



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Ms F Adesanya

The British Red Cross Society

Heard at: London Central

On: 4, 5, 6, 7, 10 and 11
February 2020

Before: Employment Judge Stout
Ms S Campbell
Mr I McLaughlin

Representations

For the claimant: In person

For the respondent: Ms F Onslow

RESERVED JUDGMENT ON LIABILITY

The unanimous judgment of the Tribunal is that:

- (1) The Respondent did not discriminate against the Claimant because of her race contrary to ss 13(1) and 39(2)(c)/(d) EqA 2010;
- (2) The Respondent did not harass the Claimant contrary to ss 26(1) and 40(1) EqA 2010;
- (3) The Respondent did not victimise the Claimant contrary to ss 13(1) and 39(2)(c)/(d) EqA 2010;
- (4) The Respondent did breach the Claimant's contract and/or make an unlawful deduction from her wages contrary to s 13 ERA 1996 when it

failed to pay her on termination in lieu of all her accrued but untaken contractual holiday entitlement for the year 2018.

REASONS

Introduction

1. The Claimant was employed by the Respondent from 20 February 2017 to 17 February 2019 as a Corporate Finance Accountant, when she was dismissed because (the Respondent says) her role was redundant. The Respondent is a humanitarian organisation and a charity registered in England and Wales.
2. The Claimant brings claims in these proceedings for race discrimination, harassment and victimisation, and holiday pay. The Claimant identifies herself as Black African and her nationality is British.

Amendment application

3. The parties had agreed a skeletal list of issues at a Preliminary Hearing (Case Management) before Employment Judge Nicolle on 16 October 2019. Following that Hearing, the Claimant had supplied further particulars of the matters about which she seeks to claim in these proceedings. As a result of this process a list of issues had been agreed, against which list the Respondent had prepared its witness statements. The Claimant had subsequently on 20 January 2020 added certain further allegations to the list of issues.
4. At the start of the hearing, we therefore heard submissions from both parties as to the extent to which these further issues (which were highlighted in yellow on a list provided by the Respondent) required an amendment to the pleadings and, if they did, whether that amendment should be permitted. For reasons that we gave orally at the hearing, we considered that some of the 'new' allegations were in fact already included in the claim form and thus required no amendment (issues 5.1(c), (e), (f) and (h); 5.2(e), (k), (m); 5.5(g), (h)). Other allegations we considered were not pleaded, but should be permitted as amendments having regard to the *Selkent* principles (the time point to be considered at the conclusion of the hearing), namely issues 5.2(i), (j), and (l). Other allegations were not pleaded and we decided they should not be allowed as amendments as they were merely further examples of conduct of which the Claimant already had a number of examples and we considered that to allow them would unreasonably expand the scope of the evidence (issues 5.1(g), 5.4(e)-(h)).
5. **If written reasons for the amendment application are required, they must be requested within 14 days of the date this judgment is sent to the parties.**

The issues

6. In the light of our decision on the amendment application, the issues to be determined were as follows. In many cases it was not entirely clear in relation to each issue what the Claimant was complaining about, but with the Respondent's consent we commenced the hearing and to some extent the Claimant's case was clarified in the course of evidence. As a result some of the issues set out below are not separately identified in our judgment as it became apparent that some needed to be dealt with compendiously, and some happened on dates other than those the Claimant had provided. We identify in the list below where in the judgment we deal with each issue:

Jurisdiction (*Dealt with at paragraph 189*)

- (1) Have any of the alleged acts of harassment and direct discrimination set out in paragraphs 11 to 67 of the Claimant's claim occurred outside the time limit under section 123 EqA 2010, therefore prior to 19 January 2019?
- (2) If so, has the last alleged act of harassment and direct discrimination set out in paragraphs 11 to 67 of the Claimant's claim taken place within the time limit, therefore on or after 19 January 2019?
- (3) If so, do the acts form part of a continuing act?
- (4) If not, would it be just and equitable for tribunal to extend time?

Alleged Acts or Omissions

- (5) Did the following acts or omissions as set out in the Claimant's claim occur:

5.1 Was the Claimant excluded from meetings on the following occasions:

- (a) Throughout her employment the Claimant was excluded from directorate management meetings ('DMT meetings') in the directorates which she looked after, from around April 2017 to around August 2018. (*Paragraphs 41-44*)
- (b) In August 2018 before Ms Lipscombe left the organisation, the Claimant again sought inclusion in the Comms DMT meetings. She was not included in Comms DMT meetings. (*Paragraphs 41-44*)
- (c) In August 2018 the Claimant was told by Zoe Abrahams that she would be allowed to attend the comms quarterly forecast meetings. This never occurred. The Claimant's email attempts to arrange

attendance at these meetings were ignored by Ms Courtney Downton. (The Claimant does not allege discrimination against Ms Downton.) (*Paragraph 51*)

- (d) The Claimant was also excluded from working with two directorates in the Respondent's organisation (People and Learning Transition, and Communications and Engagement), from around April to September 2017. (*Paragraphs 45-50*)
- (e) The Claimant was excluded from comms quarterly forecast meetings by Ms Lipscombe from April 2017 to August 2018. (*Paragraph 51*)
- (f) The Claimant was excluded from comms and engagement team meetings by Ms Lipscombe from April 2017 to December 2017. (*Paragraphs 45-50*)
- (g) [Disallowed]
- (h) At the start of her employment, the Claimant was excluded from involvement in a restructuring process which was ongoing at the time by Ms Lipscombe. (*Paragraph 40*)

5.2 Was the Respondent rude to the Claimant on the following occasions:

- (a) On or around 16 February 2018, there was an incident in which Ms Kenny was rude to the Claimant (see GoC ¶31). The Claimant complained to Ms Lipscombe. (*Paragraphs 87-93*)
- (b) On one occasion in around April 2017, Ms Lipscombe told the Claimant that she was able to read faster than the Claimant because English was not her mother tongue. (*Paragraphs 52-56*)
- (c) On another occasion, Ms Lipscombe made the same comment when the Claimant had attended a Charity Finance Group training and had brought back some books for Ms Lipscombe to read. (*Paragraphs 52-56*)
- (d) After a one-to-one meeting in July 2017, the Claimant asked for notes of meetings she had been unable to attend but which were relevant to her area of work. In response, Ms Lipscombe questioned her ability to take notes. The Claimant felt humiliated and undermined (GoC ¶ 19). (*Paragraphs 57-63*)
- (e) In or around August 2018, Ms Slater shouted at the Claimant in front of the budget holders and asked her why she had arranged a meeting with her employees, when the Claimant tried to arrange a budget meeting in time for 2019 budget. In the meeting, the Claimant felt Ms Slater-Carr referred to her as "lower level."

(Paragraphs 128-132)

- (f) In or around September 2018, Alex Moore asked the Claimant not to pretend that she had had a good relationship with Ms Lipscombe before she left and repeated the statement a couple of times in the presence of Ms Brockman. He then went on to say that he had heard that the Claimant had said she was the rightful owner of certain budgets (which she had not done). He said that it was a joint responsibility to do the budgets and no one in the organisation owns them. He was very rude to the Claimant. *(Paragraphs 133-136)*
- (g) In or around September 2018, Ms Brockman became rude and blamed the Claimant for concluding a budget with Ms Keenan without running it past her first. *(Paragraphs 142-144)*
- (h) In or around October 2018 there was a further incident in which Ms Brockman was rude to the Claimant (GoC ¶51). *(Paragraphs 146-150)*
- (i) On one occasion in December 2017 Ms Lipscombe further humiliated the Claimant by making a comment about how statistics show that she would never be subjected to a security search after some of the Claimant's belongings had been put through a brief search at the airport. *(Paragraphs 71-74)*
- (j) On the 29 October 2018, Ms Brockman in an email further undermined the Claimant by stating that she was able to explain things better than the Claimant with more clarity and complete tasks more efficiently. *(Paragraphs 146-151)*
- (k) On or around 24 May 2018 Ms Lipscombe undermined the Claimant (GoC ¶34). *(Paragraph 108)*
- (l) On 31 August 2018 Ms Lipscombe undermined the Claimant (GoC ¶40). *(Paragraphs 109-113)*

5.3 Did the Respondent reallocate work away from the Claimant on the following occasions:

- (a) The Respondent reallocated the Claimant's work to Ms Kenny in January 2018, and the Claimant complained about this (see GoC ¶29). *(Paragraphs 78-80)*
- (b) Ms Lipscombe had departed from a practice agreed with the Claimant in a one-to-one meeting on 10 November 2017, that whoever looked after a cost centre would be the person who would recharge costs from it to other costs centres or projects and reallocated the claimants work on or around December 2017 to Ms Kenny. *(Paragraphs 78-80)*

- (c) Ms Lipscombe had further departed from the practice agreed and had reallocated the Claimant's work to Ms Kenny on or around February 2018. The work was to do with payroll coding request. *(Paragraph 81)*

5.4 Did the Respondent fail to keep the Claimant updated on the following occasions:

- (a) Ms Lipscombe held budget meetings with heads of departments. Ms Lipscombe would generally only update the Claimant when she requested this, and the updates were not consistent. This mostly occurred in 2017 after which Ms Lipscombe had agreed to update the claimant more in 2018 and invited the claimant along to some comms meeting as an introduction in 2018, but the meetings and the updates were not consistent. *(Paragraph 118)*
- (b) The Claimant was not updated regarding IDT staff Forecast changes made in or around June 2018. *(Paragraph 117)*
- (c) The Claimant was not updated on organisational changes regarding volunteer operations in or around May 2017. *(Paragraph 50)*
- (d) The Claimant also relies upon her exclusion from various meetings, as referred to at paragraph 5.1 above, which was part of the Respondent's failure to keep her updated. *(See above.)*
- (e) Disallowed.
- (f) Disallowed.
- (g) Disallowed.
- (h) Disallowed.

5.5 Did the Respondent excessively monitor the Claimant on the following occasions:

- (a) The Claimant noticed that in some meetings which she attended Ms Lipscombe appeared to be monitoring what the Claimant was writing. This occurred on several occasions from around April 2017 to around May 2018. This occurred most often in regular monthly IDT meetings, which the Claimant and Ms Lipscombe attended together. *(Paragraphs 64-67)*
- (b) Ms Lipscombe excessively monitored the Claimant in an IDT headcount staff review meeting with Ms Slater in or about May 2018. *(Paragraphs 64-67)*
- (c) Ms Lipscombe excessively monitored the Claimant at some 'project red' meetings attended together from around June 2017 to around

November 2017. *(Paragraphs 64-67)*

- (d) Ms Lipscombe monitored the Claimant in an IDT Training session conducted by the Claimant in or about May 2018 (see GoC ¶36). *(Paragraphs 104-106)*
 - (e) Ms Lipscombe also excessively monitored the Claimant in that she would often open her working file when she was working on it and attempt to take unfinished work off the Claimant (see GoC ¶41). On one occasion in or around March 2018 Ms Lipscombe opened a business review file while the claimant was working on it and attempted to take unfinished work off the claimant. *(Paragraphs 102-103)*
 - (f) On one occasion she deliberately deleted the Claimant's files on the shared drive. The Claimant began to save her working files in a different location and particularly in her personal drive at work. The Claimant believes that Ms Lipscombe deleted the Claimant's working file when it was moved to a different location on the shared drive in or around December 2017 (see GoC ¶41). *(Paragraphs 75-77)*
 - (g) On 16 January 2018 Ms Lipscombe sent the claimant supervision notes over a month after the relevant meeting was held. In them she unfairly criticised the Claimant for lateness to work and to a Project Red meeting (GOC ¶30). *(Paragraphs 84-86)*
 - (h) In August 2018, Ms Lipscombe used the Claimant's writing style as one of her reasons for putting the Claimant on a performance improvement plan. *(Paragraphs 109-113)*
- 5.6 Did the Respondent dismiss the Claimant in a sham redundancy process and without fair procedure? *(Paragraphs 137-141 and 162-171)*

Discrimination on grounds of race

- (6) If any of the acts/omissions set out at paragraphs 5.1 to 5.6 occurred, did any of these acts or omissions constitute less favourable treatment of the Claimant when compared to others?
- (7) For the purposes of section 23(1) EqA 2010 the Claimant avers that the PMO Accountants, Craig Wathen, Mae Kenny and Asa Easterbrook are appropriate comparators.
- (8) In the alternative, the Claimant relies upon a hypothetical comparator.
- (9) If so, was the Claimant afforded this treatment because of her race?

Harassment on grounds of race

- (10) If any of the acts/omissions set out at paragraphs 5.1 to 5.6 occurred, do they amount to unwanted conduct?
- (11) If so, was this conduct because of the Claimant's race?
- (12) If so, did this conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- (13) If the conduct had the effect described above, was it reasonable for this conduct to have this effect on the Claimant?

Victimisation

- (14) Did the Claimant do a protected act for the purpose of section 27(2)(d) EqA 2010 when she appealed her dismissal by reason of redundancy submitted on 24 December 2018 to Martin Halliwell?
- (15) If so, did the Respondent victimise the Claimant by:
- a. Deliberately withholding the Claimant's outstanding holiday pay? (*Paragraphs 178-184*)
 - b. Deliberately making the logging on to the work system difficult for the Claimant? (*Paragraphs 176-177*)
 - c. Disabling the Claimant's work account two days before her termination date? (*Paragraphs 176-177*)

Holiday Pay (*Paragraphs 178-184*)

- (16) Were there any circumstances under which the Claimant was entitled to carry over more than 35 hours of untaken holiday from 2018 to 2019?
- (17) If so, when was this communicated to the Claimant and what were the conditions to her being allowed to do so?
- (18) If so, did the Claimant meet the conditions allowing her to carry over more than 35 hours of untaken holiday?

