EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Ms Kaur	Wolverhampton City Council

AND

JUDGMENT OF THE EMPLOYMENT TRIBUNAL (V)

HELD AT Birmingham **ON** 2 – 17 February 2021
(in chambers 16 & 17 February)

EMPLOYMENT JUDGE Harding **MEMBERS**
Ms Outwin
Ms Davis

Representation
For the Claimant: In Person
For the Respondent: Mr Bryan, Solicitor

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1 The claimant's claim of direct race discrimination contrary to sections 13 and 39 of the Equality Act 2010 succeeds in relation to complaints 2.5, 2.10, 2.11, 2.12 and 2.13. The remaining complaints fail and are dismissed.

2 The claimant's claim of harassment related to race contrary to sections 26 and 39 of the Equality Act 2010 fails and is dismissed.

3 The claimant's claim of victimisation contrary to sections 27 and 39 of the Equality Act 2010 fails and is dismissed.

4 The claimant's unfair dismissal claim succeeds.

REASONS

Case summary

1 The claimant was a manager of the respondent's Impact team until her dismissal on 6 March 2019. The respondent asserts that the claimant was dismissed for redundancy following a restructure of the team which took place in 2018. The claimant asserts that her dismissal was an act of direct race discrimination, in the alternative victimisation. She disputes that there was a redundancy situation at all, maintaining that her role continued to exist and that the restructure was designed to achieve her exit from the Council. It is also her case that preceding her dismissal she suffered a number of other acts of direct race discrimination. Relevant to the background to this case, albeit not relied upon by the respondent as a reason for dismissal, was that the claimant was someone against whom a number of complaints had been made in respect of her interpersonal skills/ conduct towards colleagues. The claimant asserts these complaints were false. The respondent investigated these complaints under a grievance process and then a disciplinary process. The disciplinary process was still ongoing up until the claimant's dismissal.

The Issues

2 The claimant's claim form was lengthy but a concise list of the claims and complaints had been drawn up at a Case Management Preliminary Hearing on 24 January 2020. The list of claims and complaints was as follows:

The claimant describes herself as British Indian for the purposes of her race discrimination claim. The complaints of less favourable treatment are:

2.1 Following a complaint having been made against the claimant in April 2017 Ms McKeever spoke to the claimant about the complaint and did not allow her to give her version of events nor did she tell the claimant when the incident was alleged to have happened.

2.2 On 14 December 2017 Ms McKeever tried to encourage other members of staff to make complaints against the claimant.

2.3 In April 2018 Ms McKeever introduced a system of weekly 15 minute meetings with the claimant.

2.4 On 15 May 2018 Ms McKeever moved the claimant to the first floor away from her team.

2.5 On 31 May 2018 Ms McKeever deliberately and unfairly marked the claimant down in her appraisal and, during the appraisal meeting to give this feedback, shouted at the claimant and was abusive.

2.6 On 28 June 2018 Mr Orchard held a lengthy grievance meeting with the claimant during which he failed to explain to her what the allegations against her were.

2.7 There was substantial delay on the respondent's part in investigating and concluding this grievance against the claimant.

2.8 On 23 July 2018 Ms McKeever suspended the claimant.

2.9 On 14 August 2018 Mr Orchard held a disciplinary investigation meeting with the claimant. He failed to make clear to the claimant what the allegations against her were and added new allegations, and consequently the claimant had no opportunity to prepare.

2.10 On 12 September 2018 Denise Pearce told the claimant that her post was being displaced in a restructure.

2.11 The claimant was then put under pressure to take a voluntary severance package by Denise Pearce and Maria Marenda.

2.12 Ms Pearce told the claimant that the respondent would not investigate a grievance that she had raised on 4 December 2018.

2.13 The claimant was dismissed on 6 March 2019.

Harassment related to race

3 The claimant confirmed that all of the above complaints were also pursued as acts of unwanted conduct related to race.

Victimisation

4 The protected act upon which the claimant relies is a written complaint of discrimination that she made in December 2018 to the Head of HR, which was copied also to the Director of Education. The respondent conceded during the course of this hearing that this complaint was a protected act. The detriments which the claimant asserts were done to her because she made this protected act are;

4.1 Ms Pearce told the claimant that the respondent would not investigate the grievance that she had raised on 4 December 2018.

4.2 In February 2019 the claimant was given very little notice of the disciplinary hearing.

4.3 The claimant's dismissal.

Unfair dismissal

5 It is the respondent's case that the claimant was dismissed for redundancy. The claimant disputes this. She asserts that her role was not redundant. It is the claimant's case that the reason for her dismissal was either her race or because she had done a protected act. If this dispute is resolved in the respondent's favour the claimant will assert that her dismissal in all the circumstances was unfair. In particular it is her case that there was no fair procedure because there was inadequate consultation with her.

Evidence and documents

6 There was an agreed bundle of documents before us running to just short of 1,900 pages. There were also witness statements running to 151 pages. The claimant produced a 72 page witness statement and also shorter witness statements from Ms J Barlow, Mr S Toor and Ms N Kaur. Ms Barlow attended to give evidence, Mr Toor and Ms Kaur did not. For the respondent there were eight witnesses; Ms A McKeever, Head of Skills, Ms J Buckley, Development Officer, Ms S Prescott, Team Leader, Ms J Grocott, Systems Development Manager, Ms Lindup, Skills and Employability Manager, Mr R Orchard, Investigator, Ms D Pearce, Head of HR and Mr B Hague, Head of School Organisation.

