EMPLOYMENT TRIBUNALS

Claimant: Ms S Bibi

Respondent: The Royal Bank of Scotland PLC

HELD AT: Manchester **ON:** 16, 17 and 18 October 2017
4 December 2017
(in Chambers)

BEFORE: Employment Judge Ross
Mrs A Jarvis
Mr S T Anslow

REPRESENTATION:

Claimant: In person
Respondent: Mr M Humphreys of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

(1) The claimant's claim that she was victimised pursuant to s 27 Equality Act 2010 because:-

(1) In May 2016, the respondent cancelled the claimant's bank accounts and bank cards

(2) In June 2016, the respondent started repossession proceedings against the claimant

(3) the respondent placed an adverse report on the claimant's credit reference account.

(4) the respondent's failed to deal properly or at all with the claimant's complaint concerning the changes in interest rates including its failure to adjust the rates

is not well founded and fails.

REASONS

2. The claimant was employed by the respondent until 2014. After her employment ended she brought proceedings in the Employment Tribunal in relation to the termination of her employment (case number 2401731/2014). The claimant's claims are listed at pages 138-139. They include claims of disability discrimination.

3. The claimant's claims were unsuccessful, see pages 138-226 of the bundle.

4. The claimant brings a claim to this Tribunal that she has been victimised pursuant to section 27 Equality Act 2010. The claimant relied on two protected acts within the meaning of section 27 of the Equality Act 2010:

(1) the bringing of Employment Tribunal proceedings in claim number 2401731/2014 in an ET1 dated 22 May 2014 (see pages 118-129 of the Tribunal's judgment at pages 138-226); and

(2) a grievance raised by the claimant on 7 May 2014 (pages 115-117).

5. The claimant also relied on the third protected act which was identified in the previous Employment Tribunal proceedings (2401731/2014) – see page 204 paragraph 331. The protected act was a discussion which took place on 13 May 2014. This was:

> "She told Ms Courtney that she had gone to London because one of her colleagues had shown her something very serious to do with racism and her colleagues wanted to talk to her."

6. The respondent agrees that each of the acts amounted to a protected act within the meaning of section 27(1) of the Equality Act 2010.

The Detriments

7. The claimant relied on four alleged detriments:

(1) In May 2016 the respondent cancelled the claimant's bank accounts and bank cards – see claim form paragraph 8.2 (page 10 of the bundle) and the case management discussion before Employment Judge Horne in paragraph 3.1 (page 29).

(2) In June 2016 the respondent started repossession proceedings against the claimant – see claim form at page 10 of the bundle and paragraph 3.2 in the case management discussion before Employment Judge Horne (page 29).

(3) The act of the respondent in placing an adverse report on the claimant's credit reference account. See the claimant's amendment to claim (page 53 of the bundle at paragraph 3), and a case management note of Regional Employment Judge Robertson at paragraph 2 (page 64) and paragraph 3 (page 70).

(4) The act of the respondent's failure to deal properly or at all with the claimant's complaint concerning the changes in interest rates including its failure to adjust the rates. See the claimant's amendment to claim (page 53), case management note of Employment Judge Robertson at paragraph 2 (page 64) and paragraph 3 (page 70).

8. The respondent admitted detriments (1), (2) and (3) amounted to detriments but there was a factual dispute about the wording of allegation 1. The respondent accepted that it had cancelled one of the claimant's bank cards but did not accept it had cancelled her bank account. It said it had downgraded it. There was a dispute as whether allegation (4) amounted to a detriment.

9. The issues were identified and refined in a case management hearing before Employment Judge Horne on 19 October 2016, at a preliminary hearing before Regional Employment Judge Robertson on 12 January 2017 and a case management hearing on the same date and at a preliminary hearing before Employment Judge Sherratt on 25 April 2017 and a case management hearing on the same date.

10. At the outset of the hearing before the Employment Tribunal there were two protected acts and four detriments as identified above. At the outset of the hearing Mr Humphreys, mindful of the overriding objective, said there was in addition a third protected act, namely the one identified as set out above from the hearing before Employment Judge Franey in case number 2401731/2014. The claimant agreed she wished to rely upon that as a protected act as was permitted to amend accordingly.