The Evidence and Hearing

7. At the start of the hearing the parties were in some disarray as to paperwork. The Claimant had only received the hard copy bundle on the morning of Day 1 of the hearing. There had been considerable to-ing and fro-ing over the content of the bundle. The Respondent had only received the Claimant's witness statement at 11.30am the previous day. Both parties confirmed that they were ready to go ahead and could complete their preparation while we did our first day's reading. As a result of this, however, we allowed the Claimant and the Respondent numerous opportunities to put in further documents, which were added to the bundle. There was also a large tranche of additional documents from the Claimant which we gave her three opportunities to produce with sufficient copies for us and the Respondent. In the end, this tranche was not added to the bundle, but we did not exclude it. We accepted it in evidence, and retained copies, directing the Claimant that if there was anything in it that she wanted to refer to with witnesses or in submissions she could do so.
8. We should say that we noticed during deliberations that the additional tranche of documents from the Claimant contained an unredacted copy of the 3 December 2018 Formal Consultation meeting minutes. As we are aware that both parties regarded portions of that meeting as being 'without prejudice' such that the material was redacted from the copy of these minutes in the bundle, we did not read the unredacted version.
9. We explained to the parties at the outset and on a number of occasions during the hearing that we would only read the pages in the bundle which were referred to in the parties' statements and skeleton arguments and to which we were referred in the course of the hearing. We did so.
10. We explained our reasons for various case management decisions carefully as we went along. This included assisting the Claimant with ensuring that she had asked each witnesses questions on each of the issues on which that witness could give relevant evidence. On occasion we had to indicate to the Claimant that, in view of the time, she would need to select her most important questions to ask of witnesses. We were careful to ensure that we did not stop the Claimant from questioning any witness until we were satisfied that each relevant issue had been properly covered with the particular witness.
11. We received witness statements and heard oral evidence from:
 - (1) The Claimant;
 - (2) Ms Jennifer Lipscombe, Corporate Finance Manager. Ms Lipscombe was the Claimant's line manager from the commencement of her employment to August 2018;
 - (3) Ms Jean Mulvenna, who was HR Advisor from May 2018 until October 2019 and is now Advice and Casework Manager;
 - (4) Ms Rosie Slater-Carr, Chief Information Officer;
 - (5) Mr Alex Moore, who was Head of Corporate Finance from 4 June 2018 until June 2019. He is now at Cancer Research UK. He took over as the Claimant's line manager from August 2018;
 - (6) Ms Antonia Drake-Brockman, who joined the Respondent as a contractor in August 2018 in the role of Senior Finance Business

Partner/Corporate Finance Manager and is about to commence a permanent position with the Respondent.

12. We refer as necessary in this judgment to pages of the bundle and paragraphs of the witness statements. The fact that we do not refer to a particular fact, document or witness statement paragraph does not indicate that we have not taken it into account. We deal in this judgment only with the matters that appeared to us to be necessary to our decision, or of particular importance to the parties' cases.

The law

Race discrimination

13. Under ss 13(1) and 39(2)(c)/(d) EqA 2010, we must determine whether the Respondent, in dismissing her or subjecting her to any other detriment, discriminated against the Claimant by treating her less favourably than it treats or would treat others because of a protected characteristic. The protected characteristic relied on by the Claimant is her race or ethnic origin.
14. A detriment is something that a reasonable worker in the Claimant's position would or might consider to be to their disadvantage in the circumstances in which they thereafter have to work. Something may be a detriment even if there are no physical or economic consequences for the Claimant, but an unjustified sense of grievance is not a detriment: see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] ICR 337 at paras 34-35 *per* Lord Hope and at paras 104-105 *per* Lord Scott. (Lord Nicholls (para 15), Lord Hutton (para 91) and Lord Rodger (para 123) agreed with Lord Hope.)
15. 'Less favourable treatment' requires that the complainant be treated less favourably than a comparator is or would be. A person is a valid comparator if they would have been treated more favourably in materially the same circumstances (s 23(1) EqA 2010). The Claimant relies on a number of actual comparators in relation to some parts of her claim (the PMO Accountants, Craig Wathen, Ma Kenny and Asa Easterbrook). However, if we consider that the actual comparators' circumstances are not materially the same, we must (given that the Claimant is unrepresented) also consider how a hypothetical comparator would have been treated (*Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting* [2001] EWCA Civ 2097, [2002] IRLR 288).
16. The fact that someone is treated unreasonably does not mean that they have been discriminated against, they must have been treated less favourably (*Glasgow City Council v Zafar* [1998] ICR 120).
17. The Tribunal must determine "what, consciously or unconsciously, was the reason" for the treatment (*Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] ICR 1065 at para 29 *per* Lord Nicholls). Discrimination

must be a material (i.e non-trivial) influence or factor in the reason for the treatment (*Nagarajan v London Regional Transport* [1999] ICR 877, as explained in *Villalba v Merrill Lynch & Co Inc* [2007] ICR 469 at paras 78-82).

18. If a decision-maker's reason for treating an employee is not influenced by a protected characteristic, but the decision-maker relies on the views or actions of another employee which are tainted by discrimination, it does not follow (without more) that the decision-maker discriminated against the individual: *CLFIS (UK) Ltd v Reynolds* [2015] EWCA Civ 439, [2015] ICR 1010. What matters is what was in the mind of the individual taking the decision (save, perhaps, in certain exceptional circumstances as identified by the Supreme Court in the 'whistle-blowing' case *Royal Mail Ltd v Jhuti* [2019] UKSC 55 – circumstances which are not relevant to the present case).
19. In relation to all these matters, the burden of proof is on the Claimant initially under s 136(1) EqA 2010 to establish facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent has acted unlawfully. This requires more than that there is a difference in treatment and a difference in protected characteristic (*Madarassy v Nomura International plc* [2007] EWCA Civ 33, [2007] ICR 867 at paragraph 56). There must be evidence from which it could be concluded that the protected characteristic was part of the reason for the treatment. The burden then passes to the Respondent under s 136(3) to show that the treatment was not discriminatory: *Wong v Igen Ltd* [2005] EWCA Civ 142, [2005] ICR 931.

Harassment

20. By s 26(1) of the EqA 2010 a person harasses another: if (a) they engage in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of (i) violating the claimant's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. By s 26(4), in deciding whether conduct has the requisite effect, the Tribunal must take into account: (a) the perception of the claimant; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect. In *Land Registry v Grant* [2011] EWCA Civ 769, [2011] ICR 1390 at paragraph 47 Elias LJ focused on the words of the statute and observed: "*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment*". As the EAT explained at paragraph 31 in *Bakkali v Greater Manchester Buses (South) Ltd* [2018] ICR 1481, harassment involves a broader test of causation than discrimination which requires a "*more intense focus on the context of the offending words or behaviour*". The mental processes of the putative harasser are relevant but not determinative: conduct may be 'related to' a protected characteristic even if it is not 'because of' a protected characteristic.

Victimisation

21. Under ss 27(1) and s 39(2)(c)/(d) EqA 2010 and s 39(2)(c)/(d), the Tribunal must determine whether the Respondent has treated the Claimant unfavourably because he did, or the Respondent believed he had done, or may do, a protected act. A protected act includes (so far as relevant in this case) making an allegation (whether or not express) that the Respondent or another person has contravened the EqA 2010 (s 27(2)). In this case, it is agreed that the 'protected act' relied on by the Claimant is her appeal against redundancy of 24 December 2018. In deciding whether the reason for the treatment was the protected act, we apply the same approach as for the claim of direct discrimination.

The facts

Overview

22. In considering the facts we have applied the above legal principles. Where we are required to consider the reason for the treatment, we have considered the reasons for each individual act of discrimination, victimisation or harassment about which the Claimant complains. We have also, in reaching our conclusions in relation to each issue, considered the claim as a whole. We have given careful consideration to whether, notwithstanding the explanations provided by the Respondent for each individual matter about which the Claimant complains, when all the facts are considered together there is any inference of discrimination or victimisation or finding of harassment we can make.
23. For the reasons we have set out below, however, we have concluded that there is no evidence in this claim from which we could infer that the Claimant's race or ethnic origin was a material factor in any of the treatment that the Claimant complains about. In some cases we have found that the treatment complained of is not capable of constituting a detriment. Where we have made this finding, we have done so explicitly. Where we have not, we accept that the treatment could constitute a detriment. However, we do not find that any conduct by the Respondent could reasonably be considered to amount to harassment, whether individually or cumulatively. None of the treatment crosses that threshold. Nor do we consider that the Respondent subjected the Claimant to any detriments because she complained about race discrimination when appealing against the Respondent's decision to dismiss her.

The Claimant's role and place within the Respondent's organisation

24. The Claimant was employed by the Respondent from 20 February 2017 to 17 February 2019 as a Corporate Finance Accountant.
25. The Claimant identifies herself as Black African and her nationality is British. The Claimant was the only black or minority ethnic employee in the corporate finance department of the Respondent during the period relevant to this claim. The other employees were white.

26. By mid-2018 the structure of the Respondent's Finance Team was as set out at p 146 of the bundle. There was a Head of Corporate Finance, a Financial Accounting Manager (to whom a Financial Account and Pension Secretary reported), a Planning and Reporting Accountant, a Property Accountant and a Corporate Finance Manager, to whom the Corporate Finance Accountant (the Claimant) reported and a PMO Accountant (on secondment from Fundraising for 3 days per week).
27. The job description for the Claimant's role (pp 87-89) states that the role is responsible for expenditure budgets of over £30m, for effective control of assets and that the role *"supports and provides challenge on financial matters to the managers of the Enabling Functions and enables effective decision-making at department level"*. It states that the role sits within Finance, which is part of the Finance, Planning and Resources Directorate. The role was a Level 4 role on the Respondent's salary bands.
28. The Claimant was line managed by Ms Lipscombe (Corporate Finance Manager) until August 2018 and from August 2018 by Mr Moore. The Claimant's job involved working with the PMO Accountant (also a Level 4 role). The PMO Accountant role was initially occupied by Craig Wathen. From October 2017 it was Ms Kenny and from June 2018 it was Mr Asa Easterbrook. The Head of Corporate Finance was Andrew Gibb initially, and Alex Moore from June 2018. Mr Gibb was Ms Lipscombe's line manager, although he was based in the Respondent's Paisley office.
29. Ms Lipscombe was the finance Business Partner for the Executive Directors of the five central support directorates. Ms Lipscombe saw the Claimant's role as a supporting role and as the main day-to-day finance contact for managers and budget holders. She regarded the Claimant's role as supporting her in her work, preparing journals, meeting with budget holders, and working with them to prepare their accounts.
30. Ms Lipscombe also managed the Programme Management Office (PMO) Accountant, which was a relatively new role brought in to work directly with the PMO and provide project finance support to the various transformational change programmes that were underway.

Start of employment

31. Ms Lipscombe recruited the Claimant. She considered her to be the best candidate and had no hesitation in choosing her. The Claimant's employment commenced on 20 February 2017. Her appointment was subject to a six-month probationary period which was due to end in August 2017.
32. Having recruited the Claimant, Ms Lipscombe said that she wanted her to succeed (para 19). We accept her evidence in this respect. In overview, we found Ms Lipscombe to be an exceptionally caring and cautious manager who was very considerate in her dealings with the Claimant. She did her best to seek

to understand and address the Claimant's concerns and provided guidance to her throughout the 18 months that they worked together that was genuinely intended to assist the Claimant to thrive in her work for the Respondent.

33. Ms Lipscombe and the Claimant had 1:2:1 meetings, usually on a monthly basis. Notes were taken of these meetings by Ms Lipscombe and we need to say something about these at the outset because the content of the notes has been in dispute in these proceedings.
34. Ms Lipscombe generally (but not always) typed up her notes after the meeting and, when she did type them up, she provided them to the Claimant. Sometimes this was not until shortly before the next meeting, which might have been one or two months later. The Claimant has in these proceedings complained about Ms Lipscombe's notes and contended that they are not accurate. Sometimes the Claimant raised queries about the notes at the time and, when she did, we have reviewed the contemporaneous email exchanges between her and Ms Lipscombe and taken those into account. Otherwise, we do not accept the Claimant's contention that Ms Lipscombe's notes were generally inaccurate or unreliable. The foundation of her complaint in this regard is an occasion (dealt with below) when Ms Lipscombe, at the Claimant's request, provided her with her handwritten pre-meeting notes which included on them things (such as a question about the Claimant's own ability to take notes) which she did not raise with the Claimant in the meeting. However, for the reasons we set out below, this incident does not show that Ms Lipscombe was making up notes and she explained this to the Claimant at the time. We therefore accept Ms Lipscombe's notes as the best record of her supervisions with the Claimant.
35. The notes of the first supervisions in March, May and June 2017 (pp 169-170, 178-179 and 183-185) show that Ms Lipscombe considered the biggest challenge for the Claimant was getting to grips with the organisation and who was responsible for what and she provided the Claimant with support with this.
36. Ms Lipscombe said that from the start her impression (which accords with ours in the light of the evidence we have heard) is that the Claimant appeared insecure and overly concerned about why she was not working with certain people and would regularly ask about what the PMO Accountant, Mr Wathen, was doing. Ms Lipscombe explained that it was not necessary to invest time in getting to know everyone as some teams were undergoing restructure and soon to be disbanded. The notes of 1:2:1 supervisions and emails from Ms Lipscombe show that she identified clear actions for the Claimant to undertake to address what she understood to be the Claimant's concerns. For example, the notes of the supervision on 17 May 2017 (p 178) record as actions that the Claimant is *"to attend P&L monthly directorate briefings to keep up to date with developments in the P&L directorate"* and that Ms Lipscombe will *"set up short weekly team briefings maybe stand up meetings, for Jenni, Craig and Sade to brief each other on what work we're doing and give updates"*.
37. The Respondent's witnesses also gave evidence that from an early stage they noticed that the Claimant sometimes appeared to have difficulty following what was said in meetings. A particular example was that in July 2017, following a

meeting, the Claimant completed the Information and Digital Technology (IDT) Business Review for June 2017 and sent it to relevant parties. Ms Slater-Carr responded (p 198):

I will be honest – this isn't really in line with our conversations ... I am quite shocked that it is so out of kilter with the reviews and conversations that we have had.