7 The entire hearing was conducted by Cloud Video Platform (CVP). Occasional technical issues were encountered with witnesses/parties/members of the panel joining the hearing and on a few occasions witnesses/parties/members of the panel were without warning disconnected from the hearing. On each occasion when this happened the hearing was immediately paused (if the disconnection was noticed straight away) or a recap of the evidence took place when the affected individual re-joined. Additional days were added on to the original listing, in part because the amount of reading time had been substantially underestimated in the original timetable, and in part to ensure that the parties were not affected by any time lost as a result of these technical issues.

Credibility

8 It was a particular characteristic of this case that there was a very significant amount of factual dispute between the parties. This was the case not just in respect of conversations, and what had been said by whom and when, it also was the case in relation to minuted meetings, of which there were many. The claimant is a prolific notetaker and more often than not there was no common ground, or very little common ground, between the claimant's notes of a meeting and the respondent's notes or recollection of the same meeting. We have, of course, resolved these disputes where it has been necessary for us to do so. On occasion one of the factors that we took into account to help us resolve these disputes was our general assessment of some of the witnesses' credibility. We set these out below:

9 We did not find Ms McKeever to be a particularly credible witness. She struggled to answer questions directly during cross examination and there were, moreover, some inconsistencies in her evidence, a number of which we considered to be significant. For example in paragraph 32 of her witness statement Ms McKeever had stated that she did not know the specific detail of Ms Prescott's grievance against the claimant until her interview with Mr Orchard conducted in June 2018 as part of the disciplinary investigation. Yet Ms McKeever was in fact emailed a copy of the grievance by Ms Prescott on 3 May 2018, page 1748. When this inconsistency was first pointed out to Ms McKeever in cross examination, and it was put to her specifically that she had details of the complaint on 3 May (when the complaint was first made) and not in June, her response was a very vague and somewhat meaningless "it depends on your definition." When it was put to her again, with page 1748 in front of her, her response was "can we see the attachment to the email". When it was additionally pointed out to Ms McKeever that Ms Prescott had confirmed in her witness statement that she had sent a copy of her grievance to Ms McKeever, Ms McKeever then told us that "the detail is something I would not remember" explaining that she received between 60 and 70 emails a day. We rejected that evidence because Ms McKeever was able to recollect during her verbal evidence that she had heard informally from Ms Lindup that there were issues with the relationships between the claimant and key members of the Impact team, particularly Ms Prescott. And she was able to recollect the complaints about the claimant that were made via Ms Buckley. It seemed to us to be highly unlikely that she would not also have remembered the complaints about the claimant made by Ms Prescott in her grievance.

10 There was a further matter which we considered adversely impacted the credibility of Ms McKeever. With the agreement of the parties we had started and completed cross-examination of the claimant and her witness and, indeed, had started cross examination of some of the respondent's witnesses before we had read all of the respondent's witness statements. It only became apparent to us part way through the hearing, therefore, that the respondent had not led any evidence as to who the decision-maker was in respect of the claimant's dismissal. Yet this was the principal complaint before the tribunal. When we asked who the decision-maker was we were told it was Ms McKeever. Surprisingly, her witness statement was completely silent on this issue. There was no evidence in her statement to the effect that she was the person who had decided to terminate the contract of the claimant let alone evidence as to why she had reached that decision. Moreover, she had by this point given verbal evidence before us and had not mentioned it in her verbal evidence either. We considered this to be a significant omission. Ms McKeever was recalled in order to give her an opportunity to explain this omission and to give the claimant an opportunity to ask questions about the decision-making process concerning her dismissal. Even then Ms McKeever's evidence remained a concern because she seemed to find it hard to accept responsibility for making the decision. She

initially told us that she was present at the meeting where the claimant had been dismissed and that she thought the dismissal decision was made by the claimant herself when she chose not to apply for two available roles. Then she told us that HR tended to take the lead in restructures and keep line managers advised and it was Ms Manku from HR who had arranged the meeting and produced the dismissal letter. It was only when asked to confirm whether she was saying that it was HR who had decided to dismiss that she accepted that it was her decision.

11 Ms Grocott's evidence also needed to be treated with caution we considered because, it seemed to us, on occasion in her witness statement she deliberately set out to paint the claimant in an unduly negative light. For example she had stated in paragraph 8 of her witness statement that she emailed the claimant on the morning of 11 June 2018 requesting that the claimant send over a draft presentation and this was not received. In fact, as she herself accepted in evidence, it was received having been sent to her by the claimant on 12 June, page 297. Ms Grocott then told us that what she had meant to say in her statement was that the draft presentation was not received within the original timescale set, which was 11 June. In paragraph 9 of her witness statement Ms Grocott had said that by a meeting on 13 June the claimant had still not completed *any activity* (our emphasis) towards the presentation. This was wrong - the claimant had in fact sent Ms Grocott the draft, see above. Ms Grocott told us that what she had meant to say in her statement was that whilst the claimant had produced a draft presentation it was not what had been requested and changes needed to be made. But both of these statements were fundamentally different from what had been put in her witness statement, and far less negative.

12 We were also concerned about aspects of Mr Orchard's evidence. For example he had told us at paragraph 21 of his witness statement that "I have no information as to the reason for the placing the investigation on hold" (sic). This was a reference to his disciplinary investigation. Yet there was in the bundle at page 1808 an email from Mr Orchard to the respondent in which he said "matter (a reference to the disciplinary investigation) was put on hold for quite a while as there was a "conversation with JK". We also considered that he, in part, deliberately exaggerated the seriousness of some of the claimant's conduct, see paragraph 15.82 below for an example of this.