11. It was agreed that, given the respondent agreed there were three protected acts, two factual issues:

(1) Did the respondent in May 2016 cancel the claimant's bank accounts and bank cards; and/or

(2) Did the respondent fail to deal properly or at all with the claimant's complaint concerning the changes in interest rates, including its failure to adjust the rates?

12. The respondent admitted that detriments 1-3 amounted to detriments. The Tribunal must consider whether or not detriment 4 amounted to a detriment.

13. The next question for the Tribunal was causation: did the respondent do each or any of the acts relied upon by the claimant as detriments because the claimant had done a protected act(s)?

14. In answering that question the Tribunal must consider did the discrimination arise out of and is it closely connected to the employment relationship that used to exist between the parties -section 108(1) of the Employment Act?

15. In answering the "reason why question" the Tribunal must have regard to section 136 of the Equality Act 2010, the burden of proof provisions. If there are facts from which the court could decide in the absence of any other explanation that a person (A) contravened the provision concerned the court must hold that the

contravention occurred. But subsection (2) does not apply if A shows that A did not contravene the provision.

The Law

16. The respondent relied on the Court of Appeal decision in CC Greater Manchester Police v Bailey [2017] EWCA Civ 425 and in particular Underhill LJ where he held:

> (1) "Establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UKHL 36 2000 No. 1 AC 501 referred to as the 'mental process of the putative discriminator' (see at page 511 A-B). Other authorities use the term 'motivation' (whilst cautioning that this is not necessarily the same as 'motive'. It is also well established that an act will be done 'because of' a protected characteristic or 'because' the claimant has done a protected act as long as long as that had a significant influence on the outcome (see again Nagarajan at page 513B)."

17. The respondent relies on **Madarassy v Nomura International PLC [2007] ICR 867** as a principle that the burden is not shifted simply by showing a protected act and a detriment:

> "The bare facts of a difference in status and 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 or probabilities the respondent had committed an unlawful act of discrimination."

18. The respondent relied also on **Hewage v Grampian Health Board [2012] ICR 1054**.

19. The claimant said she agreed the legal issues were as raised by the respondent although in her submission, the burden of proof had shifted.

20. At the outset of the hearing a Tribunal member had not attended. Efforts were made to find another member. Initially Mr Clissold was identified but he was unsuitable having been a member of the Tribunal in the previous claim involving the claimant. Accordingly, a telephone call was made to Mr Anslow and he attended. Before his attendance and with the agreement of the parties one or two administrative matters were dealt with. The Tribunal commenced when Mr Anslow attended at 12.20pm.

21. We heard from the claimant and for the respondent from Mr Logan.

22. In the course of reading the claimant's witness statement, the Tribunal noted she expressed concern about a previous Tribunal not granting her breaks. Having read her witness statement the Tribunal asked the claimant if she required any adjustments in view of any medical condition. The claimant requested that she should be permitted frequent short breaks, at short notice if necessary. The Tribunal agreed to this request.

The Facts

23. The claimant was employed by the respondent, Royal Bank of Scotland PLC. The claimant holds a mortgage account with one of the respondent's subsidiary groups, Nat West Bank. It is the claimant's case that she was "forced to take out financial services with them including banking and mortgage". According to the respondent at the time the claimant was employed there was a requirement for employees of the respondent to have an RBS or Nat West bank account into which their salary was paid. It is not disputed that the claimant holds a mortgage account for the respondent, account number *********. The respondent's breakdown statement of arrears is at pages 584-586. The claimant disputes the precise figures in the statement but agrees that she is substantially in arrears on the account.

24. The claimant also holds a loan account with the respondent (xxxxxxx). It is not disputed that that account was in arrears (page 271) by September 2015.

25. The Tribunal heard from Mr Logan, the respondent's witness, that the Bank operates a policy whereby if any account which a customer holds is in arrears the respondent will treat all of their accounts as being in a default position. The rationale for doing this is that it protects the Bank because it allows the respondent to take further action to prevent the customer from accruing further debt via other financial products such as a customer overdraft facility.

26. It is not disputed that the claimant also held a select platinum account number xyxyxy, which had an overdraft facility.