Also – the things pulled out as overspend seem really rather arbitrary..... be good to understand why you pull out the things that you do and not others as I can't see the logic in it currently.

My understanding that overspend and reforecasting was due to a move of approved spend from Opex to Capex but that is not how the first few paragraphs read.....

It is really difficult when what appears in print is not hugely reflective of conversations had – is there a chance that we could review this – and – in particular the slightly odd nature of some of the things that you have chosen to pull out before it is more widely circulated?

38. There were other such occasions. For example, in January 2018 the Claimant sent Ms Slater-Carr an IDT Contractor Spreadsheet when so far as Ms Slater-Carr was concerned something else had been agreed (p 274) and also in January 2018 Ms Slater-Carr noted in an email to the Claimant that her communications were “*a bit chaotic at the moment*” (p 291).
39. Over the next few months, leading up to completion of her probationary period, the Claimant complained that she was excluded from various matters. These were for the most part things that she raised at the time with Ms Lipscombe as being matters with which she would wish (or considered she should) be involved. We deal with each in turn below. In each case we have found that there were good reasons why the Claimant was not included and there is nothing from which we can infer that the treatment of the Claimant influenced in any way by her race.

Restructuring process

40. At the start of the Claimant's employment a restructuring process was ongoing. This was an organisation-wide restructure so as to organise employees by reference to services being provided (First Aid, Refugee Services, etc). The Claimant complained she was excluded from this by Ms Lipscombe, while Craig Wathen was included. Ms Lipscombe explained, and we accept, that this was because the restructuring was a particular project, for which the PMO Accountant had specific responsibility. The PMO Accountant acted as finance business partner to the Director of Strategic Change and was responsible for working with that Executive Director on restructuring projects. It was a transformational role. Once a new team or system went 'live', however, the project ended and finance support was handed over to the regular accountant. The restructuring process was not therefore part of the Claimant's role and this is why she was not included in work on it.

Directorate management team (DMT) meetings April 2017 to April 2018

41. The Claimant says that she was excluded from DMT meetings in the areas that she looked after while Mr Wathen was allowed to attend strategic board meetings in his areas of work.
42. Ms Lipscombe says that the Claimant was not invited to those meetings because of the differences between their roles and the purposes of the meeting. Ms Lipscombe worked directly with the Executive Directors, but even she was not invited to all DMT meetings (paras 13-18). She gave unchallenged evidence that the Claimant's predecessor (Anton Keen) was not invited to DMT meetings, neither were Mr Wathen, Ms Kenny or Mr Easterbrook (the PMO Accountants).
43. This was explained to the Claimant explicitly by Ms Lipscombe on 21 July 2017 (pp 202 to 203) and recorded in the notes of the meeting (which were shared with the Claimant) that the general division of work should be for Ms Lipscombe to work with executive directors and their DMTs and for the Claimant to work with Heads of Department and their budget holders.
44. Notes of a meeting with Zoe Abrams (Director of Communications) in August 2018 show that when this was raised again by the Claimant then, it was made clear (p 560) that "*DMT ... is the confidential directorate management meeting for Zoe, her direct reports and business partners*" and thus did not include the Claimant. Further, Ms Drake-Brockman gave evidence that since the Claimant left she (now effectively doing the Claimant's role as well as what was Ms Lipscombe's) has not attended many DMT meetings.

Working with People and Learning Directorate, Communications and Engagement Directorate and Volunteer Operations during 2017

45. The Claimant complained that she was excluded from working with these directorates/teams, but the Claimant did work with the People and Learning (P&L) Directorate as is clear from documents at pp 367 and 370. She did not work with the part of the P&L Directorate that was undergoing a restructure (which included Volunteer Operations) because that was the responsibility of the PMO Accountant.
46. The Communications and Engagement (Comms) Directorate was also undergoing a restructure and therefore the Claimant did not initially work with that directorate either. However, this concerned the Claimant who said in an email of 3 July 2017 (p 190) to Ms Lipscombe that she thought "*it would be beneficial that I go for the PMO meetings whilst you are on holiday, I understand that you indicated today that Craig would deputise for you in the PMO meeting whilst you are on holiday, but I think being the business analyst it's very important that I also attend the meeting to enable me understand all the restructuring and organisational changes in the directorate. I would also like to attend the budgeting meeting with Diane and yourself in relation to the budget and forecast since its budgeting period*". The Claimant was thus effectively

seeking to duplicate the PMO Accountant's role and also to attend the same meetings as Ms Lipscombe.

47. Although we find that the Respondent could reasonably have refused these sorts of requests by the Claimant, in fact they sought to facilitate them where they felt they could.
48. Thus the notes of the 1:2:1 of 21 July 2017 record that Mr Wathen has "*arranged for [the Claimant] to attend both the next PMO team meeting and the next Comms & Engagement project team meeting*". This topic was also discussed at a 1:2:1 on 15 September 2017, when Ms Lipscombe also discussed with the Claimant how she could begin building relationships with the Communications and Engagement directorate and the new Volunteer Operations team which had started on 1 September (p 219). It was agreed they would try to attend a meeting "*either now or in the new year*". Later in a 1:2:1 in December 2017, Ms Lipscombe recorded that she "*had felt that it was most important initially to focus on the core business as usual work (I&DT, Finance & SSC and UK Office based P&L)*" and that the Claimant could "*pick up on the [Volunteer Operations] part of P&L and the new Comms & Engagement structure in 2018 when the new teams have gone live*".
49. Although the Claimant was not permitted to attend all the meetings she was interested in attending, Ms Lipscombe took care to ensure that she provided guidance to the Claimant as to where she should focus her efforts, and also identified areas where she could take responsibility. In particular, the Claimant was asked to act as finance lead on two major IT projects (Project Red and LMS). Ms Lipscombe's notes of the 1:2:1 in July 2017 record that (p 203) that that was "*to allow her the space to take control of these projects and build up relationships with the project managers*". The same notes also record that the Claimant was "*to actively seek out meetings with managers who she's not had much interaction with so far, in particular Martin Hooper L&D manager, especially to discuss budget overspends this year*" and "*John Knight, to review H&S budget and gain understanding of the Datix costs*".
50. The Claimant was also kept updated about key issues in relation to matters she was not working on, such as Volunteer Operations. For example, on 24 May 2017 when Ms Lipscombe set up a number of new cost centres for Service Training and Volunteer Representation and Engagement in the UK Ops services (p 181-182), she copied the Claimant in on this email. The Claimant then wanted to know what it was about as she gained the impression that she was supposed to do something about these cost centres. Ms Lipscombe was clear that was not the case. She was just trying to keep the Claimant informed.
51. The Claimant complained that she was excluded from Comms Directorate quarterly forecast meetings by Ms Lipscombe from April 2017 to August 2018. The reasons why she was not working generally with the Comms Directorate during this period have been dealt with above. Ms Lipscombe further explained, and we accept, that the quarterly forecast meeting was primarily a meeting between her and the Comms Executive Director Ms Abrams. As Ms Abrams' direct business partner, Ms Lipscombe considered that it was only really

necessary for her to attend those meetings and that it was unnecessary for the Claimant to attend as well. However, in August 2018 the Claimant specifically asked to attend (p 560) and there is no dispute that it was agreed that she should go (p 560). In the end, however, this did not happen (C para 19). The Claimant emailed Ms Downton to arrange attendance at these meetings, but for administrative reasons this did not happen and the Claimant does not complain about this.

April 2017 – Ms Lipscombe remark about English as mother tongue

52. The Claimant alleged that on one occasion in around April 2017 Ms Lipscombe told the Claimant that she was able to read faster than her because English was not her mother tongue. She said that Ms Lipscombe made the same comment on another occasion when the Claimant attended a Charity Finance Group training and had brought back some books for Ms Lipscombe to read.
53. Ms Lipscombe did not recall these incidents but did not think that she would have said this and was surprised to read it in the Claimant's claim, which was the first she knew of the allegation. Ms Lipscombe gave oral evidence that she did not think she would have said this because she considers the Claimant's English to be excellent. She said the only thing she might have said would have been something about her being a fast reader and for the Claimant to take her time.
54. We ourselves found the Claimant's English to be excellent too. In an attempt to understand the background to this allegation, we asked the Claimant what her 'mother tongue' was as a matter of fact. She said that she was Nigerian and her mother tongue was "*African*" and she took Ms Lipscombe's comment to be referring to her race. When we asked, for clarity, what language her parents had spoken when she was a child, she said that it was both Nigerian and English.
55. The Claimant accepts she had not raised this with anyone previously. She said that this is because she considered it was racial and she had not wanted to mention it while she was employed. However, she did not mention it even as part of redundancy appeal when specifically asked by Ms Slater-Carr on 28 January 2020 to provide the evidence she relied on in support of her allegation of race discrimination (see below).
56. We find that Ms Lipscombe did not make the remark alleged. It makes no sense that she would say such a thing as the Claimant's English is excellent. It is also an obviously inflammatory remark and our impression of Ms Lipscombe, through both the documentary evidence, and orally to us was that Ms Lipscombe was a careful and cautious individual who took great care to ensure that she expressed herself appropriately and inoffensively. Indeed, we consider that it is symptomatic of Ms Lipscombe's care and consideration for others that she in her witness statement said that she did not recall this remark rather than outright denying that she said it. We also find that the Claimant's failure to mention this at any point previously indicates that her account is in this respect not accurate. If the remark were said, it was obviously potentially evidence of racism, as the

Claimant contended before us, yet the Claimant did not raise it even in her appeal against redundancy despite raising there an allegation of racism and being invited to supply evidence to support that allegation.

14 July 2017 – 1:2:1 meeting and extension of probation

57. At a 1:2:1 meeting in July 2017 Ms Lipscombe raised with the Claimant her concerns about how she was coping with the organisation. Ms Lipscombe prepared handwritten notes for that meeting (p 194). Afterwards, the Claimant requested a copy of her notes, which she gave to her, although she was not comfortable about it (para 27). Some of the notes were matters she had not in the end raised with the Claimant, eg about the Claimant's ability to take notes, and that she was spending too much time on IDT. The Claimant typed up the handwritten notes and pointed this out (pp 205-208), in response to which Ms Lipscombe explained that she had made the notes in advance and also expanded on her concerns about note-taking, IDT, and workload. She offered a 'super quick catch up tomorrow' before she was due to go on holiday.
58. This email was, we find, a careful and friendly email in which Ms Lipscombe expresses her concerns in the nicest possible way as points for discussion rather than accusations. She finished: *"I'm conscious that probation is officially up just a week after I get back from holiday, so would like to discuss what we need to do for that"*.
59. The Claimant argued that this incident showed that Ms Lipscombe would make up notes of meetings and she said that if she had not pointed out that the handwritten notes contained matters that were not discussed, these matters would have been included in the typed up notes. We reject that suggestion. There is no evidence to support it. The documentary record is consistent with Ms Lipscombe's account.
60. The Claimant also contended that Ms Lipscombe raising the matter of her note-taking was something she did in response to the Claimant asking for notes of meetings that she had been unable to attend but which were relevant to her area of work. However, this is not why Ms Lipscombe raised it. As she explained in her email (p 205):

Re note taking, I had just noticed that in a number of meetings we'd been to, you'd not taken many notes or had to borrow mine afterwards and I wasn't sure whether this was something to work on or whether it was simply because you were finding it hard to follow the conversations.

This could be because you're not yet familiar with the subject matter, or if you're tired and stressed it is also more difficult to take in new information – which was my next note.

Given the number of meetings and different projects, cost centres that we deal with it really is crucial to be able to take clear notes that you're able to refer back to as it's impossible to hold all the information in your head.

61. They had a follow-up meeting on 21 July 2017 (pp 202-203) to discuss the points mentioned and clarifying roles and responsibilities, including that the general split should be for Ms Lipscombe to work with executive directors and their

DMTs and for the Claimant to work with Heads of Department and their budget holders. Ms Lipscombe suggested that the Claimant's probation period should be extended because of concerns not about technical ability or financial knowledge, but because of concerns over confidence and "*a continuing issue with communication/knowledge sharing and Sade feeling that she's not getting the information she needs*".

62. It is also clear from the Claimant's email (p 204) that she had asked for notes of meetings that she had attended with Ms Lipscombe, so it is not correct to say that the Claimant only asked for notes of meetings she did not attend as in Tribunal she at times suggested.
63. Again, we can find nothing to suggest that anything Ms Lipscombe did in this regard had anything to do with the Claimant's race.