13 In fact our overwhelming impression of most of the respondent's witnesses was that they lacked a sense of balance about the claimant, were overly focused on the negative and strove to paint as bad a picture as possible about her. Ms Buckley, for instance, confidently asserted time after time in evidence that a member of the claimant's team, Ms Gibbons, went off sick with stress and anxiety caused by the claimant's bullying of her. She then repeatedly evaded a question as to how she knew Ms Gibbons was off sick with stress and anxiety caused by the claimant's bullying. It turned out that Ms Gibbons was in fact signed off with a flare up of her Crohn's disease but even then Ms Buckley remained determined to attribute the flare up to stress caused by the claimant's

treatment of Ms Gibbons. A further example of this is our comments about Ms Grocott above**.**

14 The claimant we found to be generally credible, one element of her evidence aside. Moreover, because she is someone who takes detailed contemporaneous notes of meetings, we often (but not always) considered these notes to be an accurate reflection of what had been discussed at these meetings. We found the claimant less persuasive when it came to the issue of her interpersonal skills/ conduct in the office, albeit we did not accept the respondent's characterisation of her conduct either, for which see more below.

Findings of Fact

Note; whilst the majority of our findings of fact are contained in the section that follows, some further findings, particularly those that also form a conclusion, can be found within the conclusions section of these reasons.

15 From the evidence that we heard and the documents we were referred to we make the following findings of fact:

15.1 Black Country Impact is a £51 million Youth Employment Initiative (YEI) funded in part by the European Social Fund. Five Black Country local authorities participate in the project. The aim of the project is to support young adults not in employment, education or training into opportunities that might include further education, training, apprenticeships or employment.

15.2 In November 2016 the respondent placed an advertisement for an Impact Project Coordinator. It was described as a role to lead, coordinate and manage the "Impact in the Black Country" project in accordance with European Social Fund (ESF) rules. The advertisement stated that the Coordinator would be expected to lead, coordinate and manage delivery of the overall project and partner activity against profile and use project management systems to manage spend and delivery against milestones. The advertisement stated that the Coordinator would be responsible for managing all project finances and monitoring performance against profile as well as managing the Impact team in Wolverhampton, pages 830 – 831. It was a management role, Grade 8, with a salary band of £41,551 - £45,242, pages 830 – 831. It was on a fixed term contract due to expire July 2018, which is when the ESF funding was scheduled to run out.

15.3 The claimant applied for the role and was successful. She started work with the respondent on 6 February 2017. In the job description it was stated that the role would report into the Head of Skills, who at the time was Angela McKeever, albeit the claimant was in fact told when she started with the respondent that she would report into Heather Clark,

Development Manager. Her job description stated that the main purpose of the role was “to ensure the successful delivery and management of the “Impact in the Black Country” project in Wolverhampton, ensuring compliance with ESF rules and regulations.

15.4 Oher principal duties set out in the job description were using project management systems to measure spend and delivery against milestones, expenditure and outputs, leading, coordinating and managing delivery of the project activity, preparing and implementing a detailed project business plan, developing a marketing and communications plan, developing SLA agreements and contracts, managing performance of external Partners, ensuring that management information and project reporting was accurate and timely and managing all project finances, pages 611 – 612. The job description also set out that the role would have managerial responsibility for the Impact Key Workers, the Impact Employer Engagement Officer, and the Impact Project Administrator.

15.5 The structure of the Impact team was as follows. Reporting directly into the claimant was Ms Sarah Prescott, a team leader, who managed seven Key Workers. The Key Workers are essentially the operational side of the project, they work with the young people to try to get them into education, employment or training. The claimant was not therefore responsible for the day to day management of this part of the team, this was done by Ms Prescott. Also reporting into the claimant was a Project Administrator, Carol Everitt, the Impact Administrator, Doreen Gibbons and Rachel Whalley, Data Quality and Monitoring. There was also an Impact Employer Engagement Officer, Julia Jackson Davis, but she reported directly into Ms McKeever, who was a managerial grade above the claimant.

15.6 The claimant, therefore, had ultimate managerial responsibility for both the operational and process sides of the Impact project, page 129. However, whilst the claimant had responsibility for both, the main part of her role was to deal with the following; commissioning, quality, compliance, finances, budget management for the team and what were termed claims. Claims arose as follows. The funding for the staffing costs of the team comes entirely from the ESF who pay the team on results – i.e. on their success at getting young people into employment, education or training. On each occasion that there is a positive outcome for a young person a claim will be submitted, supported by certain evidence, against which payment will then be made by the ESF. It was the claimant’s responsibility to submit these claims, as well as to manage the whole budget for the team.

15.7 The claimant and Ms McKeever met on the claimant’s first day at work. Amongst other matters the claimant was informed that the Impact

Administrator, Doreen Gibbons, had in the past not been properly managed and the claimant was told that she would need close and regular management. Ms McKeever also described a number of other difficulties within the team. It was made clear to the claimant that there needed to be an improvement in the project systems and procedures and that a key part of the role was establishing the monitoring and reporting systems to ensure compliance with the ESF rules and to make sure that the Lead Accountable Body, Dudley Metropolitan Borough Council, was provided with the necessary financial data. There was pressure on the claimant to bring about improvement, therefore, right from the start.

15.8 The claimant implemented weekly work planning with Ms Gibbons to try and improve her performance.

15.9 On 7 February the claimant met with Ms Gibbons. In a rather wide-ranging conversation Ms Gibbons told the claimant that the team was divided, page 83, and that she was p****d off because she had gone for a role and not been successful, and she said that she did not feel she was being supported or developed, page 83.

15.10 We do not find that from day one Sarah Prescott, who was newly promoted to the Team Leader role, undermined the claimant, in the main because the emails that the claimant took us to to demonstrate this, objectively speaking, did not show what the claimant alleged. For example, page 1528 was an email Ms Prescott had sent to Ms Gibbons following a meeting with her. Ms Prescott copied the claimant into the email. Ms Prescott recorded changes that she and Ms Gibbons had agreed would be made to flyers. She then stated “if all is okay, I will go ahead and introduce this to the team during Thursday’s meeting in anticipation of the flyers being completed?” She went on to say that she had compiled a list of some of the issues and ideas the team had suggested and asked if these could be looked at during an upcoming meeting. All of which we considered to be entirely normal interactions between work colleagues carried out with full visibility on the claimant’s part because she was copied into the email. Whilst we do not, therefore, find that Ms Prescott undermined the claimant from the outset we do find that the relationship between Ms Prescott and the claimant deteriorated quickly, for which see more below.

