27<sup>th</sup> October 2020 she submitted grievances to her line manager Ms Hipwell but this was not actioned (para 3) and her chasing up this grievances complaint did not yield result.
  
  - c) On more than 2 occasions the claimant’s colleague Fulvia Virgo subjected her to racially motivated bullying, social media/facebook abuses and harassment. The Claimant relies on the following Facebook/social media comments in particular:
    - i. 02.03.2018 – a Facebook comment “it is a shame that beneath the exterior you portray to people the reality is the opposite! I hope your conscience can allow you to continue to stand tall”

- ii. 05.02.2019 – a Facebook comment “Blackdiamond Rogers “I hear your blessed too Blackdimond” emojis of laughter and kisses
- iii. 11.02.2019 - An email to the Claimant copying in the Head of Res “making allegations and rantings” about the Claimant.

Claimant complained to her line manager Hipwell on 1 March 2019 and no action was taken (Para 6).

- d) In October 2019 the claimant took the requisite exam and got the result with pass in January 2020 and waited for promotion to no avail. On 17 September 2019 she had met with Deputy Governor Dixey to discuss her promotion to Governor band 7 and thereafter Mr Dixey did not get back to her (Para 8 -9).
- e) On 4 October 2019 claimant met with Governor Darren Hughes during which she indicated her interest in the band 7 position vacated by Mr Odejime which she was already occupying. Few weeks thereafter Mr Hughes brought Ms Samantha Cornberg from HMP Chelmsford and put her into that position and within 7 months promoted her to band 8 (Para 11 -12).
- f) On 12/08/2019 a new fast-track system of employing governors under the age of 35 was introduced and under this scheme 6 new governors were employed namely: Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vaso Navkarov, Mr Jack Isaac. Later Natalie Adams was promoted from band 4 – to band 8 between 2019 and 2022, a position which should have been given to the claimant. The above-mentioned male and female white fast-track governors are degree holders as the claimant yet they were placed above her. The Union complained of lack of diversity in all the promotions and Respondent did nothing about it. Claimant ended up training her “new boss” Ms Samantha Cornberg (para 14 - 15).

**Case No: 3310719/2021**

- g) On 17 October 2019, the Claimant requested to be allowed to go on detached duty at HMP Chelmsford and this was initially accepted. This was later frustrated around 8<sup>th</sup> November 2020 by the Respondent. Claimant suffered insomnia leading to excessive alcohol consumption and her relationship suffered too. (para 16 – 20).
- h) The Claimant took time off work and travelled abroad to recover and on her return both Samantha Cornberg had been promoted to band 8 and Fulvia Virgo had been promoted to band 7.
- i) Around 10 September 2020 claimant's office was taken over by two white males under the instruction of her line manager Ms Hipwell who authorised them to move into her office in her absence without informing her and all her personal stuffs were thrown away such as her family pictures and other personal items. She never recovered them (para 23). The Claimant asserts that a white female would not have been treated in the same manner and relies upon a hypothetical comparator in relation to this act.
- j) Claimant had submitted the following grievances/complaints and none of them had been logged let alone investigated as provided under their policy.
- (i) 28.11.2018 – Grievance against Noel Young
  - (ii) 01.03.2019 – Grievance against Dizzy Virgo
  - (iii) 23.06.2020 – Grievance against Noel Young
  - (iv) 27.10.2020 – Grievance against Dizzy Virgo
  - (v) 22.12.2020 – Grievance against Ruth Hipwell and Steve Dixey

But the claimant had the following complaints made against her and all of them had been fully logged and investigated, and dismissed (para 27), The Claimant relies on a hypothetical comparator in relation to these acts.



- a. OSG Jay Wayman – allegation of bullying, heard by Gov. Pete warren in 2019.
  - b. OSG Magella Sewell – work attendance & performance investigated by Gov Ian Rodger on 16/12/2020
  - c. Unknown OSG – allegation of leaving P2 gate open – investigated by Gov Ian Rodger on 16/12/2020
  - d. Officer Emma McAulay – bullying for passing through Claimant’s office during a meeting to toilet - investigated by Gov Ian Rodger on 16/12/2020
  - e. OSG Oluyadi – sick absence being investigated (7mnths off work).
  - f. OSG Oyeleke – reported to Ms Hipwell.
  - g. CM Kelly wrote a confidential Intelligence report accusing Claimant of fraud. Terms of reference required the investigator “To investigate the attendance of CM Rogers from 01/01/2017 – 07/07/2017 to ascertain if there is evidence or not to support to the contents of CP IR CPCR00099103 that CM Rogers is not attending for work but recording that she is”.
- k) In relation to moving her out of her office, Claimant states that Ms Virgo was informed earlier while claimant was not informed until 2 days later because she is a friend of her line manager Hipwell. Claimant states that this is a set-up knowing that there were unresolved issues of facebook abuses which she has complained against Ms Virgo as well as her obstruction of claimant’s work. She has also complained of her being always on phone (discussing private matters and disrupting claimant’s work). Her friend Michael Lawlor was always in their office discussing their personal matters.

