



EMPLOYMENT TRIBUNALS

Claimant: Mr S Mutangadura

Respondent: The Home Office

Heard at: Manchester

On: 6, 7 and 8 August 2019

Before: Employment Judge Sherratt
Mrs A Jarvis
Dr H Vahramian

REPRESENTATION:

Claimant: In person

Respondent: Miss H Trotter, Counsel

JUDGMENT having been sent to the parties on 16 August 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant, Mr Mutangadura, who identifies his race as black African, brings claims of direct race discrimination under section 13 of the Equality Act 2010. The claims are brought against the Home Office arising out of his applications for employment made in 2017. The claim is encapsulated in section 39(1)(a) of the Equality Act 2010 which says that an employer must not discriminate against a person in the arrangements made for deciding to whom to offer employment, or by not offering employment. In this case it is “the arrangements made” that the claimant takes issue with.

2. The case came before Employment Judge Howard at a preliminary hearing on 16 July 2018. The issues for determination by this Tribunal were set out in paragraphs 1, 2, and 3 of the Case Management Order as follows:

- “1. The claimant applied for two caseworker roles with the respondent; Administrative Officer and Executive Officer. He was offered an AO role on 21st September 2017 and subsequently accepted an EO role on 11th January 2018 and so withdrew from the AO role. The offers were conditional upon security checks at the appropriate level of clearance. Both roles required clearance at a lower level of risk; ‘CTC’. Unfortunately, on 11th October 2017 the Government Recruitment Service sent the claimant an email containing a link to the wrong – and higher - level of security clearance application; ‘Security check’; ‘SC’; which is more extensive. The claimant queried this level of clearance, but the matter was not resolved until 22nd March 2018 when the respondent acknowledged that he had been sent the wrong link and provided the correct one. In the meanwhile, the claimant was required to send a number of emails, was directed to different departments and expanded time and effort in attempting to resolve the matter.
2. The claimant believes that the failure to resolve the matter quickly was deliberate and because of his race.
3. Race discrimination

The claimant identifies his race as Black African

He believes that the way the respondent communicated with him over this issue, including the failure to properly address and resolve the matter in a timely manner, amounts to an act of direct discrimination continuing over time.

He compares himself with a hypothetical white person whose query would have been responded to promptly and the matter resolved without delay. In support of that belief he points out that at the assessment centre he was one of very few non-white applicants.

The respondent’s position is that there is no causative link; it was a simple administrative error that took time to resolve, understandable in the context of a national recruitment exercise involving 1000s of candidates and with communications conducted electronically.”

3. The claimant also claimed discrimination based on disability but that claim was dismissed by Employment Judge Holmes at a separate preliminary hearing.
4. As to evidence, we have heard from the claimant on his own behalf. The respondent has called Jack Holding, who set the level of the security check which is the problem in this case; Roy Williams, who corresponded with the claimant on matters pertaining to finances; Peter Cunningham, who did an analysis of Government recruitment processes to see if what happened to the claimant happened to others; Audrey Russell, the Recruitment Lead, and Stephen Cooke (her manager) who summarised the case following his investigation.

5. In the cross examination of the claimant it was established that he alleged that there had been discrimination by Mr Holding, by Ms Russell and by Ms Shyla Pillai, who does not appear before the Tribunal but who appears in an email that will be referred to later. The claimant also referred to someone called "Sheri" who was involved in phone calls, but he does not pursue that as an allegation of discrimination. He also confirms his claim against those who operated the PM recruitment inbox, although that was largely down to Ms Russell as the responsible person.

The Facts

6. Following the UK Government's notice to terminate membership of the European Union a decision was taken to increase numbers in the UKVI Visa and Citizenship Office in Liverpool, moving from 676 full-time equivalents involving an 837 headcount to 1,537 full-time equivalent staff. As a part of this exercise roles were advertised for Administrative Officers and Executive Officers. The AO role was advertised on 10 March 2017. There were 8,200 applications for 120 vacancies. The EO role was advertised on 14 March 2017 with 8,869 applications, again for 120 vacancies.