15.11 We in fact find that the claimant had a tendency to perceive that she was being undermined when that was not in fact so. By way of further example the claimant had complained at paragraph 8 of her witness statement that Ms Buckley had deliberately undermined her with external partners. Ms Buckley’s team carried out a support/compliance role for various ESF projects. Ms Buckley’s team had agreed with the teams that they supported that when purchasing low value items they would gather

evidence that they had searched for three separate prices for the item in order to be able to demonstrate that they had achieved best value. The claimant queried this with Ms Gibbons, who informed Ms Buckley of the query the claimant had raised. Ms Buckley then contacted Nicholas Alamanos, who worked for the Black Country Technical Assistance team providing legal advice for all the local authorities who were participating in the Youth Employment Initiative. In her email Ms Buckley explained who the claimant was, explained that to date the practice had been to collect three quotes and asked Mr Alamanos to clarify if this was needed, page 1666. The claimant asserted that this undermined her but objectively speaking this email amounted to no more than Ms Buckley, entirely appropriately, seeking advice given the query the claimant had raised about the practice that the respondent had so far adopted.

15.12 We find that the claimant's perceptions of being undermined, however, were genuinely believed by her and that this, most likely, quickly generated a somewhat defensive and distanced response from her to those that she considered were undermining of her. We base this finding in the main on Ms Buckley's oral evidence before us that after the incident set out above the claimant wanted little to do with her team

15.13 In March Ms Clark spoke to the claimant about concerns that she had with regard to Ms Gibbons' performance at work and about the fact that at a meeting Ms Gibbons had complained that she was too busy and working above her grade. On 24 March Ms Clark sent a draft email to the claimant which she proposed to send on to Ms Gibbons in which Ms Clark stated she had reviewed Ms Gibbons job description and was satisfied all her tasks were within the scope of her role and that certain activities which were not key to her job would be removed from her, page 94. Senior managers were therefore highlighting to the claimant their unhappiness with Ms Gibbons' performance at work.

15.14 By now the relationship between the claimant and Ms Gibbons was poor. The claimant, of course, was trying to performance manage Ms Gibbons, and we have little doubt that this placed a very real strain on the relationship and negatively affected Ms Gibbons' perception of the claimant. That said, on the balance of probabilities we accept the evidence of Ms Buckley and find that the claimant was at times very sharp with Ms Gibbons and could be dismissive, waving her away if Ms Gibbons asked a question, and we find that she had muttered the word "stupid" under her breath when reviewing work provided to her by Ms Gibbons. Ms Gibbons was upset by the claimant's behaviour and was often seen coming out of meetings with her in tears. We find that the claimant's attempts to performance manage Ms Gibbons tipped over into behaviour that was at times overbearing and difficult.

15.15 Ms Buckley also told us that Ms Gibbons had reported to her that whilst reviewing a piece of her work in a meeting the claimant had said "ahh this is full of mistakes – well she is blind after all" (Ms Gibbons has a visual impairment). We have no doubt that Ms Buckley believed that this comment had been made by the claimant but the more difficult issue for us was whether on the balance of probabilities the claimant had made this comment. No evidence was led by the respondent from any person who was asserted to have heard this comment, the respondent relied on the second-hand report from Ms Buckley. The claimant strongly denied ever having made such a comment. On balance, whilst we have an element of doubt, we find that the comment was made principally because there was a relatively contemporaneous complaint made about it by Ms Buckley on Ms Gibbons' behalf, meaning that Ms Gibbons must also have complained about it reasonably contemporaneously. We took into account also that whilst we considered the claimant to be generally credible we found her evidence less persuasive when it came to the issue of her interpersonal skills, for which see paragraph 15.16 below.

The claimant's interpersonal skills

15.16 The claimant's interpersonal skills were in fact a central feature of this case. The respondent's case in essence was that the claimant was continually rude, abrupt and dismissive with many of her colleagues. The claimant strongly denied all of the respondent's allegations and asserted she behaved appropriately at all times. We do not entirely accept either account. We accept Ms Buckley's evidence that the claimant would swear and use the F word in the office. We accept and find that she had a tendency to mutter and tut under her breath and that she could on occasion be dismissive of, and brusque with, colleagues, most likely we find when under pressure, which in this work environment was quite a regular occurrence. The claimant herself accepted in evidence that she did not do "the chitter chatter" and we think it likely based on this that the day-to-day niceties were sometimes forgotten by the claimant. We have little doubt that this did not endear the claimant to her colleagues. We also consider it likely that her tendency to distance herself from those she perceived to be undermining of her, paragraph 15.12 above, would have made matters worse. The claimant's comments to Ms Gibbons aside, which were clearly of a more serious nature, what we find was that there was low level but persistent rudeness/ inappropriate behaviour.