Ms Virgo would get together with her friend Michael Lawlor and they would divert claimant’s trained staff from the Claimant’s section, the staff that she needed to work. The Claimant complained to Ms Hipwell

and Deputy Governor Dixey on 19.07.2020 and they did not take any action.

- l) After the Claimant gave evidence or information in connection with proceedings Ms Virgo brought against the Respondent which resulted in Ms Virgo losing much of her claim, she took revenge in form of victimisation against the claimant (para 30) by way of the following:
- a. 14.04.2020 at 16:04 – Email from DV to Lydia Sterling and Ruth Hipwell (*pages 189 and 190 Hearing Bundle*)
  - b. 19.05.2020 at 14:16 – Email from DV to Claimant (*page 191 Hearing Bundle*)
  - c. 20.05.2020 at 20:40 – Email from DV to Claimant (*page 192 Hearing Bundle*)
  - d. 24.05.2020 at 20:25 – Email from DV to Claimant (*page 194 Hearing Bundle*).
  - e. 16.06.2020 at 18:23 – Email from DV to Lydia Sterling and Ansar Din (*page 206 Hearing Bundle*)
  - f. 21.06.2020 at 14:31 – Email from DV to Claimant (*page 205 Hearing Bundle*)
  - g. [left blank on purpose]
  - h. 08.09.2020 at 19:55 – Email from DV to various (*page 317 Hearing Bundle*)
  - i. 09.09.2020 at 20:38 – Email from DV to Claimant (*page 259 Hearing Bundle*)
  - j. 12.09.2020 at 15:02 – Email from DV to Claimant (*page 262 Hearing Bundle*)
  - k. 27.10.2020 at 11:36 – Email from DV to Ruth Hipwell and Vafo Navkarov (*page 265 Hearing Bundle*)
  - l. 03.11.2020 at 13:18 – Email from DV to OSGs (*pages 282 and 283 Hearing Bundle*)

- m. [left blank on purpose]
  - n. [left blank on purpose]
  - o. 20.04.2021 at 13:27 – Email from DV to Shaun Baker (*page 367 Hearing Bundle*)
  - p. On 18 July 2020 CM Virgo failed to give the Claimant a handover before going off duty.
- m) On 21 February 2021 the claimant was removed from her assigned bed watch in favour of Mr Paul Noakes (a white male).
- n) Around April/May 2020 Ms Virgo was promoted from band 4 to band 5 putting her on the same level as the claimant and she started acting as if she is the claimant's boss. Virgo would go outside her remit to conduct inspection of claimant's area and make damaging reports to the Deputy Governor and Claimant's line manager Hipwell and nobody called her to order despite claimant's complaints made both orally and to Ms Hipwell on 21 May 2020. The damaging reports complained of were made in emails as follows:
- (i) On 20 May 2020 Ms Virgo shut down the visits refurbishment in the afternoon by removing the 3 OSGs to go for a 15mins training.
  - (ii) On 20.06.2020, Ms Virgo instructed OSG Sims to stop visit duties as they were being redirected.
  - (iii) On 14 April 2020 Ms Virgo instructed Lydia Sterling in the staff details office that with immediate effect from Sunday the 19th of April 2020 you use the original format which shows the Staffs start times
  - (iv) On 3 November 2020 Ms Virgo CM Virgo sent an instruction to all OSG's if you are detailed under the umbrella "Visits" you will be expected to take your lunch break at 11:30hrs and then you will need to cover Main Gate or Roman Way Gate (as detailed) so that your colleagues can go to lunch at half past twelve