'Excessive monitoring' in Project Red and monthly IDT meetings

64. The Claimant complained that Ms Lipscombe "excessively monitored" her in Project Red meetings from around June 2017 to around November 2017, and in monthly IDT meetings from around April 2017 to May 2018.
65. As noted above, the Claimant had been asked to take the finance lead on Project Red. However, Ms Lipscombe still attended meetings on that project because the Claimant was still in the early stages of her employment and, as the Claimant accepted in cross-examination, Ms Lipscombe was invited to those meetings.
66. So far as "excessive monitoring" is concerned, the Claimant in oral evidence explained that Ms Lipscombe would crane her neck to look at her notes. Ms Lipscombe denied doing anything untoward. She accepted that she would sometimes look at what the Claimant was writing, as people may do sometimes to see if someone else has caught something they have missed. It was in doing that that she had noticed that the Claimant was not taking many notes, a point which she raised with the Claimant as set out above.
67. We do not find this to be 'excessive monitoring'. It was appropriate monitoring and raised with the Claimant in an appropriate way as set out above. The Claimant's race played no part in it.

15 September 2017 – Completion of probationary period

68. On 15 September 2017 the Claimant completed her probationary period. The requisite review form was completed and signed by her and Ms Lipscombe (p 214). Ms Lipscombe recorded the Claimant as having "*good quality of work and technically strong*" and as having "*built good working relationships with budget holders and with finance colleagues*". She had also met her objective of being able to prepare monthly management accounts, which the review notes she had

been doing “*without any issues*” for the last few months and sending them out to budget holders, including for the July month-end when Ms Lipscombe was on annual leave.

69. However, Ms Lipscombe gave evidence that she still had some concerns about the Claimant’s performance and issues around assimilating information and confidence in the role, but she did not feel that they were specific enough for her to address them more formally at that stage. She also thought that maybe the Claimant’s difficulty in remember things (people, team structures etc) was owing to stress and lack of sleep resulting from the combination of new job, accountancy exams that she was taking and not feeling 100% (as her impression was that the Claimant had had to go to the doctor and dentist frequently).
70. Other matters noted in the probation review form included that the Claimant needed “*to use the shared drive more to ensure we can work better as a team, supporting and covering for each other when queries come through*” (p 216). This was one of a number of occasions where the Claimant was reminded by Ms Lipscombe of the need to work collaboratively. The notes of the 1:2:1 that same day (pp 219-221) also show that the PMO Accountant Mr Wathen was leaving and Ms Lipscombe and the Claimant agreed how they would cover his tasks before his replacement (Ms Kenny) arrived. Ms Lipscombe also raised with the Claimant that she had a lot of annual leave that she had not taken and strongly encouraged her to take some “*even if just to have a long weekend after budgeting*”.

December 2017 – Paisley trip

71. In December 2017 the team flew to Scotland for meetings in the Respondent’s Paisley office. The Claimant was late and missed her flight on the way up. At the hotel she was also late coming down so that the whole team were nearly late for their meeting.
72. During the journey home, the Claimant was subject to a brief security check at the airport. She alleged that following this Ms Lipscombe commented to the Claimant on how statistics show that she would never be subjected to a security search.
73. The Claimant felt this to be humiliating. She did not complain about this alleged comment at the time, however, or mention it at all until seeking on 20 January 2020 (shortly before the hearing) to include it as an issue in these proceedings. Ms Lipscombe for her part could not remember saying anything like this to the Claimant. However, she did say that she thought it was common knowledge that unfortunately racial profiling may sometimes take place at airports and that if she did say something along the lines alleged by the Claimant it would most likely have been to allude to that and to be sympathetic with the Claimant.

74. We find that this comment was not made. Again, we consider that it is symptomatic of Ms Lipscombe's care and consideration for others that she in her witness statement said that she did not recall this remark rather than outright denying that she said it. We also find that the Claimant's failure to mention this at any point previously indicates that her account is in this respect not accurate. We would add that even if the remark were made, we do not consider it was reasonable for the Claimant to consider it to be detrimental. It is precisely the sort of thing that a sympathetic individual might say in response to such an incident at an airport.

December 2017 – file deletion and looking at work on shared drive

75. The Claimant complained that on one occasion Ms Lipscombe had "*deliberately deleted*" the Claimant's files on the shared drive. The Claimant gave evidence that she had begun saving her working files in places other than the shared drive in order to avoid Ms Lipscombe opening or viewing her working files or deleting them. The Claimant did not, however, give evidence of Ms Lipscombe having ever deliberately deleted the Claimant's files. The one example she pointed to was this occasion in December 2017 when she had saved files into a work experience folder and Ms Lipscombe had deleted them (p 239). Ms Lipscombe said she deleted them as she did not expect any of the Claimant's files to be in a folder for work experience students. The notes of the meeting on 4 December 2017 (p 239) indicate that she discussed this with, and explained it to, the Claimant at the time.
76. It is apparent from documents in the bundle that there were in fact a number of occasions when Ms Lipscombe raised with the Claimant the need for her to save documents on the shared drive so that colleagues could access them and deal with queries (see pp 467, 567, 612, 680). On one occasion in June 2018 (p 467) Ms Lipscombe even found files that the Claimant had saved into the Year End folder for 31 December 2005. Ms Lipscombe evidently thought the files had got there by accident because she had gone looking for them because she understood the Claimant to have complained about them being deleted. In fact, the Claimant told us that she had put the files there deliberately to hide them from Ms Lipscombe. The Claimant's position was that it was necessary for her not to save documents onto the shared drive until she had finished working on them as otherwise Ms Lipscombe might delete them or use them to monitor her work excessively. This issue about the Claimant needing to make more use of the shared drive was formally recorded in the end of probation review in September 2017 (p 216) as a point that the Claimant needed to work on, but it was still a problem in September 2018 (p 680).
77. We find that Ms Lipscombe did not deliberately delete any of the Claimant's files and the Claimant's race played no part in Ms Lipscombe's conduct in this respect.

December 2017- January 2018 - Reallocation of work by Ms Lipscombe to Ms Kenny

78. As noted above, the new PMO Accountant, Ms Kenny, had started in October 2017. In a one-to-one meeting on 10 November 2017 (p 230) Ms Lipscombe agreed with the Claimant that whoever looked after a cost centre would be the person who would recharge costs from it to other cost centres or projects. She did this in order to help the Claimant who was struggling with responsibility issues, but in reality this is much less flexible way of working than was ideal (para 46).
79. On 4 January 2018 the Claimant complained that Ms Lipscombe reallocated the Claimant's work (a Funding the Gap budget adjustment) to Ms Kenny. She complained orally (p 251) and followed this up with a lengthy email the next day (p 258). What had happened on this occasion was that Ms Lipscombe had explained in an email of 3 January 2018 (p 247a) that she would be doing work on preparing planner templates for the budgets and she suggested that the Claimant should look at the sheets. She also copied Ms Kenny in for information. The next day, however, Ms Kenny had told Ms Lipscombe that she had some capacity and so Ms Lipscombe asked her to do the planner templates. The Claimant was very upset about this as she saw it as her role. She said that she would reverse any adjustments that Ms Kenny made and would contact HR. She also came out of her meeting with Ms Lipscombe and told Ms Kenny not to do the task that Ms Lipscombe had asked her to do when Ms Lipscombe had in fact told her that Ms Kenny should still do the task as she felt it was reasonable. Ms Lipscombe's account of this incident is reflected in her contemporaneous notes of the discussions on 4 and 5 January 2018 (pp 251-252) and her emails to Mr Gibb (see especially p 249) and we accordingly accept Ms Lipscombe's evidence on this point. We note that when writing to Mr Gibb, Ms Lipscombe made clear to Mr Gibb that he should speak to the Claimant too *"if she doesn't get in touch herself in the next day or two as it's only fair she gets her side of the matter across"* (p 248).
80. The Claimant alleged that when she raised the above with Ms Lipscombe, she said that she was complaining because she did not like Ms Kenny. We find that Ms Lipscombe did not say this. It is not consistent with any of the documents. The Claimant felt that the agreement about allocation of work ought to have been stuck to. She said that the agreement had come about because of previous occasions when she had done work on the PMO Accountant cost centres and been told not to. She saw this as an instance of differential treatment. However, Ms Lipscombe in oral evidence was able to point to another occasion where the Claimant had done some work on Ms Kenny's cost centres. She said that these were such minor points and took up so little time and anyone else would simply have got on with it and not complained. We accept Ms Lipscombe's evidence in this respect. There were business reasons for Ms Lipscombe's actions and the Claimant's race had nothing to do with it. In any event, we do not accept that this is about 'allocation of work', it was a very small task which needed to be done by one member of the team and it did not matter who. It could not reasonably be considered by the Claimant to be detrimental because it is actually a benefit if someone relieves a colleague of a minor work task like this.

81. The Claimant also complained about other occasion in February 2018 Ms Lipscombe also reallocated the Claimant's work to Ms Kenny regarding a payroll coding request. This was on 23 February 2018. What Ms Lipscombe asked Ms Kenny to do was reallocate one cost from one cost centre to another. In fact, when the Claimant pointed out that it should be for her to do this, Ms Lipscombe agreed and let her do it. Our findings are the same as for the previous incident.
82. The Claimant says that by 5 January 2018 Ms Lipscombe had planned to put her on a performance improvement plan (PIP) and this was because she had complained about Ms Lipscombe allocating her work to Ms Kenny. This is because there is an email in the bundle at pp 254-255 which shows that Ms Lipscombe had spoken to Andrew Gibb about what to do about what Mr Gibb termed 'potential performance issues'. Among other advice, he suggested that Ms Lipscombe should be considering a '4 unsatisfactory' rating for Claimant's performance appraisal and set clear goals for improving performance, noting in particular *"improving behaviours, in particular 'managing personal impact' and 'working collaboratively"*, technical aspects of the role (which he said *"you'd know better than me but meeting reporting deadlines for example"* and *"Timekeeping – in office by 10am every day"*.
83. Ms Lipscombe, however, decided not to go down this route. As set out below, she gave the Claimant a satisfactory grading in her appraisal and felt that it ought to be possible to manage the Claimant informally. She said that she tried very hard to understand the Claimant's perspective and her conclusion was that the Claimant's behaviour was borne out of insecurity. She tried to manage this by setting clear objectives, ground rules for division of responsibility and addressing the Claimant's concerns about information-sharing and work allocation constructively. This is all apparent from the supervision notes and Ms Lipscombe's emails. Ms Lipscombe decision at this point underscores our conclusion that her conduct towards the Claimant was at no point motivated by her race. On the contrary, Ms Lipscombe went out of her way to help and support the Claimant.

January 2018 – criticism of being late in supervision notes

84. At a meeting on 14 December 2017 Ms Lipscombe raised with the Claimant that she had been coming into work late since going on holiday a couple of weeks previously. Ms Lipscombe had noticed the Claimant arriving at work at 10.10am, 10.15am and even at 10.20am. She had also arrived at meetings unprepared, including a Project Red meeting from the previous day. As noted above, she had also missed her flight to their team meeting in Scotland during this period and been late when they were waiting for her in the hotel foyer. After the meeting, Ms Lipscombe felt the Claimant had improved and had not been late again. She considered a line had been drawn under that.
85. However, when she sent the Claimant the typed notes of that meeting on 16 January 2018 (pp 262-263), the Claimant considered this to be unfair criticism because she appeared to think that Ms Lipscombe was raising this as a fresh allegation. She sought to justify herself, saying that Ms Lipscombe had agreed

she could come in at 10am and Ms Kenny came in at 10am the majority of the time. She also said that Mr Wathen came in late because he went to the gym. However, it is clear from Ms Lipscombe's email in reply (p 280) that she explained to the Claimant that the comments about being late related to what had been said in the December meeting and that she accepted "*As you mention, you have been coming in to work earlier since then*". The Claimant also pointed out that the Project Red meeting had been at 2pm in the afternoon so she could not have been late to that. As Ms Lipscombe observed, the fact that a meeting was in the afternoon did not mean that it was not possible to be late to it, but in order to avoid further argument with the Claimant she removed reference to this from the final version of the notes of this meeting.

86. We find that Ms Lipscombe's criticism of the Claimant on this occasion was based on the evidence and race played no part.

16 February 2018 – Ms Kenny is "rude"

87. On 16 February 2018 the Claimant had a discussion and then an email exchange in the office with Ms Kenny over a cost centre for expenses in LMS (pp 305-309). From the email exchange, it can be seen that Ms Kenny thought that a more senior employee Satnam Sagoo (Director of Learning) had given Cara Saunders a different cost centre to use to the one that the Claimant thought should be used. Ms Kenny therefore sought to check this with Ms Saunders. The Claimant objected to her doing that because she thought that Ms Kenny should check the right codes with her going forward. She copied Ms Saunders in on her response. Later in the chain, she stopped copying in Ms Saunders and copied in Ms Lipscombe instead (p 307). Ms Kenny could not understand what the Claimant was concerned about as she thought she had kept her informed by copying her in on the email. The Claimant "*explained that I would inform satnam [sic] of the correct codes to use and speak to cara [sic] about her expense since you were originally reluctant to do so*". Ms Kenny protested that the Claimant was 'bombarding' her with questions. The Claimant responded to say that she had complained about these sorts of adjustments to cost centres of her previously. Ms Kenny suggested a meeting to resolve. The Claimant ignored this and sent two further emails, in the last one accusing Ms Kenny of "*fabricated insinuations*".
88. On 19 February 2018 Ms Kenny sent an email to Ms Lipscombe complaining about this incident as follows:

I'm sure your inbox is already full of this and I apologise in advance - however, I do feel I need to speak to you about it.