15.17 We make these findings because many different people reported poor interpersonal skills on the part of the claimant; Ms Buckley, Ms Lindup, Ms Grocott, Ms McKeever, Ms Prescott, Ms Pearce and Ms Everitt, and we thought it highly improbable that everyone would be mistaken about this, or even lying. We thought in particular that significant weight could be placed on what Ms Everitt had said about the claimant in

her grievance investigation interview with Mr Orchard, because it was evident from that interview that Ms Everitt had a balanced and measured view of the claimant. For instance, she described her own relationship with the claimant as good, and said that the claimant was very capable with a wealth of knowledge, page 1068. She described the relationship between Ms Prescott and the claimant as fraught, page 1070, but again did so in a balanced way, criticising not just the claimant but describing both the claimant and Ms Prescott as questioning what each other was doing and saying that Ms Prescott on occasion behaved like a petulant child, page 1070. Ms Everitt was also self-evidently not wholly supportive of management describing a meeting that Ms McKeever held with the team about the claimant in November 2017 as an "unprofessional witch hunt", page 1073. But she also said that the claimant had openly bullied Ms Gibbons, page 1073. She said that the claimant could be heard muttering under her breath moaning about emails from managers, page 1069, she stated that the claimant would "tut" at people, she described her as getting frustrated at work and she said that the claimant could be unlikable, page 1067. Ms Everitt said that she had seen the claimant be rude to senior management and that a lot of people found her unapproachable. She also said she had been told by a person external to the organisation that the claimant was "always moaning about her lot in Wolverhampton", page 1070.

15.18 In fact, we considered that these interviews, particularly where they were carried out with people who were, so far as we know, not directly involved in the main events with which this case is concerned, were a reliable source of evidence about the claimant. It was certainly notable that it was not the case that a consistently negative picture of the claimant was painted in these interviews – for example Rachel Whalley stated that the claimant was supportive and was professional and knowledgeable. She said she had no issues with her, page 1063. Likewise Ronnie Fray stated he had never had any issues with the claimant, page 1097. Additionally, individuals who were negative about the claimant often described much of the claimant's behaviour in very vague and general terms, and we considered that the descriptions of some of the behaviour, taken together with the frequent lack of specificity of complaint, demonstrated that her poor behaviour was generally low level. There was also something of an undercurrent in some of these interviews that Ms Prescott's behaviour could also be poor but that management tended to be more supportive of Ms Prescott than the claimant, see for example the interviews of Ms Everitt, Ms Whalley and Mr Fray. Taking all these factors into account we do not find that the claimant's behaviour was as serious as the respondent before us maintained it to be.

<u>The first informal complaint</u>

15.19 Ms Buckley, who also had a role as a Unison representative in the workplace, was at this time (March/April 2017) sitting in the same bank of desks as the claimant and Ms Gibbons. Ms Buckley quickly formed very strong views that the claimant was a bully, particularly in relation to her treatment of Ms Gibbons. She discussed the claimant's conduct with Ms Gibbons and also with two colleagues sitting at the same bank of desks; Martha Cummings and Catherine Perry, who also had concerns about the claimant's behaviour towards Ms Gibbons. She decided to ask for an informal discussion to be held with the claimant, Ms Perry, Heather Clark and herself. This duly took place, albeit the claimant did not accept any of the criticisms levelled at her.

Ms Buckley's second complaint

15.20 In the weeks that followed Ms Buckley considered that the claimant's behaviour did not significantly change. Ms Buckley spoke to HR and then on 28 April 2017 she submitted a dignity at work complaint on behalf of Ms Gibbons. Ms Gibbons was by this point leaving the respondent and she was not prepared to pursue a complaint herself but she did agree to Ms Buckley submitting it on her behalf. In the complaint Ms Buckley stated that the claimant had subjected Ms Gibbons to unpleasant behaviour and inappropriate comments and she stated that she had personally seen the claimant swearing and raising her voice in the office and tutting, page 104.

15.21 Once she had completed the form she emailed Martha Cummings, Ian Shelley (who also sat at the same bank of desks) and Catherine Perry and she wrote:

"I have spoken to HR and I am prepared to raise the issue with JK on the attached form. I have completed as much as I know, but I am asking you now to add in more details (you do not need to put your name) I just need quotes, with approximate dates. Then I will complete and send in my name", page 110.

15.22 As far as we know no further details were provided by anyone aside from Ms Cummings who emailed Ms Buckley to say that she did not have specific dates and times but that she had frequently seen Ms Gibbons distressed and she had witnessed the claimant mumbling and swearing while sitting at her desk and had heard her making comments to others about how Ms Gibbons could not do her job, pages 109 – 110. Ms Cummings is a childhood friend of Ms Gibbons and cannot therefore be considered to be independent.

15.23 Ms McKeever met with Ms Buckley and Ms Cummings on 8 May 2017. There was discussion about the complaint that the claimant had

muttered “stupid” under her breath when reviewing work provided to her by Ms Gibbons, about the complaint that she had said in a meeting about a piece of work done by Ms Gibbons “Ahh this is full of mistakes – well she is blind after all” and about the complaint that she has repeatedly used the F word in the office, page 107. It was further reported that Ms Gibbons had been asking for support in addressing her performance in the role and this had not been provided and that her health and well-being at work had deteriorated. No dates were provided to Ms McKeever in respect of any of the alleged incidents. Both Ms Buckley and Ms Cummings expressed a preference for the complaint to be handled informally in the first instance, page 107.

15.24 Whilst we find that Ms Buckley was looking at this issue very much from the perspective of the employee and not the manager (so, for instance, Ms Buckley did not accept that the fact that Ms Gibbons was being performance managed by the claimant might affect Ms Gibbons’ perceptions of the claimant’s behaviour and neither did Ms Buckley hesitate to rely on the views of a long standing friend of Ms Gibbons), we do not find that this was, as the claimant asserted, a vindictive and discriminatory crusade on the part of Ms Buckley to engineer allegations against her. We reject this firstly and most importantly because we have found that the conduct alleged against the claimant towards Ms Gibbons on the balance of probabilities had taken place. Moreover we took into account that Ms Buckley agreed that this complaint should be dealt with informally, which did not seem to us to be consistent with a vindictive and discriminatory crusade.