7. The claimant applied for both roles. He was initially offered the AO role and then an EO role and at that time he withdrew his AO application. To get to the point of being offered those jobs the claimant had satisfactorily undergone online tests, attended an Assessment Centre and been interviewed.

8. The job offer was subject to security clearance, and Mr Cooke in his witness statement describes the process as follows:

- (7) The Home Office and UKVI follow set processes when recruiting staff and there are numerous Government Departments involved in the recruitment process.
- (8) UK Visas and Immigration (UKVI) is a department of the Home Office. The Permanent Migration Recruitment Team is a team within the European and Settlement Casework Unit based in Liverpool.
- (9) The Government Departments involved with the recruitment campaigns HOM/610 and HOM/612 included:
 - **The Permanent Migration (PM) Recruitment Team** – the employing department/vacancy holder in this case. Audrey Russell was the Campaign Manager responsible for the 610/17AO and the 612/17EC campaigns.
 - **The Government Recruitment Service (GRS)** (previously known as Civil Service Resourcing/CSR) is responsible for conducting or arranging the various pre-employment checks, including employment history, health checks, security clearance etc., on behalf of the employing department. They are based in London

and the North East (Newcastle)., GRS was part of the Home Office until early 2018, when it transferred to the Cabinet Office.

- **Home Office (HO) Security** (previously known as the Department Security Unit (DSU), now formally known as Cluster 2 Security Unit) – responsible for ensuring the security of Government assets including personnel, assets and buildings. A component of this responsibility is to ensure that personnel hold the required security clearances for the role they perform. Their National Security Vetting Department carried out the security checking element of a candidate's pre-employment checks. They are based in Marsham Street, London.
- (10) These different departments do not share the same database of information and are based in different locations within the United Kingdom. Each person in the chain relies on the information given to them by colleagues in these difference departments.
- (11) All Home Office employees require security clearance in the form of National Security Vetting (NSV). There are three levels of security check:
- (i) Counter-terrorist check (CTC);
 - (ii) Security check (SC);
 - (iii) Developed vetting (DV).
- (12) The level of security check required depends on the requirements of a role, and for the Home Office the minimum is counter-terrorist check (CTC). The level is best based on guidance from departments including Cabinet Office and the Security Service. The clearance level required varies depending on the type of work, the information and locations that are being accessed and the likelihood of coercion. In this case the AO and EO roles that Mr Mutangadura applied for both required candidates to have CTC clearance before they could take up their post.
- (13) To obtain security clearance for a prospective employee, the employing department informs GRS of the level of security clearance required by the candidate. The security element of pre-employment checks is arranged by GRS but is actually carried out by Home Office Security.
- (14) To commence a security clearance check, GRS submit the required request to Home Office Security who receive a Baseline Standard Verification Record (BSVR). HO Security add the details to their system and then send an email to the prospective employee containing a link to the security clearance application. The prospective employee follows the link in order to answer questions and provide the relevant information online. Once they return the completed form this launches the security check application with the EK Security Vetting part of the

Ministry of Defence (MOD) who complete all of the checks for Home Office Security. If HO Security require further details they make contact with the prospective employee. Once they have access to all of the required information HO Security decide on whether or not the candidate can be cleared to the required security clearance level and communicate their decision to GRS.

9. Jack Holding of the Government Recruitment Service was the person charged with starting the process leading to the claimant's security check. He told us that when he was training for this role he did so by watching someone else do the work and then he got on with it himself, so there does not appear to have been any formal training.

10. It is accepted by both sides that the appropriate level of checking for the role the claimant applied for was CTC (counter-terrorist check) and this was known to Mr Holding who wrongly set the level of check for the claimant as SC not CTC.

11. The level which goes on the form is set on the basis of a drop-down menu so we presume that Mr Holding had the option of the three levels of security described above and he chose SC rather than CTC. Before doing this he had paperwork to confirm that the correct level was CTC in the form of a control sheet, a job advert and a BPSS form.

