



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Popoola

Respondent: Department for Education

Heard at: London Central

On: 30 April, 1 – 3, 7 – 10
May 2019

Before: Employment Judge H Grewal
Mr S Williams

Representation

Claimant: Ms L Millin, Counsel

Respondent: Mr D Bunting, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

- 1 The Tribunal does not have jurisdiction to consider the complaints about any acts or omissions that occurred before 6 March 2018;
- 2 The complaints of direct race discrimination, race-related harassment and victimisation are not well-founded.

REASONS

- 1 In a claim form presented on 3 August 2018 the claimant complained of race discrimination. The Claimant commenced Early Conciliation (“EC”) on 5 June 2018 and the EC certificate was granted on 19 July 2018.

2 This hearing started before a full tribunal comprising the Employment Judge and two lay members. One of the lay members died over the week-end adjournment. Both parties consented to the case continuing with a Tribunal of two – the Employment Judge and one lay member.

The Issues

3 The issues were identified at a preliminary hearing on 18 December 2018 and the Claimant was ordered to provide further particulars in respect of some of them. It was agreed at the outset of the hearing that the issues that we had to determine were as follows.

4 Whether the following acts occurred as alleged by the Claimant:

- (a) J Capstick and K Mitchell set her up to fail;
- (b) On 5 May 2017 J Capstick failed to address directly with the Claimant (“C”) her concerns about managing the sudden death of a member of her team;
- (c) In August or September 2017 J Capstick failed to acknowledge C or to offer her any assistance or support in respect of Lola Ajakaiye having fallen ill at work;
- (d) In August 2017 J Capstick asked about C’s whereabouts in front of G Hill (Deputy Director);
- (e) In November 2017 K Mitchell refused to sign C’s Instant Reward Bonus;
- (f) In November S Rich commented, “How can that type of person be an SEO?”;
- (g) After C’s email to D Fugurally on 4 December 2017 K Mitchell denied C access to training without reason;
- (h) K Mitchell, having mixed up C and a colleague, said “They all look the same”;
- (i) In February 2018 K Mitchell and P Cohen spied on C’s team and then tried to undermine C;
- (j) On 8 March 2018 C felt so pressurised by P Cohen that she attended a Divisional meeting in Nottingham on day that she was supposed to be off work;
- (k) J Page (formerly Ives) made a hostile comment in the ESD Newsletter before the meeting of 8 March 2018;
- (l) On 8 March 2018 J Page moved away from C during a group work exercise at a Divisional meeting;
- (m) On 8 March 2018 at a Senior Leadership Divisional meeting P Cohen, J Page, S Rich, J Capsitck and K Mitchell made comments about C in relation to the Talent Grid;

- (n) On 23 April 2018 C was singled out and moved to the Teacher Workforce Development Team;
- (o) On 4 June 2018 C was moved to the bottom of the Talent Grid;
- (p) On 11 June 2018 the Respondent (“R”) refused C’s request (of 6 June) to move away from the Teacher Workforce Development Team;
- (q) Contrary to its commitment on 12 June 2018 to move C away from Teacher Workforce Development Team, R refused to do so;
- (r) Between 19 March 2018 and 10 June 2018 R failed to investigate key aspects of the grievance, including racist remarks by K Mitchell;
- (s) Between 19 March 2018 and 10 June 2018 R refused to provide C with D Fugurally’s interview notes;
- (t) Between 19 March 2018 and 10 June 2018 R refused to interview witnesses including C Boardman, G Gaskell, M Lanford-Jones and those present at the meeting on 8 March 2018;
- (u) Between 19 March 2018 and 10 June 2018 R refused to interview those present at the meeting on 8 March 2018 other than the alleged wrongdoers;
- (v) Between 28 June and 13 July 2018 R’s grievance appeal outcome only addressed one of the 29 points raised in the appeal and failed to take account of relevant evidence.

5 If they did, whether:

- (a) Whether the acts at 4 a, b, c, f, h, m, r, s, t, u, and v amounted to direct race discrimination (C describes herself as black);
- (b) Whether the acts at 4 b, c, d, e, g, i, j, k, l and m amounted to race-related harassment;
- (c) Whether the acts at 4 n, o, p, q, r, s, t, u and v amounted to victimisation (including whether C’s grievance of 19 March 2018 was a protected act).

6 Whether the Tribunal has jurisdiction to consider complaints about any acts that occurred before 6 March 2018.

The Law

7 Section 13 of the Equality Act 2010 (“EA 2010”) provides that a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. On a comparison of cases for the purposes of this section, there must be no material difference between the circumstances relating to each case (section 23 EA 2010). Race is a protected characteristic (section 4 EA 2010).

8 Section 26(1) EA 2010 provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has the effect referred to above the Tribunal must take into account the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect (section 26(4)).

9 Section 27 EA 2010 provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act or A believes that B has done, or may do, a protected act. "A protected act" includes making an allegation that (whether or not express) that A or another person has contravened the Equality Act 2010.

10 An employer (A) must not discriminate against or victimise an employee of A's (B) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service or by subjecting B to any other detriment (section 39(2), (4) EA 2010). In order to find that an employee was subjected to a "detriment" the Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had hereafter to work. An unjustified sense of grievance cannot amount to a detriment (**Shamoon v Chief Constable of the RUC [2003] IRLR 285**).

11 If there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred unless A shows that A did not contravene the provision (section 136 EA 2010). Proceedings on a complaint under the Equality Act 2010 may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable (section 123(1)). Conduct extending over a period is to be treated as done at the end of the period (section 123(3)(a)). These time limits are extended by section 140B to facilitate conciliation before the institution of proceedings.

12 In recent years the higher courts have emphasised that in cases where there is no actual comparator, or where there is a dispute about whether a comparator is an appropriate comparator, tribunals should focus on why the claimant was treated in the way that he or she was treated. Was it because of a protected characteristic? The point has been made, among others, by Lord Nicholls in **Shamoon v Chief Constable of the RUC [2003] IRLR 285** (at paragraph 11), Mummery LJ in **Aylott v Stockton on Tees BC [2010] IRLR 94** (at paragraph 41 – "*There is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others?*") and Underhill J in **Cordell v FCO [2012] ICR 280** (at paragraph 18).

