

YG



EMPLOYMENT TRIBUNALS

Claimant: Mr G Mechkarov
Respondent: Citibank, N.A.
Heard at: East London Hearing Centre
On: 13-17, 24 November 2017
In Chambers: 4 & 5 January 2018
Before: Employment Judge Lewis
Members: Mr D Kendall
Mrs S Taylor

Representation

Claimant: In Person
Respondent: Mr S Forshaw (Counsel)

RESERVED JUDGMENT

It is the unanimous judgment of the Employment Tribunal that:-

1. The Claimant's claims of direct race discrimination contrary to s 13 of the Equality Act 2010 fail and are dismissed.
2. The Claimant's claims of victimisation contrary to Section 27 of the Equality Act 2010 fail and are dismissed.

REASONS

Procedural history

1. The Claimant issued proceedings on 29 January 2015 bringing complaints of unfair dismissal, breach of contract, unpaid wages, and discrimination, including victimisation, arising out of his employment, its termination and conduct by his former employer and former colleagues post-termination. The Respondent contested the Claimant's complaints and in its ET3 referred to a settlement agreement which precluded many of the claims proceeding and maintained that other claims were out of time or were outside the jurisdiction of the Employment Tribunal and/or stood no reasonable prospect of success.

2. Following a Preliminary Hearing ("PH") on 27 April 2015 Employment Judge Warren ordered there be a PH to determine whether (a) the Claimant's claims of pre-dismissal discrimination were out of time and (b) the settlement agreement was voidable having been procured by duress and (c) the Claimant's claims of post-dismissal discrimination should be struck out as having no reasonable prospect of success. That PH was heard by Employment Judge Warren on 6 July 2015. By a judgment dated 4 August 2015 and sent to the parties on 10 August 2015 Employment Judge Warren determined that:

- 2.1. The settlement agreement was not void or voidable for duress and that it compromised the Claimant's claims for breach of contract, wages and unfair dismissal;
- 2.2. That the pre-dismissal discrimination claims were out of time and it would not be just and equitable to extend time because, contrary to the Claimant's case, there was no duress operating on the Claimant preventing him from issuing proceedings timeously; and
- 2.3. Post-termination discrimination claims had no reasonable prospect of success and should be struck out.

3. The Claimant successfully appealed the strike out of his post-dismissal discrimination claims. On appeal, Mitting J held that Employment Judge Warren had impermissibly conducted a mini-trial in relation to the post-termination discrimination claims and ordered that the strike out application be remitted to a differently constituted Employment Tribunal to determine the application for strike out. The Respondent decided not to pursue the strike out application and the matter proceeded to trial. The Claimant's appeal against the decision of Employment Judge Warren in respect of the settlement agreement and the pre-dismissal discrimination claims was dismissed and he sought to appeal to the Court of Appeal from the Employment Appeal Tribunal ("EAT) and then from there to the Supreme Court, but was unsuccessful.

Effect of Employment Judge Warren's 4 August 2015 Judgment

4. Employment Judge Warren's conclusions in relation to duress and the time limitation point in respect of pre-dismissal claims remain undisturbed and are binding on this tribunal. We accept the Respondent's submission that the relevant findings by which we are bound include:

- 4.1. That the Claimant chose to take voluntary redundancy from his employment with the Respondent. Ms Pierre was surprised that that he had done so and both Ms Pierre and Mr Gelis encouraged him to take

- time to think about it (paragraph 18.1 of Employment Judge Warren's judgment);
- 4.2. The Claimant's absence from work was not caused by bullying, harassment and overwork (paragraph 18.4 of Employment Judge Warren's judgment);
 - 4.3. When the Claimant was absent from work in April 2013 Ms Pierre was supportive of him (paragraph 18.6 of Employment Judge Warren's judgment);
 - 4.4. It was the Claimant who opened communications with Ms Pierre after a break of many months, in July 2014 (paragraph 18.7 of Employment Judge Warren's judgment);
 - 4.5. The Claimant was not subjected to any form of physical threat to his person before he entered into the settlement agreement (paragraph 19.1 of Employment Judge Warren's judgment);
 - 4.6. The Claimant was not under threat of having to keep silent, nor of having to wait and prove his trustworthiness (paragraph 28 of Employment Judge Warren's judgment);
 - 4.7. Ms Pierre did feel threatened by the Claimant and his demeanour on 1 December 2014 (paragraph 19.2 of Employment Judge Warren's judgment).
5. We are satisfied that those are fundamental findings that were central to the undisturbed conclusions in Employment Judge Warren's judgment from 4 August 2015 and therefore give rise to issue estoppel and are binding on us.

Further procedural history

6. A further Preliminary Hearing was held on 13 March 2017 before Employment Judge Foxwell at which discussion of the issues took place. The parties were ordered to file a single agreed list of issues by 27 March 2017. A further Preliminary Hearing was listed for 26 April 2017 and a time estimate for the final hearing was given of five days and the hearing listed for 5 – 8 and 12 September 2017. Employment Judge Foxwell considered the Claimant's application to amend his claim and his submission that his claim already included a whistleblowing claim, but rejected that submission. He found that whistleblowing had not been brought as a cause of action before the Tribunal. At the Preliminary Hearing on 26 April 2017 the parties had not been able to agree a single list of legal and factual issues. Employment Judge Foxwell therefore went through with the Claimant the factual allegations underlying each of his claims set out in his list of issues and, having identified them, set those out in his Preliminary Hearing Summary. He went on to consider the application to amend the claim to allege that the same matters relied upon were also the basis for whistleblowing complaints. Employment Judge Foxwell refused the application to amend for the reasons he gave in his reserved decision dated 10 May 2017 and sent to the parties on 16 May 2017. Further hearings were held in respect of applications by the Claimant for disclosure and some specific disclosure was ordered. The Claimant also pursued appeals to the EAT

in respect of disclosure applications and the procedural history was such that the dates identified for the Final hearing were not effective and further dates were required and that is how the hearing came to take place, as it did, in November 2017. The last of Mr Mechkarov's appeals to the EAT in respect of his applications for disclosure was dealt with on 9 November 2017, having been brought forward from 31 January 2018 in order to accommodate the dates for the Final Hearing in November. That was an appeal against the ruling of Employment Judge Russell on 21 August 2017 in respect of specific disclosure requests.

Issues in this case

7. The parties agreed at the outset of the hearing before this Tribunal that the list of issues as identified by Employment Judge Foxwell were the issues that this Tribunal had to decide. A copy of that list of issues is set out at pages 50 – 51 of the Employment Tribunal's bundle.

