

**Reserved judgment**



**Claimant: Ms Y Ameyaw**  
**First Respondent: PricewaterhouseCoopers Services Limited**  
**Second Respondent: Mark Gossington<sup>1</sup>**

**Heard at London South Employment Tribunal on 19-21, 24-28 April, 2-5,  
& 8-12 May 2017**

**Before Employment Judge Baron**

**Lay Members: Ms C Bonner & Ms C Edwards**

**Representation:**

**Claimant: See below**  
**Respondent: Laura Bell - Counsel**

**JUDGMENT**

It is the unanimous judgment of the Tribunal that the claims are dismissed.

**REASONS**

*Introduction*

1. We very much regret the delay which has occurred in providing this judgment and the reasons for it. We mention below the substantial nature of the hearing. It will be seen that the Claimant is making a large number of separate allegations, each of which has had to be considered. There is at present a material shortage of judicial resources in the Tribunal, and each of the lay members has other commitments. In addition to the days listed above when the Tribunal heard evidence, we have met in chambers on various other dates. The final date we met in chambers was 9 February 2018.
2. The Claimant had been employed by the Respondent since 7 April 2014, and remained so employed when this case was heard, although we understand that she had by then been suspended from work. We had no further information and nothing turns on that point. These are claims under

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<sup>1</sup> Mr Gossington is only an individual Respondent to claims made in the third claim.

the Equality Act 2010 of direct discrimination and harassment based upon the protected characteristics of race and sex, and also of victimisation.

3. The three claims forms ET1 were presented to the Tribunal on 6 October 2015, 9 August 2016 and 11 November 2016 respectively. Further mention of them, and amendments to them, is made below.
4. It is not necessary to recite in this document all the procedural matters relevant to these various claims, but some points are material. The first day for which the cases were listed to be heard was 18 April 2017. That was converted into a preliminary hearing at which I sat alone to deal with applications then made. The following two days were allowed for the Tribunal to read the evidence, and the parties attended on 21 April 2017. The evidence in support of the Claimant's case was completed shortly after the launch adjournment on 3 May 2017.
5. The Claimant has had different legal representation from time to time. Rhys Johns of counsel was instructed by the Claimant during the week preceding the hearing under the Bar's direct access scheme. During the morning of 4 May 2017 after there had been a short break Mr Johns applied for an adjournment of the hearing and a relisting of it on the basis that he had not been able to prepare sufficiently to enable him properly to represent the Claimant. That application was refused for reasons given at the time. After the lunch adjournment Mr Johns informed the Tribunal that he had ceased to represent the Claimant. Thereafter the Claimant was a litigant in person.
6. During the hearing on 8 May 2017 the Claimant left the Tribunal room saying that she was going to see her GP. She later supplied a form Med3 which stated that she had been advised that she was not fit for work up to 22 May 2017. The Tribunal treated that as a further application for an adjournment of the hearing, and informed the parties that that application would be considered at 10 am on 9 May 2017. The Claimant did not attend and was not represented. The application was refused and written reasons for that decision were provided separately. The Claimant did not attend the proceedings thereafter. In her absence the Tribunal asked some questions of the Respondent's witnesses for the purposes of clarification, or which arose out of the written and oral evidence of the Claimant.
7. Various other applications were made during the hearing, and those applications, our decisions upon them, and the reasons for those decisions have been set out in a separate document as it is not necessary for them to be recorded in the Register, and setting them out here will extend further an already lengthy document.
8. While Mr Johns was representing the Claimant I raised the issues as to whether the Claimant wished to retain Mr Gossington as an individual Respondent and, if so, exactly what factual allegations were being made against him. Mr Johns said that he would take instructions, but he then ceased to represent the Claimant. Mr Gossington therefore remains as an individual Respondent to the third claim. Henceforth we will refer to the

First Respondent simply as 'the Respondent' and to Mr Gossington by name. Further, mention of 'the Respondent' is to include any actions or omissions of PricewaterhouseCoopers LLP where applicable.

9. By any measure this has been a very substantial hearing. The trial bundle of documents consisted of about 6,000 pages in sixteen separate files. The Claimant gave evidence, and in addition called Uba Dijemeni. Mr Dijemeni is a black person and was a Senior Associate with the Respondent from 2013 to March 2016 when he left the Respondent and joined UBS. The Claimant's witness statement was 110 pages in length consisting of 597 paragraphs. Unfortunately she had not included cross-references to all the documents to which she referred.
10. Set out in an Addendum to this document are details of those individuals in the Respondent who are mentioned in the reasons below. Evidence for the Respondent was given by those whose names are in bold and underlined. Their roles as at the relevant time are set out together with their ethnicities as the Respondent understands them to be. The witness statements of the Respondent's witnesses were also substantial and filled one lever arch file. Mr Dawson gave evidence on the morning of 11 May 2017 from Australia via video link. Because of delays caused by dealing with the various applications made during the course of the hearing Mr Stocks became unavailable to give oral evidence to the Tribunal, and we accepted his witness statements as his evidence, but noted that he had not been present to be cross-examined.

*Evidence from Jane Woolcott*

11. An issue arose concerning the giving of evidence by Ms Woolcott. We understand that she was present for at least the first few days of the hearing. On 5 May 2017 Miss Bell informed the Tribunal that Ms Woolcott would not be able to attend the Tribunal further, but no reason was given at that time. On 8 May 2017, the next sitting day, the Claimant made applications, one of them being for a witness order in respect of Ms Woolcott. Miss Bell said that Ms Woolcott had a major illness and was not able to attend. A medical report was later supplied which was dated 4 May 2017 and had been prepared by Mr Michael P Bourke, a Consultant Psychiatrist. Mr Bourke set out certain conclusions and recommended that Ms Woolcott be excused from attending the hearing or that her evidence be postponed until her treatment had been concluded, which was to last for between three and six months. However Mr Bourke also advised that delaying the hearing would act as a perpetuating factor delaying Ms Woolcott's response to treatment.
12. The Claimant sent an email to the Respondent with a copy to the Tribunal on 10 May 2017 making it clear that she objected to Ms Woolcott's absence. The Claimant commented that Ms Woolcott had become unavailable after the Claimant had produced documents which the Claimant said disproved certain allegations which had been made by Ms Woolcott. The Tribunal decided that because of the contents of the medical report it would not be appropriate to require Ms Woolcott to attend

the Tribunal, and that any weight to be given to the evidence contained in her witness statement should be the subject of submissions.

13. Miss Bell made submissions on the point. We have taken Ms Woolcott's statement into evidence placing such weight on it as appropriate, noting that she was not cross-examined. We have placed greater weight on her evidence where it was supported by that of Mr Scott and contemporaneous documentation.

#### *Submissions*

14. Because the Claimant was not present at the conclusion of the evidence we decided that it would be unjust to have oral submissions from Miss Bell. The Tribunal therefore ordered that the parties be able to make written submissions to the other party by 9 June 2017, and to provide replies to the submissions of the other by 23 June 2017. A set of submissions and replies were to be provided to the Tribunal by 30 June 2017. Submissions for the Respondent were provided to the Tribunal on 28 June 2017. The covering email stated that the Claimant had not provided any submissions. By an Order of 29 September 2017 the date for the provision of written submissions by the Claimant was extended to 27 October 2017. The Claimant has not provided any submissions.
15. After Miss Bell prepared her written submissions Laing J gave judgment in the Employment Appeal Tribunal in *Efobi v. Royal Mail Group Limited* UKEAT/023/16. Further brief submissions were then made on behalf of the Respondent on 22 August 2017. It has now been held in *Ayodele v. Citylink Ltd & anor* [2017] EWCA Civ 1913 that *Efobi* was wrongly decided. Consequently we have ignored the supplemental submissions.
16. The submissions by Miss Bell on behalf of the Respondent were inevitably substantial, being of 107 pages. She addressed each of the allegations separately. We comment on such of those submissions as appropriate when considering our conclusions.
17. Miss Bell made submissions as to the attitude adopted by the Claimant during the proceedings and said that various allegations were made which were outlandish and not supported by evidence. Miss Bell submitted that on several occasions the Claimant deliberately lied to the Tribunal.

#### *The statutory provisions*

18. The provisions in the 2010 Act which are material to these claims are as follows:

##### **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.

(2) – (8) . . . .

##### **23 Comparison by reference to circumstances**

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

##### **26 Harassment**

(1) A person (A) harasses another (B) if—

## Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
  - (i) violating B's dignity, or
  - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) – (3) . . . .

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- . . . ;
- race;
- . . . ;
- sex;
- . . . .

### 27 Victimisation

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

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

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

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

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

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

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

### 123 Time limits

(1) Proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

(2). . .

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

- (a) when P does an act inconsistent with doing it, or
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

### 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.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
  - (a) an employment tribunal;
  - (b) – (f) . . . .

*The law*

19. We have directed ourselves as follows:

- 19.1 There are claims of direct discrimination and harassment under section 13 and 26 of the 2010 Act. Such claims are based on a protected characteristic. As mentioned below the Claimant relies on race and sex. She is female and describes herself as black for the purposes of the claims based on the protected characteristic of race. Any finding must be based upon one or other of those characteristics. As Miss Bell pointed out section 14 of the 2010 Act is not in force, and so we must consider each protected characteristic separately, despite the fact that often the Claimant referred to what she says happened to her was because she was a 'black woman'. That is not a protected characteristic, but a combination of two such characteristics.
- 19.2 In the case of the claims of victimisation the essential elements are a protected act (or acts) and being subjected to a detriment because of such protected act.
- 19.3 In any case the initial burden is on a claimant to prove facts from which the Tribunal could reasonably conclude that there had been unlawful discrimination, harassment or victimisation. That may involve the Tribunal in drawing inferences. If the claimant can prove such facts then it becomes the responsibility of the employer to show that the treatment in question was to no extent caused by the protected characteristic or the protected act, as the case may be. At the first stage it is proper for the Tribunal to take into account all the evidence which has been adduced to it, and not solely that of the claimant.
- 19.4 In the case of claims of direct discrimination, the Tribunal must find that there was less favourable treatment of the claimant than there was of an actual comparator, or would have been of a hypothetical comparator. The fact that the Tribunal considers the treatment of the claimant to have been poor, unfair or unreasonable is not sufficient.
- 19.5 If there is an actual comparator cited then the Tribunal must consider the treatment of that comparator. In this case any comparator must be male for the purposes of the claims based upon the protected characteristic of sex, and non-black based on the protected characteristic of race. Any hypothetical comparator should be in materially the same circumstances as the claimant, save for the relevant element of the protected characteristic.

- 19.6 The ultimate question for the Tribunal is to decide the reason why the claimant was treated in the way it has found that she was treated, and whether that was because of one or other of the protected characteristics in question, or the protected act in the case of a claim of victimisation.

*The issues*

20. The factual allegations being made, and the issues to be decided by the Tribunal, were only finally agreed at the preliminary hearing on 18 April 2017. They are set out below.

The Claimant's first claim was presented on 6 October 2015 and amended on 16 June 2016 (**'the First Claim'**).

The Claimant's second claim was presented on 17 August 2016 (**'the Second Claim'**).<sup>2</sup>

The Claimant's third claim was presented on 11 November 2016 and amended by agreement on 7 December 2016 (**'the Third Claim'**)

All paragraph numbers referenced refer to the paragraph numbers of the relevant particulars of each claim (e.g. 1/para 2).

**1. Discrimination**

- 1.1. The Claimant's protected characteristics are sex and race.
- 1.2. The Claimant is female and black.

**2. Jurisdiction (section 123 Equality Act 2010)**

- 2.1. Were the claims presented more than 3 months after any of the conduct complained of?
- 2.2. If so, did that conduct form part of a chain of continuous conduct which ended within 3 months of the claim form being presented?
- 2.3. If not, would it be just and equitable for the Tribunal to hear that part of the claim which relates to the conduct which occurred more than 3 months before the claim was presented?

**3. Direct Discrimination (section 13 Equality Act 2010)**

- 3.1. The Claimant relies on the following allegations of less favourable treatment:

**The First Claim**

- 3.1.1. The Respondent (Duncan Scott) not agreeing objectives with the Claimant for the A2 project role between July and November 2014, (1/para 2) (sex and race) (comparator Joe Gennings (sex and race), Peter Huegli (sex and race) and/or hypothetical (sex and race));
- 3.1.2. Between 1 September and 7 November 2014, the Claimant being coerced by the Respondent (Duncan Scott and Jane Woolcott) to carry out an administrative role which at the time was being carried out by someone three grade lower than the Claimant (1/para 2) (sex and race) (comparator Paul Patrick (sex and race), David Agyei-Pryde (sex and race), and/or hypothetical comparator (sex and race));

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<sup>2</sup> That date is wrong. The claim was presented on 9 August 2016.

## Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016

- 3.1.3. By Duncan Scott saying to the Claimant on 17 October 2014 'I know it's not nice work but you have to pitch in and do some unglamorous stuff' (1/para 2) (sex and race) (comparators Paul Patrick (sex and race) reported to Duncan Scott and/or hypothetical comparator (sex and race));
- 3.1.4. The Respondent (Duncan Scott) preventing the Claimant moving to another role (1/para 3) (sex and race) (comparators Paul Patrick (sex and race), Belal Ahmed (sex and race), Daren Brass (sex and race) and Woosong Kim (sex and race) were allowed to change roles and/or rolled off the A2 project respectively and/or hypothetical comparator (sex and race));
- 3.1.5. The Respondent (Duncan Scott and Jane Woolcott) unnecessarily delaying providing the Claimant with feedback on her role between October 2014 and 16 March 2015 (1/para 4) (sex and race) (comparators Belal Ahmed (sex and race), and/or hypothetical comparator (sex and race));
- 3.1.6. The Respondent (Duncan Scott and Jane Woolcott) on 16 March 2015, unjustifiably providing the Claimant with negative feedback and, in addition, raising unsubstantiated allegations in relation to the Claimant's capability (1/para 4) (sex and race) (comparators hypothetical comparator (sex and race));
- 3.1.7. On or around 19 February 2015, the Respondent (Michael Cooch and Philip Raines) preventing the Claimant from working on the A1 Division 1 MiFID2 Project (1/para 5) (race) (comparator Marija Nikolic (race) and/or hypothetical comparator (race));
- 3.1.8. At an informal grievance meeting on 30 March 2015, the Respondent, (Duncan Scott) being unable to substantiate his feedback but instead labelling the Claimant as 'aggressive'; (1/para 6, 15) (sex and race) (hypothetical comparator (sex and race));
- 3.1.9. On 27 April 2015, the Claimant again not being selected by Respondent (Michael Cooch) for a role on the A1 Division 2 project (1/para 7) (race) (comparators, Belinda Barber (race), Fiona Lehane (race), Grant Lee (race), Charles Pearson (race), Claire Wallace (race) and/or hypothetical comparator (race));
- 3.1.10. On 28 April 2015, one day after the Claimant's request as to why she had not been included in the project, Michael Cooch talking to the team about oppression and his ancestors, who he stated were farmers who oppressed people (1/para 8) (race) (comparators – Belinda Barber (race), Fiona Lehane (race), Grant Lee (race) and/or hypothetical comparator (race))
- 3.1.11. Michael Cooch, on 28 April 2015, following on from the conversation outlined at paragraph 3.1.9 above, sending an email to the team, including the Claimant, depicting a farm scene where the farmer was separating the wheat from the chaff (1/para 8) (race) (comparator- Belinda Barber (race), Fiona Lehane (race), Grant Lee (race) and/or hypothetical comparator (race));
- 3.1.12. On 28 April 2015, the Respondent using unsubstantiated and disputed feedback for the Claimant's 'moderation' resulting in her being graded as '3' (1/para 6) (race) (hypothetical comparator (race));
- 3.1.13. Since May 2015, the Respondent (Andrea Wintermantel), failing to follow-up with the Claimant and/or Che Sidanius (an ex-



## Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016

employee of the Respondent) following their complaints concerning Michael Cooch's conduct towards the Claimant at paragraphs 3.1.9 and 3.1.10 (race) (comparators – hypothetical comparator (race));

- 3.1.14. On 7 May 2015, one day after the Respondent (Andrea Wintermantel) asked the Claimant for a print out of Michael Cooch's email, the Respondent (Terhi Paakko) recommending that the Claimant's performance rating is changed to '4' without good reason (race) (hypothetical comparator (race));
- 3.1.15. On 24 July 2015, the Respondent (Fiona Lehane) suggesting that the email was 'light hearted banter' (1/para 9) (race) (comparators Belinda Barber (race), Grant Lee (race) and/or hypothetical comparator (race));
- 3.1.16. In August 2015 the Claimant being denied work on the A31 MiFID2 Project by the Respondent (1/para 10) (race) (comparators Marija Nikolic (race) and/or hypothetical comparator (race))
- 3.1.17. The Respondent's grievance (and grievance appeal) investigation being procedurally flawed (1/para 12) (race and sex) (comparator – hypothetical) being:
- *Unclear / incomplete explanation of undocumented grievance procedures*
  - *Refusal to investigate an informal grievance*
  - *Scope of grievance investigation redefined by investigation officer*
  - *Biases of grievance investigators*
  - *Improper consideration of issues during grievance and appeal stages*
  - *Complaints not properly/fully investigated*
  - *"Informal" formal grievance process*
  - *Unreasonable delays in communicating grievance and appeal outcome*
  - *HR involvement in decision-making*
  - *Lack of transparency*
  - *Choosing an inappropriate grievance appeal decision-maker*
- 3.1.18. In September and October 2015, the Respondent unreasonably delaying communication of the Claimant's grievance and grievance appeal outcomes (1/para 13) (sex and race) (comparator – hypothetical (sex and race)).

**The Second Claim** (All complaints below are made in relation to both sex and race discrimination)

- 3.1.19. In August 2015, the Respondent (Terhi Paakko) circulated false and damaging rumours accusing the Claimant of "ignoring work" and not having worked since November 2014 (2/para 3d).
- 3.1.20. In September 2015, Terhi Paakko falsely alleged that the Claimant had made statements concerning bias of the Respondent's moderation process (2/para 3e).
- 3.1.21. On 4 December 2015, The Claimant being informed at a meeting with the Respondent (Paul Cleal) that it would not be possible to obtain a reference/recommendation to facilitate a transfer

## Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016

because the Claimant had taken legal action against the firm (2/para 4).

- 3.1.22. On 17 December 2015, the Claimant was blamed for a poor meeting on 16 December 2015, and was subsequently undermined in her role as project manager (2/para 15)
- 3.1.23. The Respondent (Andrea Wintermantel) delayed providing the Claimant with feedback following the A66 MiFID2 project (2/second paras 18 & 19).
- 3.1.24. On 12 April 2016, the Andrea Wintermantel provided inaccurate and false feedback on the Claimant's performance on the A66 MiFID2 project (2/second para 20).
- 3.1.25. On 19 May 2016, Andrea Wintermantel stated that the Claimant's return to work on 26 April 2016 was "strategically timed" (2/para 25).
- 3.1.26. In May 2016 Terhi Paakko and Symon Dawson circulated false accounts of a discussion between the Claimant and Chenai Chigwedere on 4 May 2016, describing it as a "shouting match" (2/para 26).
- 3.1.27. On 8 July 2016 the Claimant was invited by Respondent (Isabelle Jenkins) to a "Confidential HR" meeting. The true purpose of the meeting was to discuss a Performance Improvement Plan; the PIP action was procedurally flawed and in breach of the Respondent's grievance policy (2/para 30).
- *Unresolved grievance of 20 June 2016*
  - *Relationship of issues to ET claims (protected acts)*
  - *Complete lack of transparency and unfair application of disciplinary policy principles*
  - *Stated reasons for PIP*
- 3.1.28. Since February 2016, the Claimant has not been assigned to or considered for consulting roles within her area of expertise (2/para 31).