13 It has long been recognised that it is extremely rare for there to be overt evidence of direct discrimination and the issue in each case will be whether such discrimination can be inferred from the primary facts found by the tribunal. In determining whether there are facts from which the tribunal can infer race discrimination, the tribunal must have regard to all the material facts and is not limited to considering only the

evidence adduced by the claimant – **Laing v Manchester City Council [2006] IRLR 745.**

14 The burden of proof does not shift to the employer simply on the claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate the possibility of discrimination. They are not, without more, sufficient material from which a tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination – **Madarassy v Nomura International PLC [2007] IRLR 247.**

15 A tribunal is not entitled to draw an inference of discrimination from the mere fact that the employer has treated an employee unreasonably and that the employee in question has a protected characteristic – **Glasgow City Council v Zafar [1998] IRLR 36.** However, discrimination may be inferred if there is no explanation for the unfavourable treatment. That is not an inference from the unreasonable treatment itself but from the absence of any explanation for it – **Bahl v The Law Society [2004] IRLR 810,** per Gibson LJ at paragraph 101.

16 If the tribunal is satisfied that the protected characteristic was one of the reasons for the treatment in question, that is sufficient to establish direct discrimination. It need not be the sole or even principal reason for the conduct; it is enough that it is a contributing cause in the sense of a “significant influence” – Lord Nicholls in **Nagarajan v London Regional Transport [1999] IRLR 572, at 576.** The same principles apply to complaints of victimisation in respect of the link between the protected act(s) and the alleged detriments.

The Evidence

17 The Claimant, her husband and David Fugurally (senior policy advisor/team leader) gave evidence in support of the Claimant. The following witnesses gave evidence on behalf of the Respondent – Paul Cohen (Deputy Director, Schools Improvement and System Leadership Division (“SISL”), Jonathan Capstick (Head of Unit for System Leadership in SISL), Kim Mitchell (Head of School Improvement Programmes in SISL), Simon Rich (part of Senior Management Team in SISL), Gareth Conyard (Teacher Workforce Development – Career Progression Division), Mela Watts (Director), Emran Mian (Director of Social Strategy and Social Mobility) and Madeleine Drury (HR Business Partner). Having considered all the oral and documentary evidence, the Tribunal makes the following findings of fact.

Findings of Fact

18 The Claimant is a black woman. She joined the Civil Service on 21 July 2008 as an Administrative Officer (“AO”). Over the years she was promoted to higher grades.

19 On 24 August 2016 the Claimant was offered a position as a Senior Executive Officer (“SEO”) in the Department for Education. That was a promotion for the Claimant. The Claimant started in the role on 26 September 2016. She worked in the Collaborative Fund Team in the School Improvement and System Leadership (“SISL”) division. She reported to Mike Collins (who was Grade 7), who in turn reported to Jonathan Capstick (Head of System Leadership, Grade 6).

20 At that time there were about forty employees working in SISL. Three of them classified themselves as BAME (Black, Asian and Minority Ethnic). They were the Claimant, David Fugurally and Lola Ajakaiye. Most of the employees working in SISL lived and were based in Nottingham; a few lived and worked in London. The Claimant was the only black SEO in SISL.

21 On 5 May 2017 a member of the Claimant's team died unexpectedly. Mr Collins was not in the office on that day. The Claimant sent Mr Capstick a message about it as she was unsure about how to relay the news to her team. Mr Capstick was on holiday at the time. He spoke to Mr Collins who told him that he would deal with it. Mr Capstick sent the Claimant a message that Mr Collins would call her about it. Mr Collins called the Claimant and supported her in managing the situation.

22 In August or September 2017 Ololade ("Lola") Ajakaiye, an employee who was line managed by the Claimant, felt unwell at work. The Claimant called a taxi to take her home. Mr Capstick was in the office at the time. He was vaguely aware of what was going on. No one asked him to help and he saw no reason to interfere or intervene.

23 The Respondent's Managing Performance Policy (issued in April 2017) sets out how performance is to be managed. Under the policy a manager is expected to have monthly discussions with his or her direct reports about their performance and development. Following that discussion the manager has to update the performance database by inputting the following information – whether the employee is performing at "exceeding" level or is underperforming or at risk of underperforming and the talent grid marking of the employee. Considering where the employee sits on the talent grid is separate to considering his or her performance. Talent is about considering the employee's potential and aspirations. The nine-box talent grid is a tool to help managers to assess the potential of people to progress to higher grades. A position on the grid is not fixed forever.

24 Under the Respondent's policy the Senior Management Team should review the performance data monthly and challenge managers where feedback on performance is not a true reflection of performance standards. In 2017 the SMT in SISL did not formally review the performance data monthly.

25 Between December 2016 and August 2017 Mr Collins entered on the performance database that the Claimant was not underperforming (on six occasions) and that she had performed at an "exceeding" level (on three occasions). From March 2017 the Claimant was placed in the "high potential" box on the Talent Grid. That indicated that she was new in her role and that there was a strong likelihood (more than 50%) of her progressing beyond the grade or level on which she was at the time.

26 In Autumn 2017 on a day when the Claimant was not in the office Mr Capstick asked where she was.

27 Mike Collins left in the autumn of 2017 and in October 2017 David Fugurally was appointed to his role and became the Claimant's line manager. At the end of October 2017 Kim Mitchell, Assistant Director (Grade 6), became David Fugurally's line manager when the team transferred to her section as part of a reorganisation. She

was his line manager until April 2018, apart from a period in December and early January when she was acting up as Deputy Director.

28 At the time when Mr Fugurally became the Claimant's line manager, there was a level of unhappiness in the Claimant's team about her management style. Most of her team was based in Nottingham and the staff based there complained about her brash management style. Lola Ajakaiye was suffering from stress as a result of the way in which her performance was being managed. She approached Mr Capstick in late October and asked to be moved to a different role. It was agreed that until another role was found for her she would be line managed by Mr Fugurally rather than the Claimant. On 14 November Kim Mitchell met with her as there was a vacancy for another role in her Division. Lola identified two matters that were causing her concern. The first was that she did not have the skills, particularly the advanced Excel skills, that she needed to perform well in her role. The second was that there were tensions between her and the Claimant. She felt that these were caused by her inability to carry out her role to a satisfactory level some of the time which in turn was due to her not having had the proper training and support. That caused her anxiety and might have led to the Claimant's frustration. Lola was moved to a different role.

29 In late October 2017 an employee called Beslan complained to the Claimant about a comment made to him by a fellow-employee called Sophie. Sophie was not line managed by the Claimant. On 27 October, without having given Sophie an opportunity to comment on the allegation, the Claimant sent her an email telling her why her comment had been inappropriate and that she was giving her a chance to put it right with Beslan. She also said that Mr Fugurally was aware of the incident and might speak to her about it later. After Sophie spoke to the Claimant about it and gave a different account from what Beslan had said, the Claimant's reaction was that she had assured Beslan that Sophie had learnt from the incident. Sophie was upset by the way the matter had been handled and she raised it with her line manager.