7.1. *Direct race discrimination*

- 7.1.1. Following a meeting with Catherine Pierre at the end of August 2014 in which she agreed to circulate the Claimant's CV and identify job opportunities for him with the Respondent and other financial sector employers, she failed to do so. The Claimant says that this was because of his Bulgarian nationality.
- 7.1.2. In the period between August and December 2014, the following employees of the Respondent failed to point him toward the opportunities for employment with the Respondent which were available: Christopher Blin, Brian Magos and Emrose Ahmed.
- 7.1.3. In a meeting at the end of August 2014 Ms Pierre saying that it was time for the Claimant to look for another job and "*if not there are always options including the black market*".
- 7.1.4. In the same conversation Ms Pierre unreasonably asking the Claimant to keep their verbal agreement confidential. This was an agreement under which the Claimant was to keep away from the Respondent for a period after which Ms Pierre would then look for employment with the Respondent or elsewhere for him.
- 7.1.5. Ms Pierre telling the Claimant in the same conversation that it may not be good to come back to the Respondent because of a head count reduction. It is the Claimant's case that this was intended to frighten him.
- 7.1.6. In the same conversation Ms Pierre saying to the Claimant that his "*background*" would be a disadvantage: it is the Claimant's case that this was a reference to his Bulgarian background.
- 7.1.7. Ms Pierre being unresponsive to the Claimant's phone calls and text messages and avoiding meeting with the Claimant in the period 10 to 28 November 2014.

- 7.1.8. On 3 November 2014, Ms Pierre telling the Claimant that he should prove his trustworthiness, and keep his part of the verbal agreement between the Claimant and Ms Pierre and Mr Gelis if he was to ensure his safety and the safety of his family.
- 7.1.9. Ms Pierre writing to the Claimant in a text message on 20 November 2014 that he "*should contact [his] old Bulgarian boss*".
- 7.1.10. Ms Pierre being unresponsive and disrespectful in telephone conversations.
- 7.1.11. At a meeting on 3 November 2014, when the Claimant explained that he was in financial difficulties Ms Pierre suggested that he might be sitting on a pile of cash which the Claimant took to be a reference to the black market. It is his case that Ms Pierre would not have said this to someone of Western European origin.
- 7.1.12. On 3 November 2014 Ms Pierre saying it might be easier for the Claimant to fit into an Eastern culture by which she meant the Far East (Japan) and/or Central and Eastern Europe.
- 7.1.13. On 3 November 2014 Ms Pierre talking about Abu Dhabi in glowing terms, in particular that people have servants there, when she knew that the Claimant was in financial difficulties.
- 7.1.14. On 1 December 2014 Ms Pierre telling the Claimant not to discuss their verbal agreement with his former colleagues.
- 7.1.15. The alleged failure by Mr Pannu and/or HR to follow Citi's internal grievance procedure and the other relevant procedures of the Respondent for the post employment grievance of a former employee.
- 7.1.16. The actions of the Respondent in allegedly blocking communication between the Claimant and certain employees of the Respondent by sending a warning email and by installing a fire-wall while the Claimant's discrimination and whistle blowing complaints were under investigation. The Claimant compares his treatment with that of Ms Pierre and Mr Gelis who are French and who continued to have management responsibilities over the majority of the witnesses to those events, while matters were under investigation.
- 7.1.17. The alleged failure to question the Claimant's colleagues and the HR department as part of the investigation.
- 7.1.18. The alleged failure of Mr Pannu and/or HR to investigate independently and to take into consideration the significant contributions of the Claimant to the Respondent, including being

a consistent top performer in Citi in London but also Citi in Bulgaria.

- 7.1.19. The alleged failure by HR to launch a separate investigation about the same issues and to contact the Claimant, as Mr Pannu told him on 8 December 2014.
- 7.1.20. The alleged failure by Mr Pannu and/or HR to investigate the general management issues in the transaction execution group.
- 7.1.21. The alleged failure of the investigation to give a fair opportunity to all internal stakeholders to freely express their views.
- 7.1.22. The Respondent's failure to inform the Claimant about the outcome of the investigation of his complaints about his treatment.

7.2. *Victimisation*

The Claimant identified the following protected acts for the purposes of his claim of victimisation under Section 27 of the Equality Act 2010:

- 7.2.1. His verbal and written complaint to Mr Gelis made on or dated 7 March 2013.
- 7.2.2. Emails sent by the Claimant to Brian Magos, Maybel Saleh, Christopher Blin, James Bardrick and David Walker on 26 November 2014 and an earlier email sent at about that time to Catherine Pierre and/or HR.
- 7.2.3. Comments made by the Claimant to Christopher Blin in a meeting on [27] November 2014.
- 7.2.4. Comments made by the Claimant to Catherine Pierre in a meeting on 1 December 2014.
- 7.2.5. The complaint made by the Claimant to the Respondent's internal investigation department by email on or about 4 December 2014.
- 7.2.6. The complaints made by the Claimant to Mr Amin Pannu at their meeting on 8 December 2014.

The Claimant relies on the same treatment as that asserted for direct discrimination as being detriments in respect of his claim for victimisation.

7.3. *Jurisdiction*

- 7.3.1. Does the Tribunal have to hear any of the Claimant's complaints of post termination race discrimination and/or victimisation that have been presented out of time? As to this:

- 7.3.1.1. Can the Claimant establish that the acts complained of formed part of conduct extending over a period?
- 7.3.1.2. If not, is it just and equitable to extend time for the Tribunal to hear the complaints?

Evidence

8. The Tribunal heard evidence from the Claimant in person. The Claimant had intended at one point to call a former colleague, Mr Bekh, but having been informed by the Employment Judge that he would be bound by Mr Bekh's evidence if he called him as his own witness, unless he could persuade the Tribunal that Mr Bekh was a hostile witness changed his mind, and having been given an opportunity to consider his position he changed his mind and decided not to call him. The Respondent's witnesses were Mr Mathieu Gelis, Mr Christopher Blin, Brian Magos, Emrose Ahmed, Catherine Pierre, Aminderjit Pannu and Sonal Shah. They gave evidence according to their written statements and were cross-examined by the Claimant. Both the Claimant and the Respondent produced written closing submissions on the law and the evidence.

9. The Tribunal made the following findings of fact.

Findings of fact

10. The Respondent is a global provider of financial services. The Claimant worked for the Respondent from August 2006 until 30 September 2013, first in the Respondent's Bulgarian office and then from 2010 in the Respondent's London office in Canary Wharf. By the end of his employment he had been promoted to the position of Vice President.

11. The Claimant, on being posted to London, was initially line managed by Mathieu Gelis, Citi Country Officer, until Mr Gelis moved to working principally from Paris in 2012 when the Claimant's day-to-day management was moved to Catherine Pierre (Director) and Christopher Blin (Director). The Claimant's appraisals were consistently those of a high performing employee and he was graded as "exceptional" or "highly effective" throughout his employment. The Claimant's employment with the Respondent came to an end in September 2013 in accordance with the terms of a settlement agreement.

12. We find the following facts from the "Warren Judgment" binding on us, as set out above. At paragraph 19.1 of that judgment, "*Mr Mechkarov was not subjected to any form of physical threat to his person before he entered into the Settlement Agreement*"; and 19.2, "*Ms Pierre did feel threatened by Mr Mechkarov in his demeanour during a meeting between them on 1 December 2014*". At paragraph 28, "*...that Mr Mechkarov was not under threat of keeping silent or of having to wait and prove his trustworthiness*".