### **Third Claim (All complaints below are made in relation to both sex and race discrimination)**

- 3.1.29. On 22 and 23 August 2016 the Respondents (Eirini Seliniotaki) and Mark Gossington (R2) contacted the Claimant during her sick leave to demanded a sick note (3/para 6)
- 3.1.30. The Claimant being subjected to a conduct investigation over a 'a prolonged period' for which she was excessively monitored without her consent and in breach of the Respondent's policies and procedures (3/para24)
- 3.1.31. In August 2016, the First Respondent (Symon Dawson) and Second Respondent (Mark Gossington) initiated disciplinary proceedings against the Claimant for alleged conduct concerns over 'a prolonged period' (3/para 7).
- 3.1.32. During the Respondent's investigatory fact-finding meetings the First and Second Respondents continued to harass the Claimant about a voluntary screening process with A10 (3/para 8)
- 3.1.33. The Respondent's decision to proceed to a formal disciplinary investigation and the subsequent Final Written warning against the Claimant was procedurally flawed and in breach its own policies being:

- *Incomplete fact-finding investigation, yet convened a disciplinary hearing as a direct consequence of having a biased investigatory officer*
- *Disregard for extenuating circumstances in their full knowledge and control (including unresolved grievance of 20 June 2016, relationship of issues to ET claims e.g. PIP etc.)*
- *Improper consideration of issues, there were issues that need to be investigated; for example, conduct of others*
- *Some allegations not put to me at the outset, i.e., additional 33 questions included matters added part -way through the disciplinary process*
- *Some allegations put to me not covered by disciplinary policy and/or amount to a breach of implied contractual terms*
- *Unfair application of disciplinary policy principles*
- *Disciplinary outcome had been improperly influenced by HR*
- *Procedural requirements that apply to a disciplinary meeting were not followed, meaning that breach the Acas code on disciplinary and grievance procedures*
- *Reached conclusions and views about me based on stereotypical assumptions without proper investigation*
- *Mitigating factors not take into account outstanding request to leave Risk Consulting*
- *Appropriateness of the penalty, i.e., final warning not issued in good faith but to manage me out*

3.2. Issues

3.2.1. Did the Claimant suffer the alleged treatment set out above?

3.2.2. If so, was the treatment less favourable?

3.2.3. If so, was the less favourable treatment because of the Claimant's sex and/or race?

**4. Harassment (section 26 Equality Act 2010)<sup>3</sup>**

4.1. The Claimant alleges that the Respondent engaged in the unwanted conduct set out in the

4.1.1. First Claim paragraphs 3.1.1 to 3.1.18 above

4.1.2. The Second Claim, paragraphs 3.1.19 to 3.1.28

4.1.3. Third Claim, paragraphs 3.1.29 to 3.1.33

4.2. Issues

4.2.1. Did the Respondent engage in the aforesaid conduct?

4.2.2. Was the conduct related to the Claimant's protected characteristics?

4.2.3. Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

**5. Victimisation (section 27 Equality Act 2010)**

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<sup>3</sup> We are assuming that the Claimant is relying on the same protected characteristic(s) in each allegation of harassment as she is doing for the associated allegation of direct discrimination.

5.1. The Claimant relies upon the following protected acts:

**First Claim**

- 5.1.1. Comments made to Andrea Wintermantel on or around 1 May 2015.
- 5.1.2. The Claimant's grievances dated 10 June 2015.
- 5.1.3. The Claimant's grievance dated 15 June 2015.
- 5.1.4. The Claimant's grievance dated 25 August 2015.
- 5.1.5. Comments made at the meeting of 29 June 2015.
- 5.1.6. The email of complaint dated 30 June 2015.

**Second Claim**

- 5.1.7. The protected acts as set out above
- 5.1.8. The First Claim lodged on 6 October 2015
- 5.1.9. The Claimant's grievance dated 14 June 2016 and submitted to the Respondent on 20 June 2016

**Third Claim**

- 5.1.10. All protected acts as set out above, save for 5.1.9.
  - 5.1.11. The Second Claim lodged on 9 August 2016.
- 5.2. The Claimant alleges that she suffered the detriments set out:
- 5.2.1. in the First Claim paragraphs 3.1.15 to 3.1.18, above.
  - 5.2.2. the Second Claim paragraphs 3.1.19 to 3.1.28, above.
  - 5.2.3. the Third Claim paragraphs 3.1.29 to 3.1.33, above.

5.3. Issues

- 5.3.1. Did the Claimant do a protected act?
- 5.3.2. If so, did the Claimant suffer any of the alleged detriments?
- 5.3.3. If so, was the Claimant subjected to any alleged detriment because of the protected act(s)?

**6. Remedy (section 124 Equality Act 2010)**

6.1. The Claimant seeks compensation and an appropriate recommendation.

6.2. Issues

- 6.2.1. Is it just and equitable to award compensation to the Claimant?
- 6.2.2. Is it just and equitable for the Tribunal to make an appropriate recommendation?

**7. ACAS Code of Practice on Discipline and Grievance ('the ACAS Code')**

7.1. The Claimant relies upon the following alleged breaches of the ACAS Code:

- 7.1.1. breaches relating to fairness and transparency (para 2 of the ACAS Code),
- 7.1.2. there have been unreasonable delays (paras 33, 40, 41, 42 and 45 of the ACAS Code),
- 7.1.3. in addition, the Claimant alleges para 43 of the ACAS code has been breached; the Claimant's grievance was dealt with by Kalee Talvitie-Brown, a Partner in the Governance team and

the grievance appeal was also heard by a Partner in the Governance team, a colleague of Kalee Talvitie-Brown.

7.2. Issues

- 7.2.1. Did the Respondent fail to comply with the ACAS Code in respect 7.1.1 to 7.1.3 above?
- 7.2.2. If so, was the failure unreasonable?
- 7.2.3. If so, would it be just and equitable in all the circumstances to increase any award by no more than 25%, to which s.207A Trade Union & Labour Relations (Consolidation) Act 1992 applies.

**8. Personal Injury (Third Claim)**

- 8.1.1. The Claimant claims that she has suffered stress, anxiety, depression and anaemia on account of discrimination and victimisation as per detriments set out above, paragraphs 3.1.29 to 3.1.33.

*The facts, discussion and conclusions*

Introduction

- 21. We set out how we have approached this difficult matter. Often the reasons for judgments are structured so that the facts as found by the Tribunal are first set out, usually in chronological order. Then a summary of the law is given, and finally the law is applied to the facts. On this occasion we have concluded that if we were to adopt that structure then we would have to repeat in our conclusions many of the findings of fact which had already been set out. We have therefore made findings of fact and come to our conclusions on the various claims, some of which we have grouped together. We are satisfied in so doing that we could include any material background which it is appropriate to record so that the employment history of the Claimant in the Respondent can be adequately appreciated.
- 22. The other point to make is that we have taken a holistic view of the evidence provided to us, and not simply analysed what was said about each individual allegation. Evidence or comments made in one connection can be relevant to our consideration of a different matter.
- 23. We were referred to a very large number of emails. Many of the emails were repeated in the bundle in several places as parts of email chains. We have done our best to disentangle those chains so that we could read the relevant emails in chronological order. Further, it is clearly not practicable to record each email and summarise its contents. What we have sought to do is summarise what occurred, and record specifically any communication which is of special significance. We have not sought to record all the evidence provided nor resolve each and every point upon which the evidence by or on behalf of the parties varied. This document is lengthy and it is simply not proportionate to extend it further.
- 24. Steps were taken to anonymise corporate clients of the Respondent, and individuals within those clients. References to 'A1', 'A2' etc are to corporate clients, and 'P1', 'P2' etc to individuals in those clients. Client

A1 had two different divisions, one relating to investment banking and the other to wealth management. We refer to those as 'A1/1' and A1/2' respectively. We will make clear which corporate client (and division where relevant) employed which individual.

25. We have included footnotes both to assist the Tribunal during deliberations and also the parties reading this document.

The structure of the Respondent

26. The Respondent which employs the Claimant is a service company. It supplies services to PricewaterhouseCoopers LLP which is the legal entity providing consultancy and other professional services in the UK. Miss Bell confirmed that the Respondent would accept liability for any unlawful actions which there may have been.
27. It is appropriate at this stage to mention that the different manifestations of PricewaterhouseCoopers globally are different legal entities. This is relevant in connection with the possible transfer or secondment of the Claimant to PwC Nigeria.
28. The Respondent has what are described as 'four client facing Lines of Service'.<sup>4</sup> They are Tax, Assurance, Deals and Consulting. This matter concerns the Consulting Line of Service. That Line of Service is sub-divided into fourteen different industries and twelve different competencies, and at least some of those competencies are further divided into sub-competencies. The relevant competency is Risk, which at the time was sub-divided into Conduct and Remediation, and Risk and Prudential. The overall picture we get is of a set structure but one which can be adapted to suit the specific circumstances of any project.
29. The Respondent has a human resources department, called Human Capital – 'HC'. Each competency has a HC Leader assigned to it, in this case Ms Paakko. Each competency also has a People Partner. Mr Gossington was that partner from July 2014 to October 2016 inclusive. The People Partner is responsible for the career development, performance management, resource management and general people management in conjunction with the HC Leader and others in HC.
30. Each individual is assigned a People Manager, who is not from HC. The role of a People Manager is 'to provide support and guidance to enable the individual to give their best to the firm and to get the best out of the firm.'<sup>5</sup> It is not normal for the People Manager to be the line or reporting manager at the Claimant's level. Mita Davé was the Claimant's People Manager until the end of June 2015 when Andrea Wintermantel took over the role. She was in turn succeeded by Symon Dawson in June 2016, and then by Isabelle Jenkins from early October 2016.
31. The nature of the Respondent's business is that of providing consultancy services as already stated. That involves being instructed by clients to

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<sup>4</sup> Paakko §3

<sup>5</sup> Davé §6

undertake 'projects'. The number of people and the skills required for the fulfilment of any project depends primarily upon the nature of the project in question. Other factors may be relevant in particular circumstances. The Respondent has a Resource department responsible for providing on request details of staff who were available at the time and had the relevant skill set for a particular project. Sometimes consultants are allocated to undertake internal projects.

32. Before being instructed to undertake a project the Respondent is usually invited to put forward a proposal, often referred to as a 'bid' or 'pitch'. A team is constituted for the purpose of the pitch, and the members of that team need not all necessarily be involved in the delivery of the final project if the pitch were to be successful.

### The grading and moderation process

33. Like many businesses the Respondent has a performance management policy or procedure.<sup>6</sup> The Respondent uses an online performance management system – 'My Performance'. The performance year runs from 1 April. Each individual should consider annual performance and personal development objectives. Those objectives are to be based upon what are referred to as 'the PwC Professional framework' which was introduced for the 2014/15 performance year. The attributes are whole leadership, business acumen, technical capability, global acumen and relationships.<sup>7</sup> Individuals should agree objectives with the relevant manager at the start of any new project, whether for clients or internal non-chargeable roles.
34. As the issue of 'feedback' is a recurring theme in these claims we quote the relevant section which summarises the matter:<sup>8</sup>

Feedback is essential in understanding and improving performance and underpins our performance management system.

It's your responsibility to:

- Request feedback throughout the year – from client projects, internal roles, competencies and sectors
- Ask for, chase and provide feedback
- Give your colleagues high-quality and well-considered thoughts, both voluntarily and when requested

If you have any questions or concerns about your feedback, discuss them with the person who gave it to you (detailing any reflections on these messages in your self-evaluation).

35. The policy emphasises that feedback should be collected throughout the year for the purpose of the mid-year and year end reviews. It should be obtained in respect of any project involving more than 80 hours of work and should be submitted within 30 days of the end of the project.
36. People Managers are responsible for reviewing the feedback in the middle and at the end of the performance year. The employee should prepare a

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<sup>6</sup> The policy dated October 2014 is at [410.1] et seq. We were not taken to it in detail.

<sup>7</sup> [2678]

<sup>8</sup> This is at [410.6]. There is a detailed guide at [410.25-410.28]

self-evaluation for the mid-year review and compare progress against the objectives. A self-evaluation form should also be completed for the year end by March setting out the contribution and impact the individual considers s/he has made during the year. That is to be followed by a discussion with the individual's People Manager who then completes an assessment form which is to include a provisional performance rating from 1-4, with 1 being the highest. The descriptors are 'Truly distinctive' (1), 'High performing' (2), 'Valued' (3) and 'Concern' (4). A rating of '4' is said to be 'for people who need more help to improve based on an open and honest conversation about where performance falls short of the required standard.'<sup>9</sup>

37. There is then a moderation process at which the ratings are reviewed by groups of partners and people managers to ensure that they fairly reflect the individual's performance relative to their peers. Following that process the final rating is supplied to the individual, and discussions should take place concerning the objectives for the next year.<sup>10</sup>
38. The policy contains the following statements under the heading of 'Your reward':<sup>11</sup>

Your performance rating will determine the size of any bonus payment you receive. Historically, bonuses have not been awarded to those with low performance ratings.

#### PIP procedures

39. The Respondent has a Performance Improvement Plan process, and this is relevant to issue 27. We can do no better than quote paragraphs 12, 18 and 19 of the evidence of Ms Jenkins:

12. PIP's are very common at PwC, particularly to address low-utilisation, i.e. where an individual is doing very little chargeable client work. Where we have someone in the business who is not performing to expected levels, we use the PIP in order to improve their performance for both their sake and the sake of the business. PIPs are successful if the individual is keen to develop and they take the process seriously and are committed to it.

18 PwC does not have a written policy/procedure in relation to PIPs. Each PIP will have a HC support and a PIP Lead. Although it was my job as the PIP Lead to run the PIP, I expect the HC support to draft the initial template to ensure that the objectives are SMART (specific, measurable, achievable, realistic, and timely). This provides a starting point for the initial discussion with the individual. I also expect the HC support to help the PIP Lead to ensure that the process is being carried out in a timely way.

19 Responsibility for the PIP lies with the individual who is the subject of it. The individual is expected to be proactive and set up all of the meetings. The individual's People Manager would normally tell them that they are being put on a PIP and who the PIP Lead is. At the first meeting with the individual, I would discuss the issues which are the basis of the PIP and the proposed PIP objectives. I would explain the PIP process and what they can expect. After the initial meeting, I expect the individual to update the PIP objectives and send them back to me, arrange follow-up meetings and obtain feedback from others on their performance. It is the responsibility

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<sup>9</sup> [410.12]

<sup>10</sup> See [410.29-410.31]

<sup>11</sup> [410.42]



of the person on the PIP to manage the process and that is part of what the individual is assessed on.

40. We had the benefit of having a PIP template in the bundle.<sup>12</sup> There are standard sections setting out the respective responsibilities of the individual and the line manager. There is a section specific to the individual listing the skills, activities and/or behaviours to be improved. Targets and goals are stated. There is a warning that disciplinary action may be taken if future performance is not satisfactory.

The Claimant’s employment and the basic chronology

41. We have to decide a large number of specific issues. At this stage we consider it useful to provide a broad overview of the employment history of the Claimant up to the issuing of a final written warning to her on 11 November 2016, which is a matter referred to in issue 3.1.33. This was prepared by the Respondent’s solicitors and it obviously does not include every incident mentioned below.

07.04.14	Commencement of employment
11.06.14	Commencement of work on A2 project
29.10.14	Moderation meeting of mid-year reviews
28.11.14	The Claimant left the A2 project
01.12.14	The Claimant starts work on project at A3 (the start date is approximate)
31.03.15	The Claimant left the A3 project
22.04.15	The Claimant started work on pitch for A1/2 project
28.04.15	Moderation meeting of year end reviews
07.05.15	‘Wash up’ meeting of year end reviews
10.06.15	The Claimant makes grievance 1
15.06.15	The Claimant makes grievance 2
25.08.15	The Claimant makes grievance 3
21.08.15	Grievance hearing
09.09.15	Resumed grievance hearing
21.09.15	Grievances dismissed
29.09.15	The Claimant appeals against the grievance outcome
26.11.15	Grievance appeal outcome

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<sup>12</sup> [3526]

06.10.15	First ET1 claim form
25.11.15	The Claimant starts work on pitch for A66
20.06.16	The Claimant makes grievance 4
09.08.16	Second ET1 claim form
26.10.16	Disciplinary hearing
11.11.16	Third ET1 claim form
17.11.16	Resumed disciplinary hearing
29.11.16	Final written warning

Victimisation claims - Protected acts

42. As can be seen from the above list of issues, the Claimant is making various claims of victimisation under section 27 of the 2010 Act. There must therefore have been one or more protected acts because of which the Claimant suffered a detriment or detriments. The Respondent accepts that each of the claims to the Tribunal were protected acts, and that must of course be right. Those fall within section 27(2)(a). We will deal with each of the others separately. The matters listed below have to fall within section 27(2)(d) if anything. We note that the allegation of a breach of the 2010 Act need not be an express one.

Comments made by Andrea Wintermantel on or around 1 May 2015.

43. The Claimant changed the allegation in cross-examination to refer to a discussion on 6 May 2015, and we find below that the relevant discussion took place on 14 May 2015. We have also found that during that conversation with Ms Wintermantel the Claimant did not raise any issue such that there was a protected act. We deal with that further below.

Grievance dated 10 June 2015.<sup>13</sup>

44. There was no express reference in the grievance to an allegation of breach of the 2010 Act. The Claimant only refers to being treated 'differently and unfairly'. In cross-examination the Claimant said that the Respondent knew that she was a black woman and she was being polite in the way that the grievance was expressed. We fail to understand why an employer should consider that an allegation is being made of a breach of the 2010 Act simply because the grievance is made by a person who happens to be black and happens to be female. Every person making a grievance has various of the characteristics covered by the 2010 Act. We have considered the statement by the Claimant as to her preferred outcome, but do not consider that it is sufficiently clear to amount to an

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<sup>13</sup> [5136]

allegation of a breach of the 2010 Act. We find that that was not a protected act.

Grievance dated 15 June 2015<sup>14</sup>

45. Again there is no reference to anything which could be a protected act within section 27 and we find that it was not such an act.

Other protected acts

46. Miss Bell accepted in her submissions that comments made by the Claimant on 29 June, in her email of 30 June, in the grievance of 25 August 2015 and in the grievance of 14 June 2016 each amounted to a protected act. The first protected act therefore occurred on 29 June 2015.
47. The comments on 29 June 2015 were made by the Claimant to Mr Gossington. She complained to him that she was being discriminated against. She then followed that up with an email to him of 30 June 2015 in which she specifically referred to sex and race discrimination.<sup>15</sup> The grievance of 25 August 2015 is dealt with below. It related to the issue of delayed feedback and the Claimant's year-end grading. It specifically refers to discrimination based upon both protected characteristics.<sup>16</sup> The grievance of 14 June 2016 related to the Claimant's work on the A66 project.<sup>17</sup> In it the Claimant referred to her first claim to the Tribunal which had been presented on 6 October 2015.

Assignment on A2 project – allegations 1-4

48. These allegations all relate to the assignment of the Claimant to the project for A2, and the subsequent feedback provided by Mr Scott. It appears that this was the second project undertaken by the Claimant for the Respondent.<sup>18</sup> The client A2 required an individual at Senior Manager / Experienced Manager level in connection with changes to its compliance operating model in the area of Personal Account Dealing. The client A2 did not provide a formal specification or job description. The individual to be assigned was expected to undertake a portfolio of work for an initial period of seven weeks at an agreed daily rate. On 4 June 2014 Mr Scott was provided by Resource with the Claimant's CV along with those of four others.<sup>19</sup> Of those five individuals the other four were male. Two of them were described to us as being black, one as Asian, and one as white.
49. Mr Scott had not met the Claimant previously and he thought from her CV that she would be a good fit. She had previously worked successfully on a short project for A2. The Claimant and another Consultant were immediately available. Mr Scott sent an email to the Claimant on 4 June 2014 as follows:<sup>20</sup>

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<sup>14</sup> [5140]

<sup>15</sup> [1342]

<sup>16</sup> [5323]

<sup>17</sup> [3396]

<sup>18</sup> See [306]

<sup>19</sup> [305.2]

<sup>20</sup> [307]

I'm not sure if Dessi has mentioned this to you at all, but there is a role I'm currently looking for help with at A2 and your name has been mentioned as someone who might be able to help. I was wondering whether you might be available to meet tomorrow morning at all to discuss it? Its in the area of Personal Account Dealing, and supporting the UK Head of Group Employee Compliance with the delivery of this, and various other activities in this area.