- (v) On 20 April 2021 Ms Virgo instructed CM Baker to “send Officer Statters to C.M Rogers hierarchy
- (vi) In an email on 9 September 2020 MS Virgo instructed the Claimant on how to do her job
- (vii) On 19 May 2020 Ms Virgo re-arranged all the staff lockers without any consultation causing disruption and arguments with staff leaving the Claimant to deal with the aftermath
- (viii) On 8 September 2020 Ms Virgo wrote to CM Mostyn stating “I appreciate CM Rogers has already confirmed to CM Mostyn that she will ensure all OSGs are in possession of Fish Knives. I appreciate this cannot wait as it forms part of the uniform policy and is a vital piece of equipment which could save someone’s life. C.M Mostyn you may want to check how far C.M Rogers has gotten with this task.”
- o) On or around 20 June 2020 Ms Virgo moved staff members under claimant’s section to other departments, an action which only claimant’s line manager or duty governor is authorised to take. Ms Virgo contacted claimant’s staff in her absence contrary to procedure just to frustrate and undermine the claimant. The Claimant complained but was ignored.
- p) On 4<sup>th</sup> August 2020 Ms Virgo sent emails to claimant’s line manager and copied external project managers just to present the claimant as incompetent and her line manager did not restrain Ms Virgo.
- q) During claimant’s duty as duty manager (16.02.2021), Ms Virgo would pull off some staff under her without her permission all in attempt to frustrate her. In all these the Respondent ignored claimant’s complaints thereby allowing her work colleague to victimise her for the reasons of her giving evidence in favour of the Respondent.

3. In relation to each of the matters listed in Paragraph 2 above:
- a) Did the matter occur?
  
  - b) If it occurred did it amount to treating the Claimant less favourably than the Respondent treated 6 newly employed white governors (Katherine Lawrence, Samantha Cornberg, Lauren Mcfarlane, Mr Vafo Navrakov, Mr Jack Isaac and Natalie Adams) or would treat others in circumstances which are not materially different because of the Claimant's **race**?
  
  - c) Was it presented in time?
  
  - d) If it was not presented in time, did it form part of a continuing act of direct race discrimination under section 123 (3) (a) of the Equality Act 2010 and if so, was that continuing act of direct **race** discrimination presented in time?
  
  - e) If it was not presented in time, would it be just and equitable for the tribunal to consider the complaint out of time?

**Issues relating to Equality Act Claims – Sex**

4. In relation to each of the matters listed in Paragraph 2 above:
- a) If it occurred, did it amount to treating her less favourably than the Respondent treated the newly employed two white male governors or would treat others in circumstances which are not materially different because of the Claimant's sex?
  
  - b) Was it presented in time?
  
  - c) If it was not presented in time, did it form part of a continuing act of direct sex discrimination under section 123(3) (a) of the Equality Act 2010 and if so, was that continuing act of direct **sex** discrimination presented in time?

- d) If it was not presented in time, would it be just and equitable for the tribunal to consider the complaint out of time?

**Issues relating to Equality Act Claims - Harassment**

- 5. In relation to each of the matters listed in Paragraph 2 (k, n, o, p, q) above:
  - a) If the matter occurred, was it unwanted conduct?
  - b) If so, was it related to **race**?
  - c) If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
  - d) Was it presented in time?
  - e) If it was not presented in time, did it form part of a continuing act of harassment under section 123(3) (a) of the Equality Act 2010 and if so, was that continuing act of harassment presented in time?
  - f) If it was not presented in time, would it be just and equitable for the tribunal to consider the complaint out of time?

**Issues relating to Equality Act Claims – Victimisation**

- 6. Did the Claimant do a protected act? The Claimant relies upon:
  - (a) Providing evidence in support of the Respondent in response to an employment tribunal claim brought by Ms Virgo;
  - (b) A complaint made on 18 July 2020; and
  - (c) A grievance lodged on 27 October 2020.

7. In relation to each of the matters listed in Paragraph 2 (k, n, o, p, q) above:
- a) If the matter occurred, did it amount to a detriment?
  - b) If so, was the Claimant subjected to that detriment because she had done one or more of the protected acts alleged?
  - c) Was it presented in time?
  - d) If it was not presented in time, did it form part of a continuing act of victimisation under section 123(3) (a) of the Equality Act 2010 and if so, was that continuing act of victimisation presented in time?
  - e) If it was not presented in time, would it be just and equitable for the tribunal to consider the complaint out of time?

**Remedy**

8. What is the appropriate amount of compensation for financial loss and injury to feelings?