13. We find that the circumstances leading up to the signing of the settlement agreement were as follows:

- 13.1. In early March 2013 the Claimant had a discussion with Mr Gelis. During the course of that discussion the Claimant complained that he was

suffering from stress and mental health problems. We accept Mr Gelis' evidence on this and it is consistent with the email at page 324 of the bundle;

- 13.2. Subsequently, the Claimant was admitted to hospital on 19 April 2013 with stomach pains (see the document at page 532 of the bundle);
- 13.3. The Claimant never returned to work. He was subsequently diagnosed with mental health problems. A medical certificate dated 28 May 2013 provided a diagnosis of "post-traumatic stress disorder" (page 558);
- 13.4. Thereafter the Claimant enquired about and chose to take voluntary redundancy in July 2013. We find that both Mr Gelis and Ms Pierre advised the Claimant to take his time and consider his options, including whether or not he should accept voluntary redundancy (see page 522 and also paragraph 18.1 of the Warren Judgment, which we accept is a finding of fact central to the decision in that judgment which was upheld on appeal:
"18.1 Emails at the time, (10 and 11 July 2013) corroborate the Respondent's case that Mr Mechkarov chose to take voluntary redundancy, that Ms Pierre was surprised that he had done so and that she and Mr Gelis both encouraged him to take his time to think about it. (See Respondent page 107/108). This is consistent with the Respondent's version of events and inconsistent with Mr Mechkarov's";
- 13.5. The Claimant then pushed for his voluntary redundancy to be affected expeditiously (page 521);
- 13.6. The Respondent had concern as to the Claimant's mental health given that he had been diagnosed with post-traumatic stress disorder and had then made a decision to leave his employment very quickly, and arranged for an occupational health physician to assess the Claimant to determine whether he was competent at that time to enter into the settlement agreement (page 183 – 184). The assessment was that the Claimant was competent to enter into the agreement;
- 13.7. Ultimately, the settlement agreement was signed by the Claimant on 26 September 2013 (page 180). The Claimant received advice from Speechly Bircham as to the terms and effect of the settlement agreement (page 181);
- 13.8. The Claimant was paid in excess of £70,000 by the Respondent following the termination of his employment under the terms of the settlement agreement, as against his statutory redundancy entitlement of £3,150 (see page 169 – 174).

14. The Respondent's employees did not hear from the Claimant again until July 2014 when the Claimant started to contact former managers and colleagues seeking advice about his future employment.

15. The Claimant contacted Ms Pierre through LinkedIn on 16 July 2014 (page 330).

The Claimant asked for a “30-minute catch up meeting” and Ms Pierre met with the Claimant on 21 August 2014 in a cafe in Canary Wharf close to the Respondent’s office (Cafe Brera). Ms Pierre followed up that meeting with an email (page 334) in which she provided contact details of a head hunter that she knew and also suggested ways for the Claimant to approach getting a job, “[I] Was further thinking about what we discussed and you might also want to look at short term position/ replacement as typically the best way to get to be known and recruited internally. Otherwise you should also look toward ratings agencies which should fit what you are looking for” (page 334).

16. The Claimant also contacted Mr Blin. They met on 27 August following which the Claimant emailed Mr Blin (page 336) sending him his CV. Mr Blin sent the Claimant contact details of senior colleagues in Citi Bank, he also forwarded the Claimant’s CV to a senior manager, Erik Arveschoug (page 338a) speaking about the Claimant in very positive terms and also to Anurag Chaudhary, Global Head of Distribution in Trade and Peadar Mac Canna (see pages 345, 346) and followed up with Mr Chaudhary (p. 357).

17. The Claimant gave evidence that he received responses from his job searches that queried why he had been out of the workplace for a year. At the same time the Claimant was also reaching out to others through LinkedIn, including a former colleague, Emrose Ahmed.

18. The Claimant sent his CV to David Walker (page 341) who then forwarded the email to Ms Pierre and asked her whether in her view the bank should bring him back. We find that this is a normal and expected response within an organisation when a former employee applies to come back to work for it. It is natural that a senior manager would seek the views of those who had managed the former employee in the past. The Claimant sought to ascribe some alternative meaning to this response and alleges that it is a reference to returning him back to Bulgaria. We do not accept that it bears that meaning.

19. By 29 August 2014 Ms Pierre has completed the CFA forms which the Claimant had asked her to and replies to the Claimant in these terms, “Thanks for CV. I will circulate internally but at the moment as I mentioned to you there are not many vacancies although I might not be aware of all of them! Take care...”. Ms Pierre accepted that she did not send the Claimant’s CV around and this was an oversight on her part. She believed that she had sent it, but on checking later realised that she had not, but in any event she had not become aware of any specific job vacancies for which he might be suitable.

20. Mr Blin continued putting out feelers on behalf of the Claimant through August (see page 356). On 8 September Peadar Mac Canna responded to the Claimant’s enquiries in the following terms, “Given the way we manage resourcing and headcount approval the best approach is to keep an eye out on the Citi Careers for approved opportunities...”, which was a reference to the webpage. He sent the link to the website and also advised “Flexibility on location is major factor as many of our roles are outside London”.

21. The Claimant texted Catherine Pierre on 10 November 2014 (page 367) asking for a meeting “today or tomorrow” as there were some things he “wanted to discuss further with you”. On 20 November 2014 the Claimant texted Ms Pierre in the following

terms:

"I have heard about some developments in the Bulgarian branch that, as things stand, might be an opportunity for me. Give me a call if you believe I may be reading this correctly".

We are satisfied that it was the Claimant who introduced the Bulgarian branch as an option he might consider, not Ms Pierre or anyone else. Ms Pierre responds to this text the same day (page 368) informing the Claimant that she was in the US but *"u definitively need to leverage ur network, old bulfarian [sic] boss mathieu, etc..."*. The Claimant replies asking when Ms Pierre will be back and saying it is impossible to discuss this on text. The Claimant contacted Ms Pierre again on 23 November, (a Sunday) looking for a meeting at the beginning of that week. On 28 November, in the morning, he asks for a meeting that day. Ms Pierre responded on 28 November informing the Claimant that she was back in Canary Wharf but the Claimant informs her that he is having a meeting with Christopher (Blin) and asks to arrange another time for his meeting with Ms Pierre. The Claimant also contacts Ms Pierre by email during this period. On 25 November he emailed Ms Pierre to say that he is outside in Brera and Ms Pierre responds, *"Sorry not possible today. Completely swamped"*, to which the Claimant replies, *"No worries, will check again tomorrow"*.

22. On 26 November 2014 the Claimant contacted Jill Gardner, who works in the Human Resources department, about his pension. The Claimant was trying to obtain information in respect of his pension because he wanted to take some money out of his pension fund, he believed that his pension fund had been sold to him as being 'like a savings pot', which he understood meant that he was able to take money out of it as well as pay money into it. On being advised by the Company managing the pension fund that this was not the case the Claimant became very upset and accused the Respondent of having misled him.