30 In November 2017 the Claimant and Mr Fugurally were recruiting two HEOs for her team. The interviews were to be done by three different panels. They needed a male SEO to sit on one of the panels and Simon Rich recommended Mike Langford-Jones. my notes **52**, Mr Langford-Jones had never met the Claimant before. He was not impressed with the way the Claimant handled the recruitment process. When he had asked her for the questions to be asked at the interview, her response was that it was up to the panel to decide the questions. He pointed out to her that all the panels should ask the same questions. Mr Langford-Jones conducted his interviews on 5 December and sent the Claimant and Mr Fugurally his scores on 6 December. On 4 January he was approached by one of the candidates for feedback. He gave her feedback on the basis of the score that he had given her. She had a printout of her score from the Respondent's system which was lower than the score that Mr Langford-Jones had given her. He told her that he would check whether there had been some error on the system. He raised the matter with the Claimant and Mr Fugurally. In her response the Claimant did not provide any explanation for the discrepancy but simply stated that he should not have provided the feedback but should have directed the candidate to the vacancy managers, i.e. Mr Fugurally and herself. Mr Langford-Jones responded that he had raised the matter with a senior manager and she had advised that it was appropriate for the candidate to have sought feedback from him. He also said that she had been concerned about the discrepancy in the score and had asked him to establish whether the wrong score had been entered on the system. The Claimant responded that there had been no

error and that there had been a moderation exercise after all the interviews, as a result of which the score had changed. Mr Langford-Jones was concerned that his score had been altered at a moderation at which the interview panel had not been present. Mr Langford-Jones shared his concerns about the Claimant's handling of the recruitment process with Simon Rich and expressed his surprise at the fact that she was an SEO.

31 It was not in dispute that Simon Rich passed Mr Langford-Jones' comments on to Mr Fugurally. There was a dispute as to when that happened and what was said. Mr Fugurally's evidence was that the conversation took place on 23 November. Mr Rich's evidence was that it was in January. We found that it was more likely to have been in January but, in our view, nothing turns on the date. Mr Langford-Jones had reservations about the Claimant's handling of the recruitment process from the start. In conveying to Mr Fugurally that Mr Langford-Jones was surprised at the Claimant being an SEO, Mr Rich might have said that he was surprised how someone like that could be an SEO. In the context in which it was said, it was clearly not a reference to her race but to her poor management of the recruitment process which was not what he would have expected from an SEO.

32 On 4 December 2017 the Claimant sent Mr Fugurally an email that she would like to attend a project management course and Policy Academy training and asked to discuss it with him. There was no evidence that that wish was communicated to Ms Mitchell or that she denied the Claimant access to that training.

33 In December 2017 there were discussions between Mr Capstick and some of the managers in his Division about some of the behaviours in David Fugurally's team. On 8 December Sophie's line manager sent to Joanna Ives (later Page) the emails that the Claimant had sent to Sophie. Ms Ives sent them to Simon Rich a few days later.

34 On 20 January 2018 Paul Cohen became Deputy Director of SISL. He was based in Manchester.

35 On 26 January 2018 Kim Mitchell arranged to meet Mr Fugurally the following week for a normal catch up meeting. She highlighted one of the matters to be discussed as the moderation that had taken place after the interviews for the HEO post. She asked him to have available the scores of the interviewees before and after the moderation. Mr Fugurally responded that he could not discuss any of the personal details of the HEO recruitment process as they were strictly confidential between the candidate and the vacancy manager. Ms Mitchell responded that she was accountable for the recruitment in her team and, as HR had confirmed that post-interview moderation was not part of the recruitment process, she needed to be reassured that the additional stage had not substantively changed the outcome. Mr Fugurally's response was that he was not the vacancy manager and had not arranged or managed any of the process. He told her to put her request and any reasons for it in writing to the vacancy manager. Ms Mitchell pointed out to him that as the G7 he was responsible for his staff's actions. She suggested that she meet with him and the Claimant the following week to discuss it.

36 Ms Mitchell then called the Claimant and her immediate reaction was that she was not the vacancy manager and that it was Mr Fugurally. When Ms Mitchell told her that he said the opposite, she said that they had both been handling it. When Ms Mitchell discussed the matter with the two of them, Mr Fugurally said that they did not

have to give the post to the highest scoring person and that he and the Claimant had done the moderation as they felt that there were inconsistencies in the interviewing panels. Ms Mitchell checked both matters with HR who confirmed that what Mr Fugurally had said was not correct. HR confirmed that interview panels may moderate their own scores but that persons who had not been on the interview panel should not moderate the scores given by that panel. As the candidate who had queried her score had been successful in obtaining another role, Ms Mitchell decided to draw a line under the matter having made clear to the Claimant and Mr Fugurally what the correct process was.

37 Between October 2017 and February 2018 Mr Fugurally entered on the performance database that the Claimant was performing at “exceeding” level and placed her in the “high potential” box in the Talent Grid. When Ms Mitchell asked him at her monthly meetings with him to explain why he had marked the Claimant as he had, he was unable to give her any detail to justify his markings.

38 Mr Cohen first met the Claimant in February 2018. She expressed an interest in policy training and he sent her details of a course on 13 March and asked to let him know if she was interested in attending it.

39 Mr Cohen instigated monthly senior management team meetings (Grades 6 and 7 managers) in his Division to discuss issues of finance, personnel and other management matters. The first such meeting took place on 14 February 2018. At that meeting Mr Cohen asked the senior managers to send to his PA the names of those who reported to them and their placings on the talent grid for a talent management discussion at the next meeting on 8 March.

40 In his first few weeks Mr Cohen had noticed that Luke, a member of Mr Fugurally’s team, who was based in Manchester, was not working the hours that he should be working. According to the structure chart provided by Mr Fugurally, Chelsea Boardman, who was based in Nottingham, line managed Luke. Mr Cohen discussed his concerns with Chelsea Boardman and asked her to monitor his attendance. As she worked at a different site, he suggested a senior employee based in Manchester who might be able to assist her. On 20 February Ms Boardman sent an email to the senior colleague in Manchester and asked her to monitor Luke’s attendance. Mr Cohen advised Mr Fugurally of the discussions that he had had with Ms Boardman and asked him to ensure that she managed the situation robustly.

41 David Fugurally told the Claimant of his conversation with Paul Cohen. He said that Paul Cohen had concerns about Ms Boardman’s performance and that if she could not manage Luke’s attendance then her performance would be reviewed. The Claimant met with Ms Boardman and informed her that Mr Cohen had said that there were concerns about her performance and that if she did not manage Luke’s attendance then her performance would be reviewed. The Claimant said that she told her that so that she could “*handle further contacts with Paul cautiously.*” Not surprisingly, being told that there were concerns about her performance and that she might be subjected to a performance review upset Chelsea Boardman and she ended up in tears. The Claimant then asked David Fugurally to join the meeting and they both assured her that they had no concerns about her performance and would support her.