12. After he completed the task he filled out a form that we have seen a sample of in the bundle on page 317. He had to certify that he had personally examined certain documents to identify the claimant, that the documentation was to be retained, that he set down the employment type, the proposed grade and the security level required, and he was required actively to tick a box to confirm that this is the security level required for the post: "I accept that the submission of an application of a lower level of clearance than is required for this post without the prior consent of DEU may result in a breach of security", and he was then to add his name and details to that. When he had finished everything he was to write on the control sheet and the candidate checklist the date and the level of clearance he had raised and update various documents. We have not seen all of those documents but we are told that what he did thereafter was consistent with having raised SC rather than CTC as the security level for the claimant.

13. It would appear that there were no checks carried out beyond Mr Holding that the right level of clearance was set for each candidate, and the assumption may be that if Mr Holding had got something wrong initially he would thereafter believe he had done things properly and if he did not check this problem or error would not come to light.

14. Mr Holding was asked how he came to do this in cross examination, how he set the claimant's level as SC not CTC, and from his replies:

"I've just mistyped. I must have populated it wrongly. It was an honest mistake. I was not asked by anyone to change the security level for the claimant. I was not motivated by anything, it was just an honest mistake."

15. The claimant received the SC level vetting form and after making various enquiries as to whether this was the correct form he eventually completed the questionnaire. We have not been provided with the CTC level questionnaire but we understand that it is not as detailed. In particular there is no section requiring detailed financial information from an applicant.

16. The vetting form was provided for the claimant at SC level, and it is apparent from the start which level it is, starts with the claimant's personal information including current and past addresses, information about his parents, information about his current and previous employments, conviction details (of which I say immediately to avoid any doubt there were none), there is a section on security risks and then a financial section. The claimant filled the form in, unfortunately revealing matters in relation to his finances which required further investigation. Had the claimant been required to complete a CTC form only then we understand that this financial information would not have been requested, the claimant's job application would have proceeded satisfactorily and he would have taken up the role that had been offered to him.

17. It is apparent from the paperwork that processes carried out for the Home Office have what are called "sponsors". The sponsor seems to be the last person who has been responsible for the file. The evidence is that the sponsor changes as the process progresses but the applicants do not appear to be updated as to this.

18. It would appear, however, that the initial sponsor at the time the work was done by Mr Holding would be Mr Holding himself. There is a document provided by the Home Office as to the guidance for sponsors in the National Security Vetting Solution Portal. The role of the sponsor includes:

"Providing ongoing support and helping to resolve any issues that arise for the subject during the clearance process."

19. I now move on to look at the various emails, starting with page 69 which the claimant sent to Home Office Pre-Employment Checks on 24 October suggesting that he had been sent the wrong form (the SC not the CTC), thinking that at that level security did not involve personal finance or credit checks. He confirmed the information but could it be clarified whether the credit score had any bearing on the decision whether or not to offer employment. The reply that came to the claimant was from Jack Holding on 31 October 2017 saying that he needed to answer all of the questions on the link questionnaire, and if he wished to query it further he should contact Home Office Security at the given email address.

20. Mr Holding was cross examined about this. He said that the email came to the team inbox and he replied to it. He said he did not know the correct answer to the question so he told the claimant to fill in the form and suggested he should contact Home Office Security. The action of Mr Holding at the time seems to have been a failure to answer all of the claimant's questions which were, in our judgment, reasonably and politely raised, and the claimant might reasonably have expected a full and proper response to his query rather than being told to fill the form in and go elsewhere.

21. The claimant then sent emails to the Home Office Security (page 75) asking about the position. He got an auto reply. He sent another email (page 77 on 13 November). He was asking about whether the level of security should have been CTC or SC, thinking he may have been accidentally sent the wrong link: could they advise if the credit score etc. had any bearing, and the reply that he got to this on 14 November (page 79) was from Shyla Pillai of the Security, Science and Innovation Directorate of the Home Office. She simply wrote:

“The level of security clearance is requested for SC NOT CTC.”

22. This was the answer that was given reproduced as set out with NOT in red . It certainly did not reply to all of the points politely raised by the claimant in his email to the Home Office, so by this time he had raised two questions on this subject, and in neither case has there been a proper answer.

23. Having got that information, the claimant completed the SC level security clearance application form and it was acknowledged by the Home Office on 15 November 2017.