I have found Sade to be a difficult and challenging colleague and team member since you started at BRC. I have worked for a number of finance teams, both large and small. I've dealt with difficult scenarios at work but Sade has been the most difficult and challenging of personalities. Sadly, Sade is argumentative, rude, disruptive, inconsiderate, unprofessional and not a team player.

I don't understand why Sade behaves like this other than what you have mentioned that she has control issues! You have reassured me that this behaviour was a concern even prior to my arrival and that this was being addressed and dealt with. However, I feel Sade has not changed or improved her behaviour and this is making my experience difficult and upsetting.

I am at the end of my tether. Her behaviour last week was intolerable and antagonistic. I feel something actionable needs to be done to resolve the situation.

89. The Claimant's version of events, as recounted to Ms Lipscombe on 19 February 2018, and noted in an email later that day (p 326) was that Ms Kenny had raised her voice to her and been unreceptive and dismissive when she had asked for information about recharging costs to the LMS project. She said that a previous incident had occurred a few days before when she requested information about overspend on staffing in the PMO cost centre. She said that *"Having given the correct budget codes to the PMO accountant [she] was surprised at the persistent [sic] from [Ms Kenny] to still request the code from the budget holder after explaining that the budget holders do get the codes wrong"*. She said that she *"was also surprised at [Ms Kenny's] false accusations that I had interrupted her telephone conversation. To avoid such reoccurrence may need to communicate only be email to the PMO accountant"*. She said that she felt that this should be addressed with the PMO Accountant, *"as employees that work together we should be able to request information from each other without any form of negativity"*.

90. Ms Lipscombe emailed both Ms Kenny and the Claimant after this incident (p 324), and after speaking to both of them, as follows:

As discussed in the meeting this morning, the exchanges between you on Friday afternoon both in person and over emails were not acceptable behaviour and not what is expected of professionals in the workplace. These exchanges are upsetting for everyone involved and those around you in the office. This was a serious incident – we can't be seen to be arguing like this in the office and any repetition of this sort of outburst would have to be dealt with more formally.

Regardless of the initial query, there was no call for tensions to escalate as they did. I think we are all in agreement on this.

Going forward however, we agreed that we would draw a line under this incident and agreed to work in a more cooperative and professional manner:

91. She then set out some ground rules for conduct going forward, emphasising the *"need to ensure good communication between us all, respect, trust and patience"*. She concluded *"I think it's really key to remember that we're all here because we wish to work for the British Red Cross and to make a difference. ... I recruited you both because you're capable finance professionals and I really want you to do well here"*.

92. We note that the Claimant's email to which we have referred above (p 326) was sent after Ms Lipscombe's email apportioning no blame and saying that a line should be drawn under the situation. The Claimant did in that email

acknowledge *“I agree that a line should have been drawn on the exchange of Emails and we are responsible for what we say or write”*. However, she also as set out above set out a number of further points as to why she considered that she was in the right and Ms Kenny in the wrong about the incident.

93. The Claimant alleged that she complained to Ms Lipscombe, who sided with Ms Kenny. This is not the case. We find that Ms Lipscombe was scrupulously even-handed over this incident, writing to both of them equally. There was no less favourable treatment here and the Claimant’s race played no part in it.
94. The Claimant further complained that later in the year, when Ms Lipscombe tried to place her on a PIP (see below), she brought up this incident again even though she had agreed to draw a line under it. We note that it was not among Ms Lipscombe’s primary reasons for placing the Claimant on a PIP, but it was among the materials that Ms Lipscombe forwarded to human resources and Mr Moore when they asked for the material underlying the decision to place the Claimant on a PIP and when Ms Lipscombe was trying to complete handover before leaving the organisation (p 531). However, in forwarding this material to HR and Mr Moore, Ms Lipscombe made clear that a line had been drawn and that she was sending it so as to ensure that everyone was aware of the history should it be relevant to future incidents. She wrote:

I didn’t really want to drag this up as we had all agreed to draw a line under the incident, and relations did improve between the two of them after this. However, it’s worth having this history in case there are any future incidents with my or Paul’s replacements. And it’s all indicative of general behavioural issues around being able to share and work collaboratively.

95. The Claimant alleged that she was treated less favourably than Ms Kenny in relation to this incident who was not put on PIP. We find that this is not the case. There were material differences between the circumstances of the Claimant and Ms Kenny in that in the Claimant’s case there were multiple other issues that led to Ms Lipscombe trying to place her on a PIP as set out below, whereas in Ms Kenny’s case this was in Ms Lipscombe’s view a one-off incident. Ms Kenny was also occasionally late to work, but Ms Lipscombe picked those matters up in supervisions with Ms Kenny in much the same way as she did with the Claimant. The difference was that in the Claimant’s case there were many other issues of concern and that was the reason for the difference in treatment.

February 2018 – Claimant’s 2017 Year-End Appraisal

96. This was signed by the Claimant and Ms Lipscombe and the comments were broadly positive. Ms Lipscombe did not follow Mr Gibb’s suggestion of rating her as a ‘4’ (unsatisfactory) but gave her an overall rating of ‘3’. This is the normal grade for new starters and indicates a satisfactory start in the role. The same rating was given by Ms Lipscombe to Ms Kenny at this point.
97. It was recorded that the Claimant felt she was not getting information required to support the directorates she was working with (p 372). The Claimant says that she was marked down for non-involvement with two directorates (P&L and Communication and Engagement) which Ms Lipscombe had excluded her from

working on (C, para 32), but that is not what the appraisal says. It says (p 371) that these were objectives “*set mainly for 2018*”, although it notes “*Sade has started to make good progress at the end of the year in building up relationships with managers in some areas in the P&L directorate*”.

Project Red complaints

98. In March 2018, Ms Lipscombe received complaints from those involved in working with the Claimant on Project Red, in particular the Executive Director, Rosie Slater-Carr, and also Richard Bowcott. An email of 8 March 2018 from Ms Slater-Carr reads as follows:

I need to raise again with you the accuracy of the information that Sade is providing to my teams – reports seem to be riddled with mistakes, incorrect numbers and there is a basic lack of understanding of the work we are doing. We have raised this with you several times. If you want more detail then please do speak to Richard Bowcott – but it is very difficult to manage projects with the kind of accuracy that you are now expecting without accurate and timely data.

99. On that particular occasion, it is apparent from Ms Lipscombe’s response that she was surprised that the numbers were not right as the Claimant had just gone through the numbers in detail with the project manager (Jon Summerson), but it is also clear from Ms Slater-Carr’s email and the evidence that she gave to the Tribunal that this was not a one-off problem, but one that had been ongoing on Project Red since December 2017.

100. Ms Lipscombe met with Mr Bowcott to discuss his complaints and her handwritten notes of that meeting are at p 381. She also captured his feedback in a later email of 18 July 2018 (p 642). What she said in that later email is, we find, an accurate summary and reflects the content of the handwritten notes she made at the time. It was as follows: “*the feedback was that prior to Christmas the support had been OK, but more recently Sade had turned up late to meetings and generally seemed disorganised – cancelling meetings at short notice or arriving late with reports that he and the other project manager ... had not seen in advance. They therefore spent most of the meetings trying to decipher reports instead of being able to use the info for anything useful and didn’t have anything timely that could be taken to the project board.*”

101. In the course of the hearing, the Claimant suggested that Ms Lipscombe had fabricated the feedback on Project Red. We do not accept this. We find that what Ms Lipscombe recorded as the feedback reflects the documentary evidence from Mr Bowcott and Ms Slater-Carr that we have set out above and her contemporaneous notes of her meeting with Mr Bowcott.

March 2018 – “excessive monitoring”

102. The Claimant alleged that Ms Lipscombe also excessively monitored the Claimant in that she would often open her working file when she was working on it. On one occasion in or around March 2018 Ms Lipscombe opened a business review file while the claimant was working on it and the Claimant says that she attempted to take unfinished work off the claimant. Business review files had been discussed in a supervision on 17 May 2017 (p 179) where Ms

Lipscombe explained that as deadlines were tight for getting the business reviews out, it may be that they could divide the work between them, but would alternate directorates so that the Claimant got to work on all four teams. In March 2018 there was discussion of having a different format for business reviews. On 27 March 2018 at 10.30 (p 382) Ms Lipscombe emailed the Claimant thanking her for following up on it, but saying that she should not spend any more time on it, that she would discuss it with the relevant managers and 'mock something up' based on responses. The Claimant objected to this as she said that working on the new report was part of her objectives agreed with Mr Gibb and she would like to work on it herself. Ms Lipscombe's response was:

I know you've already spent quite a bit of work on these, I just don't want you spending more time on them if we need to change it again after speaking to some of the other EDs. So hold fire on doing too much more until tomorrow and we can catch up on the feedback from Rosie & Debbie.

103. We find that Ms Lipscombe, the Claimant and the PMO Accountant were part of a team and that Ms Lipscombe had on a number of occasions reminded the Claimant of the need for collaborative working and use of the shared drive. The purpose of that was to enable them all to see what the others were working on. That is not excessive monitoring, it is a reasonable way of working. Further, we find that Ms Lipscombe was not 'taking work off the Claimant' in the above incident. For business reasons work on that particular item needed to pause and Ms Lipscombe explained why. This is reasonable management action for business reasons. It is not a detriment and the Claimant's race had nothing to do with it.

May 2018 – "excessive monitoring" in IDT training session

104. The Claimant complained that Ms Lipscombe 'excessively monitored' the Claimant in an IDT Training session conducted by the Claimant in May 2018. The Claimant says that Ms Lipscombe was not scheduled to attend, but did so unannounced. The Claimant initially said that she attended because the meeting appeared on her calendar but then changed her explanation when it was confirmed that she was not on the attendee list. The Claimant says that her colleagues, Mr Wathen, Ms Kenny and Mr Easterbrook were not monitored like this when delivering training or meetings.
105. This issue was discussed at a 1:2:1 on 22 May 2018. The Claimant's own notes of this (p 409) indicate that she (the Claimant) *"feels that her capabilities is sometimes questioned with Jenni just turning up at an agresso training ... Sade felt this is a waste of Jenni's time as she is quite capable of conducting the training by herself"*. Ms Lipscombe explained: *"I was keen to attend the training as it is a key part of the support that has been requested by IDT. I know that you are capable of conducting training by yourself and had already done so. I was keen to see what topics were covered, how the webex worked and what sort of questions the IDT managers were raising. The training went very well, despite a minor hitch with the webex and I let you run it yourself. I'm sorry if you felt this was undermining"*.

106. Ms Lipscombe said in oral evidence that no one else did training sessions, so the Claimant cannot compare herself in this respect to the PMO Accountants. We find again that this was reasonable management action by Ms Lipscombe and Ms Lipscombe gave the Claimant reasons at the time for attending. This could not reasonably be regarded by the Claimant as a detriment and her race had nothing to do with it.

22 May 2018 – 1:2:1 meeting

107. Ms Lipscombe and the Claimant met for a 1:2:1 meeting in May 2018. Following that meeting the Claimant sent Ms Lipscombe her notes of the meeting (pp 408-409) which included a number of points where the Claimant was complaining about Ms Lipscombe's actions. In addition to the point about the IDT training dealt with above, the Claimant's notes included complaints about Ms Lipscombe attending LMS meetings with her, attending one LMS meeting with the Claimant *"not physically present"* and about the Claimant answering queries from people about LMS. She also pointed out as *"another Example Jenni's catch up on project red budget with Richard in the canteen and not informing Sade who is also the finance lead on project red"*. This was a reference to the Claimant having seen Ms Lipscombe discussing with Richard Bowcott after the complaint that was raised on Project Red. It is apparent that the Claimant's notes of this meeting amounted to something of a 'final straw' for Ms Lipscombe and she took about a week to reply.

24 May 2018 – Allegation of Ms Lipscombe undermining the Claimant

108. In the meantime, a further matter about which the Claimant complains took place. Ms Lipscombe put a meeting in the diary at 23.16 on 24 May 2018 for the following day at 10.30am. The Claimant said that she had told Ms Lipscombe the day before that she was working from home. Ms Lipscombe said that she did not recall this, or that in any event it did not matter as it was still possible to attend meetings from home by telephone. The Claimant confirmed by text early on 25 May 2018 that she was working from home, and then emailed at 8.36 to remind Ms Lipscombe that she was working from home and that the catch up would have to wait until Tuesday, to which Ms Lipscombe agreed. The email exchange contains light-hearted reference to Ms Lipscombe working late. The Claimant appears to have thought this was an attempt to make it look as if she often had to cancel meetings. We find that it is not. It was not undermining in any way. Ms Lipscombe simply accommodated the Claimant's request to postpone the meeting.

28 May 2018 – Decision to commence performance improvement plan (PIP)

109. On 28 May 2018 Ms Lipscombe emailed the Claimant to thank her for the notes of the 1:2:1 on 22 May 2018. She wrote: *“I’ve been thinking about it all and have added a few comments in your email below but really I shouldn’t have to justify all my decision, explain private meetings etc. I feel we’ve covered a lot these issues several times over the last year and are not getting anywhere. Although day-to-day there are no problems, as soon as there’s a question over any aspect of work, it descends into blame and suspicion. ... The current situation is not healthy for either of us and as such I want to discuss a performance improvement plan. I’ll schedule in regular meetings every 2-3 weeks so that we can monitor progress.”*
110. Ms Lipscombe followed up with a further email next day expanding on her reasons for initiating a PIP for the Claimant. The email (p 406) included the following explanation:

The performance improvement plan is to look at the specific aspects of work or behaviour that are preventing progress in the role and working out how we can address them.