42 Ms Boardman told Kim Mitchell what the Claimant told her, and Ms Mitchell relayed the information to Mr Cohen. When Mr Cohen raised the matter with David Fugurally, both he and the Claimant denied that they had told Chelsea that Mr Cohen was concerned about her performance and that that was what had upset her. Mr Fugurally said that what had upset Chelsea was the fact that Mr Cohen had asked her to monitor Luke's performance. That is directly contradicted by the note that the Claimant made on Ms Boardman's appraisal. In that note she said,

"Chelsea was advised during a catch up with me (her line manager) of comments made by the Deputy Director in relation to her performance and attendance as understood from CF Team Grade 7 [Mr Fugurally], and Chelsea became upset."

Mr Cohen's reaction was that if Chelsea had been in tears over his discussion with her, he would take steps to rectify that.

43 On 9 March Mr Fugurally nominated the Claimant for an "In Year" award of £250. Ms Mitchell supported that and the Claimant received the award.

44 The agenda for the management meeting on 8 March was sent out on 5 March. Half an hour was allocated for a discussion on HR matters, one of which was talent management.

45 Shortly after starting in his role Mr Cohen also established a practice of holding a Divisional meeting once a month to provide a briefing and training on issues that affected the whole Division. The staff in the Division were based at different sites. The monthly meeting was held in Nottingham which was the largest site. It took place between 12 noon and 2 p.m. and the employees were given plenty of notice of the meetings. It was made clear that staff had to prioritise attendance at the meeting but not over annual leave. By 6 February 2018 the Claimant had not responded to say whether she would be attending the meeting on 14 February. Mr Cohen's PA sent her an email on 6 February to inquire whether she would be attending. The Claimant responded that she would not because she was on annual leave at the time. No action was taken against the Claimant. The next meeting was on 8 March. That was a day when the Claimant was working from home because of childcare issues. As the Claimant had missed the previous meeting, she felt that she ought to attend this one. No one put any pressure on her to do so. The Claimant did not raise any childcare difficulties that she had with anyone

46 The senior management team meeting took place at 10 a.m. on 8 March. It was attended by Paul Cohen and about ten Grade 6 and 7 managers. Madeleine Drury, the HR Business partner for SISL, participated via Skype for the discussion around HR matters. The purpose of looking at and discussing talent grid markings is to ensure that managers are using the boxes in a consistent way and to understand the readiness for the next role and grade at every level. There is no prescribed format for these discussions and there are different ways of approaching it. The way Mr Cohen approached it on 8 March was to read out the names of the three SEOs who had been placed in the four highest boxes (i.e. "strong", "high potential", "excellent" or "star") and asked whether anyone had any comments about the names that appeared there. He wanted to know whether anyone was surprised by the inclusion or exclusion of a particular SEO. The purpose of the discussion was not to change the placing of anyone but to understand why certain people appeared in the top four

boxes and others did not to ensure that all the managers were approaching it in a consistent way. The understanding was that it was a confidential meeting where senior managers could have open discussions without fear of what they said being reported to others.

47 Three managers present, Jonathan Capstick, Simon Rich and Joanna Page, said that they were surprised that the Claimant's name appeared there. They referred briefly to there being issues about her relationships with her colleagues and her attitude and behaviour and that they felt she was not ready for a leadership position at that time. In light of the issues that had arisen since the previous October, it is not surprising that some of the managers had reservations about the Claimant taking on a more senior role at that time. Those views having been expressed, the onus was on David Fugurally to explain why he had put the Claimant in the box that he had and justify his marking, but he was unable to do so. He said that he relied upon fact that she had been placed there by his predecessor and he had seen no reason to question it. He did not put forward any factors to justify the Claimant being in the top grid. There is no point in having those discussions at senior level meetings if managers cannot put forward the reasons why they have given the markings that they have. Instead he became defensive and said that those who were surprised to see her name there should give him reasons why they felt that her name should not be there. As the discussion was not getting anywhere and there were a number of other matters to discuss, Mr Cohen suggested that they move on and that any discussions around that issue could take place outside the meeting. It was a brief discussion that lasted no more than 5-10 minutes.

48 The monthly Divisional meeting took place in Nottingham on the same day. Joanna Page attended that meeting. At some stage, everyone split into groups. Ms Page was about to join a group which included Mr Fugurally and the Claimant, but then changed her mind and joined a different group.

49 On the following day Mr Fugurally told the Claimant that at the management meeting the previous day there had been a range of verbal attacks by Simon Rich, Jonathan Capstick, Kim Mitchell, Joanna Page and Paul Cohen on her performance and character, and that they had opposed her being placed in the top row on the talent grid. That was not an accurate account of the discussion that had taken place. She asked him to seek evidence from the individuals who had attacked her to support the negative remarks that they had made about her.

50 On 14 March Mr Fugurally sent Mr Capstick an email which was copied to Simon Rich, Kim Mitchell, Paul Cohen and Joanna Page. He said that at the meeting Mr Capstick had made "*unfavourable comments*" about the Claimant, and these had been echoed by Mr Rich and Ms Page. He asked them to send him specific examples and evidence of the issues that they had raised so that he could discuss them with the Claimant. He said that he had spoken to her about what they had said and that she was very surprised that they had that perception.

51 Mr Cohen responded by expressing concern that Mr Fugurally had decided to provide a feedback to the Claimant in advance of getting any evidence from his colleagues which they had agreed to provide. He added that their colleagues had not said that there were problems but that there were aspects of her performance which they felt did not support the high promotability rating on which she had been put.

52 Mr Capstick disagreed with Mr Fugurally's summary of the meeting and expressed concern about the message that he had conveyed to the Claimant. He said that no one had questioned that the Claimant was a valuable and effective member of the Division. The purpose of the discussion had been to ensure that assessments were broadly consistent.

53 Mr Capstick thought that it was not appropriate to ask Mr Rich and Ms Page to provide evidence to support their perceptions about the Claimant which would be based on an odd call or email or comments from their staff. He also felt that if people were going to be put in that position it was likely that there would be a high degree of reticence about discussing staffing issues in the future at what was supposed to be private management meeting. Although Mr Cohen shared his concerns about the way in which Mr Fugurally had conveyed matters to the Claimant, he thought that it was reasonable for him to ask for evidence to support the comments that had been made.