50. Mr Scott and the Claimant then met, following which the Claimant met P1 of the client on 9 June 2014. The Claimant was keen to take on the role and she started with A2 on 11 June 2014.
51. It is not in dispute that no specific objectives were agreed between Mr Scott and the Claimant in respect of that project. Such objectives were referred to as 'engagement objectives', as opposed to 'annual objectives'. The Claimant accepted in cross-examination that it was her initial responsibility to prepare objectives before seeking to agree them with the manager responsible for the project. There was an exchange of emails on 31 July 2014 between the Claimant and Mr Scott about a possible meeting to discuss objectives, and also about feedback.<sup>21</sup> It was left to the Claimant to put a meeting in Mr Scott's diary for that purpose, and she did not do so.
52. In cross-examination it was put to the Claimant that what occurred had nothing to do with her sex or race. She disagreed and then said that she was effectively part of A2's organisation and that she had been seconded and was working for A2 rather than the Respondent. She said that most of her emails were sent from A2's own system. All the Senior Managers put forward to Mr Scott by Resource were black, said the Claimant. She had not been allowed to do consulting, and this was just 'business as usual', confusion had been created, and it was a classic case of discrimination.
53. The second allegation is that the role was administrative and was being carried out by someone three grades lower.<sup>22</sup> The word 'administrative' was used at this hearing by comparison with 'strategic' and in a pejorative sense. It is impossible for us to make specific facts as to exactly what work the Claimant did on a day-to-day basis, and whether each task could be categorised as 'administrative' or 'strategic'. There was particular focus on the 'Restricted Persons Process' ('RPP') involving those in A2 who were party to insider information. However, there was a contradiction in the Claimant's evidence. On the one hand she was complaining that tasks were administrative but also complaining that she was not given a title and so was not getting recognition for the strategic work she was undertaking.
54. The Claimant raised the issue with Mr Scott in September 2014 and they met with the P1 of the client on 22 September 2014. It was acknowledged that there were administrative aspects to the role, but the client hoped that further strategic work would become available. Mr Scott met the Claimant again on 14 October 2014 and then mentioned the issue to Ms Woolcott.<sup>23</sup>

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<sup>21</sup> [353-354]

<sup>22</sup> Issue 3.1.2

<sup>23</sup> [367]

He sent a further email to Ms Woolcott on 17 October 2014 following a meeting of Mr Scott and P1 at which P1 had said that it was likely that the Claimant would become involved in higher level tasks in the future. Mr Scott specifically mentioned to Ms Woolcott the Claimant's frustration with the RPP task.

55. There were then issues about completing the RPP process and the resources which the Claimant considered necessary. The Claimant sought additional assistance from the head of the Secretarial Support Team of the Respondent without first having obtained the approval of Mr Scott or Ms Woolcott.
56. The next point of which complaint is made is that Mr Scott told the Claimant on 17 October 2014 that she had to pitch in and do unglamorous stuff.<sup>24</sup> This is really a variation of the previous complaint. We find that Mr Scott made a comment to the Claimant along those lines. He used the phrase 'this isn't very glamorous' in the email of 17 October 2014 to Ms Woolcott above. Mr Partrick is again named as a comparator by the Claimant.
57. The Claimant ceased to work for A2 on 28 November 2014. She complains that before that date Mr Scott prevented her from moving to another role.<sup>25</sup> As already stated the Claimant was becoming disenchanted with her role at A2. At the same time Mr Scott and Ms Woolcott were considering the Claimant's long term future with A2 because of the potential adverse effect on the Respondent's relationship with a major client. The Claimant first raised the question of being 'rolled off' the project in a discussion with Mr Scott on 29 October 2014.<sup>26</sup> The Claimant, Ms Woolcott and Mr Scott met on 7 November 2014 when the subject was again discussed. Ms Woolcott agreed to the Claimant's request and to her being moved when a replacement had been found.
58. Ms Woolcott then sent an email to P1 on 7 November 2014. Ms Woolcott was frank with the client about the Claimant's attitude, saying that having spoken to her she did not appear to understand the nature of her role, and that she had to pick up and get on with activities that needed doing. Ms Woolcott added that she suspected that the Claimant had not undertaken a long-term project before and was unsure how to manage it. P1 replied saying that 'it seems like there is a gulf in expectation.'<sup>27</sup> Ms Woolcott arranged for Mr Agyei-Pryde to take over from the Claimant after he returned to work. He was ill at the time. The handover from the Claimant to Mr Agyei-Pryde started on 20 November and there was a 'wrap-up' session on 23 November 2014. The Claimant's last day at A2 was 28 November 2014.
59. The Claimant specifically compares herself to Joe Gennings and Peter Huegli in connection with the point relating to not agreeing objectives. She

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<sup>24</sup> Issue 3.1.3

<sup>25</sup> Issue 3.1.4

<sup>26</sup> [464]

<sup>27</sup> [502] and [504]. The Claimant alleged that [502] was not genuine. We disagree.

relies on Paul Partrick and David Agyei-Pryde in connection with the point about doing administrative work, and with Mr Partrick in connection with the comment about 'unglamorous stuff'. The Claimant relied on Mr Partrick, Belal Ahmed, Daren Brass and Woosong Kim in relation to the final point about changing roles and/or rolling off the project.

60. In her submissions, Miss Bell said that the Tribunal should concentrate on the reason why the Claimant was treated in the way that she was as none of the comparators were appropriate because of the materially different circumstances. Miss Bell added that the construction of a hypothetical comparator was difficult because the Claimant was relying on two protected characteristics.
61. As summarised above, the ultimate question is why the Claimant was treated as she was. However, the Claimant has relied on specific comparators, and we must deal with the point. For an individual to be a relevant comparator for the purposes of the 2010 Act, there must not be any material differences in the circumstances of each case. We will take each in turn.
62. Mr Gennings is a non-black male Senior Manager. Mr Gennings prepared his own engagement objectives and sent them to Mr Scott on 25 June 2014.<sup>28</sup> They were subsequently agreed. He is not therefore a true comparator as he did prepare his own objectives. The Claimant's response to the suggestion that he was not a comparator was that he was different from the Claimant as he had a lead role in a project with A2 and so was in a position to define his own objectives as there was clarity about his role and the requirements of A2.
63. Mr Huegli is a non-black male Manager and junior to the Claimant. He was based in PwC in Switzerland. The Claimant accepted in cross-examination that that was an entirely different entity. The Claimant's point is that like Mr Gennings he also had clarity in his role. Mr Scott did not in fact agree objectives with him.
64. Mr Partrick is a non-black male Manager and therefore also junior to the Claimant. We know very little about him. He was referred to by Mr Scott as a project manager who helped him with administrative tasks. The Claimant said that his role was technical by its nature.
65. Mr Agyei-Pryde is a non-black Senior Manager. He took over from the Claimant in November 2014. He carried on the administrative elements previously carried out by the Claimant in connection with RPP, and then moved on to carrying out more strategic tasks arising as a result. He did not refuse to carry out or object to the carrying out of the administrative elements.
66. There was a dearth of evidence concerning the comparators named by the Claimant in relation to the fourth allegation that she was prevented from moving to another role.

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<sup>28</sup> [337]

67. The emphasis of these complaints shifted during the hearing. The Claimant's position moved away from the first specific allegation of there not having been any agreed engagement objectives towards a more general allegation that the role was beneath her and that she was required to undertake it because she was a black woman. However during cross-examination she also complained that she did not have a title and she was not getting recognition for the more responsible work done, and that having such recognition was important for her career progression.
68. Our findings as to the period spent by the Claimant with A2 are as follows. This was the second project upon which the Claimant had worked for the Respondent. It was different from most other projects in that the client wanted an individual at Senior Manager level to assist in a role that was ambiguous, in which the individual had to be flexible and adapt to the client's needs which varied from time to time. The individual had to work closely with the client and relatively autonomously.<sup>29</sup> Four people were provided to Mr Scott by Resource as suitable and available. Mr Scott chose the Claimant as she had recently worked for A2. The Claimant was keen to take on the role. She subsequently became disillusioned with it and considered it to be beneath her. She decided that she should be rolled-off the project.
69. We accept that there were aspects of the work which the Claimant was required to undertake which could properly be described as 'administrative' and the Respondent does not dispute that point. However we accept that such tasks needed to be undertaken in connection with the RPP aspect of the assignment.
70. The question which we must ask is whether the Claimant has demonstrated facts from which we could reasonably conclude that what occurred to her in respect of each of the four matters now being considered was less favourable treatment, and that that treatment was to any extent caused by either her sex or her race. This involves consideration of the comparators named by the Claimant. The fact that an individual may have been poorly treated in an objective sense does not mean that that treatment was because of any particular protected characteristic. Similarly, we must consider whether we could reasonably conclude that what occurred amounted to harassment as defined in section 26 of the 2010 Act.
71. The Claimant pointed out at this hearing the sex and race of others mentioned to Mr Scott and argued that the choosing of those individuals was itself an act of discrimination. We do not consider the sex or race of those individuals to be of any relevance. For those factors to have been of any relevance we would need to have evidence of the sex and race of others who could have been suitable for the role, but whose names were not provided to Mr Scott. Indeed the Claimant's reliance on this point weakens her own case, at least in respect of her claim of race

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<sup>29</sup> See Scott paragraphs 9 & 10

discrimination. She was just one of three black people, and four non-white people if the Asian individual is included.

72. We do not find the named comparators to be of any relevance. None of them could be considered to be in circumstances where there were no material differences from those of the Claimant. We have mentioned a lack of evidence in respect of some of them.
73. We turn to the specific factual allegations. No objectives were agreed. We do not accept that the Claimant was 'coerced' by Mr Scott and Ms Woolcott to carry out administrative tasks. The Claimant was offered the role by Mr Scott and accepted it. Mr Scott did refer to 'unglamorous work'. We do not accept that Mr Scott prevented the Claimant from moving off the project. Indeed, he and Ms Woolcott took steps to replace the Claimant with Mr Agyei-Pryde. We must say that we found it extraordinary that the Claimant appeared to perceive that she was entitled to require the Respondent to move her off the project as a matter of urgency.
74. We can understand that the Claimant became disenchanted by having to undertake work which she considered to be below that appropriate for a well-qualified and experienced Senior Manager, particularly as she had just joined the Respondent. That is not the point. We find that the Claimant has not proved facts from which we could reasonably conclude that the lack of there being agreed objectives or the use of the phrase 'unglamorous work' had anything whatsoever to do with either her sex or her race. Consequently the claims of direct discrimination and harassment fail.

Feedback – allegations 5, 6 & 8

75. The Claimant's first complaint is that Mr Scott and Ms Woolcott delayed providing feedback between October 2014 and 16 March 2015. The second allegation is that the feedback was unjustifiably negative. The third allegation is that Mr Scott could not justify the feedback.
76. Mr Gossington sent an email to the Claimant and others on 31 July 2014.<sup>30</sup> He reminded the recipients that feedback from clients (the 'engagement feedback') should be obtained on a quarterly basis, and that feedback for the quarter to 30 June 2014 should be obtained within 30 days. The Claimant did not seek any feedback from A2 following that email. She did seek a meeting with Mr Scott, and we have referred to that above in connection with the setting of objectives.
77. On 17 October 2014 the Claimant sent a request to Mr Scott for feedback on her work with A2 using the Respondent's electronic 'My Performance' system.<sup>31</sup> That request was made for the purpose of the interim performance review to take place at the end of October 2014. This request was made during the period when there was uncertainty about the

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<sup>30</sup> [354]

<sup>31</sup> [305.1]



Claimant continuing with her role at A2. The Claimant sent reminders to Mr Scott on 24, 27 and 28 October 2014.<sup>32</sup>

78. The Claimant also requested feedback from Ms Woolcott on 24 October 2014 using the 'My Performance' system.<sup>33</sup> She then sent an email to Ms Woolcott on 27 October 2014 suggesting the feedback be by email, and Ms Woolcott replied 'Hi yes of course I will'.<sup>34</sup>
79. Mr Scott provided a draft feedback to Ms Woolcott on 29 October 2014.<sup>35</sup> In that email Mr Scott raised the difficulties he was then experiencing with the Claimant and her role at A2. He asked that there be a conversation with Ms Woolcott about the draft feedback.
80. Mr Scott contacted P1 on 28 October 2014 requesting feedback on the Claimant's performance under five headings and asked for a reply by the end of the week.<sup>36</sup> On the same day he told the Claimant that that is what he had done, and that he would wait for a reply before providing his own feedback.<sup>37</sup> Feedback was provided by P1 to Mr Scott on 3 November 2014.<sup>38</sup> Mr Scott forwarded it to Ms Woolcott saying it was '[g]enerally positive as expected . . .'
81. As Mr Scott said, the feedback was generally positive. The only possible comment which could be seen as adverse was that the Claimant perceived some of the tasks as being process orientated and that she had more to offer. However, said the author, circumstances were such at the time that everyone was asked to pitch in.
82. The email from P1 was also forwarded to the Claimant on 4 November 2014.<sup>39</sup> The Claimant then wrote direct to P1 on 5 November 2014 which we quote as it is relevant to this point and also the role of the Claimant at A2 discussed above.

I have provided feedback to Duncan [Scott] that in order for me to continue at A2, we need to agree a clearly defined role and a set of objectives/deliverables for the covering the period Nov 2014 - Jan 2015. I may potentially end up spending the majority of the performance year here at A2 and it is important that these rudimentary arrangements are not delayed any further. This is important because your feedback did not fully reflect my contributions over the past several months – a defined role will provide clarity as well as ensure that I am fully evaluated against an agreed set of objectives. It will also help us assess whether I will have the opportunity to operate at an optimal level while supporting A2.

Could you provide an outline of my specific role, responsibilities and output/deliverables for Q4? I will need to be clear on the above prior to discussion with [ ]. I want to ensure that we each understand our respective roles and avoid any confusion.

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<sup>32</sup> [418, 427 & 428]

<sup>33</sup> [302.2]

<sup>34</sup> [425-426]

<sup>35</sup> [464]

<sup>36</sup> [430]

<sup>37</sup> [433]

<sup>38</sup> [476]

<sup>39</sup> [483]

83. That email came to the attention of Mr Scott and Ms Woolcott, and Ms Woolcott immediately sent an apology to P1.<sup>40</sup> Ms Woolcott said the following in her witness statement, which we accept:<sup>41</sup>

As a result of the client feedback email and the potential for Yvonne's actions to cause significant damage to the client relationship, my focus from 5 November 2014 onwards was on smoothing over the relationship with the client and finding a replacement for Yvonne, rather than on providing mid-year feedback for Yvonne.

84. The mid-year review was completed based upon other feedback provided by the Claimant. We mention that for completeness only. Nothing further happened concerning the A2 feedback until February 2015. In early February 2015 the Claimant approached Mr Scott asking for a discussion concerning her time at A2 and requesting feedback.<sup>42</sup> Mr Scott then contacted Ms Woolcott asking to discuss the matter with her.<sup>43</sup> He said he was concerned about the impact the feedback he had prepared would have on the Claimant and that she may dispute it. The final wording of the feedback was agreed between Ms Woolcott and Mr Scott on 20 February 2015.<sup>44</sup>
85. Mr Scott went on leave and then sent the feedback which had been agreed with Ms Woolcott to the Claimant on 16 March 2015.<sup>45</sup> The Claimant immediately responded by email saying she disagreed with some aspects of it and wanted to discuss it with Mr Scott in the presence of her line manager and a Partner.<sup>46</sup> A meeting was then arranged for 30 March 2015 involving the Claimant, Mr Scott and Ms Davé. It is at this meeting that the Claimant alleges that she was labelled as 'aggressive', and that Mr Scott was unable to substantiate his feedback.<sup>47</sup>
86. Following that meeting the Claimant sent an email to Ms Davé on 2 April 2015 which she said outlined her concerns, but it is not possible to tell from the documents in the bundle what those concerns were. On 27 April 2015 the Claimant sent an email to Ms Paakko setting out her main concerns as follows:<sup>48</sup>

1 The manner in which my request for feedback was handled; in particular, no prior discussion, reluctance to discuss retrospectively and significant delay in providing feedback

2 Feedback provided is not balanced or reflectively of my contributions to the client – this is apparent when compared with feedback received from the client

3 Duncan acknowledged in an email to me on 28 October that he required client input to provide feedback as I had been working directly for the client. Yet feedback received is both length and heavily focused on events leading up to my request to exit the project

- Feedback undermines my capability as an SM based on the opinion of a single output.

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<sup>40</sup> [491]

<sup>41</sup> § 51

<sup>42</sup> [563]

<sup>43</sup> [564 & 589]

<sup>44</sup> [638]

<sup>45</sup> [679]

<sup>46</sup> [682]

<sup>47</sup> Issue 8

<sup>48</sup> Both emails are at [861]

- It is unclear why any concern about a 'simple deck' was never raised with me at the time of delivery

Moreover I produced several other outputs for the client over six months – the client had no concerns about the quality of my outputs – far from it.

87. Ms Davé made notes of the meeting but the printed version was not sent out to Mr Scott and the Claimant until 2 June 2015.<sup>49</sup> The Claimant did not comment on them in detail but said that there was 'a common pattern of diverging accounts of discussions so I think it's best to just leave this as your notes of the discussion.'<sup>50</sup> Mr Scott made some comments on them to Ms Davé on 11 June 2015.<sup>51</sup>
88. We are faced with having to decide whether the comments made by Mr Scott in the feedback were in fact unjustifiably negative, and/or there were unsubstantiated allegations concerning the Claimant's capability, before being able to move on to whether the comments were discriminatory or an act of harassment.
89. The Claimant did not provide in her witness statement any evidence to support her allegation that she was labelled as being 'aggressive'. Ms Davé's evidence was that she did not find the Claimant to be aggressive.<sup>52</sup> The notes of the meeting made by Ms Davé do not take the matter much further. The Claimant is recorded as saying that there were factual inaccuracies and that the feedback was heavily weighted towards the last two weeks with A2. Further, at the meeting the Claimant concentrated on the lower grade work she had had to do, and she said that the role was that of data input and not that for a Senior Manager. She did not consider that her being at A2 was the best use of the Respondent's resources.
90. We summarise the feedback prepared by Mr Scott. He first of all listed areas of strength in five 'bullet' points. The final one was as follows:

The above strengths demonstrated that Yvonne has excellent delivery and technical ability and operates strongly as a senior manager and would be highly rated for this activity.

He then listed six matters under the rubric of 'Development Areas'. The points he made can be summarised briefly. The principal point was that the Claimant had pushed for assistance from a more junior resource over a considerable period, and that she was not prepared to undertake what she considered to be administrative work. Mr Scott referred to details concerning the conduct of the Claimant in seeking to obtain that resource without it having been approved. The second point was the email of 5 November 2014 from the Claimant to P1 resulting in Ms Woolcott sending her apology.<sup>53</sup> The document concludes as follows:

It is a shame that from a very positive start, and some good delivery through much of the project by Yvonne that such a situation effectively led to her leaving the project in a much less a positive light as she had initially created both in the eyes of the client and the team. Yvonne should reflect

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<sup>49</sup> [1154]

<sup>50</sup> [1157]

<sup>51</sup> [1219]

<sup>52</sup> Paragraph 40

<sup>53</sup> [489]

on how she, in future, would manage what she perceives as difficult situations and her relationship with those she directly reports to on PwC side. This may be due to her being relatively new to PwC but it is important that she understands where she needs to develop in terms of behaviours towards others and the client even when she is hugely frustrated.

91. The Claimant alleged in her claim form that there were unsubstantiated allegations concerning her capability. It appears from her witness statement that this relates to the following sentence in the feedback document:<sup>54</sup>

[The partner] hoped there was more evidence behind a very simple power point deck she received from Yvonne but was surprised Yvonne did not feel it important to have shared that with her given the "thinness" of the power point content.