27. The Tribunal accepts the evidence of Mr Logan that the respondent's systems for managing debt recovery, customer complaints and account management are mostly automated, requiring periodic input from a number of different members of staff. The Tribunal relies on Mr Logan's evidence that the debt management operation office is broadly comprised of two sets of teams, being a telephony team and a processing team. It accepts his evidence that the telephony team has approximately 85 staff providing support during opening hours from 8.00am to 8.00pm Monday to Friday and 8.00am to 1.00pm on Saturday. The Tribunal accepts his evidence that staff have no control over which calls they answer.

28. So far as tasks are concerned, the Tribunal accepts the evidence of Mr Logan that when a task comes off the automated system and has to be done by an employee, the team manager at the start of the day allocates the tasks to members of staff at random.

29. The Tribunal finds that when contact is made with a customer a record of that conversation is made at the point of it occurring. The staff member records the content into a diary note onto the debt manager system which is the platform on which debt recovery action takes place. The note is accompanied by a date and time stamp which cannot be amended except in exceptional circumstances by the team manager.

30. The Tribunal accepts Mr Logan's evidence and finds that he has "copied and pasted" the entire set of debt manager system up to the relevant point in time into a

word document and that has been included in the Tribunal bundle. The Tribunal accepts the evidence of Mr Logan that from time to time human error occurs in that an email sent in by a customer is not linked to the debt manager system. Indeed it can be seen that the claimant's email to Narinder Kaur (pages 523-524) had not been added to the system although there is a note of the telephone conversation of the claimant with Narinder Kaur on 18 August 2016 at page 341.

31. The Tribunal also heard from Mr Logan that certain basic actions are carried out by colleagues based in two centres in India. The Tribunal accepts the evidence that the debt manager entry showed who has created the entry by the letters on the right-hand side of the page e.g. SHERIAC whom Mr Logan identifies in his statement as Akshita Sherigara.

32. It is not disputed that the claimant started to fall into arrears in or around August 2014 after her employment ended. The claimant made numerous complaints, and elements of many of these were upheld, particularly in relation to administrative failures of the respondent .See complaint 77800715 with outcome letter pages 444-445 (log 446-452), complaint 70399915, outcome pages 456-457 (log 458-451), complaint 108151516 outcome pages 505-506 (log 507-516), complaint 0111554616 outcome pages 525-526 (log 527-539), complaint 128552316 outcome pages 542-544 (log 545-547) and complaint 0128552316 outcome pages 554-577. On 17 February 2017, there is an entry which states “complex complaint a serial complainer” The entry then states “Need a thorough investigation to prevent further complaints”. P554.

33. The Tribunal relies on the evidence of Mr Logan to find that this is not pejorative, it is factually correct. The claimant had made a series of complaints.

34. We rely on Mr Logan’s evidence to find that a basic rule of the respondent is that an account is not transferred to recoveries for enforcement until the mortgage payment is in arrears by at least three months and that a possession claim will not be commenced until the mortgage repayment is in arrears by at least six months.

35. There was a dispute between the parties about whether or not the claimant received certain letters from the respondent. There is no dispute that the claimant was paid compensation in relation to the successful outcome of a number of her complaints.

36. In November 2014, the claimant informed the Bank that she had a medical condition of ulcerative colitis. We find that the respondent had a team who dealt with vulnerable customers. We find the respondent referred to their vulnerable people team a customer who is “someone whose capacity to interact with the Bank and/or make decisions is permanently or temporarily compromised by their personal circumstances”. We find that a customer managed by this team is afforded a greater deal of forbearance by members of staff who have received specific training from external agencies, including Macmillan, MIND and Dementia Friends. This means that there is delay in the Bank seeking recovery or repossession in relation to people being looked after by the vulnerable persons’ team.

37. We find that the Bank moved the claimant's accounts to the team for vulnerable customers in or around November 2014.

38. We find that on 9 July 2015 (see page 415 in the debt manager notes) the account was reviewed and the respondent's contact strategy, which involves automatically dialled telephone calls and automatically generated letters, was restarted. We find the Bank's automated system prompted a review to assess whether it was appropriate to send default notices and demand notices.

39. On 16 August 2015 the debt manager system, the platform upon which the debt recovery is completed, considered whether it was able to send an automated formal demand notice. The system determined that the requirements to send a formal demand notice had been met and so prompted a person to manually review the account. We accept the evidence of Mr Logan that the account was reviewed by user SHERIAC, which is the user name for an employee who works for the respondent at one of their centres in India. Ms Sherigara selected an option on the debt manager system called SDF which is an abbreviation of secured default. This means that a default notice was sent to a customer who has accounts that are secured i.e. the mortgage is secured by way of a legal charge over property.