23. We find from the emails contained in the bundle (see for instance page/s 378, 380) that Ms Gardner was trying to be as helpful as possible in her response. The Claimant, however, referred to himself as a former employee and a job applicant and demanded that he should be entitled to a meeting at the Citibank premises to explain his pension options and asserted that there was a legal obligation to meet with him, asserting that *"all applicable laws of this country do not allow you to just shut me out"*.

24. The communication from the Claimant deteriorates significantly during this period as can be seen from his response to Jill Gardner at page 381. By 12.27 pm on 26 November Gail Reavy from the HR department has spoken to the Claimant. David Walker emails Ms Pierre on the same day in these terms, *"this has echoes of a difficult separation case..."*. The Claimant relies on this as evidence of some conspiracy, the inference he seeks to draw is that the Respondent was well aware of the reason that he was contacting them and that his complaint was one of race discrimination. We do not find the the emails bear that meaning and nor is that something that can be inferred from them. We are satisfied that is not an interpretation that any reasonable or objective reading of the documents could support.

25. By the end of November the Claimant appears to have nearly run out of money and was contacting other colleagues in increasingly desperate terms. On 27 November 2014 he contacted a former colleague, Brian Magos, by text at 5.03 am stating *"I NEED your help!"*. He also contacted Emrose Ahmed at 7.49 am that morning. At 10.35 am he emailed Brian Magos, Maybel Saleh and Christopher Blin to

tell them that he is outside (page 415). Christopher Blin responds within six minutes telling the Claimant that he is *"Coming down now"*. Maybel also responds telling him she cannot leave her desk. It is apparent from her email to Brian Magos (page 414) that she had also received a strange message from the Claimant the previous night. We find that Christopher Blin had spoken to the Claimant by 11.24 am and that Mr Blin then emailed Sonal Shah from HR at 1.35 pm and spoke to Gail Reavy by 2.33 pm that day. We accept Sonal Shah's evidence that if Mr Blin had said anything to Gail Reavy about the Claimant making allegations of discrimination against the Respondent or any of its employees that Ms Reavy would have made sure that this was brought to Ms Shah's attention.

26. Mr Magos, on receiving the email from the Claimant, considered the Claimant's behaviour to be concerning and we accept his evidence that he thought this was someone who appeared to be having mental health problems. Examples of the text messages received are at pages 400, 411 and 429. These messages and the times at which they were sent raised questions in the minds of the Respondent's employees about the state of the Claimant's health and we accept that this is why they contacted the Respondent's HR department.

27. We accept that Ms Pierre was surprised that the Claimant had said to another colleague that she was refusing to meet him as she had in fact met with him two times in the previous three weeks. Ms Pierre sought guidance from Gail Reavy in HR on 28 November 2014. Ms Pierre met the Claimant on 1 December 2014. We accept Ms Pierre's evidence and find that she was telling us the truth about what was said in that meeting. We accept that at that meeting Mr Mechkarov appeared to Ms Pierre to be desperate and aggressive, that he made a number of aggressive comments about bankers in general and their wealth, including comments such as, *"you posh people up there"*, which was said in a threatening tone and that he also accused her and Mathieu Gelis of being responsible for his financial difficulties and unemployment. We find that the Claimant did not make any allegation of race discrimination at that meeting. The Claimant handed Ms Pierre two sheets of paper, one set out a list of head hunters and the other had contact details of a former employee of the bank who had since gone to work at a different investment bank. He demanded that Ms Pierre contact the individuals listed on his behalf and find him a job. Ms Pierre did not respond well to Mr Mechkarov's accusatory and aggressive tone during the meeting and declined to do as he had demanded. We accept her evidence that he appeared quite shocked when she refused to do so. We also accept that she was genuinely in fear for her safety due to Mr Mechkarov becoming increasingly aggressive.

28. At the end of the meeting Ms Pierre declined to shake hands with the Claimant. However, despite this, following the meeting the Claimant sent an email to Ms Pierre in these terms, *"As discussed, please find attached my latest CV. Appreciate your help on this one"* (page 503), which was completely at odds with the way he had behaved at the meeting and the way the meeting had ended. Ms Pierre on her part was concerned enough to report the meeting to the Respondent's Human Resources department (page 447), informing them that she was concerned about the Claimant's behaviour and felt threatened by him.

29. As a result of Ms Pierre raising these concerns, Ms Shah sent an email to members of staff that she thought might be contacted by the Claimant, asking that if any members of staff heard from him they should contact her. Her email stressed that,

"It is of course a matter for you if you would like to have personal contact with him, however I would advise that you contact me beforehand" (page 451). This is described by the Claimant in the list of issues as the "warning" email.

30. As a result of what the Claimant had said in the meeting, Ms Pierre felt that not only was she personally being threatened but that the bank was also being threatened, due to remarks he had made about the way the Respondent conducted its business including references to due diligence failures and misleading of investors. Ms Pierre quite properly reported this to Ms Shah and the matter was referred to Mr Pannu, a senior investigations manager at the bank. Mr Pannu took Ms Pierre's concerns about the Claimant's aggressive and threatening behaviour seriously and decided to set up an automatic redirection for any emails received by the bank's email system from the Claimant's email address so that they were sent automatically to his inbox. He did this in order to be able to monitor the Claimant's communications with members of staff and in particular to make arrangements to protect Ms Pierre if it became apparent that the Claimant was intending to visit the Respondent's premises. We accept that this was the reason for setting up what became known as the "firewall".

Motivation of Ms Pierre

31. The Claimant alleges that Ms Pierre deliberately misled him about her intention to assist his job searches because of his complaint to Mathieu Gelis on 7 March 2013 about her alleged racist comments. Mr Gelis was clear in his evidence that there was no reference to any allegation of racism in his conversation with the Claimant in March 2013; that conversation focused on the Claimant's mental health. At the time, the Claimant described Ms Pierre to Mr Gelis as being kind and supportive. Ms Pierre denies making any derogatory comments about Bulgarians, people being from lower class, plebs, or gypsies. We accept her evidence on this without hesitation. We found her to be a credible and truthful witness. We did not find the Claimant's allegations to be credible.

32. The Claimant also made allegations in relation to the use of the term "*the black market*". He alleged that Ms Pierre was trying to force him onto the black market, and that this was because he was Bulgarian. He alleged that there was a link, or association based on prejudice, made by Ms Pierre and others employed by the Respondent between being Bulgarian and the black market. We accept Ms Pierre's denial of having made any such link. We accept her evidence that she does not understand what the Claimant meant by the black market in the context of her conversations with the Claimant, which were about job opportunities. We find that she had made no reference to the black market, nor did she make any reference to the Claimant sitting on a pile of cash; or any derogatory or negative remarks in connection with Bulgaria or Bulgarians. We are satisfied that none of the Respondent's witnesses made any link between the black market and Bulgarians.