54 In early March questions arose about the funding of temporary staff that the Collaborative Fund intended to recruit in the summer. The Claimant and Mr Fugurally were asked to find out from which budget the funding had been made available the previous year. It was not a particularly difficult task. However, Mr Fugurally's view was that it was not fair to ask them to do it. On 14 March the Claimant provided the relevant information. Ms Mitchell thanked her for doing it and asked her to set up a meeting the following day with the Finance Business Partner to discuss it. When the meeting was set up Ms Mitchell told the Claimant that she was happy for her to chair the meeting. The Claimant said that she did not feel comfortable chairing the meeting as getting a budget in place for recruiting the temporary staff was not within her remit. Ms Mitchell responded that she had thought it reasonable to ask her to follow the matter to its conclusion and to identify the budget. However, if she did not think that she was best placed to deal with it, she could pass it on to someone else.

55 On 16 March Kim Mitchell sent an email to Paul Cohen in which she set out various issues that had arisen with David Fugurally since she started line managing him.

56 On 19 March 2018 the Claimant raised a formal grievance of bullying, harassment and discrimination against Simon Rich, Jonna Page, Jonathan Capstick, Kim Mitchell and Paul Cohen. The grievance comprised eleven typed pages. The Claimant complained of a number of actions in respect of each of the five individuals and gave what she thought were the reasons for their conduct.

57 In respect of Simon Rich she said that she had been told by her line manager that on 23 November 2017 he had said in respect of her "*how can that type of person be an SEO?*" She said that she strongly believed that that was a reference to her race. She did not attribute her race as being the reason for any of his other actions. She said that she believed that some of his attitude toward her stemmed from his problems with David Fugurally and that he was partly treating her as guilty by association with Mr Fugurally.

58 She said that she and Joanna Page had been friendly but that her attitude towards the Claimant had changed after the Claimant complained about the backlog of emails in the inbox of the team that Ms Page was leading and Mr Fugurally took up the matter with Ms Page. She said that after that Ms Page had become frosty and

had isolated her and completely shut her off. She also strongly believed that Ms Page's dislike of Mr Fugurally had partly trickled down to her and resulted in Ms Page's vicious attacks on her.

59 She said that she believed that Mr Capstick's overtly aggressive behaviour towards her stemmed from his dislike of David Fugurally and the fact that she had a good relationship with Mr Fugurally. She said that Kim Mitchell and David Fugurally had had some disagreements in the past and she, therefore, believed that part of Ms Mitchell's attitudes towards her originated from her problems with Mr Fugurally. She said Ms Mitchell openly disrespected him, had little to no regard for his opinions and concerns and had not supported him in the changes that he had tried to bring about.

60 She said that environment in the SISL division had become very toxic since Mr Cohen's arrival and that it was affecting many people. It was a systemic problem which stemmed from the top of the division.

61 She concluded by saying,

“There is no question in my mind that I have been targeted by all these individuals because of association with David and possibly because of my race (which is a common denominator between David and I). As a result, I have suffered bullying, harassment and discrimination as described above. I am unaware of any other previous Collaborative Fund Grade 7 who has ever experienced the level of hostility, demeaning and degrading behaviour experienced by David and I who are both ethnic minorities. I do not believe that all of this is somehow a coincidence.”

62 She asked for formal findings to be made against each of the individuals about whom she had complained and asked in the meantime for arrangements to be made for a managed move for her to a different directorate as she feared retribution following her complaint and her relationship with those individuals had been damaged beyond repair.

63 Sarah Lewis, to whom the grievance was addressed, summarised the issues raised in the grievance in fifteen bullet points. She sent those to the Claimant on 20 March 2018 and spoke to her on the same day to make sure she had properly understood the main points to be addressed. The Claimant asked for the grievance to be investigated by someone who did not know the individuals concerned. Ms Lewis met with her again to confirm that she wanted to proceed straight to the formal stage and to confirm that she was happy for Emran Mian to investigate it. The Claimant confirmed that she was. On 28 March Ms Lewis informed her that Mr Mian would investigate her grievance and would start when he returned from leave in the second week of April.

64 Emran Mian was the Director for Strategy and Social Mobility. He had been trained in grievance management and had undertaken unconscious bias training on three occasions. He had also been involved in the internal Black, Asian and Minority Ethnic network and had written and spoken about the issue of opportunity for BAME individuals within the Respondent.

65 On 3 April 2018 Mr Fugurally wrote to Ms Lewis to make a formal complaint about the behaviour of Paul Cohen, Kim Mitchell and Jonathan Capstick. He did not

attribute any of their conduct to race. Many of the complaints he made were similar to the ones made by the Claimant. One of his complaints was that Ms Mitchell had confused Lola Akajaiye with the Claimant and had used their names interchangeably. When he had corrected her, she had said "*They look the same*". The Claimant had not made any reference to that in her grievance. Mr Mian was asked to investigate Mr Fugurally's complaint as well.

66 In order to accommodate the Claimant' request to move away from the people about whom she had complained, Ms Lewis identified a role in another division to which she could move for a period of three months. The division was then called the Teacher Workforce Development – Career Progression Division (its name has since changed to the Government and Leadership Division). In that role the Claimant was to work with someone called Ailieen on a three-month project. Ms Lewis sent the Claimant a couple of emails on 6 April 2018 explaining the move and the Claimant was happy with the move and thanked Ms Lewis for her help. Her evidence to the Tribunal was that when she was offered the move she jumped at it and was happy to move. On the same day Ms Lewis sent an email to everyone in the division, including the Claimant, in which she said that she was minded to move the Collaborative Fund team to a different division. The Claimant never said to her that if that was the case, she no longer wanted to move.

67 On 12 April Mr Mian wrote to the Claimant and the individuals named in her grievance inviting them to meetings to discuss the grievance. The individuals were not sent a copy of the grievance but a very short summary (in four or five lines) of the nature of the complaints. The Claimant was invited to a meeting on 2 May and the others to meetings after that.

68 On 23 April 2018 the Claimant moved to the Government and Leadership Division. Although it had originally been envisaged that the Claimant would work with Ailieen, Gareth Conyard (the Deputy Director), needed additional resources in a team reforming teachers' inductions and professionalism, and the Claimant was assigned to that policy area. The Claimant worked with Stacy Singleton (G6 who managed the work) and Gemma Payne (G7 who was leading in that policy area). She reported to Gemma Payne. Mr Conyard, Stacy Singleton and the Claimant were based in London; Gemma Payne was based in Sheffield and visited the London office about three times a fortnight.