40. On 18 August 2015 the system recorded it had created default notices which were sent to the claimant: "Default notice issues" p 413. The claimant disputed she had received these documents.

41. On 15 September 2015, formal demand letters were sent in relation to the claimant's accounts (see pages 265, 269-270 and 271). The claimant contacted the Bank and spoke to an adviser, Amanda Collins, who agreed to raise a complaint on the basis that the claimant did not receive a call back as had been promised and to look into why the formal demand notice had been sent (see diary note 15 September 2015 at 9:14 page 412).

42. We find that on 15 September 2015 the respondent moved the account back into a part of the system for dealing with vulnerable customers. We find that if the staff member had not moved the account to the vulnerable customer team then ordinary debt recovery activity would have continued. As the claimant said she had not received the previous notices a fresh demand was sent on 15 September 2015 (see page 265).

43. We find when a complaint is raised by a customer it has the effect of halting all activity pending complaint resolution. The claimant raised a complaint on 15 September 2015 meaning that recovery activity was placed on hold until 13 November 2015 when the Bank responded partially upholding the complaint (reference 70399915).P438-9. Compensation was paid. The aspect of the complaint upheld was customer service.

44. The claimant made a further complaint on 13 November 2015 (see reference 77800715). The outcome letter is p444.Once that complaint was resolved it was necessary for the respondent to send a further formal demand which was sent on 24 December 2015 (page 387).

45. A further complaint was raised about the claimant's cards being stopped following a formal demand (reference 70399915). This was resolved on 20 January 2016. The complaint upheld was with regard to information given and administrative errors (see pages 456-457).

46. We find based on the evidence of Mr Logan that all customers' accounts, including any mortgage accounts, are linked to one sim. We find that once a customer is in significant arrears on one of their accounts the Bank starts a process to disassociate the accounts which are in arrears, "the bad accounts" and downgrades one remaining account "the good account" to a very basic account with no extra facilities such as an overdraft. We find the respondent intended to disassociate the claimant's account numbered ********* (Mr Logan paragraph 44) from the other accounts she held in order that she could maintain an operating account when the remaining accounts were transferred to the recovery office for debt enforcement. We rely on the evidence of Mr Logan that the claimant's account was downgraded in March 2016. At that stage, there was a commencement of the process to disassociate her "good" account which she was allowed to keep which had limited functions and no overdraft from her other "bad" accounts which were in arrears. We rely on page 362 on 29/3/16. We find that the dissociation process was likely to take up to 6 weeks. "Disassociation can take up to 6 weeks from start to complete" p362

47. We find that the Bank had written to the claimant on 15 December 2015 (pages 265-266) to inform her of their intention to downgrade her account to a basic account. We find she was contacted again by letter about this on 19 February 2016 (page 273). We find the account was downgraded on 2 March 2016 (see page in the diary notes p364).

48. We find on 13 May 2016, almost a year after first sending the default and demand notices, the claimant's accounts were transferred to the respondent's recoveries office. In respect of the claimant's mortgage account a 15 day letter warning of the level of arrears and potential legal action was sent (see pages 286-288). It is entitled "15 day notice of possession proceedings".

49. We find that the VTR is an automated action code(page 358) stating the accounts should be transferred to recoveries. We accept Mr Logan's evidence that this is an automatic action which triggers the cancellation of all cards linked to the disassociated or "bad" accounts. We accept his evidence that the manager system feeds into a back office function where the cards are issued. The VTR action feeds into a system which is then actioned the next working day. We find that 13/5/2016 was a Friday. We accept the evidence of Mr Logan that the Bank office system did not action automated matters over the weekend. We find the feed was received on Monday morning and it was then that the cards were cancelled i.e. on the week commencing 16 May 2016. We rely on the entry at page 359 that says that a foundation account has now disassociated (see entry 13/5/16) and that a final demand (FD) expired 16/4/16 and that a recent complaint had been resolved.

50. We find that the delay between the commencement of the disassociation process which started on 2 March 2016 and the disassociation completion which was confirmed on 13 May 2016 which is a period of longer than 6 weeks. We find was caused by several factors including a further complaint from the claimant in April 2016 and the respondent waiting for a final demand to expire.