I feel that whilst your work is technically fine, there is an attitude / behavioural issue which is **holding** you back particularly in regard to managing personal impact.

I would like to see you take more responsibility for keeping yourself informed and not relying on me to update you. For example, as the lead on LMS if you felt that there was information you were missing, then I would expect you to either set up a meeting yourself with either the project manager, or to ask me for an update. I wouldn’t expect you to wait until the day of the steering group meeting before letting me know that you weren’t up to speed and then hold me to blame for not updating you.

I would also like to see you being able to take responsibility for yourself without trying to apportion blame when something goes wrong. For example, when it came to light that the balance sheet reconciliations had been done incorrectly, your first response was that I was at fault for telling you to do them in that way. We then realised that I hadn’t told you to do them that way. Regardless, I had allocated the task to you and you’d assured me that you knew what you were doing. I had let you get on with it and so when a query arose, I would expect you to look at your own work first, understand what has gone wrong and then fix it without trying to apportion blame elsewhere.

And I would also like to see greater self-awareness of your actions. For example, when I do try to set up 1:1 or updates then you frequently postpone them several times. This happened with the appraisal meeting, the last 1:1 before your holiday and now the meeting to update you on P&L changes. This would not be a problem except that you then seem to hold me to account for not having regular 1:1s or update meetings without any awareness of your own actions.

These issues have been consistent over the last year and were the underlying reason for your 3 rating in your appraisal. We’re nearly half-way through the year and I want to ensure that they’re addressed so that you can progress in the role.

Our 1:1 meetings often seem to end up with blame and defensiveness instead of looking at constructive ways to manage any setbacks.

The Corp Finance Accountant role is a very busy one, and there will always be times when you can’t get through all the work that is requested. However, we can only deal with this if we have mutual respect, trust, self-awareness and take responsibility for ourselves.

111. Subsequently, after the Claimant raised a grievance about this, Ms Lipscombe provided slightly different reasons to Mr Hopper when he interviewed her on 31 August 2018 as part of his investigation of the Claimant’s formal grievance. The notes of that meeting record her as saying that her reasons for putting the Claimant on a PIP were as follows (p 641):

- (1) *“Significant behavioural issues, especially regarding timekeeping”;*
- (2) *“Significant performance issues, failings in work, contractor management spreadsheet, balance sheets”;*
- (3) *“121 meetings missed”;*
- (4) *“Writing style not clear and inappropriate use of cc function”;*
- (5) *“Poor stakeholder feedback, eg from Rosie Slater-Carr and Richard Bowcott on Project Red”;*
- (6) *“Difficulties in discussing with the Claimant because of her defensive attitude”.*

112. Ms Lipscombe also supplied evidence to Mr Hopper of the feedback on Project Red from Richard Bowcott and Ms Slater-Carr, which we have already set out above.
113. The Claimant in these proceedings sought to complain about various of the reasons given by Ms Lipscombe for putting her on a PIP. The Claimant had a tendency to isolate the reasons, but it is clear to us, and Ms Lipscombe frankly accepted in evidence, that in reality it was the ‘whole package’. There were a number of issues regarding the Claimant’s performance and conduct at work which had arisen. For the most part, Ms Lipscombe had raised these with the Claimant in supervisions at some point, or they were matters which other stakeholders had raised with Ms Lipscombe. We find that all of the reasons cited by Ms Lipscombe had at least some evidential basis, as is reflected in our findings about the various matters that the Claimant has raised in these proceedings. We do not find that the Claimant’s race affected Ms Lipscombe’s thinking at all. She was simply responding to issues arising with the Claimant’s work and conduct as she genuinely and reasonably perceived them to be.
114. Ms Lipscombe invited the Claimant to a meeting on 30 May to discuss the PIP further, but the Claimant declined the invitation because she wanted to take advice from HR. The meeting was rescheduled for 7 June and then again for 11 June to allow the Claimant time to do this. Ms Lipscombe also offered to have a neutral third party present, but the Claimant refused all of this. Ms Lipscombe sought advice from Ms Mulvenna (pp 444-445). On 19 June the Claimant cancelled a 1:2:1 meeting as she was still waiting for advice from *“the appropriate parties”*. The Claimant and Ms Lipscombe did, however, agree her objectives for the year by email on 21/22 June 2018 (p 446).
115. On 2 July 2018 the Claimant responded to Ms Lipscombe’s email of 29 May in which she had set out her reasons for starting a PIP (pp 489-90). She set out why she disagreed with Ms Lipscombe about each of the matters that she had raised and concluded: *“Considering the current situation, I think it would be helpful to have an independent party in our 121 meetings.”*
116. The position therefore by July 2018 was that Ms Lipscombe had communicated her intention of placing the Claimant on a PIP, and given reasons for that which we have found to be reasonable, but the Claimant effectively refused to be placed on a PIP.

June 2018 – IDT staff forecast changes

117. In the meantime, the Claimant complains that during June 2018 she was not updated regarding IDT staff forecast changes. This relates to an occasion where Ms Lipscombe made some adjustments to the forecast, transferring budgets between cost centres. She informed the Claimant of what she had done, so she did update the Claimant (p 428). The Claimant's complaint at the time was that Ms Lipscombe should have let her make the changes. Ms Lipscombe said that to the extent that it was not apparent to the Claimant what the reason for the cost centre changes was all she needed to do was ask. We find this was reasonable of Ms Lipscombe. It is simply her doing her job. We are not satisfied that this could reasonably be considered by the Claimant to be detrimental and it has nothing to do with her race.

26 June 2018 – Claimant raised an informal grievance (p 470)

118. On 26 June 2018 the Claimant wrote to Martin Halliwell as the CFO raising an informal grievance about Ms Lipscombe. In her letter she expressed concern at the use of PIP for what she described as 'work issues with her line manager'. She complained about the lack of salary increase. She raised again the issue of not getting updates on budget meetings when they were attended by Ms Lipscombe. She suggested that they should both attend. She gave examples. She also raised cancellation of 1:2:1 meetings, learning management steering (LMS) board meeting. She identified a number of other issues with Ms Lipscombe and said that she had growing concerns about trust and honesty: *"I feel there is a continuous pattern of Jenni not keeping to agreed work plan, and occasionally attempts were made to take assigned task off me"*. She requested having someone present in 1:2:1 meetings because of the trust issues. She asked to have her appraisal score reviewed.

119. The informal grievance was dealt with by Alex Moore who had recently started working for the Respondent. Mr Moore met individually with the Claimant and Ms Lipscombe. Ms Lipscombe also sent him background documents to show the history of issues with the Claimant (pp 501-507). Having done that, she commented (p 508) *"Reading all my notes through, I'm now embarrassed for myself at putting up with it for so long"*.

120. On 25 July 2018, Mr Moore wrote to the Claimant with the outcome (p 520). He found that the instigation of the PIP was reasonable and in line with policy. He considered in relation to pay that the Claimant had been offered the right pay at the outset and that the subsequent reclassification of a component of salary as 'market premium' was in her interests as it would enable her to benefit from greater scope for future pay increases. He said that he had found no evidence of the Claimant's line manager intentionally excluding her from meetings and that issues with 1:2:1s were likely to be resolved by Ms Lipscombe's leaving as was now planned. He offered to attend the first capability meeting with Ms Lipscombe and the Claimant.

121. The Claimant received the outcome letter on 30 July 2018.

7 August 2018 – formal grievance

122. On 7 August 2018 the Claimant raised a formal grievance (p 539). In this she raised most of the same points as in her informal grievance, explaining why she disagreed with Mr Moore's conclusions. In particular, she maintained that the PIP was inappropriate and she indicated that she had declined Mr Moore's offer to attend the first capability meeting.

123. Ian Hopper (Director of Strategic Change) was appointed to investigate the Claimant's grievance and a grievance meeting was arranged for 3 September 2018 (p 686).

August 2018 – Ms Drake-Brockman's arrival

124. In August 2018 Ms Drake-Brockman joined the organisation. She was taking over Ms Lipscombe's role as Ms Lipscombe was due to (and did) leave at the end of August 2018. Ms Drake-Brockman was not assuming line management of the Claimant because she was a contractor and it was considered more appropriate for Mr Moore to assume line management responsibility given the issues that had arisen with Ms Lipscombe.

125. There were tensions between the Claimant and Ms Drake-Brockman almost from the outset. Ms Drake-Brockman was, as she said both in her witness statement (paragraph 16) and in oral evidence, keen to impress in her new role. Her impression, which accords with ours, is that the Claimant saw her as something of a threat, and this exacerbated the Claimant's concerns as to the scope of her role and about 'other people doing her job'.

126. On 20 August 2018 the Claimant emailed some information regarding a budget to the relevant budget holders (pp 580-582). She copied in Ms Drake-Brockman and Ms Lipscombe. Ms Brockman then replied to all recipients of the email saying that *"for a little bit of clarification"* she had done some work on investigating the spend and providing some further notes to the budget holders. She concluded *"Feel free to give myself or Sade a call if you'd like to discuss"*. The Claimant said (GoC) para 49 that she saw this as an attempt to undermine her position with the budget holders, but we find that it was not: Ms Drake-Brockman was undoubtedly seeking to show herself in a good light, and to be as helpful as possible in her new job, but she was not seeking to undermine the Claimant, hence her saying that budget holders could call either her or the Claimant about her email. The Claimant responded, copying in all recipients, *"Thanks Antonia, quite helpful with the reforecast, the plan is to do the budget more on account code breakdown level this year, so the account codes will change"*.

127. Ms Lipscombe then picked up on this in a personal email to the Claimant saying *"just a word on email etiquette – there was no need to copy in [all recipients] on*

your reply here. Given volumes of emails, it's good practice to consider whether everyone needs to be copied in to all future messages in a trail. And also good to consider what message you're sending – the 'quite helpful with the reforecast' could be construed as patronising and undermining given that Antonia is new and in a senior role. Copying in people from outside the corporate finance team makes it doubly inappropriate". Ms Lipscombe forwarded this exchange to Mr Moore "For the record" because "I can see it being used as evidence against me, so am getting in first!".

August 2018 – incidents with Ms Slater-Carr

128. In or around August 2018, there was an incident where the Claimant alleges that Ms Slater-Carr shouted at her in front of the budget holders and asked her why she had arranged a meeting with her employees, when the Claimant tried to arrange budget meeting in time for the 2019 budget. The Claimant contends that Ms Slater-Carr referred to her on this occasion as 'lower level' and that this was because of her race. Ms Slater-Carr denied this. She said that if she had referred to 'level' at all it would have been a reference to level of detail in relation to the numbers, i.e. that she did not want to be involved in discussions about every line on the numbers.
129. We accept Ms Slater-Carr's evidence. It is apparent that Ms Slater-Carr had on a number of occasions been frustrated with the Claimant's numbers and the time that needed to be spent in meetings working out what might quite reasonably be described as 'low level' financial information and we find Ms Slater-Carr's evidence about this incident to be consistent with that. She was very clear in oral evidence that she does not think about people in terms of levels and that the values of the Respondent humanitarian charity, including treating everyone equally, are very important to her. The other examples of occasions when Ms Slater-Carr had become frustrated with having to deal with matters of detail with the Claimant included the instances with Project Red in March 2018 (above) and the occasions we deal with in the next two paragraphs below.
130. Ms Lipscombe gave evidence of another incident around this time (para 126) where the Claimant and Ms Lipscombe were in an IDT meeting with Ms Slater-Carr. Ms Slater-Carr was complaining that a spreadsheet that the Claimant had produced was too unwieldy to use and the Claimant said "Well, this is actually Jenni's spreadsheet". Everyone at the meeting was very surprised and Ms Lipscombe felt it made the Claimant look unprofessional. However, she did nothing about it and (as she put it in her witness statement) "shrugged it off as another example of the Claimant trying to shift the blame away from herself".
131. Indeed, matters with Ms Slater-Carr reached the point where she felt at the end of August 2019 that she had to ask for someone else (Ms Drake-Brockman as she was now in post) to lead on the IDT budget going forward (p 611). The Claimant argued in this hearing that at this point the Respondent's witnesses were conspiring to 'get her fired'. She said there had been no complaints from Ms Slater-Carr the previous year in relation to Project Red. Ms Slater-Carr

accepted things had been all right in 2017. However, they had not been all right in 2018. She did not ask not to work with the Claimant at all, and indeed, the Claimant continued to work on the budget and Ms Slater-Carr continued working with her (see eg pp 854-856), but Ms Drake-Brockman took the lead.