33. We find that Ms Pierre was trying to be helpful to the Claimant. She provided details of a head hunter and made very helpful practical suggestions as to how he might try to find a job. This was entirely inconsistent with the Claimant's allegation that she was trying to push him onto the black market. We prefer Ms Pierre's account of the conversations that took place between herself and the Claimant to the account provided by the Claimant which we find to be unreliable and incredible.

34. We are satisfied that there was no verbal agreement between the Claimant and Ms Pierre and or Mr Gelis prior to him taking the severance agreement that they would secure employment for the Claimant on condition that he keep the arrangement confidential. We accept that Mr Gelis and Ms Pierre had discussed with the Claimant during his absence in 2013 the possibility that he might return to work to other less stressful roles for a period of time, but this did not come to anything as in the event the Claimant chose to take voluntary severance. There was no agreement that he should keep quiet for nine months, or any other period, and then they would find him a new job. When Ms Pierre met with him in 2014 she was meeting with him as a former manager and colleague. She offered him friendly and helpful suggestions. There was no obligation on her to conduct a job search for him and she did not promise to do so. Nor, as already found by Employment Judge Warren, did she make any threat to Mr Mechkarov or his family.

Mr Pannu's role

35. Following Ms Pierre reporting her concerns to Gail Reavy and Sonal Shah on her return from her meeting on 1 December, Mr Pannu was contacted by Joanne Cutts, also from HR, who informed him that the Claimant had been contacting the bank's employees regarding job opportunities in an odd manner which was accusatory and sometimes appeared desperate and was doing so with increasing frequency. We find this was an accurate description of what had been happening. It was also reported to Mr Pannu that the Claimant had raised a number of concerns about the circumstances in which he had left the bank, issues with his pension and the prioritisation and processing of bond executions at the bank.

36. Mr Pannu is responsible for investigating incidents of suspected fraud, control failures and serious wrongdoing in order to protect the assets and reputation of the bank and its clients. His investigation findings are used to inform decision makers in the bank's business units and the corporate risk functions. Investigating potential threats to the physical safety of bank employees, other than general health and safety matters, are also within his remit.

37. Mr Pannu spoke with Ms Pierre before speaking to the Claimant to obtain an overview of the events of the morning of 1 December and the previous month. She told him she had felt threatened by Mr Mechkarov and that he had been contacting her with increasing frequency over the past weeks which was concerning to her; that he had banged his fists on the table and pointed his finger very aggressively at her at their meeting that morning and that he had accused her of manipulating clients.

38. Mr Pannu contacted the Claimant on 3 December explaining that he wished to discuss some of the Claimant's concerns. The Claimant responded the next day and they confirmed a meeting the following week. The Claimant sent Mr Pannu a document (pages 515 – 516) in advance of their meeting which set out an extensive list of complaints. Mr Pannu did not understand any of those complaints to be about discrimination or make reference to race or nationality, we have seen those documents and accept that is an accurate and fair conclusion for him to have reached. We accept Mr Pannu's evidence as to what was discussed at his meeting with the Claimant on 8 December 2014. The Claimant did not make any complaint of race discrimination to him or suggest that any actions had any relation to his race or nationality. Mr Pannu told the Claimant that he might not be able to share the results of his investigation with

him, which was acknowledged by the Claimant in an email on 1 January (page 512).

39. Following his meeting with the Claimant, Mr Pannu spoke again with Ms Pierre on 20 January to understand her response to the issues the Claimant had raised. Ms Pierre strongly denied all the allegations the Claimant had made and explained that she had always been supportive of him. Ms Pierre explained the circumstances of the bond executions during the time Mr Mechkarov was employed and that she was not involved in handling of Mr Mechkarov's absence and subsequent exit from the business. She forwarded to Mr Pannu a number of emails which corroborated some of what she had said. Mr Pannu was satisfied that those showed that Mr Mechkarov had been supported by Ms Pierre during his sick leave and during the settlement agreement discussions and also when he had got in touch almost a year later.

40. Mr Pannu was satisfied that Ms Pierre's version of events was more plausible and he preferred her account. He focussed his investigation on the allegation of control failures and whether there had been any serious wrongdoing that could prove a risk to the assets or the reputation of the bank, and also on whether there was any threat to the physical safety of any employees. He did not investigate employee management issues, that was not part of his role and he referred those matters back to Joanne Cutts in the HR team. Mr Pannu considered that he had all the information he needed to arrive at a conclusion in respect of the matters that were within his remit.

41. We find that Mr Pannu independently investigated the matters raised by the Claimant as far as they were relevant to his remit. There was no requirement for him to interview other employees or investigate more widely. It is not Mr Pannu's role to undertake grievance investigations or handle grievances.

42. We accept that Mr Pannu's understanding was that any reference that the Claimant made to being Bulgarian was in the context of his perceived inequality between a low paid, (as he described it) Bulgarian immigrant living in East London and rich people such as Ms Pierre and Mr Gelis living in large houses in West London.

43. It was not disputed that the Claimant's salary when he was employed by the Respondent was in the region of £100,000 per year and that by the time he appeared before us he had obtained new employment on a similar salary, i.e. £100,000 per annum. In his complaint to the tribunal the Claimant linked his perceived inequality of wealth to an inequality of power between himself and others but we are satisfied that his references to inequality of wealth do not amount to allegations that were understood by the Mr Pannu, or anyone employed by the Respondent, to be allegations of race discrimination.

Sonal Shah

44. We accept the evidence of Ms Shah that the Respondent's HR department did not consider the complaint raised by the Claimant to Mr Pannu to be a grievance. There was no separate complaint by the Claimant to anyone in HR to raise a grievance. The only complaint was in respect of his pension which had been referred on to the appropriate pension fund provider. We also accept her evidence that the Respondent's grievance policy did not apply to ex-employees and that she considered that there was no obligation on the Respondent to make the grievance procedure available to a former employee.

The law

45. The relevant law is contained in the following sections of the Equality Act 2010 :

13 Direct discrimination

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

23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

27 Victimisation

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

....

39 Employees and applicants

(1) An employer (A) must not discriminate against a person (B)--

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)--

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

S108 relationships that have ended

(1) A person (a) must not discriminate against another (b) if-

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

...

(7) But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.

123 Time limits

(1) Proceedings on a complaint within s 120 [a contravention of part 5 (work)] 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.

...

(3) for the purposes of this section-

(a) conduct extending over a period is to be treated as done at the end of that period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

46. Direct discrimination assumes a comparison as between the treatment of different individuals. To make that comparison, however, the cases of complainant and comparator must be such that there must be no material difference between the circumstances relating to each case, Equality Act 2010 s 23. The tribunal should have regard to what was in the mind of the alleged discriminator at the relevant time (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337), the reason why the complainant was treated as he was. The protected characteristic need not be the only reason for the treatment but must be an effective cause (*O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor* [1997] ICR 33, EAT).

47. In respect of his complaints of victimisation we have to decide whether the claimant has been subject to a detriment because he had done a protected act, or because the Respondent believed that he had done or intended to do a protected act.