15.25 We do find, however, this as time went on Ms Buckley became increasingly frustrated with what she considered to be the respondent’s inability to deal with the situation properly and that led to her persisting in raising complaints about the claimant on behalf of others. We make this finding based on Ms Buckley’s oral evidence that the respondent was, in her view, too frightened to tackle difficult issues, from Ms Buckley’s admission that she next approached the respondent about the claimant in November 2017 when no formal complaints had been made to her but people had instead raised what Ms Buckley herself described as “niggles” about the claimant, and from the fact that the respondent felt it necessary to talk to the Unison branch secretary about the way Ms Buckley was approaching her role in the context of this issue, page 158.

<u>The 9 May meeting between the claimant and Ms McKeever: discrimination complaint one</u>

15.26 Ms McKeever met with the claimant to discuss the complaints on 9 May 2017. During the course of the meeting Ms McKeever informed the claimant of the three specific complaints made against her; use of the F

word, the comment about Ms Gibbons being blind and using the word stupid in connection with Ms Gibbons' work, page 112. We do not find that the claimant was not given an opportunity to give her version of events because we accept the evidence of Ms McKeever and find that the claimant denied saying what had been alleged, and hence she must have been given an opportunity to comment on the allegations. It is the case that the claimant was not given the dates when the conduct was alleged to have happened. The complainants had not been able to attribute dates to the conduct, paragraph 15.22 and 15.23 above, and accordingly Ms McKeever did not have the dates. The claimant was also informed at this meeting that she would now be reporting to Sue Lindup, who was appointed as Adult Skills Manager in June 2017.

15.27 Also reporting into Ms Lindup were Martha Cummings, the voluntary sector coordinator, Joseph Burley and Sukhminder Chalal, Skills and Employability Brokerage Officers and the Connexions Manager, Helyna Hrebiner who managed a team of NEET (not in education or training) advisers.

15.28 After the meeting Ms McKeever emailed Ms Buckley to confirm that the concerns had been raised. She stated that everyone was in agreement that this kind of language and behaviour was unacceptable and she was hoping a line could now be drawn under it and people could move on, page 966. Ms Buckley responded that she hoped that was the case and she hoped it would not come to making a formal complaint, page 966. We infer from this that Ms Buckley had already formed the view that if matters persisted as they were she would make a formal complaint about the claimant.

15.29 On 28 June 2017 Ms Lindup held a one to one supervision meeting with the claimant. During the course of this meeting she said to the claimant that there had been issues with two Key Workers who had left their positions and Council processes were being called into question on this and that they needed to be clear that everyone is treated equally, page 122. This was a rather oblique reference to the claimant's behaviour.

15.30 We accept the claimant's evidence and find that when Ms Lindup became her line manager she immediately *felt* (our emphasis) that Ms Lindup treated Ms Prescott preferentially to her, and in doing so undermined her. Whilst we find, based on the content of some of the grievance interviews, paragraph 15.18 above, that on occasion managers, including Ms Lindup, would be more supportive of Ms Prescott then the claimant, we do not find this happened to the extent suggested by the claimant, at least at this point in time (although this did change later, see below). Sometimes the claimant would perceive a slight when one was not there. For example the claimant complained that Ms Prescott was treated

differently to her with regard to the booking of annual leave in late 2017. Ms Prescott had notified Ms Lindup by email on 11 September 2017 that she had booked some annual leave for October, December and January, page 124(f), without any apparent response from Ms Lindup to this email. The claimant contrasted this with an email that she had been sent by Ms McKeever on 7 December 2017 in which Ms McKeever asked the claimant to send her details of the annual leave she had booked close to Christmas and to confirm that the leave did not conflict with any significant requirements of her role, page 1496. But the comparison was inapt; it involved two different managers (Ms Lindup and Ms McKeever) and moreover Ms McKeever had just a matter of days before received a complaint about the claimant, part of which was that she was booking leave when it was not always appropriate to the project to do so, page 148, for which see more below.

The Lindup appraisal

15.31 In November 2017 Ms Lindup held an annual appraisal with the claimant. Under the respondent's appraisal system the employee rates themselves against certain measures first of all and then the manager does the same. Before us the claimant complained that Ms Lindup had declined to score her against the core behaviour of positivity. Whilst Ms Lindup had not awarded her a mark for positivity it was evident from the appraisal document that the situation was more nuanced and balanced than the claimant suggested. Ms Lindup recorded the following in the appraisal document against positivity, page 142,

"we discussed the issues that had arisen with some staff in the council. It is clear that there had been differences of opinion and some staff had raised concerns about negativity. Jas felt strongly that she had no right to reply to these concerns. I think it would be unfair to appraise Jas simply on those cases and none of the options above (a reference to the scoring options which were; highly positive, very positive, sometimes negative and negative) allow for a clear management response on this".

15.32 There was also much about this appraisal that was positive; overall the claimant's performance was rated as more than satisfactory by Ms Lindup, pages 140 – 147. She was rated as more than satisfactory in respect of job knowledge, job skills, inspiring trust and confidence, demonstrating a tenacious attitude and encouraging teamwork. She was rated as well ahead of standard (the highest score available) in respect of punctuality and putting customers first. Ms Lindup added a comment to the claimant's appraisal; "Jas works well in the Impact team and has organised several team meetings and away days. She has also used her NLP experience to make these away days fun and interactive", page 143. At the end of the appraisal document Ms Lindup stated that the claimant

had worked hard to develop the service and ensure that it was compliant and meets deadlines and that she had been proactive in ensuring that the team had the necessary training required to complete paperwork to the appropriate standard and to ensure that the data scheme, exits and audit requirements are in place, page 145.