24. There then followed an email from the claimant to the PM Recruitment Team asking if the level of security was counterterrorist or SC level, as he thought he may have filled in and submitted the wrong questionnaire, and another brief reply, this time from Audrey Russell (page 83):

“Hello, yes, it’s CTC, thank you. Audrey.”

25. Whilst there was a reply to the question to the claimant as to what level of security the response did not look at the claimant’s email in what one might perhaps refer to as a “holistic manner” to see what it was he was really getting at, and what he was getting at is that he may have been sent, filled in and submitted the wrong questionnaire. The answer to the email from Audrey Russell did not go beyond saying it was CTC when in our judgment it was plain that the claimant was asking a reasonable, sensible and polite question as to what happened.

26. The claimant then sent a further email to Ms Russell and to PM Recruitment, the generic inbox (pages 84 and 85), stating his understanding that the differences between SC and CTC was financial information and asking “please advise how we should proceed with the application process”. The questions again specific and reasonable but there does not appear to have been any reply to those emails.

27. Moving forward to page 90, on 2 January 2018 Mr Roy Williams, Corporate Security Vetting at the Home Office, sent a letter to the claimant about his security clearance application, inviting him to complete a financial questionnaire, presumably on the basis that the information provided by the claimant on the SC form had thrown up matters of concern to the Home Office which would not have been revealed on the CTC form.

28. The claimant, on 11 January 2018, was offered provisionally the Executive Officer role subject to various matters including a baseline security check. The documentation for that again confirmed security level CTC and the claimant

responded on 11 January 2018 (page 96) saying that he had been offered the AO role, there had been some pre-employment checks, he would like to commence with the checking process for the EO role and withdraw from the AO role. He asked if they still required new paperwork or would they be able to do the checks using documents which he sent for the caseworker role. The claimant did not at that stage say could he start afresh: he asked if they required any new paperwork.

29. The claimant was reminded by Roy Williams on 6 March that he had not sent back the security form. The claimant responded explaining why he had not sent it back, pointing out the SC/CTC problem.

30. We then move forward to an email on 9 March from Roy Williams to the claimant noting that the Home Office sponsor had submitted his application for the SC level clearance and as such part of the process was oversight of the applicant's finances. If a financial form was not completed and provided by 16 March "the application for employment will be cancelled".

31. The claimant's response to that was to ask Mr Williams who he would need to contact within the Home Office to clarify the situation of the level of security clearance required, and the simple answer was "please contact your Home Office sponsor" without helpfully stating who that Home Office sponsor might be.

32. The claimant therefore sent an email to PM Recruitment on 11 March setting out in considerable detail the problems arising from the CTC v SC check and how he had made people aware of what was going on but without receiving any proper replies to his emails. He also sent that to Home Office Security, and the only reply he seems to have received from PM Recruitment was:

"Good afternoon,

I can confirm that candidates from the two campaigns only require counterterrorist check (CTC). We cannot confirm as to why you were required to complete SC level. This could purely be down to abbreviations."

33. The Tribunal does not know quite what is meant by the last sentence and Ms Russell did not know either.

34. The email this time did say they would forward his email to the pre-employment checking team so he may well be contacted by other people depending on the stage of the checks, and Mr Mutangadura was able to say on 14 March that he had not received anything from Home Office Security since the 12 March response explaining that someone might get in touch with him.

35. Moving forward, PM Recruitment on 15 March again confirmed to the claimant all candidates were required to obtain CTC clearance. At page 144 was the 22 March email from Jack Holding to the claimant to say:

"I am sorry for the distress you have been caused by the CTC/SC security clearance application. I have been in touch with the Home Office Security Team today and confirmed that CTC clearance is required for the job vacancy you have applied for not SC clearance."

36. In cross examination concerning his apology Mr Holding said that he just apologised and kept it short rather than going into unnecessary detail. That, of course, is his view of what might have been unnecessary detail rather than the view that the Tribunal or indeed the claimant might take as to what was or was not necessary. He said he would not necessarily have seen the claimant's response to his apology (page 159) as it was sent to the office inbox rather than to his personal inbox.