51. We accept the evidence of Mr Logan that when the claimant's account was downgraded to a basic account in March 2016 she should have been issued with a new card for the basic foundation account. The Bank failed to do this. Therefore

when the automated code VTR transfer to recoveries took effect it automatically cancelled all the claimant's cards linked to her existing accounts. Because the bank had failed to provide her with a new “good” or protected card for her downgraded account, the claimant was still using the card which she had held for that account for many years. It was that existing card which the system retained at a cashpoint when the claimant tried to use it on 16 May 2016 because the system had cancelled all cards linked to the claimant’s accounts.

52. We find that the claimant's bank account was not cancelled. What happened was her card was cancelled when it was “swallowed” by the cash machine on 16 May 2016. There is no dispute that 16 May 2016 was the first day of her Tribunal hearing in relation to case number 2401731/2014.

53. We find that on 6 June 2016 the Bank instructed its solicitors, TLT, to issue a possession claim (see diary note 6 June 2016 by OSMAMG, user name for ID Mehwish Osman 355-356). The respondent says the aspects of the account that were considered were that a 14-day letter had been sent on 19 May; the account was over 12 months in arrears and no reduced payments were being made and no satisfactory proposals for repayment made.

54. On 13 July 2016(p502) the claimant complained about her card being cancelled and on 8 August she complained that she still did not have a card for her account.P518.

55. On 18 August 2016, the claimant had a conversation with Narinder Kaur, a mortgage adviser (see page 341) with regard to completing a rate change. The claimant emailed a complaint about the interest rate change on 18 August 2016 (page 523). This email has not been added to the debt manager notes.

56. Meanwhile the complaints department was dealing with a complaint from the claimant which had been made on 9 August 2016 and logged on 10 August 2016 about her foundation account (see pages 527-539). The outcome letter is at pages 339-340.

57. There appears to be confusion about whether the claimant was also raising a complaint about the mortgage (page 529): “Customer has since confirmed that her complaint was in relation to foundation account”. The complaint was upheld.

58. On 11 December 2016 the claimant complained she had had no reply to her complaint regarding her interest payments (page 335). On 8 December 2016 an email was sent in and placed on the debt manager note system (page 334) chasing up complaints.

59. A contact on 20 December 2016 (page 332) made it clear the claimant was complaining about rates but referred to “since April 2016”. An email at page 541 notes the claimant “initially raised a complaint about this in April 2016 but has no response” in relation to rates. There were other aspects of concern raised by the claimant in that email. At this point the concern about the rates is logged as a new complaint (PH0128552316 – pages 554). The outcome was sent to the claimant by letter dated 9 March 2017 (pages 542-544) which she disputed receiving. A further copy of that letter is at page 545-547 dated 4 April 2017.There is no dispute that the

respondent failed to put the claimant's mortgage on a new interest rate in Aug 2016, nor at that time discussed a new rate with the claimant. They apologised for this in the complaint outcome and offered to agree a new rate. (P543). The claimant was advised as in every outcome that she was entitled to go to the Ombudsman. On this occasion she did and the Ombudsman letter is pages 548-553. The outcome of the complaint was that the mortgage centre had been unable to put the claimant's mortgage onto a new interest rate in August 2016 due a system issue. However the claimant was not then contacted as a follow-up to discuss this for which an apology was given.

60. The Bank therefore sought a resolution for this and tried to contact her on 9 March 2017 to discuss how to put things right. The claimant was asked to make contact to discuss what rate she had been looking to agree back in August and the term so that they could see if such a product was available at that time. If so an interest rate adjustment could be made putting the claimant into the position she would have been in had the rate been adjusted in August 2016. She was also informed that interest rates had subsequently gone down slightly since August 2016 and therefore going forward would be actually in her best interests to contact the mortgage centre and agree a new interest rate.(See Mr Logan paragraph 68).

61. We find recovery action was placed on hold pending the resolution of that complaint. We therefore find the claimant was actually placed in a better position because interest rates changed after Aug 16 and the bank allowed her a more advantageous rate than the rate available in August 2016.

62. A response to the claimant's complaint concerning the interest rate was delayed. It is unclear precisely when she first made her complaint. The respondent did not understand it as occurring in August 2016. We find that that it is likely this was because of the way the claimant complained which meant it was incorrectly linked to an existing complaint.