92. The partner referred to was Ms Woolcott. The Claimant's written evidence was that the reference to a 'simple deck' (being a PowerPoint presentation) and 'quality of my handover' were not supported by evidence. Ms Woolcott said in her statement that she did not raise the issue of the PowerPoint presentation with the Claimant at the time, and accepted that with hindsight it would have been preferable to do so. However, that is not the point. We are being asked to find that the comments were unsubstantiated. As an Employment Tribunal which heard this case we are not in a position to do so.
93. We were taken to feedback on the Claimant's performance provided by Mark Sutton in connection with the Claimant's work on a project for A3.<sup>55</sup> Again there were positive comments, but also some criticisms not dissimilar to those of Mr Scott. The Claimant has not complained about that and explained the criticisms in cross-examination by saying that Mr Scott had spoken to Mr Sutton and 'noise' had been generated and there was a 'feedback loop'.
94. We heard substantial evidence concerning the time the Claimant spent working with A2, only some of which is recorded above. We have set out our overview of the project. The Claimant has to prove that the terms of the feedback were unjustified. She has not succeeded in that task. The feedback did contain criticisms but we find that they were justified. From all we heard and read the feedback appears to be entirely balanced. This element of the claim fails on the facts.
95. We now go back to allegation 5 about the delay in the production of the feedback. The allegation in paragraph 4 of the first claim form is apparently that in October 2014 Mr Scott said that it would be a misrepresentation for him to provide feedback in respect of the project as he did not have any direct working relationship with the Claimant in that connection, yet he did a 'U turn' in March 2015.
96. The issue as set out above and Claimant's witness statement were somewhat different and referred to delay. The Claimant said that Mr Scott

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<sup>54</sup> Paragraph 154

<sup>55</sup> [879]

‘created an artificial barrier between the client and myself that unnecessarily delayed my performance feedback.’<sup>56</sup> The Respondent and we have dealt with the matter on the basis referred to in the Claimant’s witness statement. The Claimant is clearly complaining that feedback was not provided to her by 28 October 2014 in time for the mid-year review.<sup>57</sup>

97. Mr Scott was first formally asked by the Claimant for his feedback on 17 October 2014 and Ms Woolcott on 24 October 2014.<sup>58</sup> That was the Claimant’s responsibility in accordance with the performance management scheme.<sup>59</sup> Mr Scott prepared a draft for Ms Woolcott on 29 October 2014. The written feedback was not provided in time for the mid-year review and was not given to the Claimant until 16 March 2015.
98. The Claimant’s witness statement stated that the requests for feedback were for the purpose of the mid-year process.<sup>60</sup> However, during cross-examination she stated that the requests had nothing to do with the mid-year moderation but was to do with her being at the end of the project. That is contradictory. We do not accept the Claimant’s oral evidence. It is clearly wrong, although we do not see the point as being particularly material. As at 17 October 2014, the Claimant was still working on the project and did not raise the matter until 29 October 2014.<sup>61</sup>
99. The question for us again is whether the Claimant has proved facts from which we could reasonably conclude that there was less favourable treatment of her by the Respondent because of one of the protected characteristics, or that there was unwanted conduct related to one or both of those characteristics. The Claimant relied on Belal Ahmed as a comparator in respect of the claim of direct discrimination. We cannot trace having received any evidence from the Claimant about Mr Ahmed.
100. We find that each of Mr Scott and Ms Woolcott could have provided feedback to the Claimant before 28 October 2014, which we have found to be the relevant date for the mid-year review, and that that was the reason that the Claimant was asking for the feedback.<sup>62</sup> We understand Mr Scott wanting to have feedback from A2 in the absence of the Claimant having obtained it, but that did not prevent him from preparing his own draft. Having missed the deadline date we see no reason why there was a delay of some five months. The performance management scheme refers to the benefits of an individual requesting feedback regularly.<sup>63</sup> We note that at the meeting of 30 March 2015 mentioned below Mr Scott

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<sup>56</sup> Paragraph 131

<sup>57</sup> See paragraphs 133-135 of the Claimant’s witness statement

<sup>58</sup> [305.1 & 302.2]

<sup>59</sup> [410.6]

<sup>60</sup> Paragraph 131

<sup>61</sup> [464]

<sup>62</sup> Although contrary to her oral evidence.

<sup>63</sup> [410.25]

accepted that the feedback was late and could have been provided earlier.<sup>64</sup>

101. There is no evidence from which we could reasonably conclude that such delays as occurred were because of either of the protected characteristics, or related to them in any way. The burden of proof to show that the delay was to no extent caused by the Claimant's race or sex does not therefore move to the Respondent.
102. The next element is that on 30 March 2015 Mr Scott was not able to substantiate the feedback and labelled the Claimant as being aggressive.<sup>65</sup> There are two elements to that allegation. The first relates to substantiating the feedback. We cannot add anything to the conclusion above relating to issue 6.
103. We have only been able to find one reference to the Claimant being referred to as 'aggressive' and that is in the email from Mr Scott to Ms Davé of 11 June 2015 commenting on her notes of the meeting.<sup>66</sup> The paragraph is below. The first sentence comes from Ms Davé's notes, upon which Mr Scott then comments.

"Duncan said your (Yvonne's) communication method had an adverse impact on other people." I am not sure I made such a sweeping statement, but I certainly mentioned something around very direct communication because Yvonne's rebuttal was that she was "consistent" in her communication style. I think this was in relation to my mention of the call Yvonne made to me on a particular Friday that was particularly aggressive and where she threatened not to deliver the restricted persons process.

104. Mr Scott repeated the point during his interview with Lindsay Wood on 8 July 2015 when the Claimant's first two grievances were being investigated.<sup>67</sup> Ms Davé said in her witness statement that the word 'aggressive' was not used at the meeting. The Claimant did not include any reference to this allegation in the section of her witness statement relating to the meeting.<sup>68</sup> In cross-examination she said that the description of her as being aggressive was stereotypical of the attitude in the Respondent towards black females. She said that she had been referred to as an 'angry black woman'. In her submissions Miss Bell described these statements by the Claimant as being outrageous and unsupported by any evidence.
105. Miss Bell also submitted that a hypothetical comparator who had acted as the Claimant did would also have been described by Mr Scott as being 'pretty aggressive' and that that had absolutely nothing to do with the Claimant's race or indeed her sex.
106. We find that at the meeting on 30 March 2015 Mr Scott had said words to the effect that during a telephone conversation in mid-October 2014 at a time that the Claimant was seeking extra resources for the A2 project the

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<sup>64</sup> [1154]

<sup>65</sup> Issue 8

<sup>66</sup> [1219]

<sup>67</sup> [5214]

<sup>68</sup> Paragraphs 165-168

Claimant had been 'pretty aggressive'. From all we have read and heard, and from the attitude of the Claimant when giving evidence at this hearing, particularly taking into account the position the Claimant was taking in October 2014 about her role with A2, we accept that Mr Scott could reasonably have perceived her as being 'pretty aggressive' during that call. We have noted that Mr Dawson commented on the Claimant in general and said in his witness statement that she had a 'refreshingly direct style', but that he was 'slightly concerned whether she could adapt effectively to consulting, as she would need to flex her style.'<sup>69</sup>

107. Would Mr Scott have described the Claimant's attitude during the conversation any differently if she had not been black or had not been female? We have decided that there is no evidence from which we could reasonably come to that conclusion.

A1/1 project – allegation 7

108. The Claimant alleges that she was prevented by Mr Cooch and Mr Raines from working on the project. The project was initiated by PwC Germany for the client A1, and was being led by Mr Lehman in Germany. It was an investment banking project involving proposed regulations known as MiFID2. As we understand the position the provisions of The Markets in Financial Instruments Directive 2004/39/EC required member states of the EU to introduce domestic legislation for investor protection from late 2007, but the Directive has now been revised and there are new requirements to come into effect in 2018. The original provisions have become known as MiFID1. Ms Wintermantel was the cross-service lead partner for MiFID projects.
109. Mr Cooch was the Engagement Partner for the project and he asked Mr Raines to be the Lead Engagement Director. Mr Raines thus became responsible for determining the requirements for people to have on the project team, and for the resourcing of those people. He decided that about 15 people would be required for about six months. Of those 15 only five were to be based in the UK. Ultimately there was to be one Director, together with one Senior Manager and two Managers.
110. Mr Raines wanted the strongest possible team as the project could have been the Respondent's flagship MiFID2 project.<sup>70</sup> In an email exchange of 4 February 2015 Mr Raines put forward various names to Ms Wintermantel who replied suggesting various other individuals, including the Claimant. Ms Wintermantel noted that the Claimant had MiFID1 experience.
111. Mr Raines and the Claimant were introduced to each other at an away-day on 5 February 2015. The Claimant expressed an interest in being present at the initial pitch for the project, and then working on the project itself if the pitch were successful. At the time the Claimant was occupied working on a project for A3 and could not therefore contribute fully to the

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<sup>69</sup> Paragraph 7

<sup>70</sup> [570-2]

preparation of the pitch. Although the Claimant was working on that project, that did not entirely prevent her from contributing to the pitch. Mr Raines was impressed with the Claimant. Mr Raines decided that the Claimant should have the Senior Manager role if the timing were to work out and he asked Resource to 'ghost book' her for the project.<sup>71</sup>

112. It was at this stage proposed that the Partners, Directors and the Senior Manager who were to work on the project should all travel to Frankfurt on 10 February 2015 to present the proposal. The Claimant made herself available from the A3 project for that purpose. It was then decided that having in total nine people from PwC Germany and PwC UK presenting the proposal was too many. The client then decided that only Mr Raines should attend from the UK.
113. Following the meeting in Frankfurt on 10 February 2015 the client asked that there be a further presentation, this time in London. It was originally booked for 16 February, but was later changed by the client to 19 February 2015. An outline of the requirements for that presentation was sent by Mr Raines to Mr Malta, Ms Wintermantel, Mr Arnold and the Claimant in the UK on 11 February 2015.<sup>72</sup> The client sent a proposed agenda on 11 February 2015 and that was forwarded by Mr Raines to Ms Wintermantel.<sup>73</sup> Mr Raines said in the email that he was nervous whether Mr Malta (a Director) and the Claimant were to be available as they were 'both maxed out on their current engagements'.
114. Mr Raines' PA arranged for meetings of the individuals, with Mr Wildhirt of PwC Germany attending (presumably) on the telephone, for 12 February at 5 pm and 13 February at 4 pm. There was also a dry run of the pitch on 16 February and further ones on the mornings of 17 and 19 February 2015 due to the client changing the date for the presentation. The Claimant was not able to attend any of those meetings. Mr Raines prepared a list of actions to be carried out by named individuals following the meeting on 13 February 2015.<sup>74</sup> The Claimant was not allocated any task.
115. Ms Wintermantel sent an email to the Claimant and Mr Arnold on 17 February 2015 (21:54) asking that one or other of them be prepared to talk about a case study to the client. The Claimant then asked Mr Arnold to deal with it as she said that she would be at a meeting with A3 at the time when the dry run was to be held on the morning of 17 February 2015.<sup>75</sup> Mr Raines sent a copy of the final draft of the presentation to the bid team, including the Claimant, on 18 February 2015 (20:07). It was at the time anticipated that the Claimant would speak to slide 45 which related to the case study.

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<sup>71</sup> [584]

<sup>72</sup> [594.5-594.6]

<sup>73</sup> [595]

<sup>74</sup> [601.1]

<sup>75</sup> [606-7]



116. The client had requested that all those who were to work on the project should attend the pitch. At the final dry run on the morning of 19 February 2015 Ms Wintermantel and Mr Raines agreed that the Claimant should not participate in the pitch after the matter had been discussed with the other members of the team. However, the Claimant was still named in the presentation documentation as a member of the proposed project team.<sup>76</sup>
117. There was a misunderstanding between Ms Wintermantel and Mr Raines. Ms Wintermantel only intended that the Claimant should not participate in the pitch, but that she would still be part of the project team. Mr Raines thought that it had been agreed that the Claimant would not be part of the project team either. It appears from the evidence of Mr Raines that this misunderstanding occurred about 19 February 2015 but that is inconsistent with later emails.
118. On 9 March 2015 Mr Raines sent an email to Mr Dawson in which he said that it looked as if the bid was to be successful, and that he was 'building out the team'.<sup>77</sup> He asked for the views of Mr Dawson on each of the Claimant, Winn Faria and Marija Nikolic for the role of the Senior Consultant / Manager. He added the following:
- I had originally placed Yvonne in this role, but she hasn't shown the greatest level of drive and (sic) commitment during the sales phase, so I am a little reticent.
- Mr Dawson replied to that email almost immediately:<sup>78</sup>
- Marija is top talent
119. Mr Raines then asked Mr Blackman, Resourcing Manager, to book Ms Nikolic on the Respondent's 'Retain' database.<sup>79</sup> Mr Raines had not previously worked with Ms Nikolic and relied upon the recommendation of Mr Dawson.
120. As part of the process for assembling the project team we were referred to an email from Mr Raines to Mr Cooch dated 10 March 2015 as follows:<sup>80</sup>
- So I have locked in Marija Nikolic and Miranda Baldoo, we only need 1 more [Senior Associate] to fill the white space in CB&S. We have a little more time to figure out AWM
121. That email had the effect of confirming that the Senior Manager role was to be filled by Ms Nikolic, who is a non-black female, and not by the Claimant. She was however removed from the project in June 2015 as the client was looking for SME<sup>81</sup> support from someone with more MiFID2 experience.<sup>82</sup> Ms Nikolic was replaced by Mr Upadhyay.
122. The Claimant had included in the bundle two American academic articles concerning 'white space'.<sup>83</sup> They relate to the concept of certain

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<sup>76</sup> [5555] and others

<sup>77</sup> [660]

<sup>78</sup> [667]

<sup>79</sup> [668]

<sup>80</sup> [671]

<sup>81</sup> 'Subject Matter Expert'

<sup>82</sup> See [1590] for information supplied by Mr Raines' during the subsequent grievance process.

<sup>83</sup> [5135.89] & [5135.93]

neighbourhoods as being effectively reserved for white people. The Claimant had included these because of the use of the phrase 'white space' in the email of 10 March 2015. Mr Johns put to Mr Raines that that was a reference to the colour of individuals, a suggestion which Mr Raines denied. Miss Bell submitted that the Claimant's interpretation was odd particularly as Miranda Baidoo is a black person. We find that Mr Raines simply intended to say that there was a role which had to be filled, and nothing more. There is absolutely nothing from which we could conclude that the use of the phrase in this context had anything to do with race, or that the Claimant could reasonably think that it had.

123. This is a straightforward claim of race discrimination and also of racial harassment. There are two Senior Managers, one black and one non-black. Both are female and therefore the issue of sex discrimination does not arise. We have to decide whether the facts as proved by the Claimant are such that we could reasonably conclude that there was unwanted conduct related to the Claimant's race which had any of the effects set out in section 26 of the 2010 Act, or that the difference in treatment between the Claimant and Ms Nikolic was because of the difference in race. The difference in treatment is insufficient by itself to show that there is a *prima facie* case.
124. The relevant part of the history of this pitch and project starts with Mr Raines meeting the Claimant, being impressed by her, and immediately ghost booking her for the project. That does not indicate that he was averse to the Claimant being involved with the project because of her race. We find that the reason why the decision of Mr Raines changed is simply that he was not impressed by the level of commitment shown by the Claimant during the pitch process. Whether objectively it was a reasonable decision for Mr Raines to make and in particular whether the Claimant was more qualified for the role than Ms Nikolic are questions which are not material once we have decided that the reason for the decision was nothing to do with the Claimant's race.
125. There was no evidence that Mr Cooch was involved at all in the selection of the team. The allegation against him therefore fails also.

A1/2 project – allegation 9

126. This claim is that the Claimant was not selected by Mr Cooch to be on the project team for this project. On 22 April 2015 Mr Cooch met a representative of client A1 about tendering competitively against another consultancy firm for a particular substantial project. The project related to asset and wealth management, which was not an area in which Mr Cooch had particular expertise. A proposal had to be provided by the end of Friday 24 April 2015. That deadline was in practice flexible, and various iterations of the proposal were provided to the client from 24 April up to 4 May 2015 as the client's needs changed. This included working over the weekend of 25 and 26 April 2015.
127. The project involved MiFID2. Because of the nature of the project and the existing relationship between Mr Cooch and the client it was arranged that

Mr Lord and Mr Cooch would be the joint engagement partners if the proposal were successful. Mr Cooch had the existing relationship with the client, and Mr Lord had the relevant expertise. Mr Cooch oversaw the bid process and requested from the Partners and Directors who were then available names of potential candidates to work on the proposal. The team selected for that purpose comprised Mr Lee, the Claimant, Ms Lehane and Ms Baber, with Mr Cooch retaining a general oversight. Mr Lee led the team and he was to be principally responsible for the selection of those to be involved on the project if the bid were to be successful.

128. Mr Cooch approached the Claimant to join the team to prepare the proposal and they had discussions on 22 April 2015. The Claimant alleges that during that conversation she was told by Mr Cooch that he would ensure that she had a role on the project if the bid were successful.<sup>84</sup> We prefer the evidence of Mr Cooch which was that he was pleased that the Claimant was enthusiastic about the possibility of being involved in the bid and project, but that he could not commit to her involvement in the ultimate project as the subject matter was outside his area of expertise, and that he would need to consult Mr Lee as the SME.
129. The Claimant was allocated specific responsibility by Mr Cooch during the bid process for what was termed 'the commercials'. Her role was to cost the resources to be allocated to the project against the budget set by the client, ensuring that that the project would be profitable for the Respondent. This necessarily involved working closely with Mr Lee in identifying the team for the proposed project. Further, Mr Lee asked the Claimant and Ms Baber to assist in selecting the individuals for the project team.
130. Mr Lee used the Respondent's formal resourcing process to ascertain who was available with the required skills and in the relevant locations. The project involved working in London, Zurich and Frankfurt. The Claimant's CV was not put forward by the resourcing team. The Claimant was involved in sifting the CVs which were provided for passing on to Mr Lee and Ms Lehane.<sup>85</sup> They then selected the individuals proposed for the project team. The Claimant and Mr Lee liaised on a regular basis about the team structure and the commercials and the Claimant prepared various slides showing the team structure.<sup>86</sup> The Claimant's name was not shown in any of the drafts, nor did the Claimant suggest in any of the emails that she should be included in the project team. We note in particular an email of 27 April 2015 (22:48) from Mr Lee to the Claimant with a spreadsheet attached which shows Ms Wallace as being the sole Senior Manager on the project.<sup>87</sup> The Claimant responded at 23:37 making a comment about another person, but not mentioning the Senior

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<sup>84</sup> The Claimant's witness statement at paragraph 235 does not go that far and refers to her throwing her 'hat into the ring' and having 'an understanding.'

<sup>85</sup> [798]

<sup>86</sup> See for example [811], [813], [832] & [840>]

<sup>87</sup> [899]

Manager role.<sup>88</sup> A further similar email and spreadsheet were sent to the Claimant by Mr Lee on 29 April 2015 (10:26), again not including the name of the Claimant.<sup>89</sup>

131. The client confirmed acceptance of the proposal on 30 April 2015, probably during the morning.<sup>90</sup> The Claimant was not selected by Mr Lee to work on the project. The Claimant was aware at the time that she was not listed to work on the project because she had been preparing the commercials, and they included the names and roles of those who were to be involved. She confirmed on that day that she was not to be part of the team in response to an email from Mr Coughlan enquiring whether she was potentially available to work on another project.<sup>91</sup> The Senior Managers who were selected were Ms Wallace and Charles Pearson. The Claimant compares her treatment with that of each of Ms Baber, Ms Lehane, Mr Lee, Mr Pearson and Ms Wallace. In each case the Claimant relies upon the protected characteristic of race.
132. The allegation is made against Mr Cooch. We have not accepted the Claimant's evidence that Mr Cooch originally promised her a role on the project if the bid were successful. If that had been the case then it would have undermined the Claimant's claim that her not subsequently being included in the project was an act of race discrimination. Most importantly we have also found that it was Mr Lee who decided who was to be involved in the project and not Mr Cooch. The allegation is not made against Mr Lee and it therefore fails on its facts. It is not necessary to consider the comparators.
133. The Claimant also puts this matter forward as an act of harassment related to her race. That claim fails for the reasons set out above. What occurred had nothing to do with the Claimant's race.
134. We add two comments. Mr Lee set out in some detail in his witness statement why he chose those who he did to work on the project, and those explanations are entirely non-discriminatory.<sup>92</sup> Secondly, we entirely fail to understand how it is that the Claimant dealt with various iterations of the commercials which did not show her as being included to work on the project, but did not raise the issue with Mr Lee if she considered that she ought to have been allocated to work on the project.

Incident on 28 April 2015 – allegations 10, 11, 13 & 15

135. The team preparing the proposal for the A1/2 project had been working extremely hard for several days, including during at least part of the weekend of 25 and 26 April 2015. Various iterations of the proposal had been issued to the client. There was a break during the morning of 28 April. A short informal conversation then took place. Present were the

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<sup>88</sup> [902]

<sup>89</sup> [922-923]

<sup>90</sup> See emails at [939] & [940]

<sup>91</sup> [935]

<sup>92</sup> Paragraphs 18-19

Claimant, Mr Cooch, Mr Lee, Ms Baber and Ms Lehane. Ms Lehane had only joined the Respondent a few days earlier.