48. We reminded ourselves of the guidance on the application of the burden of proof has been given by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142, [2005] IRLR 258, [2005] ICR 931. The EAT in *Laing v Manchester City Council* [2006] ICR 1519, EAT per Elias P held that if the tribunal is satisfied that the reasons given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. We also reminded

ourselves that the Court of Appeal emphasised in *Anya v University of Oxford* [2001] IRLR 377, [2001] ICR 847, that it is essential that in exercising its discretion to draw inferences, a tribunal does so on the basis of proper findings of fact.

Protected Acts

49. The Claimant relies on the following as protected acts:

49.1. *The verbal and written complaint to Mr Gelis on 7 March 2013.*

We accept Mr Gelis' evidence that he was not aware of any allegation of discrimination made by the Claimant. The email chain from 7 March 2013 clearly relates to a discussion of stress and mental health issues. It contains no reference to any allegation of bullying or of discrimination of any type made to Mr Gelis. We find that the conversation was in respect of the Claimant not being able to cope with the work pressure and Mr Gelis was genuinely concerned about the Claimant's health as reflected in his email (see page 324 for instance). We accept Mr Gelis' evidence that the Claimant had never told him that Ms Pierre was mistreating him. No such allegation was made. We do not find that there was a verbal or written complaint of discrimination or that could amount to a protected act under s 27 of the Equality Act 2010.

49.2. *The Emails to Brian Magos, Maybel Saleh, Christopher Blin, James Bardrick and David Walker (who was Corporate Head) on 26 and 27 November 2014 and an earlier email sent to Catherine Pierre and/or HR [p380 to Ms Pierre and Julieanna Cooke Yarborough]; the Claimant also relies on the text message to Maybel Saleh (page 400) and email to Maybel Saleh at page 417 which states " I am in big trouble and there is no way out".*

49.2.1 The Claimant suggests that the link between these and the 'preceeding harassment and bullying campaign orchestrated by Mr Gelis and Ms Pierre' was 'immensely clear', particularly the reference to "*What you guys have done to me is too much...*" [text to Maybel Saleh, p 400] and he seeks to rely on that as a reference to a complaint of race discrimination. We are satisfied that there was no reason for any of the recipients of those emails, or texts, to think that any allegations of race discrimination were being made in them or being referred to implicitly. There was simply no reference to or suggestion of any complaint of race discrimination or harassment.

49.2.2 *Emails to Catherine Pierre and HR and James Bardrick and David Walker*

The Claimant points to the reference to 'applicable laws' in that email and, 'to being misled' about his pension and Catherine Pierre not helping with his job search, he relies on those as being protected acts. The Claimant suggests it was clear from the response of David Walker what was being referred to and that it amounted to a claim for race discrimination. We are satisfied that no reference was made to race discrimination and nor was that any part of his complaint, the documents referred to do not support the suggested interpretation nor any implied meaning that the Claimant now seeks to ascribe to them.

49.2.3 We do not find that these emails and/or texts constitute protected acts.

49.3. *Meeting with Christopher Blin on 27 [not 28th as stated in the list of issues] November 2014*

49.3.1 The Claimant's evidence was that at his meeting with Mr Blin he linked his complaints about his treatment to that of Victor Bekh who is also Eastern European. However, the Respondent's case was that Mr Bekh did not accept he was mistreated or discriminated against by Mr Gelis or anyone else. Mr Blin did not remember any allegation of race discrimination being made at that meeting when he made his witness statement. We also accept Mr Blin's evidence to us that if the Claimant had made a complaint of race discrimination, or that he had understood to amount to race discrimination, he would have mentioned it to Gail Reavy when he reported to her what had happened at his meeting with the Claimant. We have accepted Ms Shah's evidence that had he said anything of the kind to Gail Reavy she would have reported it to Ms Shah. We accept that no such complaint was reported to the HR officers, Gail Reavy or Sonal Shah, following that meeting.

49.3.2 We found Mr Blin to be a very thoughtful witness who was obviously concerned about the Claimant and we are satisfied that if the Claimant had raised a complaint of discrimination in his meeting with Mr Blin, Mr Blin would not have neglected to pass it on to the Respondent's HR department. We do not find those complaints were made to him in the meeting on 27 November. We do not find that anything said by the Claimant to Mr Blin amounted to a protected act.

49.4. *Meeting with Catherine Pierre on 1 December 2014.*

We accept Ms Pierre's evidence that the Claimant referred to "you and your posh friends" and that there was no reference to Bulgaria, race or nationality in that conversation, nor any allegation of discrimination. We do not find this was a protected act.

49.5. *The draft email to colleagues given to Mr Pannu (page 515) in which there is reference to the word harass. The passage relied on is as follows (found at page 516), "I am writing this to you because I know you are the people who will understand me. I know that Victor, Maybel, Oxana and Paul have been harassed on-the-job..."*

The people listed by the Claimant are from various nationalities and backgrounds, there is no reference to harassment because of race, or related to race or nationality and we are satisfied that it is not possible to imply that into what is set out in the Claimant's draft email. We accept Mr Pannu's evidence that he did not understand the complaint to be a complaint of race discrimination. This was not a protected act.

50. We have not found any of the acts relied on to amount to protected acts under the Equality Act and therefore there is no basis for a claim of victimisation arising from any protected acts.

Less favourable treatment – allegations of direct discrimination

51. We set out our conclusions on each of the Claimant's complaints of direct race discrimination below:

Allegation 1 – Failure to circulate CV and identify job opportunities

51.1. We do not find that Ms Pierre agreed to identify job opportunities and circulate the Claimant's CV at their meeting on 21 August 2014. She did say that she would circulate his CV in an email on 29 August; this was in the context of the Claimant asking her to do so if she became aware of any opportunities. We accept Ms Pierre's evidence that she was not aware of any opportunities coming up and that she thought she had circulated the Claimant's CV when in fact she had not. We accept Ms Pierre's explanation as genuine. We do not find that her failure to do so was because he was Bulgarian. We are satisfied that she would not have behaved any differently had he been Western European or from any other country.

Allegation 2 – August to December 2014 failing to point him towards opportunities for employment, that is Christopher Blin, Brian Magos and Emrose Ahmed.

51.2.1 None of the Claimant's former colleagues named in this allegation were responsible for recruitment. We are satisfied that it was not their responsibility or role to find the Claimant a job. However, Mr Blin made considerable efforts on the Claimant's behalf. He contacted Erik Arveschag on 27 August (page 336) and Anuray Chaudhry on 1 September 2014 and followed this up on the 5th. He also contacted Peadar Mac Canna on 1 September (page 354), who referred the Claimant to the opportunities on the relevant part of the Respondent's website.

51.2.2 We are satisfied that the Claimant's assertion that Mr Blin failed to point him towards opportunities for employment is factually incorrect and not a fair reflection of what Mr Blin did for him

51.2.3 Neither Mr Magos nor Mr Emrose had any obligation to provide support or assistance to the Claimant in his job searches. They were not aware of any vacancies and nor was there any reason for them to be aware of vacancies. They both already had jobs and were not looking at the Respondent's jobs website. There is no evidence to suggest that they would have behaved any differently to a non-Bulgarian colleague. We do not find that they were part of a conspiracy to keep the Claimant out of employment with the Respondent or any wider conspiracy with Ms Pierre or Mr Gelis in an effort to damage the Claimant's career. There was no less favourable treatment of the Claimant and no link to the Claimant's nationality in how they conducted themselves towards him.