132. We find that Ms Slater-Carr's treatment of the Claimant had nothing to do with the Claimant's race.

August/September 2018 – Mr Moore begins line management of the Claimant

133. Mr Moore found working with the Claimant to be a challenge. In August 2018 he tried (para 21) to organise a team meeting with her, Ms Drake-Brockman, Ms Lipscombe and Mr Easterbrook to discuss areas of responsibilities. However, despite a number of attempts to arrange the meeting to her convenience (pp 575-577, 584-587 and 590) she did not make herself available to attend and did not dial in while working from home as her phone was 'playing up'. It is apparent from these email exchanges that the Claimant wished to meet 1:2:1 with Mr Moore and not to have a team meeting. We do not need to resolve why this was.
134. On 22 August 2018 Ms Drake-Brockman had had a conversation with Ms Slater-Carr and reported to Mr Moore that *"There are some definite grievances with the whole 2019 Budgeting process for IDT ... I think we need to tell Sade to put a pause on the IDT budgets at the moment"* (p 578).
135. Later, in September 2018, there was a meeting between Mr Moore, Ms Drake-Brockman and the Claimant, where the Claimant tried to explain that budgets had been done differently with Ms Lipscombe. Mr Moore asked the Claimant not to pretend that she had had a good relationship with Ms Lipscombe before she left. The Claimant alleged he repeated this a couple of times in the presence of Ms Drake-Brockman. Mr Moore accepts that he says something along other lines, although he does not accept that he said it more than once. He said that he challenged her because he considered that she was being disingenuous in trying to suggest that everything had been operating smoothly when she was working with Ms Lipscombe.
136. There is little between the parties on this issue. We find that the Claimant was in this conversation in substance trying to make it appear that everything had been all right with Ms Lipscombe and that there had been a prior way of working that had worked well before Ms Drake-Brockman joined. This is consistent with the Claimant's approach in Tribunal which was often to say that everything had been fine in 2017 and her performance had been regarded as good until she started raising complaints about Ms Lipscombe's treatment of her. We also find that this is consistent with the Claimant's general approach to Ms Drake-Brockman, which was to try to assert her authority/experience over her. We find that the reason Mr Moore made the remark that he did was because he genuinely perceived the Claimant to be trying to misrepresent the past and did not feel he could allow that to go unchallenged. The Claimant's race had nothing to do with it.

18 September 2018 – protected conversation

137. On 18 September 2018 Mr Moore asked the Claimant to have a ‘protected conversation’ to discuss leaving in the light of her grievance against Ms Lipscombe and deteriorating relationship with Ms Drake-Brockman. The Claimant refused this.
138. Mr Moore’s evidence in his witness statement was that he had thought the Claimant had in a meeting in August 2018 said something about ‘if she was to leave the organisation it would have to be on favourable terms’ and that this is why he had asked her about having a protected conversation. In oral evidence, he appeared to forget this and said that he had raised the possibility of a protected conversation because the Claimant had raised a grievance and he considered this to be a normal thing to do. He had not dealt with any grievances previously either for the Respondent or any other organisation. The Claimant’s evidence was that she had never asked about leaving the organisation. She said that it was a surprise to her that Mr Moore raised this possibility and she said the same thing again in an email immediately after the meeting (p 734c).
139. On this point, we prefer the evidence of the Claimant. There is no email trail supporting Mr Moore’s version of events on this. The first email on the subject is from Ms Mulvenna on 14 August 2018 (p 579e) where she writes to Mr Halliwell: *“I was having discussions with Alex and Jo before they went off in relation to an employee who has issues with management in terms of performance management and subsequently trust issues with her line manager who is about to leave the organisation. I understand there was some discussion around having a protected conversation with this employee but you had concerns after hearing about some case law which seemed to question when was a protected conversation not a protected conversation ...”*.
140. We therefore find that it was Mr Moore’s idea to suggest a protected conversation and that he did this because he perceived the Claimant as being seriously concerned about management in the light of her reaction to Ms Lipscombe’s decision to place her on a PIP and the other matters raised in her grievance. We have considered carefully whether the Claimant’s race played a part in this decision of his, but conclude that it did not. Mr Moore had never dealt with a grievance before but we consider that he would have treated anyone the same.
141. There had for some time prior to this been proposals by the Respondent for saving costs across all directorates. Since at least May 2018 the Corporate Finance team had been identified as needing a £44k reduction (1 FTE). Mr Moore accepted in evidence that had the Claimant accepted the protected conversation, and had it resulted in termination of her employment, that would have achieved the headcount reduction necessary to meet that budget. Since the Claimant did not accept the offer of a protected conversation, Mr Moore then began to progress the redundancy proposals, working up a draft of a

Consultation Document during October/November 2018 (p 839a and following, and p 145 and following).

September and October 2018 - Ms Brockman being rude

142. In August 2018 the Corporate Finance team was working on the staffing budget with Ms Keenan. The Claimant had arranged to meet in person with Ms Keenan when she visited the London office on 4 September 2018. The Claimant had accepted the meeting in her outlook diary and a room booking had been made (p 697). On 4 September 2018, however, the Claimant was working from home (p 691) and so Mr Moore asked Ms Drake-Brockman to do the meeting with Ms Keenan (p 695). (In fact, this was also in line with Ms Keenan's request that she deal with Ms Drake-Brockman and not the Claimant (p 689), although that was not communicated to the Claimant). Mr Moore asked the Claimant to make sure that Ms Drake-Brockman had access to the P&L Operations spreadsheet to facilitate this (p 694). The Claimant said that she would prefer to finish off the budgets because she had been working on it. Ms Drake-Brockman agreed to that (p 693).
143. The Claimant then picked up work on the budgets again, having been updated by Ms Drake-Brockman (p 720). On 13 September 2018 the Claimant sent the activity budget to Ms Keenan, copying in Ms Drake-Brockman (p 718). Ms Drake-Brockman responded (p 717) to the Claimant, copying in Mr Moore, saying "*I wish you had discussed this with me before sending to Tracy, as I thought we parked it and said we'd discuss it later.*" She goes on in her email to say that the Claimant has made it look like she was not listening to Ms Keenan in their meeting and referring to the need for the Claimant to update her as to "*where we are at for Comms, P&L and remaining SSC and IDT activity budgets*".
144. We find that Ms Drake-Brockman was clearly frustrated in this email, but she is not "*rude*" as the Claimant alleged. It is an email which sets out clearly and politely what is difficult about what the Claimant has done and why she needs more information from the Claimant about what she is working on. Ms Drake-Brockman would have dealt with the matter in the same way regardless of the Claimant's race.
145. It was shortly after this on 2 October 2018 that Ms Drake-Brockman referred to the Claimant in an email to Ross McDonald (the Financial Planning Accountant), copying Mr Moore, as a "*certain someone*". The whole sentence reads: "*See comments in spreadsheet (first tab), ... I made a few amendments based on mistakes in the budgets (from previously me not knowing how to treat FG savings, because was told 'not to touch them' by a certain someone who's work I was reviewing ...*". The Claimant did not see this email at the time, but saw it when she received the response to her data subject access request at some point in late December 2018. Ms Drake-Brockman said that she was frustrated with the Claimant at this point. While we acknowledge that '*certain someone*' is derogatory, we find that Ms Drake-Brockman would not have said anything different about someone of a different race who had been behaving towards her as the Claimant had done.

29 October 2018 – Incident in office with Claimant and Ms Drake-Brockman

146. On 29 October 2018 there was an incident in the office between the Claimant and Ms Drake-Brockman. The Claimant heard that Ms Drake-Brockman had met with a new contractor called Fionn and wanted to meet with him herself to have an 'induction' meeting and also because she wanted to create project codes for the IDT Capex budget which she thought Fionn might have something to do with. The Claimant's written account of this incident was first provided as part of her appeal against dismissal in an email to Ms Slater-Carr of 30 January 2019 (pp 1115-1116).

147. Ms Drake-Brockman, in contrast, wrote a lengthy email about the incident to Mr Moore on the day that it happened (pp 845-848). It gives a blow-by-blow account of the incident from Ms Drake-Brockman's perspective and makes clear how very upset she was by the incident. In summary, Ms Drake-Brockman reported that she and the Claimant had been discussing work relating to Fionn who was a PMO contractor working on tracking projects for Ms Slater-Carr. The Claimant, who had not met Fionn previously, then said that she needed to meet with him. Ms Drake-Brockman tried to dissuade her as she felt she could update the Claimant as needed and Fionn's role was not a budget holder and he had little to do with finance. The Claimant insisted and Ms Drake-Brockman backed down. The Claimant then got someone (Hana) to fix up a meeting with Fionn which she said would be for 'an hour to start'. Ms Drake-Brockman considered that it was not Hana's role to organise meetings. (In oral evidence, she explained that Hana was in fact Ms Slater-Carr's personal assistant so although it had been appropriate for her to arrange meetings on Project Red and other matters involving Ms Slater-Carr, Ms Drake-Brockman felt that it was not Hana's role to arrange 1:2:1 meetings between other individuals.) Ms Drake-Brockman also felt an hour was unreasonable and so protested again. At this point the Claimant became very angry and started raising her voice to Ms Drake-Brockman telling her to mind her own business, that she knew nothing about her work, etc. This ended with the Claimant taking Ms Drake-Brockman into the ladies' bathroom and continuing to shout even though Ms Drake-Brockman protested that this was inappropriate.

148. Towards the end of her email to Mr Moore, Ms Drake-Brockman made this comment about which the Claimant makes specific complaint in these proceedings:

Again, from all other perspectives I am enjoying the work and the people at BRC, and have still continued to get good feedback from those I work with so think I'm doing a generally good job (Which I think infuriates her even more, especially when it's usually something that should would do, but I explain it with more clarity/complete the task more efficiently).

149. After this incident Ms Drake-Brockman refused to sit beside the Claimant or have any significant contact with her.

150. We find that Ms Drake-Brockman's conduct on 29 October 2018 was entirely in response to the Claimant's conduct and the Claimant's race played no part in it.
151. Further, Ms Drake-Brockman's comment in her email to Mr Moore about her being able to explain "*with more clarity/complete the task more efficiently*" was not something that the Claimant was aware of at the time as Ms Drake-Brockman's email was not shared with the Claimant prior to disclosure. Of all the things that Ms Drake-Brockman said about the Claimant in that long email, this is insignificant. Ms Drake-Brockman was merely trying to explain that she thought that the reason the Claimant was behaving towards her as she described was because the Claimant had a problem with the fact that Ms Drake-Brockman was doing a better job than the Claimant. The fact that the Claimant has picked this sentence out of this long email perhaps suggests that Ms Drake-Brockman was right about what was motivating the Claimant, but, in any event, we find that this comment is not something that Ms Drake-Brockman included because of the Claimant's race, but because this was genuinely her analysis of the situation.
152. On 1 November 2018 Mr Moore forwarded Ms Drake-Brockman's account to Finance Business Partner, Ms McCann. In his covering email (p 845) he stated:

Please see the below note from Antonia. I think you are aware and if it were not for other matters that might resolve the issue anyway, I would be inclined to progress a disciplinary process, especially as this is now a repeated event and Sade was warned that a repeat of previous behaviour would be dealt with formally (attached). Antonia is ok at the moment, but we've had to move her up to the other end of the floor following this incident.

Perhaps we can catch up soon, as we also need to discuss consultation timelines, and who would witness any conversation between myself and Sade.

153. Mr Moore accepted in oral evidence that the reference to 'other matters' in this email was to the proposed redundancy. The 'previous behaviour' was a reference to the incident with Ms Kenny on 16 February 2018 which we have dealt with above.
154. In a further email to Mr Moore on 5 November 2018, Ms Drake-Brockman made it clear that she could not tolerate the working environment created by the Claimant much longer. She felt that the Claimant was criticising her every move, but if she said anything critical to the Claimant she would get shouted at. She said that for her peace of mind she needed an 'explicit end date' to this "*toxic relationship*" (p 860).
155. On 7 November 2018, Mr Moore wrote to HR again:

I am just working on the finishing touches to the consultation doc anyway.

Just for the record, I don't want to be exposed to doing this meeting alone, and just with video conf support.

I have also just caught up with Antonia again, and we are literally trying to get through this day to day now. Any process that could go on for weeks is not an option. I honestly don't think that my duty of care to Antonia allows me to ask her to work in this situation for much longer.

156. Emails between Jean Mulvenna, Tracy Keenan and Nicola Bailey (pp 877-878) indicate that the possibility of a “VR discussion” (voluntary redundancy) discussion was raised on 8 November 2018 and that if that did not work *“the only other option is to see through to redundancy”*. Ms Keenan continued: *“[Of] course we can initiate discip/perf proceedings but we’ll be hard pushed to evidence that this is not just a means of getting back at her and trying to get rid of her for free. Which of course is not [the] case. As we all know, they should have just been brave and progress to discip / perf.”*
157. On 13 November 2018 Mr Moore sought guidance from Ms McCann in advance of a 1:2:1 with the Claimant (p 896). He wanted to know whether he should mention the proposed restructuring, the fact that performance issues had not gone away despite the grievance, the conduct issue regarding the bathroom incident and his expectation that the Claimant *“will start some sort of pre-emptive counter complaint against Antonia, which will undoubtedly be infuriating”*.
158. At the 1:2:1 on 13 November 2018, the Claimant alleges that she raised the incident with Ms Drake-Brockman and that Mr Moore was very dismissive of her concerns. We find that he was simply trying to avoid discussing anything very much with the Claimant as at that point he was anxious to move forward with the redundancy proposal (as to which further below) but could not yet discuss them with the Claimant. He was also firmly of the view that it was Ms Drake-Brockman who had been most affected by the incident (and thus was the wronged party) because she had made her feelings and account of the incident known to him immediately, which the Claimant had not done.
159. During this period Ms Drake-Brockman in her witness statement (paragraphs 66-72) details various further incidents that she considered amounted to detrimental conduct by the Claimant after they moved to separate desks. She (para 72) and Ms Slater-Carr (paras 53-54) also gave evidence about an IDT meeting in late November where Ms Drake-Brockman asked a question about the recording of capital expenditure and the Claimant responded by saying something along the lines of she did not know how Ms Drake-Brockman did not know something so simple, that it had been explained by the Claimant and Ms Lipscombe in emails previously. In substance the Claimant’s case in relation to this incident was to the same effect and we find that she was rude to Ms Drake-Brockman on that occasion. Ms Drake-Brockman was so struck by the awkwardness of the incident that she emailed Mr Moore about it afterwards (p 947).