136. We say straight away that we found Mr Cooch to be an entirely credible witness, and that he was horrified to have learned that the Claimant had been upset by what occurred on that day. In hindsight, of course, he regretted that the incident which we relate below ever occurred.
137. The relevant part of the conversation started with Mr Cooch saying that he had taken his family to a farm in Sussex on the preceding Saturday. Mr Cooch referred to his family having been involved in agriculture in the past, and had registered patents for wheat sorting machinery in the 19<sup>th</sup> century. He referred to a farming museum at Reading University. Ms Lehane is Irish, and Mr Cooch mentioned that in the 17<sup>th</sup> century some of his family had been involved in the occupation of Ireland. Ms Lehane also talked about what she had been doing at the weekend and her search for a flat. We find that this was a casual conversation when the team was taking a short break during a period of considerable pressure.
138. It is what Mr Cooch said about which the Claimant complains. She alleged in her witness statement that he 'spoke at length about oppression of slaves in a self-indulging manner' and that his ancestors 'owned plantation farms'. The Claimant then went on in her statement to compare the life expectancy of African slaves in the USA with individuals in the death camps in Nazi Germany.
139. We find that Mr Cooch did not use the words 'slavery' or 'plantation'. It is not credible that those words would be said in the context of Ireland. Mr Cooch accepted that he did use the words 'occupation' and 'invasion', but again that was in the context of his ancestors having settled in Ireland. Both Mr Cooch and Ms Lehane accepted that Mr Cooch may have used the word 'oppression'.
140. After the conversation had finished Mr Cooch and others returned to their desks. Mr Cooch then searched for, and found, a photograph on the internet. He edited it and sent it by email to each of the Claimant, Ms Lehane, Ms Baber and Mr Lee at 12:47.<sup>93</sup> The email was headed 'Team selection policy'. The photograph appears to be of a bearded peasant farmer, sitting cross legged. He is shown winnowing the wheat by tossing it from a shallow basket into the air to separate it from the chaff. The legend 'Michael' was added with an arrow pointing to the farmer. The further legend 'Grant, Fiona, Yvonne, Belinda' was also added with an arrow pointing to the wheat and the chaff which was in mid-air. We do not know when each of the addressees opened the email.
141. The evidence concerning any complaints made by the Claimant about the email was conflicting. The Claimant accepted in cross-examination that the allegation set out in the issues above that she had a conversation with Ms Wintermantel was not correct and she said that it was on 6 May 2015.<sup>94</sup>

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<sup>93</sup> [909]

<sup>94</sup> Issue 5.1.1

142. Che Sidanius was away from the office on leave from 4 to 11 May 2015. On a date on or before 12 May 2015 the Claimant contacted him concerning the emailed photograph. We did not hear from Mr Sidanius and cannot be certain of the date. We find that the first that Ms Wintermantel learned of the matter was when Mr Sidanius sent her an email on 12 May 2015 (17:48) headed 'Chat' saying that he was perturbed by something that had come to his attention.<sup>95</sup> Ms Wintermantel then spoke to Mr Sidanius and was told that the Claimant had received an email from Mr Cooch which had upset her. The Claimant's concern, as then understood by Ms Wintermantel, was that the Claimant had been informed in an insensitive manner that she was not to work on the project, and not that the email had anything to do with her race. The point was that the other three members of the bid team were selected to work on the project, but the Claimant was not selected.
143. Ms Wintermantel then spoke to the Claimant and asked for a copy of the email and photograph. This was on 14 May 2015. Ms Wintermantel spoke to Mr Dawson about it, and then to Mr Cooch when they were next able to meet in the office. Mr Cooch was working at A1's office at the time. They spoke shortly before 10 June 2015. Mr Cooch explained that the email was intended to be humorous and encouraging. Ms Wintermantel then spoke to Mr Dawson again, and she was told that the Claimant had by then lodged her grievance on 10 June 2015. Ms Wintermantel thought that the matter should be dealt with through that process, and so did not contact the Claimant about it.
144. The Claimant did raise the issue in her grievance.<sup>96</sup> The thrust of that part of her complaint was about the team selection and that the email and the photograph was an inappropriate method of communication. She referred to the creation of a hostile working environment. There was no specific mention in that grievance of race discrimination, nor indeed of sex discrimination for that matter. In the claim form the Claimant said that the email was Mr Cooch's way of telling her why she was not picked for the project.
145. The next related allegation is that on 24 July 2015 Ms Lehane said the email was 'light-hearted banter'.<sup>97</sup> Ms Lehane was interviewed as part of the grievance investigation process.<sup>98</sup> The notes of the interview include the following:

FH said that she did remember the meeting and the conversation and that she had only been with the firm for one week at that time. FH said that it was a funny conversation and she had taken the mickey out of MC as he said that he had Irish ancestry and FH is from Ireland. FH said that they were laughing at each other and it was a moment when they had a bit of light relief. FH said that she remembered it because she said that it was nice to move to a new firm and be able to have a bit of banter with people. FH said that once the conversation was finished they moved on.

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<sup>95</sup> [1026]

<sup>96</sup> [5136]

<sup>97</sup> Issue 15

<sup>98</sup> [5292] For some reason Ms Lehane is referred to as 'FH'

LW asked FH if she recalled an email that MC sent out following the meeting. FH said that the email referred back to the conversation that they had been having as MC had said that his ancestors were farmers. FH said that she had thought it was funny and that the email reiterated their conversation that they had had about MC's ancestors being farmers and his comments about what a good team he had.

146. These are all allegations of direct race discrimination and harassment. The first allegation refers to the Claimant requesting on 27 April 2015 for an explanation as to why she had not been included on the project. The Claimant's evidence in her witness statements was that she 'flagged this' with Mr Sidanius, and we saw an email of 27 April 2015 from Mr Sidanius to Mr Lee saying that the Claimant was available.<sup>99</sup> That point is only by way of background to the complaint about the conversation.
147. We find that the conversation was a perfectly normal conversation principally between Mr Cooch and Ms Lehane during a time when they were relaxing briefly from a period of pressured work. The conversation happened to turn to Mr Cooch's family background and his connection with Ireland. It was exactly as described by Ms Lehane in the extract from the investigation notes we have quoted. There is absolutely nothing from which we could conclude that there was any less favourable treatment of the Claimant by comparison with any of those others present who were not black. The other head of complaint is that of harassment. We find that there was no conduct by Mr Cooch which was related to the Claimant's race. We entirely accept the explanation of the conversation given by Mr Cooch and Ms Lehane, and it has nothing to do with the Claimant being a black person. The only racial element to the conversation related to Ms Lehane being Irish. In the loosest possible way we could therefore say that the conversation related to a relevant protected characteristic. Clearly there was no intention that the conversation should have any of the proscribed consequences. We find as a fact that it did not have such effect on the Claimant, and would have found, if necessary, that it was unreasonable for there to have been such consequences. We find that the Claimant has embellished or exaggerated this matter very considerably.
148. In connection with the allegations about Mr Cooch now under consideration the Claimant had included in the bundle certain documents obtained from the internet.<sup>100</sup> One was an article entitled 'Black Americans in Delaware: An Overview' referring to black slaves in English colonies in North America from 1619. There was also a print of a Wikipedia entry concerning Cooch's Bridge in Delaware. An article headed 'Grist Mill 1770-76' referred to a mill in Delaware bought by one Thomas Cooch of England in 1746. There are other miscellaneous pages. There was no evidence that Mr Cooch was related to any of the individuals referred to in the articles. None of the articles are of any relevance whatsoever to this claim and their inclusion is not to the credit of the Claimant.

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<sup>99</sup> Paragraph 236 and [851]

<sup>100</sup> Commencing at [5135.70]

149. The next matter relates to the email and photograph rather than the conversation.<sup>101</sup> The photograph was found and modified by Mr Cooch with reference to the bid team for whom he was responsible. He was seeking to congratulate them. The Claimant was treated in exactly the same way as being among the wheat with three others, and not the chaff which had fallen to the floor. There was no less favourable treatment of the Claimant. This is also a claim of harassment. We have concluded that the email was not in the slightest related to the Claimant's race. The claim of harassment therefore fails.
150. The allegation number 15 concerning Ms Lehane is also alleged to be an act of victimisation. The allegation is that Ms Lehane referred to the email from Mr Cooch as 'light-hearted banter' during the grievance investigation meeting with her on 21 July 2015.<sup>102</sup> The relevant date is 24 July 2015. By then the Claimant had carried out the two protected acts on 29 and 30 June 2015 mentioned above. For the Claimant to succeed in a claim for victimisation she must prove facts from which the Tribunal could reasonably conclude that what occurred was because of the protected act. Ms Lehane did indeed refer to 'a bit of light relief' and having a 'bit of banter with people.' We find there is no evidence from which we could reasonably conclude that those comments by Ms Lehane were because of the Claimant's race, nor because of the fact that she had made a protected act. Further, the comments were not related to the Claimant's race.

Feedback and moderation for 2014/15 year – allegations 12 and 14

151. These are claims of race discrimination. The first of these allegations is that the Claimant was graded '3' in the end of year moderation on 28 May 2015 because of Mr Scott's feedback on the A2/2 project. The second allegation is that on 7 May 2015 Ms Paakko recommended that the rating be changed to a '4' without good reason. The significance of the date is that it is said by the Claimant to be one day after Ms Wintermantel asked the Claimant for a copy of the 'wheat and chaff' email from Mr Cooch.
152. The performance review for the year to 31 March 2015 was the first annual review for the Claimant. As mentioned above the Claimant expressed concerns about the feedback prepared by Mr Scott in emails to Ms Davé and Ms Paakko on 2 and 27 April 2015 respectively.<sup>103</sup> Ms Davé and the Claimant met on 27 April 2015. Shortly before the meeting the Claimant provided a consolidated feedback to Ms Davé excluding that from Mr Scott.<sup>104</sup> The Claimant said in the email that she would speak to Ms Paakko about it. After the meeting the Claimant sent her 'Contribution & Impact Summary'.

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<sup>101</sup> Issue 11

<sup>102</sup> [5292] The Claimant refers to 24 July 2015, but we think that is an error.

<sup>103</sup> [861]

<sup>104</sup> [878] & [893]



153. At the meeting the Claimant expressed again her concern about Mr Scott's feedback. The Claimant sent a text message to Ms Davé the next morning saying that she 'should be considered for the top% pile'.<sup>105</sup> Ms Davé considered all the information provided, including that from Mr Scott and considered that '3' was the appropriate grading.
154. The moderation meeting in respect of Senior Managers in Risk Consulting and others was held on 28 April 2015. When those Senior Managers were to be discussed the Claimant and other Senior Managers left the meeting. The meeting was chaired by Mr Gossington assisted by Ms Paakko. Each People Manager was given 3-5 minutes to speak about each Senior Manager. Ms Davé recommended that the Claimant be graded as '3' and stated that she did not agree with all of Mr Scott's feedback. Some of those present considered '4' was more suitable, but it was ultimately agreed that the grading should remain at '3'.
155. There was a further meeting on 7 May 2015 referred to as a 'wash-up' meeting. The purpose was to review all the scores allocated across the sub-competencies in the Risk Consulting Competency. That was normal practice. The general agreement was that the Claimant was on the borderline of a '3' or '4'. There was some confusion in the evidence given on behalf of the Respondent as to whether it was agreed at that meeting that the Claimant should remain as '3' or be graded to a '4'. We find that it was decided that the Claimant should be graded '4' and Ms Paakko sent an email to Ms Fitzpatrick, HC Advisor, recording that decision and other changes which had been agreed.<sup>106</sup> Ms Paakko then had further discussions with Mr Gossington. In the end Mr Gossington decided that the Claimant should remain as a '3'.<sup>107</sup>
156. Allegation 12 is that it was race discrimination for feedback from Mr Scott to have been used, on the basis that it was disputed and unsubstantiated. The position of the Claimant in her witness statement was that the feedback should not have been considered at all because she 'had a pending complaint with HR.'<sup>108</sup> Miss Bell submitted that there was no reason for it not to be taken into account.
157. We accept that the feedback was disputed, but not that it was unsubstantiated. What we have to be able to find is that the reason it was used is because the Claimant is a black person, and that it would not have been used in the same circumstances if she had been a white person. We cannot make that finding. There is no evidence to support the assertion. The claims of direct discrimination and harassment therefore fail.
158. Allegation 14 is that Ms Paakko recommended that the Claimant's grading be changed to '4' because of Ms Wintermantel having asked for a copy of the email from Mr Cooch of 30 April 2015. This is a somewhat strange allegation within the provisions of the 2010 Act relating to direct

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<sup>105</sup> [1052] (First version)

<sup>106</sup> [993]

<sup>107</sup> [995] & [1012]

<sup>108</sup> Paragraph 210

discrimination and harassment. Our conclusions are as follows. The first is that Ms Paakko did not recommend a '4'. She simply recorded what had been agreed concerning the Claimant and others. The second is that there is absolutely no evidence that the changes in grading had anything whatsoever to do with the email of 30 April 2015.

159. The claim of victimisation must fail as the 'wash-up' meeting took place before any protected act had occurred.
160. As a final comment we note the submissions by Ms Bell that the Claimant was not aware of the changes that had been made behind the scenes until the disclosure process in this litigation. It is difficult to see how the Claimant therefore could maintain that she was harassed at the time as defined in section 26 of the 2010 Act.

A31 project – allegation 16

161. The allegation by the Claimant is that she was denied an opportunity to work on a MiFID2 project for A31. The Claimant's specific complaints are that she was not invited to attend any proposal meeting, and that her name was not on the final proposal document. Although no specific comparator was listed in the list of issues the Claimant referred to Marija Nikolic in her statement. Those factual allegations are correct.
162. Mr Gray is the relationship partner for A31. He was approached by the client to put forward a formal proposal for the project. Ms Wintermantel introduced the Claimant to Mr Gray. Ms Wintermantel had some continuing responsibility for reviewing the proposal from a technical perspective, but was not involved with the selection of the project team. Mr Gray asked Daren Brass, a Senior Manager, to be responsible for the finalisation of the proposal document. It is the Claimant's contention that she was the *de facto* lead in preparing the proposal as she understood the MiFID2 Regulations, and that Mr Brass had a limited amount of input. The Claimant expected to be the lead Senior Manager on the project if the proposal were successful.
163. On 15 July 2015 the initial proposal was sent to the client. At the time it was proposed by Mr Gray that the team to work on the project if the bid were successful was to be Uma Kymal (Project Delivery Director), Mr Brass (Project Manager / Senior Manager), three Managers and one Associate. It was also envisaged that Che Sidanius, Justin Malta and the Claimant would provide expertise when required as SMEs. The client's requirements then changed somewhat and Mr Gray and Mr Brass were invited to a meeting on 7 August 2015. Mr Brass was due to be away on leave. Mr Gray decided that those attending in addition to himself would be Ms Kymal, Mr Malta and Mr Nelson.
164. The client sent an email to Mr Gray on 12 August 2015 providing feedback from the meeting and making certain requests.<sup>109</sup> One requirement was a reduction in cost. A further requirement was that any input from a SME should be free of charge, and that ideally that should be from Mr Malta.

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<sup>109</sup> [1534]

Further, the client required that the business analysts allocated to the project had the ability to build a dynamic model. The final proposal had to be submitted on the following day.

165. We accept Mr Gray's evidence that it was clear from the email from the client that the proposed project team had to be changed, and that that had to be done as a matter of great urgency. A copy of that email was sent to Ms Kymal, Mr Malta and then to Liam Coughlan in Resource. He then sent it to the Claimant and others on the morning of 13 August 2015 asking for assistance to rewrite the proposal. Mr Coughlan said he would find CVs to put in the proposal. Ms Kymal contacted Ms Nikolic asking if she would be free to work on the project.<sup>110</sup> She was allocated to the project as lead Senior Manager. She had a particular qualification which would be of benefit to the project.
166. The Claimant did not respond to the request for assistance from Mr Coughlan. Her evidence to the Tribunal as to why she did not do so was vague. She said that she had by then put in grievances and that she was also working on other things.
167. There was email correspondence involving the Claimant, Ms Wintermantel, Mr Gray and Mr Gossington initiated by an email from the Claimant to Ms Wintermantel on 5 August 2015.<sup>111</sup> The Claimant was in effect complaining about not attending an internal meeting to be held later that day to discuss the proposed presentation to the client. The Claimant said that 'it is unreasonable for others to expect me to continue supporting bids without a reasonable incentive.' On the following day Ms Wintermantel emailed the Claimant, having spoken to Mr Gray.<sup>112</sup> An explanation was given as to why each of those who were to attend the pitch had been asked to do so. Ms Wintermantel then said that Mr Gray had confirmed that the Claimant would be part of the team as an SME if the pitch were to be successful.
168. The explanation given by Mr Gray concerning the failure to select the Claimant and to select Ms Nikolic was as follows. He said that originally it had been intended to have three individuals, including the Claimant, in an SME role as mentioned above. It had not been intended that she would have been on the project in any other role. The number of SMEs was ultimately reduced to two, being Mr Malta and Luke Nelson. Ms Nikolic took over the role as lead Senior Manager on the project from Mr Brass. Ms Nikolic did not take over the role which had been initially proposed for the Claimant.
169. These claims are made on the basis of race only, and of victimisation. Miss Bell pointed out that the Claimant was not the only person who ultimately did not work on the project. Ms Kymal and Mr Brass did not work on it, and they are each non-black.

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<sup>110</sup> [1531]

<sup>111</sup> [1452]

<sup>112</sup> [1474]

170. Mr Gray gave a perfectly rational and non-discriminatory explanation for the sequence of events leading to the final selection of the team. Further there is nothing from which we could conclude that what occurred had any relation to the Claimant's race, nor that there was any victimisation.

Allegation concerning Ms Paakko in August and September 2015 – allegation 19

171. This allegation arises out of the disclosure process in connection with the Claimant's first claim. In an email to Denise Lake of 13 August 2015 Ms Paakko said that the Claimant had been ignoring work since November.<sup>113</sup> This issue arose in connection with attempts which had been made to contact the Claimant on that day while trying to put a team together very urgently for a pitch for A6 for a MiFID2 project. The email from Ms Paakko was sent in reply to the following email from Ms Lake:

I am not comfortable she is ignoring work-related contact and she needs to be told where the lines are in the context of her grievance.

As her grievance is about certain individuals then perhaps we can limit her contact with them but apart from that she should be able to do work/pitches etc and if safeguards are needed where appropriate.

Will leave you to decide what you want to do.

172. Ms Paakko accepted in her witness statement that the contents of her email to Ms Lake were incorrect.<sup>114</sup> Her explanation was that Mr Gossington and Mr Dawson had previously raised concerns with Ms Paakko that the Claimant was not sufficiently visible, and had not been contactable by telephone. We were referred to an email of 29 June 2015 in which Ms Paakko asked Mr Gossington to make it clear to the Claimant that she was expected to be in the office at all times.<sup>115</sup> We were also referred to an exchange of emails of the same day between Ms Paakko and Ms Fitzpatrick.<sup>116</sup> Ms Paakko was told that the Claimant had not recorded any time for the preceding week, and was not in the office that day. Ms Paakko also said that she had been informed at weekly meetings with Mr Gossington, Mr Dawson and members of the resourcing team that on occasions the Claimant had refused to go forward for work.<sup>117</sup>

173. We go back to the basic proposition that the Claimant must prove facts from which we could reasonably conclude that the statement by Ms Paakko was made because of her race or because of her sex, or related to one or other of those protected characteristics. There is no evidence to enable us to come to that conclusion. The statement was erroneous, but that is far from sufficient to pass the burden over to the Respondent to show that there was no discriminatory treatment of the Claimant. We make the same finding in respect of the allegation of victimisation.