69 Mr Mian interviewed the Claimant on 2 May 2018. She was accompanied by her trade union representative. There was a note-taker present at the meeting and the Claimant was sent the notes on the following day. She was asked what her key complaints were against each of the individuals. At the end Mr Mian asked the Claimant whether she had any evidence to support her assertion that these individuals were targeting her because of her race. The Claimant said that Ms Mitchell often mistook her for another colleague and when challenged had replied, "*They all look the same*". She also said that she was the only BAME SEO in her team and no one else in her position had experienced what she had. Mr Mian told her that he would be interviewing the five individuals against whom she had raised her grievance. The Claimant gave him some further documentary evidence but did not suggest that he should interview anyone else.

70 Mr Mian interviewed David Fugurally in respect of his grievance on the same day. Some of the questions that he asked him related to the Claimant.

71 Mr Mian interviewed the five individuals named in the grievance separately between 8 and 17 May 2018. Notes were taken at each of the interviews.

72 Mr Conyard had discussions with his reports about the performance of the staff whom they managed. The feedback from Stacy Singleton and Gemma Payne was that the Claimant understood what she had to do but was not delivering to the standard expected of someone at her level. The Claimant was open that her previous work had been more process based and that she had not worked on policy much before. The Respondent has three performance ratings – “Exceeded”, “Achieved” and “Must Improve”. As “Achieved” covers a wide spectrum of performance levels, it was common practice to indicate whether a person was at the top end or at the low end. In the Claimant’s case, in light of the fact that she had only been in the role for a month, it was felt that it was fair to award her “Achieved” but to make it clear that it was at the low end of that.

73 On 31 May 2018 Mr Conyard alerted Sarah Lewis to the above facts and said that it meant that they needed to step up the conversation about finding a different and more suitable job for the Claimant. Ms Lewis responded that it would be good to have a chat with the Claimant and find out from her what kind of work she thought that she would most excel in, and she offered to have that conversation with her.

74 On 4 June 2018 the Claimant had a one-to-one meeting with Gemma Payne at which they discussed her performance. Ms Payne explained that they recognised that the Claimant was new in the role, had made efforts to try new things, and that she had delivered things that were in her plan. However, the quality and pace of her work were not what they expected of someone at her level. They also expected her to be able reassess her work in response to feedback and changes in the situation. Ms Payne informed her that she would be rated as “Achieved” for that month but at the lower end of that. The purpose of the feedback was to identify the areas in which improvement was required so that the Claimant could make those improvements. As far as the talent grid was concerned she told the Claimant that she would be placed in the box marked “Inconsistent”. That was the only box in which someone who was not meeting all the performance expectations at the level at which she was could be placed.

75 On 5 June the Claimant sent an email to Stacy Singleton explaining why she disagreed with Gemma Payne’s assessment of her performance. She said that she believed that Gemma had taken a dislike to her ever since the Claimant had raised issues about her after their first meeting. She said that she no longer wanted to continue in that role and said that they should have an urgent meeting with Mr Conyard to determine whether there was another role in the division for her or she needed to return to previous team.

76 Ms Singleton met with the Claimant the following day to discuss her concerns. She explained to her the rationale for the markings that she had been given. She told the Claimant that many people starting new roles found themselves in the “inconsistent” box because they were still getting up to speed and not fully effective but that it was not fixed and she expected her to move out of that box. The Claimant was not prepared to accept any of that. She said that she felt that she had been harassed and discriminated against. She said that she did not want to work in that unit any more and had stopped working on the project and had cancelled all her meetings. Ms

Singleton set out those discussions in an email to the Claimant. The email was copied to Mr Conyard.

77 Mr Conyard sent the Claimant an email that he would not put up with any harassment or discrimination in his division and asked her arrange a meeting urgently with him to provide details of the discrimination and harassment which she had experienced. He said that when they met they would also discuss what would happen in terms of her role going forward. In the meantime she should continue doing the job she was doing at that time.

78 A meeting over the telephone was arranged for 6 June 2018 and the Claimant sent particulars of her allegations of discrimination and harassment against Gemma Payne to Mr Conyard in advance of that call. During the telephone conversation the Claimant said that she did not want to take formal action at that time because she thought that matters could be resolved informally. She also made it clear that she did not think that Ms Singleton was a bad person but that she had been influenced by Gemma's view. Mr Conyard tried to get the Claimant to see things from the perspective of her managers and pointed out that it was not uncommon for someone who was new to a role to find him or herself in her position. The Claimant said that she wanted him to investigate the matter and to come to a conclusion about what had happened. If either party was unhappy with that, then further action could be considered. She also made it clear that she no longer wanted to work anywhere in that division and wanted to return to her former role. They agreed that Mr Conyard would undertake a management review, that he would speak to Ms Lewis about roles and that they would try to resolve it informally.

79 The Claimant also contacted Ms Lewis and explained to her why the new role had not worked out and asked to return to her old role in the Collaborative Fund team. Ms Lewis reminded her that she had been moved out of that team at her request following her complaints of bullying, harassment and racial discrimination. She said that she needed to consider the outcome of the investigation into those complaints before she made a decision on her new request.

80 On 7 June Mr Conyard sent the Claimant an email setting out the conclusions of his informal investigation. He copied that email to Ms Singleton, Ms Payne and Ms Lewis and HR. His conclusion was that having considered what they had said and having looked at the emails between them he could find no evidence of bullying, harassment or discrimination on the part of either Ms Singleton or Ms Payne. He dealt in detail with the specific allegations that she had made and gave his reason for reaching the conclusions that he did. In respect of the Claimant's ratings, he said,

"In your view it is inappropriate for any member of staff to be judge to be low-end achieved and to be placed in the 'inconsistent' box in the talent grid after one month in a role. You explained that you didn't feel it fair or unreasonable. I explained that I think it both fair and reasonable – in fact it is common – for somebody new to a role not to be full to grips with it after only one month, and that this should be reflected in the performance and talent grid marks... I can see no evidence that the judgments made by Stacy and Gemma have been based on anything other than an honest assessment of your performance. You can, of course, disagree with their assessment, but this does not constitute evidence of bullying, harassment or discrimination on their part."

He suggested that they meet the following week to discuss the matter. In the meantime, he expected her to continue to work on her current project.

81 On 10 June Mr Mian sent the Claimant his investigation report and the notes of all the interviews that he had conducted. The Claimant's grievance was not upheld. Mr Mian said that he had considered interviewing Chelsea Boardman and had decided against it because it would have been an unnecessary burden to her to arbitrate between two different accounts given by senior managers of what she had previously said. He said that a large part of the Claimant's grievance had related to the senior management team meeting of 8 March. The Claimant had not been present at the meeting. Her account was contested by the other attendees who had given a consistent account. They were also corroborated by the emails sent shortly after the meeting. He said that the balance of the evidence suggested to him that,

“there was a legitimate discussion about the talent grid; it was short; it involved mild and reasonably expressed challenge to the complainant's position on the grid; and that challenge was cut short because of the reaction of the complainant's line manager.”