37. The claimant having received this response from Mr Holding was still very distressed and he emailed a reply Home Office Pre Employment Checks on 22 March, starting Hi Jack, saying that he had not been responded to, why were the checks made, he suffered from anxiety, it was all rather unfair, it had exacerbated his anxiety, he was not going through the same process that other applicants had been going through, he felt rather miserable and anxious that doing this very likely cost him the chance of a stable career with the Home Office. He thought he may have been treated unfairly and he needed the following question answered, please: why was he required to go through the SC process when other people applying for the same AO and EO roles only had to undergo the CTC vetting process?

38. Again, in the Tribunal's view the claimant was there setting out his position in a simple, straightforward polite fashion. He asked an obvious and straightforward question to which there was no reply on the basis it would appear that the email was sent to the generic Home Office pre-employment checks inbox and although it said "Hi Jack" Mr Holding denies having seen that email.

39. There was then an email dated 26 April from a Senior Personnel Security Manager at the Home Office responding to the claimant's 12 March email. Usually only a CTC level check was required but it was not unusual for a request for financial information should it come to their attention that a CTC applicant was experiencing financial difficulties. This did not necessarily mean security clearance would be refused, either at SC or CTC level: what was important was that the person's financial liabilities were being managed and they did not present a risk of financial vulnerability, so it was confirmed that if he wished to pursue the role he would be required to complete the document sent out to him previously by Mr Williams.

40. Moving on to the 10 May (page 169) when someone called Adam Duffy at Home Office Pre-Employment Checks had taken over the claimant's case, he had seen that an application for CTC clearance was cancelled by the Home Office as the requested information had not been provided. He could not see a response to questions sent on 9 April: would the claimant please say how he would like to progress, because he only required CTC clearance before a start date, but also he needed to provide evidence for the security team in terms of the finances.

41. At page 170 the claimant emailed on 13 May to explain the reasons why he did not wish to proceed any further with the application for what had gone on with the security checks. The reply to that from a different Home Office employee was:

"I can only apologise. Your security clearance was raised incorrectly. We did correct our error as soon as it was picked up. Please think about the decision.

If you still wish to withdraw please let us know by Wednesday. If you wish to accept CTC will still need to be completed.”

42. The claimant again confirmed he did not wish to take up the employment.

43. There is also within the bundle an email from Mr Holding to the claimant seeking to encourage him to continue with the application process.

44. Audrey Russell provided a witness statement. She was cross examined. She told us of being very busy at the material times in connection with recruitment exercises. She was spending certain full weeks at Assessment Centres. Her evidence is inconsistent in as much as sometimes she said that she and her colleague did go into the office but her oral evidence was to the effect that she did not. She said there was poor IT: it was insecure because she was working at the Assessment Centre, which was not a Government building and did not have the Government Secure wi-fi. Her witness statement said she had no access to emails but her oral evidence was to the effect that she had limited access to emails. We know that this is the case because when she was alerted to the email from the claimant by her colleague, her assistant, she responded as set out above, that being the one saying that the CTC was the appropriate level of clearance required for the job the claimant was applying for. She told us that her generic and/or personal inboxes were too full, there was not enough time to reply, there were no resources to reply, none of the other emails sent in by the claimant were brought to her attention, but nothing she failed to do was on the basis of the claimant's race.

45. We know that the claimant did make a number of phone calls as the process continued, trying to get to the bottom of what was going on. This is where he spoke to someone called Sheri but given that the claimant does not pursue this as an allegation I will not go on to deal with it in this Judgment.

46. We had a witness statement from Peter Cunningham who described himself as the Lead Solutions Architect and Data Analyst working at the Home Office. He provided an analysis of 2,918 vacancies over two years, and he confirmed that this was the number of vacancies advertised rather than the number of applicants for those vacancies. His research told him that 141 vacancies had more than one security level raised during the recruitment process, which was wrong because the security level check is determined by the post rather than the applicant so if there was more than one there was something wrong somewhere.