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<sup>113</sup> [1544]

<sup>114</sup> Paragraph 82

<sup>115</sup> [1326]

<sup>116</sup> [1332]

<sup>117</sup> See [1619-1620]

Africa – reference / recommendation – allegation 21

174. This allegation is that on 4 December 2015 the Claimant was told by Mr Cleal that it would not be possible to obtain a reference or recommendation to facilitate a transfer or secondment to PwC Africa because she had by then issued her first claim against the Respondent. This is a claim of victimisation only, and not one of direct discrimination or harassment covered by either of the protected characteristics relied on by the Claimant. The Claimant withdrew her claims of direct discrimination and harassment during cross-examination.
175. The background is as follows. The Respondent (to which we will refer in this section as ‘PwC UK’) had decided to invest a considerable amount of capital in expanding consulting services provided by PwC Africa, which is based in South Africa. Mr Cleal took on the role as Advisory Leader for the development in West Africa, and particularly Ghana and Nigeria. This was a role for three years from June 2014, during the first of which Mr Cleal was to be based in London. Mr Cleal handed over the role early in March 2016. Mr Cleal describes himself as black if asked informally, but more formally as mixed white / black African.
176. In July 2014 the Claimant expressed an interest to Mr Dawson in getting involved with PwC Africa. Mr Dawson mentioned this to Mr Cleal, and the Claimant and Mr Cleal met in late July 2014.<sup>118</sup> Thereafter the Claimant became involved in what was called the ‘Africa Business Group’ which was a PwC group designed to cultivate professional relationships in London with African based businesses. There was no suggestion at this stage of the Claimant moving to Africa.
177. Mr Cleal moved to Lagos from June 2015, although he was often in London, partly due to health issues towards the end of the year. We cannot trace exactly what occurred after July 2014, but by September 2015 the Claimant had expressed an interest in moving to Africa. Her CV had been provided to Andrew Nevin, the Chief Economist of PwC Nigeria, by 6 October 2015 who ‘responded very positively’.<sup>119</sup> The Claimant and Mr Nevin then spoke a few days before 20 November 2015.<sup>120</sup> Mr Nevin said that he would make contact with colleagues in the UK for oral references. Mr Cleal then suggested to the Claimant that they have a further chat, and a visit by the Claimant to Lagos and Accra.<sup>121</sup> The Claimant did not make that visit. She was, however, pencilled in for a role.
178. The Claimant and Mr Cleal met in London on 4 December 2015. It is what occurred at that meeting that is in contention. The fact of the Claimant having presented her first claim to the Tribunal was mentioned. The issue of the Claimant’s rating having been a ‘3’ was also discussed as it was thought that it may have been seen to be a problem by PwC Nigeria. We accept the evidence of Mr Cleal that if a request for details about the

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<sup>118</sup> [348]

<sup>119</sup> [1975.1]

<sup>120</sup> [2226]

<sup>121</sup> [2230]

Claimant were made by PwC Nigeria then the fact of the claim would have had to be disclosed, and that that may not help her case. We do not accept that it was said that no reference or recommendation would be supplied. Mr Cleal was at all times keen to assist the Claimant.

179. We note that in paragraph 383 of the Claimant's witness statement she referred to a letter of 8 April 2016 from the Respondent (without the name of the author having been provided) in which it was said that she 'was denied the opportunity due to economic conditions and a change in leadership priorities.' We do not have that letter. We do have an email from Mr Cleal to Tara Kent of HC dated 9 February 2016 in which he said that he had told the Claimant of changes going on in West Africa and resulting uncertainty.<sup>122</sup> That accords entirely with the oral evidence given to the Tribunal by Mr Cleal in reply to questions asked by the Tribunal. He explained that the consulting side of PwC Nigeria was sustaining heavy losses, and was being subsidised by the audit side. There had also been a change of Senior Partner who had appointed a new Consulting Leader. Mr Cleal said that he had had to plead to allow consulting to continue in Africa.
180. We accept the evidence of Mr Cleal that career moves of the nature under consideration have to be driven by the individual concerned, in conjunction with Global Mobility, and that as far as he was aware the matter was never pursued by the Claimant.
181. The specific allegation is that the Claimant told by Mr Cleal that it would not be possible to obtain a reference. As stated, we do not find that assertion proved. We found Mr Cleal to be a very straightforward credible witness who was in fact seeking to assist the Claimant. The allegation is rejected on the facts.

A66 project – allegations 22-24

182. The allegations relate to a project to be undertaken for client A66 from December 2015. Andrea Wintermantel had become the Claimant's People Manager on 1 July 2015. Ms Wintermantel secured a chargeable MiFID2 project for A66 and offered the Claimant the role as the Engagement Manager. The client is a Canadian bank. Ms Wintermantel was the Engagement Lead Partner. The Claimant's role involved taking responsibility for the day-to-day leadership of the project and reporting to Ms Wintermantel. She had not been involved in the earlier proposal stage, but was involved in the preparation of the final engagement letter and the 'kick-off deck'.<sup>123</sup> It was agreed that the deck was of high quality.
183. Three managers had been 'ghost booked' for the project. The principal from A66 wanted to meet the team, and such meeting took place on 25 November 2015. The engagement letter was signed on 3 December and the Claimant and others formally began working on the project from that

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<sup>122</sup> [2444]

<sup>123</sup> [2217] A 'deck' is a PowerPoint presentation.

date. The Claimant was due to be on leave from 11 to 15 December 2015 inclusive.

184. There were emails between the Claimant and P11 of A66 on 2 and 3 December 2015 about the setting up of initial meetings.<sup>124</sup> There was a proposal for what was referred to as an 'initial business engagement meeting' for 10 December 2015, and then 'deep-dive interviews' for the week commencing 14 December 2015. The Claimant referred to them as 'bilateral meetings with each desk and the support functions', and Ms Wintermantel referred to them as 'fact-finding meetings with relatively junior members of the client's business management team.'<sup>125</sup> Also to be there was the Project Manager from A66 in Canada (P11) and the Head of Equity Compliance from the London office (P10).
185. On 11 December 2015 Ms Wintermantel asked the Claimant who was to facilitate the deep dive meetings in her absence on leave and the Claimant replied at 09:26 saying that she was not sure at the time and would update Ms Wintermantel by close of business that day.<sup>126</sup>
186. Although the evidence is somewhat obscure we find the following to have occurred. There was a discussion on 14 December 2015 in the absence of the Claimant on leave involving Ankit Pathak, Luke Nelson, Emma Tan and Uba Dijemini from the Respondent, and P10 and P11 from the client. It was agreed that detailed questions would be discussed at the meeting proposed for 16 December 2015, and that the client would decide who would attend from A66. The Claimant was not involved in the discussion or subsequent decisions about the meeting.
187. On the morning of 16 December 2016 the Claimant sent a template questionnaire and other documents to P10 and P11 in preparation for the meeting, which was normal practice.<sup>127</sup> The client had arranged for individuals to attend who were at a much more senior level than was intended or expected by either the Claimant or Ms Wintermantel. The Claimant was not personally present at the meeting which was to be led by Mr Pathak and 'attended' by telephone. It quickly became apparent that there had been a misunderstanding, and it resulted in a severe feedback from the client. Ms Wintermantel apologised to the client by email on the evening of the same day.<sup>128</sup>
188. At some stage during the afternoon there was a telephone conversation between Ms Wintermantel and the Claimant about what had occurred. The Claimant sent an email to Ms Wintermantel that evening at 20:23 with her comments about the meeting, and saying that they were working at getting back on track.<sup>129</sup> Ms Wintermantel then sent an email to the whole team

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<sup>124</sup> [2302-2303]

<sup>125</sup> [203] and Wintermantel paragraph 113

<sup>126</sup> [2314]

<sup>127</sup> [2324]

<sup>128</sup> [2333]

<sup>129</sup> [2330]

setting 'ground rules' and asking for better communication. She said as follows:

As you can imagine I was rather horrified to learn that the bilateral fact finding / scoping meeting you told me you are going to have after the kick off meeting turned into a meeting with the head of fixed income and his team.

189. It is not clear from the claim form or list of issues exactly what the Claimant is referring to when she says that she was wrongly blamed. In cross-examination she referred to an email from Ms Wintermantel to Mr Dawson, Mr Gossington and Ms Paakko. That email is dated 17 December 2015 at 07:42:

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I received a complaint from my client about a meeting Y organised and ran. She apologised but is trying to put the blame of the Augment resource in the team which is not appropriate.

I am dealing with the situation but just wanted to keep you in the loop.

190. The Claimant's evidence was to the effect that Ms Wintermantel should have checked the list of proposed attendees in the absence of the Claimant on leave. She blamed another member of the team, Ankit Pathak, for the error and said that he should have been supervised by Ms Wintermantel. Ms Wintermantel's evidence was that as the Engagement Manager responsible for the day-to-day running of the project she should have informed Ms Wintermantel that the stakeholders from A66 who were to attend were more senior than had been originally planned.
191. It is not clear exactly what the Claimant means by saying that she was undermined in her role as Project Manager, but she did refer to Shantanu Upadhyay being imposed on the project by Ms Wintermantel without consultation with the Claimant.<sup>130</sup> The Claimant asked to be removed from this project also, and that was done on 22 January 2016, although Ms Wintermantel would have asked her to consider doing so because of her poor working relationship with Mr Upadhyay and to limit the damage caused by the meeting of 16 December 2015.
192. The Claimant complains that feedback for that project was delayed by Ms Wintermantel.<sup>131</sup> The Claimant and Ms Wintermantel met on 26 February 2016 to discuss the project. Ms Wintermantel provided oral feedback and then sent an email on 1 March 2016 requesting that she obtain all relevant feedback for the end of year assessment.<sup>132</sup> Suggestions were made as to who should be asked for feedback. The email recorded that the Claimant had declined to complete a self-assessment for the A66 project.
193. By now the first claim had been presented to the Tribunal and the normal case management process was underway. The Claimant refers to the Respondent's solicitors having promised the feedback by 31 March 2016

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<sup>130</sup> Claimant paragraph 421

<sup>131</sup> Issue 23

<sup>132</sup> [2512]



although we did not have any evidence to that effect.<sup>133</sup> Ms Wintermantel did provide draft written feedback to the Claimant on 12 April 2016.<sup>134</sup> It was provided shortly before a meeting was due to take place between the Claimant and Ms Wintermantel for the purpose of the Claimant's annual performance review.

194. The Claimant alleges that the feedback was 'inaccurate and false'.<sup>135</sup> The document is three pages. It set out in some detail what she saw as the Claimant's strengths, and also commented on the meeting of 16 December 2015. Ms Wintermantel commented as follows:

Yvonne was committed to the success of the engagement and was flexible in accommodating the 5 hour time difference, which resulted in her often working till late in the evenings.

195. The feedback from A66 was summarised. Ms Wintermantel criticised the Claimant saying that she should have informed Ms Wintermantel of the meeting and the suggestions from the client as to who should attend. Any concerns should have been escalated to Ms Wintermantel. She added that the Claimant should be more sensitive to client feedback and consult more appropriately with more senior managers. The final short conclusion was as follows:

**Overall.** I recognise the challenging circumstances of this project and I value Yvonne's positive contribution. I hope she can reflect on her experience and benefit from the lessons learned on future engagements.

196. The Claimant was then away from work because of an eye problem. She sent her comments on Ms Wintermantel's draft feedback on her return to work on 26 April 2016.<sup>136</sup> That was the date of the year end moderation meeting at which the Claimant's performance was possibly to be discussed. The Claimant's comments were 22 pages in all including emails. Ms Wintermantel prepared notes about the Claimant's comments, backed up by other emails, in readiness for a meeting with the Claimant.<sup>137</sup> That meeting took place on 19 May 2016 and we refer to it below.

197. It is very difficult for us to ascertain from the Claimant's evidence exactly what aspects of the feedback from Ms Wintermantel are said to have been inaccurate and false. In her statement the Claimant mentions several times that Ms Wintermantel should have been more involved with the project, and specifically says that she considered it 'unfair scapegoating to be criticised for what was fundamentally about the poor performance of Ankit Pathak'.<sup>138</sup> On the basis of the evidence before us we are not able to find that the factual allegation that the feedback was inaccurate and false proved.

198. The Claimant alleged in her second claim that there was a delay of three months in Ms Wintermantel providing any feedback. That is not entirely

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<sup>133</sup> [2866]

<sup>134</sup> [2951]

<sup>135</sup> Issue 24

<sup>136</sup> [3054-3061]

<sup>137</sup> [3047.1-3047.37]

<sup>138</sup> Paragraph 424

correct. The Claimant was provided with oral feedback on 26 February 2016 at a meeting with Ms Wintermantel, and declined to complete her self assessment. It is true that written feedback was not provided until 12 April 2016, but that was in time for the moderation meeting to be held on 26 April 2016. We note that the Claimant does not cite any comparators in this connection.

199. There is no evidence from which we could reasonably conclude that what occurred was because of the Claimant's race and/or sex, or related to those characteristics, or was caused by any protected act.

The meeting on 19 May and the Claimant's return to work on 26 April 2016 – allegation 25

200. The factual allegation that at this meeting Ms Wintermantel referred to the Claimant's return to work as being 'strategically timed' is accepted by the Respondent as accurate. In her witness statement the Claimant simply said she found the comment offensive.<sup>139</sup> In cross-examination the Claimant said that such comment was consistent with the Respondent's treatment of her in discriminating against her on the ground of sex and race.

201. Ms Wintermantel's explanation for the comment was that the Claimant had been able to prepare detailed comments about the feedback relating to the A66 project, but had cancelled planned meetings and not been able to come into work until the day of the moderation meeting.

202. Our conclusion is that the comment could be seen as inappropriate, but that is insufficient for the Claimant to succeed in any of her claims relating to the matter. The burden of proof does not move to the Respondent in respect of the claims of discrimination based on either of the protected characteristics, of harassment, or of victimisation.

Accounts of a discussion between the Claimant and Ms Chigwedere – allegations 20 & 26

203. This is somewhat complex and arises as the result of the disclosure of documents as part of the litigation process. There was an email of 7 September 2015 from Ms Paakko to Mr Gossington and Mr Dawson:

You are probably aware of this already, but I met with David Taylor this morning and he told me about his reward discussion with Chenai, who is one of Yvonne's mentees. Chenai told David that Yvonne had told her that she was subject to bias at the year end moderation because she had done work for [X]. David said he had a good conversation with Chenai, and he also told Chenai that she had not been subject to bias and that we reviewed her against the work and feedback in comparison to her peers, she was not reviewed any differently to anyone else.

204. The Claimant was Ms Chigwedere's People Manager in May 2016. In cross-examination the Claimant referred to this as Ms Paakko 'passing on noise' and it was done to taint the Claimant's image as being a troublemaker because she is black.

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<sup>139</sup> Paragraph438

205. We did not hear from David Taylor. Ms Paakko said that all she was doing was passing on to Mr Gossington, the Claimant's People Partner, and Mr Dawson, the Head of the Risk Consulting Competency, information she had been told about which they ought to know. She had at about that time become aware that there was an issue as to the extent of support being provided to Ms Chigwedere by the Claimant.
206. After the Claimant had seen the email she asked to meet Ms Chagwedere. They had a meeting on 4 May 2016. Following that meeting the Claimant sent an email to Ms Chigwedere stating that Ms Chigwedere had confirmed that she had not made the comment attributed to her by Mr Taylor.<sup>140</sup> That email was copied to Ms Paakko, Mr Dawson, Mr Gossington and Mr Taylor.<sup>141</sup> Ms Chigwedere confirmed the accuracy of the email, saying that it was her view that the moderation process was biased, and not that of the Claimant.<sup>142</sup>
207. We accept the evidence of Ms Paakko that she had been provided with information, or understood that she had been provided with information, which ought to be made known to Messrs Gossington and Dawson. Obviously if the Claimant had been telling a mentee that s/he had been subject to a biased rating then it was quite proper for those senior to the Claimant to have been informed of the matter. There is nothing from which we could conclude that the sending of the email by Ms Paakko was because of or related to the Claimant's race or sex, or any protected act. She would have done the same in relation to any other employee, regardless of that employee's race or sex, or the making of any protected act.
208. The next allegation follows on. The Claimant says that on an unknown date in May 2016 Ms Paakko and Mr Dawson circulated false rumours of the Claimant having had a shouting match with Ms Chigwedere. This relates to the meeting of 4 May 2016 mentioned above. The evidence of Ms Paakko was that she heard the Claimant and Ms Chigwedere speaking louder than usual, and she informed Mr Dawson.<sup>143</sup> Ms Paakko referred to there having been raised voices, and Mr Dawson adopted the phrase 'shouting match'.
209. There was a meeting of Ms Chigwedere, Ms Paakko, Mr Dawson and the Claimant on 25 May 2016 principally concerning the future arrangements for the management of Ms Chigwedere. Mr Dawson apologised for using the phrase 'shouting match'. What we do not know is when he had used that phrase. Most importantly, there is no evidence of Mr Dawson having circulated any account of the meeting of 4 May 2016 describing it as a shouting match. This allegation fails on the facts.

Performance Improvement Plan – allegation 27

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<sup>140</sup> [3115]

<sup>141</sup> It was also sent to Sarah Henry.

<sup>142</sup> [3117]

<sup>143</sup> Paragraph 93

210. We have set out above the general policy of the Respondent in respect of the putting of employees on a PIP, and also referred to the PIP template. This allegation is that the Claimant was invited to a meeting on 8 July 2016 contrary to the Respondent's grievance policy, and that it was for the purpose of discussing a PIP. It is not clear exactly what breaches of the grievance procedure are being alleged. The details in the particulars of claim do not assist in that the Claimant refers to a breach of policy and the Respondent not following the correct procedure.
211. There were discussions involving Ms Jenkins, Mr Dawson and Ms Wintermantel towards the end of May concerning putting the Claimant on a PIP. The Claimant had been rated a '4' or 'concern' as a result of the 2016 year end moderation, and on 20 May 2016 Ms Wintermantel had sent to the Claimant her (Ms Wintermantel's) Contribution and Impact Assessment rating the Claimant as 'concern'. The covering email recorded that the Claimant had not been willing to discuss the 2015/16 performance, and that as a result of the 'concern' rating the Claimant would be placed on a PIP.<sup>144</sup> The Claimant replied on the same day saying that she was being victimised, and that she wished to raise a formal grievance.<sup>145</sup>
212. At the end of the Assessment document Ms Wintermantel noted various points. They were as follows. The Claimant had a utilisation rate of 46% which was under the target for Senior Managers. The Claimant had not attended various training events. She had not completed screening for client A10. She had not attended any skills group meetings and not been visible to the Risk competency.
213. Ms Jenkins agreed to be responsible for the Claimant's PIP. She had had considerable experience in chairing PIPs. Ms Jenkins had not met the Claimant previously and did not know her ethnicity. Ms Jenkins then had discussions with Ms Paakko and Ms Henry. The initial reasons for the PIP were that the Claimant had a low utilisation rate, that there were concerns about the Claimant's performance on the A66 project and that she had been rated a '4' following the 2015/16 moderation process. Those reasons were later reduced following various internal discussions, and the limits were set out in the email from Ms Jenkins of 18 July 2016 mentioned below.
214. An initial meeting was to be set up of the Claimant, Ms Jenkins and Mr Dawson. On 8 July 2016 Ms Jenkins' PA sent an electronic invitation to the Claimant for a 'Confidential HR meeting' to be held on 12 July. The Claimant responded by asking Ms Jenkins for an agenda.<sup>146</sup> Ms Jenkins had assumed that the Claimant knew that a PIP was to be proposed. She left a voicemail message for the Claimant on 8 July to the effect that the meeting was to be for PIP purposes and that questions could be dealt with at the meeting.

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<sup>144</sup> [3188-3192]

<sup>145</sup> [3196]

<sup>146</sup> [3519]

215. At some stage the Claimant electronically accepted the meeting invitation, but then on 11 July 2016 sent an email to Ms Jenkins on the same day saying that she had booked annual leave and accepted the invitation in error.<sup>147</sup> She said that she would 'reach out' on her return to work. No date was stated.
216. There is considerable confusion in the evidence as to whether or not the Claimant was on leave during the week of 11 July 2016.<sup>148</sup> A further electronic invitation was issued for a meeting on 13 July 2016, and that was accepted by the Claimant.<sup>149</sup> Ms Jenkins was confused as she had assumed that the Claimant would be away for the whole of that week, and asked if she were able to attend. The Claimant replied asking for the purpose of the meeting to be set out in writing, for a copy of the Respondent's PIP policy procedures and/or guidelines, and for confirmation that they were being followed.<sup>150</sup> Ms Jenkins replied on 18 July 2016 in some detail, and attached a copy of the Respondent's PIP template.<sup>151</sup> In that email Ms Jenkins stated in the first and second paragraph as follows:
- I understand from [Mr Dawson] that you were notified by Andrea Wintermantel that your concern rating for the 2015/16 performance year would result in a Performance Improvement Plan (PIP) being commenced. A PIP is designed to support you to reach the expected level of performance for your grade.
- I am also aware that you have raised a grievance in respect of the project feedback that was used to evaluate your 2015/2016 performance. Whilst any developmental issues solely relating to that feedback will not be considered until the grievance process has concluded. I understand that issues relating to utilisation and areas for development have been identified which should form the basis of structured support that the PIP can assist with.
217. Ms Jenkins then set out a summary of the proposed procedure and said that it was consistently applied across Risk for those who were rated 'concern' or otherwise identified as needing support. A standard blank PIP template was attached to the email setting out the respective responsibilities of the individual and the person conducting the PIP during the process. That email is the only evidence before us as to the reason(s) provided to the Claimant for the PIP being commenced.
218. There were then various attempts to set up the proposed meeting. The attitude taken by the Claimant was that she wanted to obtain legal advice before attending the meeting and that her adviser was ill. The details are not relevant. Ms Jenkins became frustrated. The Claimant's sick leave ceased on 6 September and she then immediately went annual leave until 24 September 2016. On her return, or from shortly thereafter, Ms Jenkins became her People Manager in place of Mr Dawson who was transferring to Australia. Ms Jenkins decided thereafter to approach the outstanding issues with the Claimant in that capacity.