82 He concluded that there had been no misrepresentation of what the Claimant had said to Ms Boardman, he did not find it credible that Mr Rich had a racially motivated comment. Some of the matters of which the Claimant had complained, even if they did happen, did not amount to conduct that was improper or wrong in any way. He did not make any finding about Ms Mitchell allegedly saying “They all look the same” because that had not been part of the Claimant's grievance. He had asked Ms Mitchell about it when investigating Mr Fugurally's complaint. She had denied making the comment and he had believed her.

83 On 11 June the Claimant appealed the decision. She said that key members of staff had not been interviewed, Mr Mian had not deal with the comments made by Ms Mitchell, she had produced clear evidence that Chelsea had been upset by Mr Cohen and Ms Mitchell and not by anything that she had said and Mr Mian had not taken any account of the fact that those who had questioned her position on the talent grid still had not provide any evidence to support their position.

84The Respondent's Grievance Procedure provides that appeals can be made against procedural errors and/or decisions, including cases where new evidence has been raised that might change the outcome of the original decision.

85 Ms Lewis asked the Claimant what her desired outcome from the appeal would be. The Claimant replied that it would be an immediate move to her old role in the Collaborative Fund team or a move to a different directorate where her new colleagues would not have much direct working relationship with those about whom she had complained.

86 On 12 June 2018 the Claimant's doctor certified her as being unfit to work for four weeks because of “work stress”.

87 On 12 June Ms Lewis told the Claimant that they would do all that they could to support her request for a managed move to another part of the Respondent. She asked her to provide a short note summarising her skills and experience and the sort of work that she would most like to do. On 13 June she advised the Claimant of a

possible role in the children's social care directorate. The Claimant provided the information requested by Ms Lewis on 14 June. Mr Conyard forwarded the Claimant's CV to other departments when they had roles available.

88 On 13 June Ms Lewis notified the persons against whom the Claimant had brought the grievance of the decision and the fact that the Claimant had appealed it.

89 On 14 June Mela Watts, a Director in the Infrastructure and Funding Directorate, was appointed to hear the Claimant's appeal.

90 After a preliminary appeal hearing on 26 June 2018 the Claimant sent Ms Watts a document setting out her detailed grounds of appeal and a large number of documents in support of her appeal. A further appeal hearing took place on 2 July 2018.

91 On 12 July the Claimant was given a further medical certificate that she was unfit to work until 15 August 2018. On 23 August she was certified as unfit to work until 31 August 2018. On both occasions the reason given was work stress.

92 On 13 July 18 Ms Watts sent the Claimant her decision on the appeal. She partially upheld the Claimant's appeal on the basis that the investigation report had failed to indicate whether all the material that the Claimant had provided to the investigator had been considered. However, she rejected the Claimant's appeal against the conclusions reached by Mr Mian and his decision on her grievance stood. She considered that the investigation had been entirely appropriate on the basis of the evidence provided and that the investigation report had been credible and balanced.

Conclusions

Complaints about acts that occurred before 6 March 2018 (paragraph 4(b)-(g) and (i))

93 We considered first whether, if these acts were not found to be part of a continuing act that extended beyond 6 March 2018, it would be just and equitable to consider complaints in respect of them. With the exception of one act, these acts are alleged to have occurred between May and December 2017. The claim form was presented on 3 August 2018. The complaints were instigated between five months and one year after the time limits for presenting them had expired. That is a considerable delay. The Claimant has not provided any explanation of why she did not present a complaint about these matters within three months of them occurring. She did not even raise a grievance about most of them within three months of them occurring. The cogency of evidence in respect of those matters is likely to be affected by the delay because many of the complaints are vague and relate to things that people are alleged to have said. That would cause prejudice to the Respondent. The Claimant's real complaints are about the matters that occurred after that date. Having considered all the above matters, we concluded that it would not be just and equitable to consider those complaints if they were not part of a continuing act of race discrimination.

94 In case we are wrong in reaching that conclusion, we set out briefly what our conclusions would have been on those complaints. Mr Capstick dealt with the concerns raised by the Claimant when a member of her team died by ensuring that

her line manager provided her with the necessary support. The Claimant was not subjected to a detriment in respect of that. His conduct did not have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant ("the proscribed purpose or effect"). Furthermore, there was no evidence from which we could infer that the way in which Mr Capstick dealt with it had anything to do with her race. Equally, the Claimant was not subjected to a detriment when Mr Capstick did not interfere while the Claimant dealt appropriately with a member of her team who felt unwell. No one sought his assistance. There was nothing to suggest that any assistance was required. His conduct did not have the proscribed purpose or effect. Again, there was no evidence from which could infer that he would have acted any differently if the line manager had been white or that his conduct had anything to do with race. We could not see how asking where the Claimant was could possibly amount to a detriment or could be said to have the proscribed effect. Again, there was no evidence from which we could infer that it had anything to do with the Claimant's race. We did not find that Ms Mitchell refused to sign the Claimant's Instant Reward bonus in November 2017 or that she denied her access to training on 4 December 2017.

95 We have found that either in November 2017 or January 2018 Mr Rich told Mr Fugurally that Mr Langford-Jones had expressed surprise that the Claimant was a SEO. He might well have said that Mr Langford-Jones had said that he was surprised how someone like that could be an SEO. Having regard to the context in which that comment was made we would have found that what led to him saying that was the way in which the recruitment process had been handled by the Claimant. It was the Claimant's competence in handling the recruitment process that had prompted the remark, and not the Claimant's race. We would have concluded that her race played no part in it.

96 We have not found that Mr Cohen and Ms Mitchell spied on the Claimant's team and then tried to undermine her. Mr Cohen had concerns about the time-keeping of a member of the Claimant's team who was based at the same location as him and he asked the person who was line managing him to monitor his attendance. He kept Mr Fugurally informed about his actions. His actions were entirely appropriate. Mr Fugurally and the Claimant, instead of supporting him, undermined him by telling Ms Boardman that Mr Cohen was monitoring her performance and attendance. When Ms Boardman raised concerns about what she had been told, the Claimant and Mr Fugurally denied that they had said anything to her or that she had been upset by what they had told her.

97 For the reasons given above, if we had considered the complaints that were not presented in time, we would have concluded that they were not well-founded.