Allegation 3 – Meeting in August 2014 Ms Pierre allegedly told the Claimant that if he was not able to find a job "there are always options including the black market".

51.3. We have found that this simply was not said and the allegation is not sustainable on the facts.

Allegation 4 – Ms Pierre telling the Claimant, in the same conversation, that the Claimant should keep their verbal agreement confidential

51.4. We find that this was not said and the allegation is not factually sustainable.

Allegation 5 – Telling the Claimant, in the same conversation, that it may not be good to come back to the Respondent because of a head count reduction

51.5. Ms Pierre may have referred to a head count reduction. Having heard Ms Pierre's evidence we are satisfied that this was not intended to frighten the Claimant.

The Claimant did not provide any credible explanation as to why it should. We accept Ms Pierre was simply trying not to give the Claimant false hope. She was not aware of vacancies but she had been aware of some head count reduction in the previous couple of years. There was no evidence to suggest that she would have said anything different to the Claimant had he been Western European, or any other ex-employee in the same circumstances, had they approached her for help with a job search. We find there was no less favourable treatment and her conduct was in not because of or in any way whatsoever connected to the Claimant's race, including his Bulgarian nationality

Allegation 6 – In the same conversation, Ms Pierre saying to the Claimant that his “background would be a disadvantage”.

51.6. We accept Ms Pierre's evidence that she made no reference to the Claimant's background being a disadvantage. She did not refer to his Bulgarian background or any other background. In response to the Claimant's request for advice as to whether he should contact his old Bulgarian boss in response Ms Pierre confirmed that he should leverage his network, including his Bulgarian boss and Mathieu Gelis. We accept Ms Pierre's explanation that she believed this to be sensible advice. We do not find that she said the words ascribed to her by the Claimant.

Allegation 7 – Ms Pierre being unresponsive to the Claimant's phone calls and text messages and avoiding meeting with the Claimant in the period 10 to 28 November 2014

51.7. We find this allegation is not sustainable on the evidence. Much of the chronology of meetings and his contact with Ms Pierre was accepted by the Claimant. We have found as a fact that Ms Pierre did meet with the Claimant on numerous occasions and she was very responsive to him. Ms Pierre was away in the United States during this period and then spent a weekend in Paris, on her return she was also very busy at work and under no obligation to respond to the Claimant. However, she did respond. We have found that she responded promptly. She told him when she was away and when she was available, and she made efforts to meet him despite her heavy schedule and workload. There is no basis in fact for this allegation.

Allegation 8 - On 3 November 2014, Ms Pierre telling the Claimant that he should prove his trustworthiness, and keep his part of the verbal agreement between the Claimant and Ms Pierre and Mr Gelis if he was to ensure his safety and the safety of his family.

51.8. We are satisfied that this did not happen.

Allegation 9 – Ms Pierre writing to the Claimant in a text message on 20 November 2014 that he should contact his old Bulgarian boss.

51.9. The text messages between the Claimant and Ms Pierre speak for themselves. Ms Pierre responded to the question texted by the Claimant, who asked if he should contact his old boss in the Bulgarian office about possible opportunities there. The reference to Bulgarian boss came from the Claimant: it was a fact that he had worked in Bulgaria before working for Mathieu Gelis in London. We do not find Ms Pierre's response is capable of being seen as a detriment in the circumstances. There was nothing to suggest that Ms Pierre would have responded any differently if the

question had been from someone who had worked in the Paris office or any other of the Respondent's offices. We do not find there was any less favourable treatment of the Claimant.

Allegation 10 – – Ms Pierre being unresponsive and disrespectful in telephone conversations

51.10. The Claimant has failed to put forward any credible evidence that the Ms Pierre was unresponsive or disrespectful to him in telephone conversations. We have found that Ms Pierre made considerable efforts to be supportive of the Claimant and responded to his texts and emails promptly as well as arranging to meet with him on a number of occasions. This is inconsistent with the Claimant's allegation that she was unresponsive and disrespectful towards him. We dismiss this allegation.

Allegation 11 - At a meeting on 3 November, when the Claimant explained that he was in financial difficulties Ms Pierre suggested that he might be sitting on a pile of cash which the Claimant took to be a reference to the black market.

51.11. We found that this was not said by Ms Pierre.

Allegation 12 - On 3 November 2014 Ms Pierre saying it might be easier for the Claimant to fit into an Eastern culture, by which she meant the far-east (Japan) and/or Central or Eastern Europe

51.12. We do not find that Ms Pierre said this to the Claimant.

Allegation 13 – On 3 November 2014 Ms Pierre talking about Abu Dhabi in glowing terms, in particular that people have servants there when she knew that the Claimant was in financial difficulties

51.13. It was not disputed that Ms Pierre had just returned from a trip to Abu Dhabi where she had been staying with friends who had a nanny and a cleaning lady. We do not find that Ms Pierre said that 'everyone there had servants'. We are satisfied that Ms Pierre would not have had the same conversation about her recent trip with anyone that she was meeting in the same circumstances and it had nothing to do with the Claimant's Bulgarian nationality that this topic was raised. We do not find there was any less favourable treatment of the Claimant nor was it in sense because of his race. Even if it had happened whilst it might be insensitive we are satisfied that it would not amount to race discrimination.

Allegation 14 – On 1 December 2014 Ms Pierre telling the Claimant not to discuss their verbal agreement with his former colleagues

51.14. We have found that this was not said. There was no such verbal agreement arising from the meeting in August or at any time.

Allegation 15 – Mr Pannu's alleged failure and/or HR's to follow Citi's internal grievance procedure post-employment grievance of a former employee

51.15. We have found that there was no grievance procedure applicable to former employees and there is therefore no failure to follow such a procedure. He was

not a current employee and no procedure was thought to apply to him. We are satisfied that any former employee who made complaints or allegations in the way that the Claimant did would have been treated exactly the same. There was no less favourable treatment because of the Claimant's nationality

Allegation 16 – The actions of the Respondent in allegedly blocking communication between the Claimant and certain employees by sending a warning email and installing a firewall while matters were under investigation. The Claimant compares his treatment to that of Ms Pierre and Mr Gelis who are French and who continued to have management responsibilities over the majority of witnesses to those events, even while matters were under investigation.

51.16. 1 Ms Pierre and Mr Gelis were not in the same circumstances as the Claimant. There were material differences between their circumstances, including the fact that the Claimant was a former employee of the Respondent and Ms Pierre or Mr Gelis were current employees; and the fact that the Claimant had behaved in an erratic and threatening way towards members of the Respondent's staff. Further, the Claimant misunderstood the position of his comparators: Ms Pierre and Mr Gelis were not under investigation. The Claimant seemed unable to accept that his position as an ex-employee was not the same as someone who was an employee of the organisation.