16 November 2018 - Outcome of formal grievance and appeal

160. Mr Hopper wrote to the Claimant on 16 November 2018 setting out his findings on her formal grievance (pp 904-906). In summary:

- a. He did not uphold her grievance about the PIP, finding that it was reasonable to instigate it;
- b. He did not uphold her grievance about the appraisal rating for 2017, noting that a grade 3 is *“defined as good with scope to grow and develop”* which he considered to be *“a correct grade for a new starter in a role, in their first year”*. He pointed out that there was a process for challenging grades, which had not been followed by the Claimant;
- c. Her salary complaint was not upheld; her role would not include market premium, consistent with other new starts in the finance department. He pointed out that there was a blanket ban on salary increases outside of the annual review process because of the ‘financial challenges’ across the Respondent;
- d. He found that the Claimant’s role was sufficiently clear, there was no job sharing although team members would be expected to co-operate;
- e. As to the trust, hierarchy and communication issues, he recommended *“For you to feel empowered to take ownership of work I would suggest that the Corporate Finance team invest time together in considering their ways of working and practices”* and directed them to an online tool;
- f. An independent person of the Claimant’s choice could attend 1:2:1s with her line manager, but not someone from HR because of resource constraints.

161. On 25 November 2018 the Claimant appealed the outcome of the formal grievance (pp 943ff). This appeal was considered by Satnam Sagoo and an outcome provided to the Claimant on 19 December 2018 (p 1061).

Redundancy/dismissal

162. In the meantime, on 22 November 2018 the Claimant was due to meet with Mr Moore about the restructuring proposals, although she did not at that stage know what they were about, as she was only told that the meeting was about a ‘corporate finance meeting’. She had been permitted to bring a companion to the meeting. She initially wanted Ms Mulvenna to attend. Then she arranged for Hana to attend when the meeting was re-arranged. Ultimately, when it was rearranged again it was Ms Mulvenna who attended. The Claimant said that if she had known it was a formal consultation meeting she would have wanted a properly independent person to attend.

163. The Claimant was unwell on the day of original scheduled meeting and could not attend. She was asked by Mr Moore to attend on 26 November 2018, which was a day she had previously requested should be taken by her as annual leave. When this became apparent to HR, the meeting was rearranged to 3 December 2018.

164. On 3 December 2018 the Formal Consultation Meeting took place. At this meeting Mr Moore talked the Claimant through the consultation document. The proposal was to delete both the Claimant’s role and that of the PMO Accountant

(who was by that time 0.6 FTE, having been reduced from full-time to part-time earlier in the year). This was discussed with the Claimant.

165. After the meeting on 6 December 2018 the Claimant was given a letter confirming that the consultation period would last from 3 December to 16 December 2018. Mr Moore provided the Claimant with dates of availability for further discussions (p 1008), but the Claimant did not take him up on this.
166. During this period the Claimant queried the content of the notes of the 3 December 2018 meeting and asked to be permitted to submit her own account. Mr Moore failed to respond to this, despite being advised to do so by Ms Mulvenna. In an email (p 1058) he said he did not want to *“invite the submission of an inaccurate record”*.
167. On 16 December 2018 the Claimant provided detailed comments on the Consultation Document (pp 1032-1034), which broadly reflect the points she has raised in these proceedings where she has questioned the Respondent’s business case, the inclusion of the PMO Accountant role and asked why it was only her role being deleted and what selection criteria have been applied. She also suggested that savings might be made from reducing contractor costs.
168. On 17 December 2018 a further consultation meeting was scheduled to take place, but the Claimant was ill and did not attend. The Respondent went ahead anyway and on 17 December 2018 notified the Claimant that her role would be made redundant and given notice of termination of her employment (p 1049). Mr Moore responded to all the points that the Claimant had raised on the consultation. The Claimant was given the option of taking pay in lieu of two months’ notice after 31 December 2018 or working her notice period, albeit in a different role as her role would be deleted with effect from 31 December 2018.
169. The Claimant consulted solicitors at this point and there is a record (p 1074) of her lawyer having contacted the Respondent on 19 December 2018.
170. The Claimant in these proceedings complains that there were inconsistencies between Mr Moore’s reasoning as set out in the final version of the Consultation Document presented to her and the draft Mr Moore had previously prepared. We do not find the reasoning to be inconsistent and, in any event, it is immaterial since we are in the light of the evidence we have heard able to make the following findings of fact about the redundancy situation that had arisen:
 - (1) The Respondent had identified that £65k could be saved from its 2020 corporate finance budget if it deleted both the Claimant’s role and that of the PMO Accountant;
 - (2) This was more than the £44k original target for savings in corporate finance that had originally been set months (or, even, a year) previously, but it was still a genuine saving;
 - (3) The PMO Accountant role was a secondment from fund-raising, so it was due to finish in any event at some point, but it was not inappropriate to include it in the proposal so as to give clarity to the incumbent of that

role (Mr Easterbrook) and it did in fact represent a reduction in the corporate finance staffing spend;

- (4) Mr Moore's draft proposal for a new Level 3 Corporate Financial Planning Analyst role was not proceeded with. Instead, the Respondent decided to see how the finance department managed without any additional personnel for a period;
- (5) It was subsequently decided that additional support was necessary in the Planning department, which is based in Paisley and a new Level 3 role was created there which started in June or July 2019;
- (6) The tasks formerly done by the Claimant are now done by Ms Drake-Brockman. The new Level 3 role provides some limited assistance (Ms Drake-Brockman said 'about 25 minutes a month');
- (7) There were no alternative roles available for the Claimant in the finance department and the Claimant did not suggest that there was any other work that she could do.

171. We therefore find that this is a case in which, had we been required to determine whether a redundancy situation had genuinely arisen, we would conclude that it had since the Respondent genuinely had a reduced need for employees to carry out work of the kind that the Claimant had been doing. Further, we do not find that the Claimant's race played any part in the Respondent's reasons for identifying her post as the one to be deleted. There were other factors 'in play' here, but they were the performance and conduct issues that had been raised with the Claimant previously, and also and most particularly the breakdown in the working relationship with Ms Drake-Brockman. To the extent that Mr Moore was anxious to move matters forward in relation to the redundancy (including proposing to have a consultation meetings in November and December when he knew that the Claimant wished to take annual leave) this was because he was concerned about three factors: (i) the effect that the Claimant was having on Ms Drake-Brockman; (ii) the need to achieve the savings by the financial year end (31 December 2018); and (iii) a desire to achieve the dismissal of the Claimant before she reached two years' service and acquired rights to claim unfair dismissal. None of these were improper factors for him to take into account and they fully explain his actions. The Claimant's race was not a factor in his conduct of the redundancy process or the decision to dismiss the Claimant.

Redundancy appeal and events to termination of employment

172. On 24 December 2018 the Claimant appealed the dismissal decision, asserting that the dismissal was due to her race and the redundancy was not genuine. She also complained about the selection procedure. She pointed out that savings could have been made from other areas (p 1079). She said that the workload was significant and the role therefore still required. It is this appeal that is relied on the Claimant as her 'protected act' for the purposes of her victimisation claim.

173. By letter of 27 December 2018 (p 1082) the Respondent gave the Claimant the option of taking garden leave to the end of her employment or working her notice period. Mr Moore set out tasks that she could work on. However, the Claimant did not work on those tasks so was effectively on 'garden leave' from 31 December 2018.
174. Ms Slater-Carr was appointed to hear the Claimant's appeal against dismissal. A hearing was scheduled for 24 January 2019, but the Claimant was unwell, so the hearing was re-scheduled for 28 January 2019. On that date the Claimant was still unwell and notified the Respondent that she would send in written evidence. By email of 28 January 2019 Ms Slater-Carr gave the Claimant until 30 January 2019 to submit any further written evidence, specifically including "*any evidence you have to support your claim of race discrimination*" (p 1106). The Claimant did submit further evidence on that date (p 1115).
175. By letter of 12 February 2019, Ms Slater-Carr informed her that her appeal was dismissed. Ms Slater-Carr found the redundancy to be genuine and that there was no evidence at all presented that could support the Claimant's claim of race discrimination. She found the process followed to be reasonable and in line with the Respondent's policy.
176. Once the Claimant had ceased working in the Corporate Finance role on 31 December 2019 the Respondent took steps to remove her access to IT systems that she no longer had to deal with. The Respondent also disabled her access entirely at midday on Friday 15 January 2019 which was the Claimant's last 'working day'. As she was on 'garden leave', however, this should not have caused any difficulties. In any event, there is nothing improper about the Respondent's conduct in these respects and it had nothing to do with the fact that the Claimant alleged in her appeal that her dismissal had been discriminatory.
177. It is agreed that the Claimant's employment terminated on 17 February 2019.

Holiday pay

178. On termination of employment the Claimant was paid 61.5 hours in lieu of accrued but untaken annual leave, comprising her pro rata entitlement to 17 February 2019 (based on a contractual entitlement of 36 days, which is in excess of the statutory entitlement under regs 13 and 14 of the Working Time Regulations 1998), together with 35 hours carry-forward to which she was entitled under the Respondent's standard holiday policy.
179. However, the Claimant considered that she was entitled to additional carry-forward holiday based on emails that Mr Moore had sent to her after the Respondent was unable to approve a holiday request she had made for December 2018 because it needed her to be available to complete the redundancy consultation period. The material part of Mr Moore's emails of 3 and 4 December 2018 was as follows:-

I can confirm that it's ok for you to work at home during the consultation period (this week and the week commencing 10th December). This would mean, as you say below, that in the event of the proposed changes going ahead, all accrued holiday would be paid to you.

Regarding carrying forward holiday I also confirm that, should you be unable to use your remaining entitlement before the end of the year, in the circumstances we will allow you to carry forward outstanding entitlement (even if this exceeds 5 days, which is the standard policy).

180. The Respondent contended that because the Claimant had had the opportunity to use her holiday entitlement between 17 December (when the consultation period ended) and 31 December 2018 (when the leave year ended), she was not entitled to any additional carry-forward. The Claimant had understood the email meant she could carry forward all holiday unused from 2018.
181. This issue was put forward to us by the Respondent on the basis that the above email is to be regarded as a variation to the Claimant's contract. We have therefore approached it on the basis that we must construe the above email in accordance with normal principles of contractual interpretation, i.e. objectively from the point of view of a reasonable person having all the background knowledge that would be available to the parties. The subjective intentions of the parties are not relevant: see *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14.
182. In our judgment, the words "*should you be unable to use your remaining entitlement*" in the second paragraph of that email would reasonably be understood in context as "*if you do not use your remaining entitlement*". If the Respondent had meant, as it effectively now contends, "*you should use your remaining entitlement before the year end, but if we prevent you from doing so you may carry the holiday forward*", then in our judgment it needed to make that much clearer. This is because this is an email in which Mr Moore is refusing the Claimant's leave request for mid December and asking her to remain available for consultation. If he were expecting her instead to take holiday in late December, it really needed to be said in this email. Without that, and especially given that the first paragraph says that if the redundancy goes ahead all accrued leave will be paid to her, we do not think that anyone reading this email would reasonably understand that if the redundancy went ahead accrued leave would *not* be paid unless she had tried, but been prevented, from booking a holiday in the last two weeks of December.
183. We therefore find that the Respondent breached the Claimant's contract (and/or unlawfully deducted her wages) when it did not pay her on termination for all leave accrued in 2018 and not just the 35 hours that she was permitted to carry forward.
184. We do not, however, find that the Respondent refused to pay because the Claimant had complained about discrimination in her redundancy appeal. There is simply nothing to link these two matters at all and this was not victimisation.

ACAS Early Conciliation and these proceedings

- 185. The Claimant contacted ACAS on 18 April 2019 and the period of ACAS Early Conciliation ended on 14 May 2019.
- 186. The Claimant commenced these proceedings on 16 May 2019.
- 187. The Respondent submitted a response to the claim on 8 October 2019.

Overall Conclusion

- 188. For the reasons we have set out above, in our judgment:
 - (1) The Respondent did not discriminate against the Claimant because of her race contrary to ss 13(1) and 39(2)(c)/(d) EqA 2010;
 - (2) The Respondent did not harass the Claimant contrary to ss 26(1) and 40(1) EqA 2010;
 - (3) The Respondent did not victimise the Claimant contrary to ss 13(1) and 39(2)(c)/(d) EqA 2010;
 - (4) The Respondent did breach the Claimant’s contract and/or make an unlawful deduction from her wages contrary to s 13 ERA 1996 when it failed to pay her in lieu on termination for all her accrued but untaken holiday for the year 2018.
- 189. In the light of our judgment, there is no need for us to determine whether the Claimant’s claim (or any part of it) was out of time.
- 190. The Tribunal assumes that the parties will be able to reach agreement as to the payment to be made to the Claimant in respect of her outstanding holiday entitlement. If not, the parties should contact the Tribunal so that a remedies hearing may be listed.

Employment Judge Stout

Date 13 Feb 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON
17/02/2020.....
.....
FOR THE TRIBUNAL OFFICE