63. Once the respondent clearly identified there was a complaint about the rates it took 55 days to resolve it. The respondent agrees that that was in excess of the ideal timescale. The respondent says that at that time the complaints team were struggling to deal with complaints. Mr Logan told us that the Bank at that time received on average 2,500 complaints a month. We find that as a result there was a significant delay in complaints being answered.

64. The Tribunal finds that the Ombudsman agreed the resolution the Bank had suggested with regard to this matter was reasonable (see the Ombudsman's letter).

65. There is no dispute that the respondent placed an adverse report on the claimant's credit reference account (see pages 549 and 543). We rely on the Bank's letter to the claimant of 9 March 2017 which states: "We are obliged to report factually correct information to credit reference agencies". We also rely on the regulator's letter at pages 548-552. It states:

> "Businesses have a duty to report factual information to credit reference agencies such as missed payments, late payments etc."

66. We accept the evidence of Mr Logan that it is a matter of regulation that a Bank reports to credit reference agencies when there are missed payments or arrears.

67. We accept the evidence of the respondent that there was no connection between HR and other departments such as those processing morfage recovery or dealing with customer complaints.

68. We find numerous different individuals dealt with the claimant's account.Some were based in the UK and some were based in the respondent's centres in India. We find certain actions on the respondent's system were automated.

69. We rely on Mr Logan, a clear and excellent witness. He accepted the bank "did not deal well" with the claimant regarding her various complaints but also said bank dealing with huge volume of complaints at that time.

Applying the Law to the Facts

70. There is no dispute that there are three protected acts in this case. We therefore turn to the detriments.

71. In relation to the first detriment: "In May 2016 the respondent cancelled the claimant's bank accounts and bank cards", we rely on our findings of fact that the respondent downgraded the claimant's bank account and cancelled her bank card. We find the card for the account she used was "swallowed" by the machine in St Ann Square on 16 May 2016 although the claimant was able to continue to use Apple Pay on the account. Accordingly the detriment is not quite as stated by the claimant but we find that having the card retained by the machine does amount to a detriment.

72. We turn to detriment 2. There is no dispute that the respondent did start possession proceedings against the claimant in 2016 and we find this amounts to a detriment. It was not disputed. (In so far as it is relevant the Tribunal notes the possession proceedings were not completed and at the time of this Tribunal Hearing the property had not been repossessed)

73. Detriment 3 is of the respondent placing an adverse report on the claimant's credit reference account. There is no dispute that this occurred and that it is a detriment.

74. Detriment 4 if the act of the respondent's failure to deal properly or at all with the claimant's complaint concerning the changes in interest rates, including its failure to adjust the rates. We find there is a detriment but only in relation to part of this allegation.

75. We find that the respondent did deal with the claimant's complaint. We rely on our findings of fact at paras 56-60 above. Accordingly we find that part of the allegation of detriment is not factually correct. The respondent dealt with the claimant's complaint about her mortgage interest rate.

76. Neither is it factually correct to state that the respondent failed to deal properly with the complaint in the sense of the substance of the complaint. The Regulator confirmed the bank had dealt properly with the concern about her distress resulting

from the complaint and the Bank had followed the Regulator's recommendations about holding a discussion with the claimant about the interest rate. In fact the Bank offered a more advantageous rate than would have been available at the time the discussion should have occurred in August 2016. Therefore we find the claimant was in a more advantageous position regarding the mortgage interest rate than she would have been if the bank had acted correctly in August 2016.

77. The Tribunal finds where the respondent did not deal properly with the claimant's complaint was in relation to timescale. Mr Logan accepts it took 55 days to deal with this complaint and the Tribunal finds this is capable of amounting to a detriment as to take this length of time was frustrating for the claimant.

78. The Tribunal turns to the next issue which is causation.

79. The Tribunal reminded itself that when considering the burden of proof, there is rarely direct evidence of discrimination In addition, discrimination can be unconscious. The Tribunal had regard to the totality of the evidence .The Tribunal reminds itself that the fact there are protected acts and the fact the claimant suffered detriments is not sufficient to shift the burden of proof.

80. There must be "something more". The Tribunal is not satisfied there is any such evidence here. The claimant dealt with numerous different individuals both in the UK and India. The system was automated in part. We found staff members were allocated tasks at random. We find the recoveries team was entirely separate to HR. We find the customer care team was a separate team.