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<sup>147</sup> [3552]

<sup>148</sup> See [3553] & [3559]

<sup>149</sup> [3568]

<sup>150</sup> [3569-70]

<sup>151</sup> [3628]

219. We go back to the allegation, which relates to the meeting of 8 July 2016. What the Tribunal has to be able to find is that the invitation by Ms Jenkins to a 'Confidential HR Meeting' was because of, or related to, either or both of the Claimant's race or sex, or because of a protected act. There is simply no evidence from which we could come to any such conclusion.

The Claimant not being assigned roles after February 2016 – allegation 28

220. The full allegation is set out in paragraph 31 of the particulars of claim in the second claim. The Claimant said that she had been available from February 2016, but had not been provided with any consulting roles within her area of expertise, yet new Senior Managers had been recruited.

221. It is the Respondent's position as set out in the submissions of Miss Bell that the Claimant was treated more favourably than many others in that efforts were made to support her, and to encourage her to accept roles. It was said that the Claimant was unreasonably fussy about the work that she would consider undertaking, demonstrating an inflated ego.

222. In her evidence Ms Wintermantel put forward three reasons for the Claimant's low utilisation:<sup>152</sup>

- 1 Her performance on the A66 engagement from December 2015 to January 2016;
- 2 The Risk Consulting Competency as a whole being low-utilised (especially at Senior Manager grade); and
- 3 Her continued lack of proactivity in terms of assisting with business development and looking for chargeable roles.

223. Those points were repeated by Mr Dawson, who emphasised the Claimant's lack of flexibility and agility, and that she did not respond to opportunities offered to her.

224. The Claimant was cross-examined at length in connection with this broad allegation. She accepted that in 2015 the Respondent had had a recruitment drive for Senior Managers, and also that in early 2016 the general utilisation levels of consultants in the Risk competency was low.<sup>153</sup> There had been an unexpected downturn in work which hit those at Senior Manager level particularly.

225. On 5 January 2015 Mr Dawson sent an email to the 'Risk Team' referring to new people joining the Respondent, and that it was important to have plans in place to have them busy on chargeable work. In an email of 26 February 2016 to the Risk Team Mr Dawson said that at the end of January 2016 Consulting was significantly behind budget and that many consultants were not being utilised on chargeable work. Seven ways of finding chargeable work were listed. Mr Dawson said that from 29 February all members of the team not on chargeable work were to be in the office and report to the competency Ops Leader or the Resourcing

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<sup>152</sup> Paragraph 142

<sup>153</sup> See [2364] & [2475]

team. Mr Dawson sent a further email to the Risk Team on 15 April 2017 again making the point that utilisation levels were not at a comfortable level, and that a significant number of Senior Managers were available.<sup>154</sup>

226. The Respondent accepts that the Claimant was not assigned to any consulting project as a Senior Manager from February to August 2016 when the second claim was presented to the Tribunal. Miss Bell submitted that the Claimant was unreasonably fussy about the work she would and would not consider, and demonstrated an inflated ego. She drew our attention to an offer of work circulated to all members of the Risk team of 10 March 2016.<sup>155</sup> In cross-examination the Claimant was adamant that it was not appropriate for her to accept it because she has been employed as a Consultant, and the work in question was an internal secondment. If she had accepted it then it would have increased her utilisation rate.
227. The responsibility for showing facts from which the Tribunal could reasonably conclude that her low utilisation was because of her race or her gender is on the Claimant. She has not referred to any specific comparators in the issues. In her witness statement the Claimant referred to a white female, who we believe to be Corinna Scott, as being recruited but does not refer to her as being assigned to any project. The Claimant does not use her as a comparator.
228. We find that the Claimant has not proved facts from which the Tribunal could reasonably conclude that the failure to place her on any consulting project was because of, or related to, her sex or race. We are entirely satisfied from the evidence of Ms Wintermantel and Mr Dawson, and also from the answers given by the Claimant in cross-examination, that there simply was not the work available. We did not have full statistics, but we do note a report for April to July 2016.<sup>156</sup> This shows the Claimant and ten other Senior Managers as having had zero utilisation. There were fifteen people with zero utilisation overall. The covering email from Clare Basson, Operations Leader for Risk Competency, to Mr Gossington says at the end:

We probably need to focus on the lowest utilised people as a priority when chargeable work starts to roll in!

Fit note requirement – allegation 29

229. The Respondent has a back office function based in Birmingham called 'HC Direct' or 'HC Customer Services'. The sickness absence policy requires that an employee telephones her manager on the first day of absence, and thereafter keeps in contact on a regular basis during the absence. A self certification form must be completed in respect of all absences via the Employee Portal. If the employee is absent for more than

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<sup>154</sup> [2993]

<sup>155</sup> [2628]

<sup>156</sup> [3663]

seven days then a form Med3 has to be provided to HC Customer Services by no later than the ninth day of absence.

230. The Claimant was away because of illness on 15 August 2016 and sent an email to Mr Dawson at 09:27 informing him of that fact. She sent a further email on the following day saying that she was taking the rest of the week off to recover.<sup>157</sup> The Claimant was then provided with a form Med3 by her GP dated 23 August 2016 which stated that the Claimant had been advised that she was not fit for work from 22 August to 5 September 2016 inclusive because of 'general malaise'.<sup>158</sup>
231. On 22 August 2016 at 11:56 Eirini Seliniotaki sent an email to the Claimant.<sup>159</sup> Ms Seliniotaki introduced herself as the new HC Advisor for Risk. She said that she had heard that the Claimant had been unwell and said that she wanted to see if she was back at work. Ms Seliniotaki added that if further time off was needed, including that day, then a form Med3 would have to be provided. Mr Gossington sent a similar email on the following day.<sup>160</sup> The Claimant sent a copy of the form Med3 to Ms Seliniotaki on 24 August 2016 (07:18) and Ms Seliniotaki replied asking that a copy be sent to HC Direct also.
232. It is the Claimant's case as expressed in her witness statement and cross-examination is that what occurred was harassment as the requests from Ms Seliniotaki and Mr Gossington were in breach of the Respondent's policy. She referred to certain paragraphs of the sickness absence policy.<sup>161</sup>
233. There is nothing in what occurred from which we could possibly conclude that it was because of the Claimant's sex or race, or because she had made a protected act. This was entirely normal correspondence arising out of the absence of an employee.

Grievances and procedures – allegations 17 & 18 and issue 7.1.3

234. The Respondent's grievance procedure was in the bundle.<sup>162</sup> It is unremarkable and very similar to many grievance procedures we have seen. It sets out general principles and procedures and is not prescriptive. It states that the Respondent will seek to resolve the grievance 'as quickly as we reasonably can'. It states that where significant prior investigation is not required then the aim was to hold a grievance hearing within two weeks.
235. In the list of issues there is reference to a grievance in the singular. It is apparent that in fact the Claimant was referring to the whole of the grievance process, and not one single grievance. The Claimant's allegations as set in the list of issues are very general. There is reference

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<sup>157</sup> [3852] & [3857]

<sup>158</sup> [3951]

<sup>159</sup> [3923]

<sup>160</sup> [3933]

<sup>161</sup> [5135.10-5135.11]

<sup>162</sup> [5135.47]



back to paragraphs 12 and 13 of the particulars of claim in the first claim. We extract the following points from that paragraph:

- 235.1 The majority of the grievances were not upheld;
  - 235.2 At the meeting with Mr Gossington on 29 June 2015 the Claimant was inappropriately questioned about her grievances;
  - 235.3 There was unreasonable delay.
236. The Claimant's witness statement did not assist in clarifying her allegations save that she considered the decisions were incorrect. The Claimant was cross-examined at some length concerning the grievances. We make our findings of fact taking into account such evidence as was before us, and bearing in mind the vagueness of the allegations.
237. The Claimant refers to an informal grievance. That appears to be a reference to a discussion with Ms Paakko on 28 April 2015 after the moderation meeting. Following that Ms Paakko sent an email to the Claimant on 26 May 2015 asking for clarification as to the issues which were concerning her, and the Claimant replied that day saying that Mr Scott could not substantiate parts of his feedback.<sup>163</sup> The Claimant asked for the 'next steps in terms of raising a formal grievance.'
238. The first grievance was lodged on 10 June 2015.<sup>164</sup> She complained about not having been selected for the A1/1 and A1/2 projects, and generally of not having been provided with consulting opportunities. She also complained about the email from Mr Cooch of 28 April 2015. The second grievance was lodged on 15 June 2015.<sup>165</sup> This grievance related to the issue of Mr Scott and the feedback from the A2 project.
239. On 14 June 2015 Ms Thorpe emailed the Claimant to say that she was to investigate the grievance with a view then to arranging a formal grievance meeting.<sup>166</sup> She asked to meet the Claimant to discuss the grievance before the formal meeting. The Claimant's reaction was in an email to Ms Thorpe of 18 June 2015 in which the Claimant said that she had lost faith in the investigation process because Ms Thorpe was a Manager and was being asked to investigate a dispute between a Senior Manager and a Director/Partner. The Claimant asked that the investigation be carried out by a senior member of staff.
240. It was put to the Claimant by Miss Bell that the appointment of Ms Thorpe to investigate the grievance had nothing to do with the Claimant's race. The Claimant replied that a more senior person would have been appointed if the Claimant had not been black. She added that it would not have been the same if she had been Jewish, as Jewish women are considered to be white.

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<sup>163</sup> [1049]

<sup>164</sup> [5136]

<sup>165</sup> [5140]

<sup>166</sup> [1223]

241. Mr Gossington sent an email to the Claimant on 25 June encouraging the Claimant to engage with the process.<sup>167</sup> Sarah Henry, the HC Leader for Consulting, then contacted the Claimant on 25 June 2015 also to discuss the procedure.<sup>168</sup> They met on 26 June 2015. Ms Henry then sent an email to the Claimant asking if she was content for Ms Thorpe to continue with the investigation.<sup>169</sup>
242. The Claimant met Mr Gossington on 29 June 2015.<sup>170</sup> He had sent an email to her at 10:30 am saying that he had been trying to contact her, and asked her to call him urgently. The Claimant replied asking if there was anything specific to discuss, to which Mr Gossington replied that it was 'to catch up on business matters and general catch up.'<sup>171</sup> They then spoke. The Claimant was working from home. Mr Gossington asked to meet her in the office at 4 pm that day.
243. One element is clear from the evidence of each of the Claimant and Mr Gossington and that is that it was a difficult meeting. It is also agreed that there was a discussion concerning the level of utilisation of the Claimant. The allegation by the Claimant is that she was questioned about issues relating to her grievance without prior notice. It is agreed that the question of the grievance was mentioned. Mr Gossington's evidence was that he was concerned as to whether she was fit to return to work, and also about how to help her to find suitable work. He also said that what he said to the Claimant was that Lindsay Wood would be in contact with her about the grievance. Mr Gossington stopped the meeting as he felt it was not being productive.
244. We do not accept that Mr Gossington was seeking to interfere in the grievance procedure. We find that it was entirely appropriate for him to seek to meet the Claimant because of her absences due to illness, and her continued low utilisation. He was the People Partner for the Risk Consultancy, and therefore the proper person to have such a discussion. There is nothing from which we could conclude that this meeting had anything to do with the Claimant's race or sex.
245. The Claimant then sent an email to Mr Gossington at 1 am on 30 June 2015.<sup>172</sup> She said that the issues which had been discussed were directly linked to her formal grievance. She said that she did not want to be brought into any further meetings concerning her grievance without prior notice. She also made a general allegation of having been discriminated against on grounds of sex or race. This was the first occasion that the Claimant had mentioned such discrimination.

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<sup>167</sup> [1307]

<sup>168</sup> [5159]

<sup>169</sup> [5163]

<sup>170</sup> In addition to the evidence of Mr Gossington we have noted his email of 30 June 2015 which acted effectively as a file note – [1348.1].

<sup>171</sup> [1327-1328]

<sup>172</sup> [1342]

246. The Claimant also asked that an email from Mr Gossington of 29 June 2015 be included as part of the grievance.<sup>173</sup> That was an email forming part of a chain of emails concerning the arranging of the meeting. The Claimant had ‘tentatively accepted’ an electronic invitation from Mr Gossington.<sup>174</sup> Mr Gossington had replied to her as follows:
- I see you have tentatively accepted my meeting request – I do expect to see you to accept and see you.
247. Lindsay Wood took over the investigation into the Claimant’s grievances as Ms Thorpe was on holiday.<sup>175</sup> They met on 1 July 2015.<sup>176</sup> Ms Wood then interviewed Mr Scott, Ms Paakko, Mr Gossington, Ms Woolcott, Mr Cooch, Ms Davé, Ms Wintermantel (twice), Ms Lehane, Mr Lee and Ms Baber. The last interview took place on 28 July 2015. Shortly thereafter a copy of Ms Wood’s report was provided to the Claimant. On 6 August 2015 the Claimant sent an email to Ms Wood saying that she was reviewing the report and asking for clarification on two points.<sup>177</sup> There was then further correspondence about details in the report and documents to which we will not refer in detail.
248. On 27 July 2015 the Claimant had been notified that the grievance hearing itself was to take place on 6 August 2015.<sup>178</sup> She then asked for it be delayed as her companion was not available. It was rearranged for 21 August 2015. The partner hearing the grievance was Ms Talvitie-Brown. Present also was Ms Wood to take notes and provide HC support. The hearing lasted for two hours and was adjourned to 9 September 2015 for Ms Talvitie-Brown to consider the evidence.
249. The Claimant lodged another grievance on 25 August 2015.<sup>179</sup> The grievance related to year end moderation procedure for 2014/15, and her rating of ‘3’ which she said was ‘based on personal opinion and hearsay, racial stereotypes and prejudice.’ Ms Wood met the Claimant on 27 August 2015 to discuss this grievance, and she then produced an updated report.<sup>180</sup>
250. The adjourned meeting was held on 9 September 2015 as arranged, but at that meeting the Claimant’s third grievance was also considered.<sup>181</sup> Ms Talvitie-Brown adjourned the meeting at 3.30 pm to consider the grievances. It was originally intended that Ms Talvitie-Brown would provide the outcome to the Claimant the next day. However Ms Talvitie-Brown wanted further time to consider the outcome. The letter setting out the outcome of the grievances was drafted and agreed between Ms

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<sup>173</sup> [1343]

<sup>174</sup> [1341.1]

<sup>175</sup> [1352]

<sup>176</sup> Notes of the meeting are at [5204]

<sup>177</sup> [1473]

<sup>178</sup> [1442]

<sup>179</sup> [5323]

<sup>180</sup> [5327] is the report in its final version after the meeting of 21 September 2015.

<sup>181</sup> [5517]

Talvitie-Brown and Ms Thorpe. It was eventually provided to the Claimant at a meeting on 21 September 2015.<sup>182</sup>

251. The letter is seven pages in length and is closely typed. We find from the contents of that letter that Ms Talvitie-Brown had considered each element of the Claimant's grievances. Ms Talvitie-Brown stated in the letter that she partially upheld the Claimant's grievance concerning her not being allocated in projects for A1. However, we cannot see what element was upheld in that respect.
252. Ms Talvitie-Brown then referred to the email from Mr Cooch of 30 April 2015. She found that Mr Cooch did not have any intention to undermine or humiliate the Claimant, but it was accepted that the Claimant had been adversely impacted by the email, and that it was inappropriate. That element of the grievance was upheld.
253. The grievance in relation to the feedback concerning A2 was next considered. Ms Talvitie-Brown considered that the feedback by Mr Scott was balanced and honest. She accepted that it had been provided later than should have been the case, but that the Claimant had not been treated inappropriately, and that it was right that it be used for moderation purposes. Ms Talvitie-Brown was not able to find any evidence that the Claimant had been bullied by Mr Scott or that Mr Gossington had acted inappropriately.
254. Ms Talvitie-Brown then addressed the third grievance and the general allegation of discrimination, harassment and victimisation. Ms Talvitie-Brown concluded that the 'valued' rating of '3' was not based on hearsay, racial stereotypes or prejudice. She set out in some detail the history of what had occurred in relation to the grading and moderation.
255. Ms Talvitie-Brown made six recommendations. She recommended that there be facilitated discussions involving Mr Scott, Mr Cooch and Ms Woolcott. She also recommended that the Claimant be provided with a coach and also a mentor particularly in relation to project selection.
256. The Claimant then appealed and sent a detailed document attached to a short email of 29 September 2015.<sup>183</sup> The appeal document is over eight pages long and contains over 90 separate points. The Claimant and Jamie Houghton, a Partner, met on 26 October 2015 and his decision was sent to the Claimant on 26 November 2015.<sup>184</sup>
257. Mr Houghton stated that he was also concerned about the delay in Mr Scott having provided the Claimant with feedback. He recommended that there be a discussion with Mr Cooch specifically related to the email of 30 April 2015. In summary he concluded that 'a number of matters could have been handled differently' but that there was no 'evidence that [the Claimant] was discriminated against on the grounds of sex and/or race.'

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<sup>182</sup> [5526] & [5533]

<sup>183</sup> [5537] & [1948]

<sup>184</sup> [5547]

He also made recommendations in connection with the Claimant's role in the Respondent for the future. There was no further right of appeal.

258. In the list of issues the Claimant has set out eleven separate criticisms of the manner in which the grievance was handled. As mentioned they are vague, and not much clarity was obtained during the Claimant's cross-examination. For example, when asked if she accepted that it was normal for a Manager or Senior Manager from HC to act as case manager, and for any grievance to be heard by a Partner, the Claimant simply replied that that was not in the grievance procedure.
259. We are unable to understand from the Claimant's evidence exactly what she means by the first seven elements of her complaints, nor the allegation of 'lack of transparency'. It appears to us that the various grievances were handled entirely properly. Those allegations cannot be substantiated on the facts. However, for the avoidance of any doubt we record that we cannot find any evidence that a non-black person or a man would have been treated any differently, nor would the matter have been handled differently if there had not been any allegations of discrimination.
260. There is an allegation of unreasonable delays. Miss Bell properly accepted that the grievance process overall took a long period of time. The first grievance was lodged on 10 June 2015 and the outcome of the appeal was not provided until 26 November 2015. We find that in all the circumstances that was not an unreasonable period, and that those involved in the process took considerable care over the investigation and the decision-making process. The Claimant also alleged that the complaints were not fully investigated although without specifying what further should have been done. If there had been further enquiries made then that would have delayed matters further. In any event, again there is no evidence that the matter was affected by the protected characteristics upon which the Claimant relies.
261. The Claimant also complains of 'HR involvement in decision-making'. We do not accept that any HC/HR officer was involved in the making of any decision as opposed to providing advice and assistance. That in our view is a perfectly proper function of HR officers, and wholly unrelated to the Claimant's race or sex, or the fact of complaints of discrimination having been made.
262. The final point is that Mr Houghton is alleged to have been an inappropriate person to hear the appeal. We did not hear from him. The Claimant's explanation in cross-examination was that both Ms Talvitie-Brown and Mr Houghton were Partners in the Government Health Cluster, but she accepted that she did not have full details of their competencies or responsibilities. We find this allegation fails on the facts.

Disciplinary investigation and proceedings – allegations 30-33

263. One specific aspect of these allegations is that the Respondent has failed to comply with its Monitoring Policy.<sup>185</sup> The Claimant referred in her

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<sup>185</sup> [288]

witness statement to paragraphs numbered 1 and 2 on page 2 of the Policy. The first sentence of paragraph 1 and the whole of paragraph 2 are as follows:

1. Monitoring shall only take place when it is appropriate and justified to do so.
2. Monitoring and investigative procedures shall be conducted in a manner which is fair and lawful, and maintains mutual trust and confidence with staff.

264. The introductory paragraph to the Policy under the heading of 'Scope' is as follows:

This document sets out the firm's policy for the monitoring of UK premises, IT system and individuals. Monitoring may comprise automated scanning / monitoring, reviews of automated scanning output and targeted monitoring / investigations. The policy is intended for use by the UK firm in relation to its monitoring activities.