47. Mr Cunningham then went on to look at the work of Jack Holding. According to his investigation, Mr Holding had created 190 security links, two of which were wrong: one was in respect of this claimant and the other was in respect of a white female. Given that 141 errors were found that left 139 errors. They were made by 54 other members of staff, although we do not know the number of candidates involved, the total number of members of staff involved or more particularly the ethnicity of those candidates who were the ones who had incorrect clearance levels applied to them. The report simply does not question ethnicity and in cross examination it did not appear to cross his mind that anything might be related to race. He was not aware, and presumably neither was the Home Office, of any problem of this nature

until this case arose. He confirmed that there did not appear to be any checks made on security levels as the process went along.

Submissions

48. We have received lengthy written submissions from the claimant. We have received written submissions from the respondent, but in the form of an introduction setting out the legal position and then a conclusion after the evidence, applying the law to the facts. I will not set out what those submissions are save to say that the Tribunal received and read them, and we also have taken into account the oral submissions made this morning following our reading.

The Law

49. Section 13 of the Equality Act 2010 deals with direct discrimination and provides that:

“(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.”

50. Section 23(1) provides that:

“On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.”

51. There are many decided cases giving guidance to Tribunals in respect of discrimination cases. Ms Trotter in her submission referred to the guidance given by Underhill, P (as he then was) in the case of **Amnesty International v Ahmed [2009] IRLR 884** as to what must be considered by a Tribunal when determining a direct discrimination claim:

“The basic question in a direct discrimination case is what is or are the ‘ground’ or ‘grounds’ for the treatment complained of. That is the language of the definitions of direct discrimination in the main discrimination statutes and the various more recent employment equality regulations. It is also the terminology used in the underlying Directives ...

In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself. If an owner of premises puts up a sign saying ‘no blacks admitted’, race is, necessarily, the ground on which (or the reason why) a black person is excluded **James v Eastleigh** is a case of this kind. There is a superficial complication, in that the rule which was claimed to be unlawful – namely that pensioners were entitled to free entry to the council’s swimming-pools – was not explicitly discriminatory. But it nevertheless necessarily discriminated against men because men and women had different pensionable ages: the rule could entirely accurately have been stated as ‘free entry for women at 60 and men at 65’. The council was therefore applying a criterion which was of its nature discriminatory: it was, as Lord Goff put it..., ‘gender based’. In cases of this kind what was going on inside the head of the putative discriminatory – whether described as his intention, his motive, his

reason or his purpose – will be irrelevant. The ‘ground’ of his action being inherent in the act itself, no further inquiry is needed ...

But that is not the only kind of case. In other cases – of which **Nagarajan** is an example – the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation i.e. by the ‘mental processes’ (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but Tribunals are trusted to be able to draw appropriate inferences (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator’s action, not his motive: just as much as in the kind of case considered in **James v Eastleigh**, a benign motive is irrelevant ... The distinctions involved may seem subtle, but they are real ... There is thus, we think, no real difficulty in reconciling **James v Eastleigh** and **Nagarajan**. In the analyses adopted in both cases, the ultimate question is – necessarily – what was the ground of the treatment complained of (or if you prefer – the reason why it occurred). The difference between them simply reflects the different ways in which conduct may be discriminatory.”

Conclusions

52. We need to examine the acts complained of in relation to Mr Holding, Ms Pillai and Ms Russell with whom we include the PM Recruitment inbox.

53. In relation to the setting of the security level at SC for the claimant, the claimant was treated less favourably by being asked to complete a longer form, including detailed financial information, which we know was not on the CTC form. We know this made the claimant feel weaker as a candidate because his finances were not in as good a state as he might have wished. It made him feel anxious. Certainly on the information we have got the CTC form would not have required financial information, and we know that nothing was done to deal with the claimant’s queries when raised to Mr Holding particularly as to whether or not he was doing the right form, but the initial question comes down to why the claimant was asked to fill in SC and not CTC? Was it because of the claimant’s protected characteristic of race, because he is black African?