Ms Buckley's complaint about the claimant in November 2017

15.33 By this time a number of people had talked to Ms Buckley informally about the claimant. We find, based on Ms Buckley's oral evidence, that no serious matters were raised (Ms Buckley described people as raising "niggles") but people had said to her that the claimant was unfriendly, that there was an atmosphere in the office and that she would swear and mumble. People also reported that the claimant was frequently absent from the office.

15.34 Despite the fact that no formal complaints had been made Ms Buckley secured the agreement of several individuals that their comments could be passed on to management and she decided to request a meeting with Ms McKeever to discuss the claimant.

15.35 On 28 November 2017 Ms Buckley met with Ms McKeever. It was explained that following the issues being raised in May 2017 Ms Buckley had received several informal comments about management issues on the team and three members of the team had now agreed that Ms Buckley could raise these issues on their behalf, pages 148 – 149. It was said that the claimant was frequently absent from the office on TOIL or annual leave but with no notice to staff who were often working remotely and they would be unaware whether the claimant was available or not. It was said that the claimant was the only member of the team with a P card (which is needed in order to purchase equipment or materials for clients) and so it was imperative that the claimant be available. Examples were given of occasions when meetings with clients had been booked around the claimant's availability but the claimant had not then attended the meeting. Ms Buckley complained that no communication was given about annual leave or availability and she also stated that the claimant was booking leave in a manner that was not always appropriate to the project, such as booking two weeks leave over Christmas despite the fact that a claim was required in early January. Ms Buckley further complained that, in part as a result of the claimant's absences from the office and also her management style, junior members of the team were being left to do work that should have been done by the claimant. Ms Buckley complained that the claimant could be rude and aggressive to team members or ignore them completely and she said that she publicly criticised staff. Ms Buckley asserted that the claimant had left aggressive and rude telephone

messages accusing staff of incompetence and she stated that overall there was a culture of fear and reprisals.

15.36 Ms McKeever spoke to Baljit Basatia of HR. Ms Basatia advised that the usual procedure would be for the member of staff to be asked to raise any issues with their manager and she stated that given that the person being complained about was the line manager then a different approach was needed. We do not find, as Ms McKeever suggested in her evidence, that Ms Basatia advised that Ms McKeever should meet with the whole of the Impact team to discuss the issues. We reject this evidence because it was not consistent with the contemporaneous email that Ms McKeever sent to Ms Buckley on 12 December describing the advice that she had been given by HR, page 151. Neither was it consistent with Ms Pearce's evidence, which was that the advice from HR was that HR should meet with any affected individuals. Based on the email and Ms Pearce's evidence we find that Ms Basatia offered to meet the staff to hear their concerns, and she informed Ms McKeever that they should be told there was an offer of a confidential meeting with her, page 151.

15.37 Sometime after this email was sent, however, Ms McKeever decided that she would meet with the team herself.

15.38 On 14 December 2017 Ms Lindup had a meeting with both the claimant and Ms Prescott. She explained that Ms McKeever wished to hold a meeting with the Impact team later that afternoon to "see what the issues were". Ms Prescott objected to the claimant attending the meeting saying that the claimant should not be there, following which the claimant said she would not attend as it would not be conducive to staff if they had concerns to raise about her.

The Team meeting of 14 December 2017: Discrimination complaint two

15.39 We do not find that there was simply a general discussion during this meeting in which team members were reassured that if they had any issues they could raise them. We find, based on Ms Lindup's note of the meeting, page 155, that as an introduction Ms McKeever stated that it was not possible to change people or "work miracles" and that she understood it was difficult to raise issues about a line manager but that it was possible for people to approach other managers. We find based on the evidence of Ms Lindup and the witness statement of Sunil Toor that Ms McKeever then specifically asked questions about the claimant noting that there had been complaints made against her and asking if anyone wanted to provide details. She actively, therefore, encouraged people to make complaints about the claimant. The meeting then turned into a general discussion about the claimant with a number of team members commenting, some positively and some negatively, page 155. Shortly after the meeting two

colleagues, Rachel Southen and Julia Jackson Davies, went to see the claimant to tell her that they had "stuck up for her".

15.40 We find that the manner in which this meeting was conducted was totally inappropriate, given that matters of this nature are sensitive and should be dealt with confidentially, particularly as most of what had been raised about the claimant was no more than vague and generalised complaints. Indeed, it was notable that two members of the team, during the grievance investigation interviews, described this meeting as like a "witch hunt", pages 1063 and 1073. However, we also accept Ms McKeever's evidence and find that she was finding it hard to deal with the situation because Ms Buckley was persisting in raising complaints, but these complaints, when they were raised, were anonymous and lacking in detail and she felt that this made it hard to take decisive action.

15.41 We think it likely that this meeting marked something of a watershed in the respondent's relations with the claimant. Those who were inclined to view the claimant in a negative light were no doubt emboldened by management's approach; others felt that the respondent's treatment of the claimant was unfair. Factions developed. Pressure on the claimant grew. Ms McKeever started a chain of events running which seriously impacted the team dynamics.

15.42 In early January 2018 Ms Stephanie Dean approached the claimant and told her that Ms Buckley was actively seeking out complaints against her.

The change in management structure

15.43 Shortly after the December meeting Ms McKeever decided that she would take over line management responsibility for the claimant from Ms Lindup and that Ms Lindup would take over what was described as "matrix management" responsibility for Ms Prescott and the Key Worker team. Management of the Key Worker team was not a significant part of the claimant's duties. She was not directly engaged with the day to day running of the operational side of the team but would on occasion have a more strategic input into it, in so far as it was relevant to the compliance function, for example taking steps to ensure audit compliance for Key Worker files. Nevertheless, whilst a relatively small change, it did, we find, amount to a unilateral reduction in the claimant's management responsibilities. We find that the reason for the change was that there was concern about the claimant's relationship with Ms Prescott. The claimant was told at the time that the change was temporary.