81. Although sometimes in the debt manager system it has been noted the claimant has told an employee in a telephone call that she feels victimised there is no evidence to suggest that any of the call handlers dealing with the claimant's accounts had any knowledge of the Tribunal case no 2401731.2014, of the grievance she raised on 7 May 2014 nor of the discussion which took place on 3 May 2014 between the claimant and Ms Courtney.

82. The only evidence which the Tribunal finds is a matter about which an adverse inference can be drawn is the timing of the retention of the claimant's bank card.It is undisputed this occurred on the first day of the hearing in case no 2401731/2014. We find this matter of is sufficient to shift the burden in detriment one to the respondent.

83. Detriment one: "In May 2016 the respondent cancelled the claimant's bank accounts and bank cards".

84. There is no dispute that the bank retained the claimant's bank card on the first day of her Tribunal hearing in case 2401731.2014 on 13 May. We turn to consider whether the respondent can show a non discriminatory reason for the treatment.

85. We rely on the evidence of Mr Logan and the documentary evidence to find that the reason why the claimant's card was retained was because the respondent had moved the claimant's accounts to the recovery process. As part of this process they had downgraded her bank account to a basic foundation account and disassociated her foundation account from her other accounts.

86. We find the reason for that process was that her accounts were in significant arrears. We rely on our findings of fact that the bank did this to protect its position. We find the bank first commenced action on 15/9/15 -see p265- to downgrade the account. We find the timetable for this process very significantly predated the Tribunal hearing in case no 2401731.14. We find this shows it was unrelated to the start of the Tribunal hearing and that the timing is no more than a coincidence.

87. We rely on our fact find that once a customer presents a complaint it has the effect of putting on hold the respondent's recovery activities. We find that although action was proposed in September 2015, no action was taken whilst the claimant's complaints were investigated. We rely on our finding that on 19th Feb 2016 p.273 the bank recommenced the recovery action. That letter clearly explains the reason why the bank is downgrading the claimant's account to a foundation account and that it is removing the link between that account and the accounts which are in arrears. The letter on 24 Feb 2016 p275 confirms the position. We also rely on Mr Logan's explanation at paragraphs 39 and 48 of his statement.

88. We rely on his evidence in cross examination that on 2nd March 2016 the "good" foundation account was disassociated from the "bad" accounts in arrears. We rely on our fact finding that it can take 6 weeks to fully disassociate the accounts.

89. We rely on our finding that whilst the claimant had a complaint outstanding the case could not be transferred to recovery. We find that once her further complaint was resolved the respondent resumed the process to transfer her accounts to recovery. We rely on our finding that during the process of disassociation the respondent failed to issue the claimant with a new card for her foundation account which Mr Logan described as the "good" account.

90. We find above that the immediate cause for the retention of the claimant's card was the automatic transfer of the file under code VTR on Friday 13th May and the system actioning the automatic command to cancel all cards related to the "bad" account. We find that because the card held by the claimant was a card she had always held, the system identified it as a card linked to the "bad" disassociated accounts. We rely on the evidence of Mr Logan that the Bank office system did not action automated matters over the weekend. We find the feed was received on Monday morning and it was then that the any cards associated with the claimant's accounts were cancelled i.e. on Monday 16 May 2016.

91. We find this is the last step in a long process which had started months earlier. We find the fact it occurred on the day the claimant had a hearing at the Manchester Employment Tribunal is no more than a coincidence. We find this was the culmination of a standard process protecting the customer and the bank where the accounts were in substantial arrears.

92. We find there was not one individual making this decision. It was a culmination of the actions of numerous individuals in conjunction with the bank's automated system. We find there is no evidence that any of them knew of the claimant's Tribunal proceedings, her grievance or of the conversation which is the third protected act.

93. We find there is a convincing explanation for the card being retained, namely the bank was carrying out a routine procedure for a customer in arrears. Therefore, this claim fails.

94. Strictly speaking there is no need to consider the other detriments because we are not satisfied there is any evidence for us to draw an adverse inference to shift the burden of proof in relation to the other three detriments. However, in case we are wrong about that we have gone on to consider the case as if the burden had shifted to the respondent in relation to each detriment.