54. Mr Holding’s evidence was given. We take the view it was given honestly and we find that he made an administrative error; a position that might have been different had he had proper training, proper supervision, had there been appropriate checks on the system. It would have been better had the system been pre-populated so that if a candidate applied for a job with CTC level the form immediately comes up with CTC level rather than there being room for human error with someone having to populate the level of the security check. Mr Holding made an error. Mr Holding was not, in our judgment, over the relevant time supported by proper training/supervision and management. We do not find any inferences can be drawn to warrant a finding of discrimination against Mr Holding and the Home Office in relation to this error. It was in our judgment an error made without discriminatory intent.

55. In reaching this conclusion we take into account 180 or so forms completed by Mr Holding, two mistakes made, one in respect of the claimant, one in respect of a white female, and if that person were to be a comparator put forward from the respondent's side Mr Holding would appear to have not treated them differently i.e. he treated them both as badly for a reason that would not appear to be related to race or to sex.

56. In relation to the actions or inactions of Mr Holding thereafter, in our judgment he could have answered the claimant's email sent on 24 October in more detail and properly without just sending him a link to the Home Office Security. He may have been too busy but he, from his evidence, seemed to lack full knowledge of the systems and processes he was dealing with. He failed to go back into the system to check what he had done, he was perhaps too busy to be bothered to give the claimant a proper and detailed answer to the questions that he reasonably raised. But to be too busy to be bothered or to be too busy to give a proper and effective reply does not in our judgment amount to discrimination and we do not find that he did it because of the claimant's protected characteristic related to his race.

57. Mr Holding was the person who in due course provided an apology. It could, and in our judgment should, have been a detailed letter explaining the position to the claimant, telling what happened and why and what could be done to resolve matters, but again we are satisfied that this was not done or failed to be done on the basis of race. Again it was the way in which Mr Holding seemed to have operated without taking proper care for the person he was initially the sponsor of, and when we have the claimant's final email (page 159) sent to the generic inbox but to "Hi Jack" Mr Holding claims he did not see it, it was not forwarded to him. No-one responded to it. Again we are unable to find that this failure was an act of discrimination against the claimant on the ground of race, but we have noticed that after that apology and failure to respond he did write to the claimant to confirm the chance to continue with his application.

58. Looking at Ms Pillai, it is alleged that when she sent the curt email to the claimant she was discriminating against him directly on the basis of his race. In our judgment it was a factual response to a part of the claimant's question; it was a failure to respond to the rest. We understand why the claimant might take offence at an email coming to him in a curt and brusque manner using capital letters and red, which generally we think is regarded as being "shouting" which was not necessary when responding to a civil, straightforward and fairly simply enquiry from the claimant. However, we assume that she was asked about the level of security, she checked the database: looking at the database for the claimant would say that the level was set at SC and that is the information that she provided. The letter was brusque, it was rude, it was inadequate, but it was not in our judgment discrimination against the claimant on the basis of his race.

59. Turning to Ms Russell, at the material time her section seems to have been chaotic and under-resourced. We have noted some inconsistency in her evidence as to whether she was in or out of her office or not during the weeks of the Assessment Centres; there is also the inconsistency in her evidence as to access to emails. We have the response to the claimant's 15 November email which fails to look beyond the immediate question that the claimant raised as to the level of security to deal with

whether or not he had filled in the wrong form. Thereafter there was a failure to answer, which should not have been the case. In our judgment there should have been proper staffing such that emails coming into the department were responded to properly rather than being ignored. However, having said that we are satisfied that the race of the claimant was not a factor in the way in which he was treated by Ms Russell and the department and the inbox. We are satisfied there was no racist intent.

60. Having said all that, we are not surprised that the claimant felt as he did given the initial error in the setting of the security level, the failure properly to respond to his queries or the lack of response to his various emails sent usually to at least two different sections with the Home Office. There was a failure to put matters right when the claimant raised his issue initially to Mr Holding back in October.

61. We dismiss the claimant's claim that what happened was because of race. We find that the application process that the claimant was involved in was not at all satisfactory from his perspective; we fully understand that. However, we must for these reasons dismiss the claimant's claims that what happened was motivated by direct discrimination because of his race.

Employment Judge Sherratt

9 October 2019

REASONS SENT TO THE PARTIES ON

05 November 2019

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FOR THE TRIBUNAL OFFICE

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