Complaints about acts that occurred after 6 March 2017 (paragraph 4 (a), (h), (j)-(v))

98 There was no evidence that Mr Capstick and/or Ms Mitchell set the Claimant up to fail. It appears from the Claimant's evidence and closing submissions that this complaint relates to the funding for temporary staff that Collaborative Fund intended to recruit in summer 2018. We did not find that by asking the Claimant and Mr Fugurally to look into where the funding had come from the previous year, the Respondent subjected them to a detriment. It was a reasonable request. We also did not find that by suggesting to the Claimant that she chair the meeting Ms Mitchell was setting her up to fail or subjecting her to a detriment. At that time the Claimant

was rated as performing at an “exceeding” level and was placed in the “high potential” box on the Talent Grid. Furthermore, Ms Mitchell did not insist that the Claimant had to do it. She suggested it and when the Claimant said that she did not feel comfortable doing it, she said that she could pass it on to someone else.

99 We have not found that Ms Mitchell, having mistaken the Claimant for another black colleague, had said “They all look the same.”

100 The Respondent did not subject the Claimant to a detriment in respect of attending the Divisional meeting on 8 March 2017. The Claimant was treated in exactly the same way as all the other members in the Division in respect of those meetings. They all had to prioritise attendance at the meetings. If the Claimant had any difficulty in attending the meeting because of childcare issues she could and should have raised it. The Claimant was not treated less favourably than anyone else in the division in respect of attendance at those meetings. It did not have the proscribed purpose or effect on the Claimant.

101 We have not found that Joanna Page made a hostile comment in or about a piece in the ESD weekly newsletter before the meeting on 8 March 2017.

102 We have found that Ms Page was about to join the Claimant’s group at the Divisional meeting on 8 March but then changed her mind and joined another group. That does not amount to subjecting the Claimant to a detriment and there was no evidence from which we could infer that that had anything to do with race. It did not have the proscribed purpose or effect.

103 We have found that when asked whether anyone was surprised at the inclusion or exclusion any SEO in the top four boxes on the Talent grid, three managers said that they were surprised that the Claimant’s name appeared there. She was the only black SEO in the Division. The purpose of the discussion was not to change the placing of anyone on the Talent Grid but to understand why the managers had placed individuals where they had. It was a private discussion between managers to ensure that they were acting consistently. In that context, we did not consider that by stating that they were surprised to see the Claimant’s name included, the Respondent or the managers in question subjected the Claimant to a detriment. However, even if it did amount to a detriment, we were satisfied that the Claimant’s race had nothing to do with it. There was plenty of evidence that there had been issues to do with the Claimant’s relationships with her team and her attitude towards certain issues in the preceding six months - the staff based in Nottingham were unhappy with her management style; there were tensions between the Claimant and Lola Ajakaiye, who was suffering from stress as a result of the way in her performance was being managed; Sophie was upset about the way the Claimant had dealt with the complaint by Beslan and she had raised it with her line manager; there had been unhappiness about the way the HEO recruitment process had been managed. We were satisfied that the managers concerned express the view that they did because of those issues. There was no evidence from which we could infer that they would not have expressed the same view in respect of a white SEO who had had similar issues.

104 The Claimant was moved to the Teacher Workforce Development Team on 23 April 2018 because she asked to be moved to a different directorate when she raised her formal grievance on 19 March 2018. The Respondent accommodated her

request by finding that role for her. The Claimant was offered the opportunity to move to that role and she was happy to move to that role and thanked Ms Lewis for her help. In her own words she “jumped at it”. In those circumstances, it is difficult to see how the Claimant can possibly claim that by accommodating her request and giving her what she wanted the Respondent subjected her to a detriment. Clearly, it did not.

105 On 4 June 2018 the Claimant was told that she would be placed in the box marked “inconsistent” on the Talent Grid. We found that the reason for that was that the Claimant had moved to a new role about six weeks earlier, it was a policy role, the Claimant’s previous work had been more process based, she had not done much policy work before and she did what was expected of her but the quality and pace of her work was not what was expected of someone at her level. There was no evidence before us from which we could infer that the Claimant’s race had in any way contributed to her being placed in that box. Nor was there any evidence that she had been placed in that box because she had made complaints of race discrimination in her grievance of 19 March 2018.

106 On 6 June 2018 the Claimant told Mr Conyard that she did not want to work in that division and wanted to return to her old team. The request to move away from the team was not refused. Ms Lewis said that as the Claimant had been moved out of her old team at her request following her allegations of bullying, harassment and racial discrimination, she needed to consider the outcome of the investigation of those allegations before she made a decision on the Claimant’s new request to return to that team. The Claimant appealed the outcome of the grievance on 11 June 2018. On 12 June Ms Lewis told the Claimant that they would do all that they could do to support her request for a managed move to another part of the Respondent. Thereafter, she supported the Claimant in attempting to find an alternative role. The Respondent did not refuse to move the Claimant away from the Teacher Workforce Development Team.

107 The Claimant makes a number of complaints of direct race discrimination and victimisation in respect of the grievance investigation by Emran Mian. The alleged racist remark by Kim Mitchell was not dealt with in the grievance outcome because it did not form part of the Claimant’s formal grievance. She gave evidence about it at the grievance hearing. Mr Mian investigated it as part of Mr Fugurally’s grievance because it formed part of his grievance. Mr Mian did not refuse to interview certain witnesses. He told the Claimant whom he would be interviewing. She did not suggest or ask him to interview anyone else. An investigating manager is entitled to decide whom he needs to interview. The Respondent did not refuse to provide the Claimant with Mr Fugurally’s interview notes. She did not ask for them. They were not provided to her because he was interviewed as part of the investigation into his grievance and not the Claimant’s grievance. We concluded that Mr Mian conducted a fair, impartial and thorough investigation. He interviewed a number of individuals and looked at the relevant documents. He set out in his outcome letter the conclusions that he had reached on the matters that the Claimant raised in her grievance. It is not possible or necessary in an outcome letter to refer to every document or piece of evidence to which the complainant refers. If there were any shortcomings in his investigation (and we have not found any) there was no evidence from which we could infer that they had anything to do with the Claimant’s race or the fact that she had complained of race discrimination in her grievance.

108 The grievance appeal considered all the matters raised by the Claimant and concluded that the grievance investigation had been appropriate on the basis of the evidence provided and that the report had been credible and balanced. The outcome letter did not set out Ms Watts' conclusions on each of the points made by the Claimant. The failure to do so does not mean that those points were not considered. There was no evidence to indicate that the way in which Ms Watts dealt with the appeal had anything to do with the claimant's race or that she had made complaints of race discrimination.

109 We did not consider each of the above matters in isolation; we considered them and viewed them as part of the whole picture. Having looked at the picture as a whole we were satisfied that the Claimant had not been subjected to any unfair or unfavourable treatment or to direct race discrimination, race-related harassment or victimisation.

Employment Judge Grewal

Date 21 August 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

22 August 2019

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FOR THE TRIBUNAL OFFICE