51.16.2 We are satisfied that Ms Shah's email was not a block on communication but a request to be notified if the Claimant contacted any of the employees mentioned in the email.

51.16. 3 The protocol installed at the request of Mr Pannu was described as a 'firewall', we find that it ensured that communications went to him first, he could then forward them on as appropriate. We accept Mr Pannu's explanation that the reason for this was that the Claimant's behaviour had been considered to be threatening: the Respondent was concerned to monitor his contact with others in the organisation and specifically to protect Ms Pierre from any further threats and to ensure that the organisation was aware if the Claimant was arranging to meet other employees. We accept that is an explanation that has nothing to do with the Claimant's nationality or race or nationality and does not amount to race discrimination.

Allegation 17 – The alleged failure to question the Claimant's colleagues and the HR department as part of the investigation

51.17. We accept Mr Pannu's evidence that he interviewed those people that he felt he needed to. Having spoken to the Claimant and to Ms Pierre and having seen the emails Ms Pierre sent him Mr Pannu decided that the Claimant's allegations were not credible and he did not need to conduct any wider investigation. We accept his explanation and do not find that he was influenced in his decision in any way by the Claimant's race or nationality. We do not find that he treated the Claimant any less favourably because of his race or nationality, he was treated in the same way as he would have treated anyone else who was not Bulgarian, or who was Western European.

Allegation 18 – The alleged failure of Mr Pannu and/or HR to investigate independently and take into consideration the significant contribution the Claimant had made to the Respondent, including being a consistent top performer in Citi London but also in Citi

Bulgaria.

51.18. We accept Mr Pannu's evidence as to his remit. His remit did not extend to reviewing complaints about colleagues or between former colleagues. He was satisfied, having spoken to Ms Pierre, that there was no regulatory issue and he preferred her account of events. He found the Claimant's allegations to be unsubstantiated and passed the file to HR. We are satisfied that Mr Pannu investigated independently, in that he was not influenced by the status or nationality of any of those involved, and there was no further investigation required of him. He had no obligation to question the Claimant's colleagues or anyone else in the organisation once he was satisfied with the explanations provided by Ms Pierre. The fact that the Claimant had been a top performer was not in dispute and did not create any additional obligation on behalf of the Respondent towards him. There was no evidence put forward to suggest that the Respondent would have treated any other ex-employee any differently and there is no basis for us to infer there was less favourable treatment on the basis of the Claimant's race or nationality.

Allegation 19 – The alleged failure by HR to launch a separate investigation about the same issues and contact the Claimant as Mr Pannu told him on 8 December 2014

51.19. We have found as a fact that the Claimant was not told by Mr Pannu that HR would launch a separate investigation. We accepted the explanation from HR as to why they did not conduct an investigation. For the reasons given we found no less favourable treatment and no connection whatsoever with the Claimant's nationality.

Allegation 20 – The alleged failure by Mr Pannu and/or HR to investigate the general management issues in the transaction execution group

51.20. We have accepted Mr Pannu's evidence that general management issues were outside his remit. We also accepted Ms Shah's evidence that the HR department considered that historical complaints by ex-employees did not come within any procedure; and that from HR's point of view no complaint had been received. We find there was no less favourable treatment of the Claimant because of his race or nationality, there is nothing to suggest that the Respondent would have acted any differently had the Claimant not been Bulgarian or had he been Western European.

Allegation 21 – The alleged failure of the investigation to give a fair opportunity to all internal stake holders to freely express their views

51.21. We have already found that there was no need for a wide-ranging investigation, or any further investigation than that carried out by Mr Pannu. There is no evidence of any less favourable treatment in respect of the Respondent's decisions in relation to any investigation and no basis for inferring that there was any connection with the Claimant's nationality. We are satisfied that none of the decisions taken by HR or Mr Pannu in respect of the investigation had any connection whatsoever with the Claimant's nationality or race.

Allegation 22 – the Respondent's failure to inform the Claimant about the outcome of the investigation of his complaint about his treatment

51.22. We have found that Mr Pannu specifically informed the Claimant that he would

not be receiving the outcome of his investigation. There was no other investigation about which the Claimant could expect to be informed. The reason for Mr Pannu not informing the Claimant of the outcome of his investigation was accepted by the Tribunal and there was no relationship with the Claimant's race or nationality.

51.23. We have not found any of Mr Mechkarov's allegations of race discrimination to have been made out. His claim for direct discrimination fails and is dismissed.

Jurisdiction

52. Having dismissed each of the Claimant's complaints we do not need to go on to consider the question of jurisdiction. In any event we consider that had there been an agreement to assist in securing new employment entered into during the Claimant's employment by the Respondent and at the time of its termination, then it would be arguable that any breaches of that agreement would have a sufficiently close connection with the employment to give us jurisdiction over discrimination complaints arising from it, and we do not understand the Respondent do be arguing any differently. However, there was no such agreement. We are also satisfied that there is no obligation on former colleagues or the Respondent, in circumstances such as we have found those of this Claimant to be, to assist former employees with finding new work.

Credibility

53. Where there has been a direct conflict in the evidence we have preferred the evidence of the Respondent's witnesses to that of the Claimant. We found the Claimant's recollection of events to be unreliable and on many occasion inconsistent with the contemporaneous documents (emails and texts). We find the Claimant's evidence to be lacking in credibility and to be unreliable in many respects, his interpretation of the documentary evidence was on many occasions objectively not credible. For instance, even the early emails with Mr Gelis in March 2013. His own evidence was inconsistent, for example his absolute denial that he had suffered from any mental health problems is inconsistent with the documentary evidence he produced of a diagnosis of Post Traumatic Stress Disorder and with his pleaded case in his ET1. We accept Mr Forshaw's submissions as to the Claimant's lack of credibility. We found that the Claimant misrepresented what was said by the Respondent's witnesses on numerous occasions during the course of his cross examination of those witnesses. It is clear the Claimant came to see himself as a victim in everything, describing himself as a 'poor Bulgarian immigrant', despite his earning in excess of £100,000. We are satisfied that the Claimant's version of events was a distortion of the truth and did not bear close connection with reality.

54. Ms Pierre, in particular, conducted herself with dignity and restraint under immense pressure in lengthy cross examination by the Claimant and under the stress of prolonged litigation, having found herself the subject of very serious and upsetting allegations by Mr Mechkarov in circumstances where we are satisfied that she was simply reaching out to try to provide him with some assistance in recognition with their former working relationship. We found that each of the Claimant's former colleagues who gave evidence, in particular Ms Pierre, Mr Gelis and Mr Blin had been genuinely concerned for his wellbeing and had no ill will or malintention towards him at any time prior to these proceedings. They displayed sympathy towards him during the hearing despite the difficult circumstances and the allegations that he had made against them.

Conclusion

55. The Claimant's claims of direct race discrimination and victimisation fail and are dismissed.

Employment Judge Lewis

19 March 2018