95. Detriment 2:"In June 2016 the respondent started repossession proceedings against the claimant."

96. We rely on our finding of fact. The claimant was issued with a notice of possession proceedings on 15 May 2016. See p.286. We find that on 6 June 2016 the Bank instructed its solicitors, TLT, to issue a possession claim (see diary note 6 June 2016 by OSMAMG, user name for ID Mehwish Osman 355-356). We rely on our findings that a 14-day letter warning of a notice to repossess the property had been sent; the account was over 12 months in arrears and no reduced payments were being made and no satisfactory proposals for repayment made.

97. We turn to consider the reason why the respondent started possession proceedings of the claimant's property. We find the reason was the claimant was in arrears with her mortgage. Although the claimant disputed the precise amount there was no dispute she was in substantial arrears in excess of 12 months. See p275 and 584-6. We rely on the evidence of Mr Logan to find the Bank usually moves to repossess once there are arrears in excess of 3 months. We find in this case there were delays caused by either the proceedings being placed on hold whilst the claimant's complaints were investigated or because her account was considered by the vulnerable people team because of her medical condition. By June 2016, the claimant had been moved back into the process for recovery.

98. Furthermore, numerous different individuals together with the automated system had been involved in the decision to move to repossess the claimant's property as shown by the different user names on the call manager system. We find there is no evidence that any of them knew of the claimant's Tribunal proceedings, her grievance or of the conversation which is the third protected act.

99. We rely on the evidence of Mr Logan. The respondent is a business. Once a customer is in substantial arrears the bank moves to protect its position by starting possession proceedings. Accordingly, there is a convincing non discriminatory explanation for the reason possession proceedings were started namely the claimant was in substantial arrears with her mortgage. Therefore this claim fails.

100. Detriment 3: "The act of the respondent in placing an adverse report on the claimant's credit reference account".

101. We turn to consider whether the respondent can show a non discriminatory reason for the treatment. We find the reason the respondent placed an adverse report on the claimant's credit reference account was because the bank was obliged to report factually correct information to credit reference agencies. In support of this

we rely on the ombudsman's letter at pages 548-552 which states: "Businesses have a duty to report factual information to credit reference agencies such as missed payments, late payments etc."

102. We accept the evidence of Mr Logan to find that it is a matter of regulation that a Bank reports to credit reference agencies when there are missed payments or arrears.

103. For these reasons we find the the respondent placed an adverse report on the claimant's credit reference account because she was in substantial arrears with her accounts and it was obliged to report this information to credit reference agencies. Therefore we find there is a convincing non discriminatory explanation and this claim fails.

104. Detriment 4: "The act of the respondent's failure to deal properly or at all with the claimant's complaint concerning the changes in interest rates including its failure to adjust the rates"

105. The Tribunal has found this amounted to a detriment only in relation to the delay in the bank dealing with the claimant's complaint.

106. The Tribunal turns to consider whether the respondent can show a non discriminatory explanation for the treatment.

107. The Tribunal finds the respondent replied to the complaint on 9 March 2017.See p542. The Tribunal relies on the evidence of Mr Logan whom the Tribunal found to be a clear, conscientious and compelling witness.The Tribunal relies on his evidence that the respondent took 55 days to respondent to the claimant's complaint which he agreed was not good customer service.

108. We rely on his evidence to find the reason for the delay was at that time the bank was receiving 2,500 complaints a month and was struggling to meet its time scales to resolve complaints.We also rely on his evidence that the complaint was complex in the sense that this complaint which is numbered PH 0128552316 includes several other issues in addition to the claimant's complaint about the mortgage interest rate. We find all the matters required investigation and this is supported by the entries on the respondent's system.We find this is a further reason there was a delay in responding to the complaint.

109. The outcome letter at p542 together with the case notes show this matter was investigated by Mansoor Khalfey from the respondent's customer care team.There is no evidence to suggest that he had any knowledge of the claimant's claim to Employment Tribunal, her grievance raised on 7 May 2014 or the conversation with Ms Courtney which amounts to the third protected act.

110. The Tribunal finds the delay in responding to the claimant's complaints was caused by the volume of complaints received by the bank at that time. Accordingly this claim also fails.

Employment Judge Ross

Date 5 December 2017

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
11 December 2017

FOR THE TRIBUNAL OFFICE