265. Mr Dawson was by August 2016 becoming concerned about various aspects of the Claimant's performance. He sent the following email to Mr Gossington on 16 August 2016:<sup>186</sup>

I am concerned that Yvonne is not engaging with the business in line with expectations. Key areas of concern:

1. Yvonne not complying with the direction to the whole Competency re: being clear with Clare on a weekly basis as to what she is doing day-to-day as per my email of 26 February 2016;
2. Yvonne not engaging with Isabelle re: her PIP;
3. Yvonne not taking on work requested of her [examples given], introductory meeting with Luara Cox to explore opportunities;
4. Yvonne refusing to undertake [A10] screening;
5. Yvonne not completing Talent Link;
6. Lack of transparency on her whereabouts. Yvonne not visible to the team to offer day to day support or attending team events (Third Fridays, FSRR town halls, Skills Group meetings);
7. Yvonne generally being uncooperative, delaying responding to emails and not sufficiently proactive in her role.

In addition Yvonne is pursuing career opportunities outside of the risk team, however she has failed to provide me with a recent update on progress with this. I have provided my support and ideas, including the Laura Cox discussion mentioned above, however I do not feel that Yvonne is driving this forward quickly enough. I would expect her to keep me regularly updated to progress and where she need further support.

266. Mr Dawson included further detail in his witness statement, and oral evidence was given, about some of those matters. We will not set out each of those matters. We deal with the fourth point specifically below. Mr Gossington replied on the same day as follows:

I would suggest in line with normal HC process we request a conduct investigation to be pursued to ascertain next steps. We should certainly ask Denise's team to start pulling together the relevant information for further review by an independent partner.

267. The issue concerning A10 is this. A10 is an important client of the Respondent. All members of staff who could potentially be engaged on a project with A10 were required by the client to have undergone a pre-

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<sup>186</sup> [3860]

screening process. Mr Coghlan sent an email to Mr Gossington on 29 June 2015 with a list of eight potential projects he had supplied to the Claimant. One of those was for A10, and the email noted that the Claimant had withdrawn as she said that she had a conflict of interest.<sup>187</sup> Those who had not been screened were reminded by Mr Gossington on 22 March 2016. A further reminder was sent to the Claimant on 30 March 2016.<sup>188</sup> Mr Gossington reminded the Claimant again on 23 May 2016 'to ensure that all are as highly utilised as possible.'<sup>189</sup> The Claimant then replied saying that the matter had been discussed one year previously.

268. Mr Gossington then replied on 1 June 2016 saying that he could not recall a substantive conversation although he knew the Claimant had said there was a conflict. Mr Gossington wanted to know whether the Claimant considered herself conflicted in respect of the original project only, or whether it was in respect of A10 generally. Mr Gossington emphasised that the purpose of his enquiry was to seek to utilise the Claimant on client work. The Claimant replied referring Mr Gossington to PwC Legal.<sup>190</sup>
269. Our conclusion on this point is straightforward. The Respondent had a standard procedure for pre-screening employees so as to make them available to work on projects with A10 if required. The Claimant was seriously underutilised at the time. Mr Gossington was seeking to utilise her. He reminded the Claimant, and others, of the process. The Claimant was singularly unhelpful in not being willing to discuss at the very least in outline why it was that she considered herself unable to work on projects with A10.
270. The Claimant may have considered this to be harassment. We find that what occurred had nothing whatsoever to do with the Claimant's race, or her sex, or that she had committed any protected acts. We entirely accept the reasons given by Mr Gossington, and they are non-discriminatory. Further, we do not accept that what occurred had any of the effects on the Claimant set out in section 26 of the 2010 Act.
271. Lis Chalkley, a HC Manager based in Bristol, was asked to investigate the concerns raised by Mr Dawson. She spoke to Ms Paakko, Mr Dawson, Mr Gossington, Mr Kandiah, Ms Basson, Ms Stephenson, Ms Jenkins, Ms Wintermantel, Ms Cheryl Wallace and Ms Cox between 19 August and 3 October 2016.
272. On 3 October 2016 Lis Chalkley sent an email to the Claimant.<sup>191</sup> In it she said that 'some concerns have been raised by your business unit' and that they should be raised with the Claimant. She invited the Claimant to a meeting on 5 October 2016 in London. Ms Chalkley said that this was not a formal disciplinary hearing but attached a copy of the disciplinary policy,

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<sup>187</sup> [1337]

<sup>188</sup> [2873]

<sup>189</sup> [3228]

<sup>190</sup> [3316]

<sup>191</sup> [4094]

and said that a failure to co-operate could give rise to an independent disciplinary meeting. There was then an exchange of emails.<sup>192</sup> The Claimant wanted further details of what was to be discussed. Ms Chalkley said that they would be provided at the meeting, and the Claimant then said that she 'may not be able to assist [Ms Chalkley] fully at the proposed meeting.'

273. The Claimant and Ms Chalkley spoke on the telephone on 5 October 2016. Ms Chalkley had prepared questions in advance.<sup>193</sup> In the notes of the meeting Ms Chalkley, helpfully from our point of view, set out the areas of concern: Resourcing; Visibility; Meetings; PIP; Training; Work load and output; Moderation; Meetings with contacts; Timesheets and the PwC Professional.<sup>194</sup> The Claimant recorded that discussion but did not provide it to Ms Chalkley, despite requests to do so. The Claimant did not provide answers to all the questions raised. She declined to do so as she said they related to matters raised in claims to the Tribunal and she wanted to take legal advice. Later on that day following that discussion the Claimant prepared a table listing the areas of concern, a summary of the questions asked or issues raised, and her replies.<sup>195</sup> The table was sent to Ms Chalkley at 16:14.
274. On 7 October 2016 Ms Chalkley sent an email to the Claimant.<sup>196</sup> In the email Ms Chalkley said that as a consequence of the way that the Claimant had decided to engage with her<sup>197</sup> during the telephone conversation she was recommending that the formal disciplinary process be initiated. Ms Chalkley prepared an investigation report dated 12 October 2016, and made recommendations to proceed with ten matters, but not to proceed with three others. There were numerous appendices to the report.
275. On 12 October 2016 Steven Stocks, a Partner, he wrote to the Claimant requiring her to attend a disciplinary hearing on 21 October 2016.<sup>198</sup> Three types of allegations were set out as follows:
- 1) It is alleged that you have not collaboratively worked with the business in order to support your utilisation and work output over a prolonged period of time
  - 2) It is alleged that you have consistently failed to obey legitimate instructions from a more senior employee or partner over a prolonged period of time
  - 3) It is alleged that your behaviour breaches expectations of a Senior Manager in line with the Code of Conduct and PwC Professional
276. There were four or five more specific allegations under each of those headings. With that letter were enclosed the investigation report and appendices, notes of interviews, and copies of PwC Professional and the

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<sup>192</sup> [4097]

<sup>193</sup> [4116]

<sup>194</sup> [4141]

<sup>195</sup> [4130]

<sup>196</sup> [4140]

<sup>197</sup> Or perhaps more accurately, had not engaged with Ms Chalkley.

<sup>198</sup> [4207]



Code of Conduct.<sup>199</sup> The Claimant then requested details of the relevant IT logs and those were supplied by Ms Chalkley on 25 October 2016.<sup>200</sup> They are not intelligible to us and fortunately we did not have to seek to understand them.

277. The Claimant was ill from 18 to 30 October 2016 with a stress related problem.<sup>201</sup> The Claimant did not attend the disciplinary hearing on 26 October 2016 held by Mr Stocks.<sup>202</sup> She had sent written representations for Mr Stocks to consider at the hearing.<sup>203</sup> The submissions and appendices were over 100 pages long. As a result of that document Mr Stocks added a further allegation which was that the Claimant had admitted recording the conversation with Ms Chalkley of 5 October 2016. We cannot trace any record of the Claimant having been specifically notified in advance that that would be considered.
278. The meeting was adjourned for further investigations to be carried out, and it reconvened on 17 November 2016.<sup>204</sup> The Claimant did not attend that meeting either. Her solicitors advised the Respondent that she would not be attending 'for health reasons'.<sup>205</sup> The notes of the first meeting record Mr Stocks as saying that he needed further evidence from both parties to provide full answers to the allegations.
279. The notes of the first meeting are detailed. Mr Stocks considered each of the specific allegations in a systematic way, stating the allegation, then the relevant evidence, and then the conclusion.
280. After the first hearing Ms Chalkley wrote to the Claimant on 1 November 2016 with thirty-three questions which Mr Stocks wished to ask to enable him to come to a conclusion, and Ms Chalkley said that Mr Stocks wished to meet the Claimant.<sup>206</sup> Ms Chalkley also asked again for a copy of the audio recording of the conversation of 5 October 2016. The Claimant replied on 7 November 2016 saying she required more time, and declining to provide a copy of the recording which she would 'be retaining for personal reference.'<sup>207</sup> The Claimant also asked for further clarification about requests for details of the Claimant's working patterns and where she had been on certain dates.
281. Sarah Henry replied to that letter on 10 November 2016 on behalf of Mr Stocks.<sup>208</sup> She supplied the information which had been requested by the Claimant. A further request was made for a copy of the audio recording.

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<sup>199</sup> We think that 'PwC Professional' and 'Code of Conduct' may be the same document, but it is of no consequence.

<sup>200</sup> [4731]

<sup>201</sup> [171]

<sup>202</sup> [5106]

<sup>203</sup> [4625]

<sup>204</sup> [5115]

<sup>205</sup> [5035]

<sup>206</sup> [4818]

<sup>207</sup> [4899]

<sup>208</sup> [4907]

There was a further exchange of correspondence in which the Claimant asked for a copy of the Monitoring Policy.<sup>209</sup> On 14 November 2016 the Claimant sent an email relating to the questions which had been asked of her.<sup>210</sup>

282. The Claimant did not specifically answer many of the questions. Mr Stocks summarised it as follows:<sup>211</sup>

I read [the Claimant's] further responses and was both disappointed and frustrated to see that [the Claimant] again failed to answer the questions posed to her. Her answers amounted largely to an attempt to deflect the issues away from what work she had done and how available for work she was when she was not ill or on holiday. I became increasingly concerned that I was not going to meet [the Claimant] and be able to understand her side of the story.

And so it proved to be.

283. Mr Stocks had been supplied with certain data as to when the Claimant had used her security pass to obtain access to the Respondent's offices. He wanted clarification on some points after 26 October 2016. He had also received reports as to when the Claimant had been logged into the Respondent's computer network. The Claimant was provided with the same information. The relevant period considered by Mr Stocks was from early 2016. Mr Stocks also wanted further information as to what the Claimant had done to add value to the business, and what had been done to support her.

284. Mr Stocks was supplied with further information and wrote to the Claimant on 9 November 2016.<sup>212</sup> He sent a copy of the further reports he had obtained, including in particular details of dates and times about which Mr Stocks was concerned to learn what the Claimant had been doing. He also reminded the Claimant that covert recording was not allowed.

285. The Claimant alleges that she was subjected to a conduct investigation over a prolonged period and that she was excessively monitored without her consent. We find that what occurred was that concerns were raised about the Claimant's performance in various respects, and an investigation was undertaken at the request of Mr Dawson. That investigation involved obtaining data from the building access system, and the computer network. The Claimant was not subjected to any further monitoring than any other employee. The data was readily available, and was called for as part of the investigation. The period covered was from 1 January 2016 at the earliest. We do not accept the Claimant's allegation that she had been monitored from July 2015, which allegation was based on an email dated 8 July 2015.<sup>213</sup>

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<sup>209</sup> [5010]

<sup>210</sup> [5024]

<sup>211</sup> Paragraph 32

<sup>212</sup> [4910]

<sup>213</sup> [1476.2]

286. Mr Stocks wrote a seven page letter to the Claimant on 29 November 2016 with the outcome of the disciplinary hearings.<sup>214</sup> The Claimant was given a final written warning. In his witness statement Mr Stocks summarised his findings and the rationale for his decision.<sup>215</sup> Seven conditions were attached to the warning. The Claimant was required to maintain contact with her People Manager, agree objectives for the remainder of the performance year, be available in the office on a daily basis, sit with the rest of the team, engage with her colleagues, respond to reasonable requests, and finally ensure that she used the building access cryptag pass in accordance with the Respondent's security policy.
287. As will be seen from the list of issues, the Claimant is making allegations concerning the disciplinary procedure under eight bullet points, most of which are very general. Her witness statement did not take the matter much further. Miss Bell cross-examined the Claimant on some aspects of the issues.
288. Miss Bell put to the Claimant that the request by Ms Chalkley on 3 October 2016 to have a meeting was normal practice, to which the Claimant replied that what occurred was because she is a black woman, and she asserted that a non-black male would have been treated differently. The Claimant also asserted that the Respondent was intent on dismissing her, although that is of course not what happened as a result of the disciplinary procedure.
289. The Claimant alleges that there was an incomplete investigation, and that Ms Chalkley was biased. The Claimant did not provide any evidence to support the allegation of bias. The allegation that the investigation was incomplete appears to be based on the fact that Mr Stocks required further information. Mr Stocks did indeed require further information, but we bear in mind that the Claimant was not present at the hearing on 26 October 2016. He considered there were some anomalies in the data supplied. We could not possibly conclude that the presence of such anomalies was because the Claimant is a black person or that she is female. Further there was no evidence that this point had any relationship to any protected act.
290. This links in with the point about 33 questions being asked following the first disciplinary hearing. The Claimant says that the questions contained new allegations. We do not accept that. They were simply questions which Mr Stocks would have put to the Claimant if she had attended the hearing.
291. The Claimant also alleges that the Respondent's action in pursuing the disciplinary policy disregarded an unresolved grievance, her claims to the Tribunal, and her PIP. Our conclusion is that the institution of the disciplinary process was entirely appropriate. There were genuine concerns about aspects of the Claimant's performance and it was appropriate, and indeed necessary, to deal with them. She was highly

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<sup>214</sup> [5099]

<sup>215</sup> Paragraphs 42 & 43

paid, and it was perfectly reasonable for the Respondent to undertake and investigation.

292. The point about conduct of others not having been considered is so vague that we cannot consider it. The Claimant also alleges that some of the allegations were outside of the disciplinary policy and breached implied terms. We do not know what is being alleged. Similarly, we do not know what is meant by an 'unfair application of disciplinary policy principles.' The allegation of a breach of procedural requirements is also lacking in specificity. There is no evidence to support the allegation that the outcome of the procedure was improperly influenced by HR.

Overall conclusion

293. The Tribunal is used to dealing with the breakdown of employment relationships but it is with particular regret that we record what has happened here. The Claimant is obviously intelligent and talented. She regularly referred to her treatment as a 'black woman', 'noise' and a 'feedback loop'. The Claimant has failed to provide evidence from which we could reasonably conclude that any of the acts (or omissions) of the Respondent were because she is a black person, or because she is female (or related to those characteristics), or that insofar as relevant they were because of one or more protected acts. The claims therefore have to fail.

**Employment Judge Baron**

**Dated 07 March 2018**

**ADDENDUM**

<b>NAME</b>	<b>TITLE</b>	<b>ETHNICITY AND GENDER</b>
AGYEI-PRYDE, David	Senior Manager, Assurance	White, Male
AHMED, Belal	Senior Manager in Securities Reform Skills Group, Risk Consulting Competency (Conduct and Remediation sub-competency)	BME, Male
<b>AMEYAW, Yvonne</b>	Senior Manager, Risk Consulting Competency (Conduct and Remediation sub-competency)	BME, Female [Black African]
ARNOLD, William	Senior Associate	White, Male
BABER, Belinda	Manager in Consulting	White, female
BASSON, Clare	Operations Leader for Risk Consulting Competency	White, female
BLACKMAN, Rich	Resourcing Manager for Financial Services Cluster	White, Male
BRASS, Daren	Senior Manager, Financial Services Operations Competency	White, Male
<b>CHALKLEY, Lis</b>	Manager, Human Capital	White, female
CHIGWEDERE, Chenai	Manager	BME, female [Black]
<b>CLEAL, Paul</b>	Partner, member of PwC's Africa Leadership Team and Africa Business Group	BME, male
<b>COOCH, Michael</b>	Partner within PwC's Consulting Line of Service, Portfolio and Programme Management Competency	White, male
COUGHLAN, Liam	Manger in Risk Consulting Competency's Resourcing team	White, male
COX, Laura	Leader of PwC's Financial Services regulatory Centre of Excellence	White, Female
<b>DAVÉ, Mita</b>	Director, Risk Consulting Competency	BME, female [Asian]
<b>DAWSON, Symon</b>	Head of Risk Consulting Competency from July 2014 to September 2016	White, male
<b>DIJEMENI, Uba</b>	Senior Associate, Risk Consulting Competency, Securities Reform Skills Group	BME, Male

**Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016**

FARIA, Winn	Senior Manager, Risk Consulting Competency (Conduct and Remediation sub-competency), Securities reform Skills Group	BME, Male
GENNINGS, Jo	Senior Manager	White, male
<b>GOSSINGTON, Mark</b>	People Partner for Risk Consulting Competency (Conduct and Remediation Sub-Competency) from 1 July 2014 to 31 October 2016	White, male
GRAY, Andrew	Partner, Financial services Consulting	White, male
HENRY, Sarah	HC Lead for Consulting	White, female
HUEGLI, Peter		White, male
<b>JENKINS, Isabelle</b>	Head of Capital Markets, Partner Consulting Line of Service	White, female
KANDIAH, Damian	Resourcing officer for Risk Consulting Competency	BME, male
KIM, Woosung	Director	BME, male
KYMAL, Uma	Director in Financial Services Consulting, Operations Consulting Competency,	BME, female
LAKE, Denise	PwC's Employee Relations, Policy and Advice team ("ERPA")	BME, female
<b>LEE, Grant</b>	Partner in Risk Assurance business unit, Assurance Line of Service	White, male
<b>LEHANE, Fiona</b>	Lead Director for Securities Reform Skills Group from October 2015, Director Risk Consulting Competency	White, female
LEHMAN, Christoph	Partner, PwC Germany	White, male
LORD, Crispian	Partner, Consulting	White, male
MALTA, Justin	Former Director	White, male
NELSON, Luke	Senior Manager from Centre of Excellence (a team in PwC which has specialist technical knowledge in a particular area and provide ad hoc specialist support on engagements where required)	White, male
NEVIN, Andrew	Partner, PwC's Consulting Line of Service and Chief Economist in PwC's Nigerian network firm	White, male

**Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016**

NIKOLIC, Marija	Former Senior Manager, Risk Consulting Competency (Risk and Prudential sub-competency)	White, female
<b>PAAKKO, Terhi</b>	HC Leader for Risk Consulting Competency	White, female
PARTRICK, PAUL	Manager	White, male
PATHAK, Ankit	Senior Manager, Contractor from PwC Augment	unknown, male
PEARSON, Charles	Senior Manager, Consulting	White, male
<b>RAINES, Philip</b>	Partner, Finance Competency, Consulting, Relationship director for A1	White, male
<b>SCOTT, Duncan</b>	Director, Assurance Line of Service	White, Male
SELINIOTAKI, Eirini	HC Advisor	White, female
SIDANIUS, Che	Former Director, Lead Director Securities Reform Skills Group	BME, male
STEPHENSON, Lauri	Resource Lead for the Risk Consulting Competency	White, female
<b>STOCKS, Steve</b>	Partner, Consulting	White, male
SUTTON, Mark	Director, Assurance Line of Service	White, male
<b>TALVITIE-BROWN, Kalee</b>	Partner, Consulting Line of Service, Competency Leader for Foundation for the Future	White, female
TAN, Emma	Manager	White, female
TAYLOR, David	Partner, Risk Consulting Competency (Partner Lead for Conduct and Remediation Sub-Competency)	White, male
THORPE, Chris	HC Case Manager	White, female
UPADHYAY, Shantanu	Senior Manager in Risk Consulting Competency (Conduct and Remediation sub-competency) Securities Reform Skills Group	BME, male
WALLACE, Cheryl	Manager in Risk Consulting Competency	BME, Female [Black]
WALLACE, Claire	Senior Manager, Assurance	White, Female
<b>WINTERMANTEL, Andrea</b>	Partner Risk Consulting Competency (Conduct and Remediation Sub-Competency), Securities Skills Group Partner Lead,	White, Female
WOOD, Lindsay	PwC's HC Case Manager	White, female

**Cases Nos: 2302806/2015, 2301477/2016 & 2302373/2016**

<b>WOOLCOTT, Jane</b>	Partner, Risk Assurance, UK relationship partner for A4	White, female
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