The move to Impact 2

15.44 The first three years of funding for the Impact Project (referred to as Impact 1) was due to come to an end in July 2018. It was not known in early 2018 if the project would continue (it did, and the second phase became known as Impact 2) but in the hope and expectation that it would continue the management team started to discuss with the Impact team what had worked well with the current processes, areas where improvement was needed and what ideally would make things better. The first such discussion with the team took place on 6 February 2018, pages 178 – 182. We do not, for the avoidance of doubt, find that this was a redundancy consultation meeting because this assertion, made repeatedly by the respondent in various documents, and in evidence, was wholly contradicted by the contemporaneous document produced by the respondent recording what was discussed at the meeting. For example it was discussed under the category of what had worked well that there had been a reduction in NEET's in 16 – 18 year olds and that internal partner relationships worked well. Under areas for improvement matters such as the need for improvement in processes, improving the profile of the Impact team as a whole and the need for training were discussed. Under what the ideal would look like matters such as better use of IT and pre-apprenticeship roll on roll off programs were discussed. There were no discussions about any topics that might resemble redundancy consultation.

15.45 On 6 March 2018 Ms McKeever emailed the claimant saying that concerns had been raised with her about the way that she was talking to Ms Lindup and Ms Prescott, page 186. The claimant's response was that she was equally concerned to receive the email and she asked for a one-to-one, page 186. A meeting took place on 6 March during which the claimant was told that she was too direct, page 189.

15.46 On 15 March Ms McKeever held a one to one with the claimant. During the course of the one to one it was discussed that the claimant would be managed by Ms McKeever for the last seven months of Impact 1 and Ms Prescott would be managed by Ms Lindup, page 193. After the meeting Ms McKeever sent the claimant notes of the meeting which the claimant felt were not accurate. The claimant forwarded the notes to Denise Pearce, Head of HR, and asked for a meeting with her. They met on 29 March. We accept the claimant's evidence and find, taking into account our general assessment of the claimant's credibility, that during the course of this meeting the claimant told Ms Pearce that she felt Ms McKeever was acting in a discriminatory way and that if she said the word race it would be the end of her job with the Council.

15.47 Following on from this a meeting between the claimant, Ms McKeever and Ms Pearce was arranged for 6 April. The claimant raised with Ms McKeever that she had issues with Ms Prescott and Ms

McKeever's response was that Ms Prescott was highly skilled and well respected, page 212. We infer from this immediate rejection of the claimant's concerns and from how management dealt with the claimant when Ms Prescott subsequently raised a grievance against her, for which see below, that management (Ms McKeever, Ms Lindup and Ms Grocott) were by now consistently more supportive of Ms Prescott than the claimant. At the end of this meeting Ms Pearce told the claimant that she knew the claimant "did not do chitter chatter" and had a strong work ethic "but if you don't join in they'll isolate you and then I can't help you", page 212.

15.48 We accept Ms McKeever's evidence and find that by April concerns had been raised about the claimant by a number of members of staff, including Ms Lindup and Ms Grocott, albeit again only in generalised and vague terms. Ms McKeever was also informed that Ms Prescott had been in tears about the way the claimant had spoken to her. On 13 April 2018 Ms McKeever held a one to one with the claimant in which she told the claimant that a number of staff had complained about her communication style which was described as critical, abrupt and unfriendly. It was explained that staff had reported that she never said good morning to them. The claimant's response was that she didn't have time. Ms McKeever offered the claimant coaching but the claimant declined this saying that it was insulting, pages 985 - 986. Whilst the claimant accepted that she had declined the offer of coaching saying it was insulting, the remainder of the respondent's account of the meeting was disputed. We resolved this dispute in the respondent's favour because we considered that the claimant's own notes of that meeting lent some support to Ms McKeever's evidence, as they referred to a discussion about communication skills and style and being concerned about the claimant's perceptions of Ms Prescott, page 222. Additionally Ms McKeever's evidence was also consistent with her own notes of the meeting.

Discrimination complaint three: weekly meetings

15.49 That month Ms McKeever decided to set up weekly 15 minute meetings between the claimant Ms Lindup and Ms Grocott. We accept her evidence and find that she had concerns that there were the ongoing issues with communication, particularly between the claimant Ms Lindup and Ms Grocott, and she thought this might improve the operations of the team.

Ms Prescott's complaint against the claimant

15.50 By now both the claimant and Ms Prescott had formed increasingly negative views of each other. The claimant, we find, based on her own evidence, considered Ms Prescott to be belligerent, demanding and

undermining of her. Ms Prescott was, we find, prepared to ignore instructions from the claimant and go above her head to more senior management if she did not agree with a decision of the claimant's. For example Ms Prescott wished to be issued with a P card (on which purchases can be made for the young people working with the Key Workers) at a time when the claimant was responsible for the only P card on the team. The claimant and Ms Prescott discussed this and the claimant informed her that she did not want Ms Prescott issued with such a card and explained why this was the case. Yet on 28 November 2017 Ms Prescott had emailed Ms Lindup and Heather Clark asking for a P card, page 1649. Additionally when Ms Prescott had issues with a member of staff on her team around February/March 2017, Mr McGinn, she escalated matters not to the claimant but to Ms Lindup and Ms McKeever. We have little doubt that the claimant found this sort of behaviour difficult and challenging. Moreover, the claimant also considered that Ms Prescott was not fulfilling her role properly.

15.51 Ms Prescott on the other hand considered that the claimant communicated with her in an inappropriate way and was unfairly asking her to do more and more work. Then, in early April 2018, there was an incident which Ms Prescott took particular exception to. Ms Prescott had emailed her team setting out what needed to be done and who would be covering for her whilst she was away on a week's annual leave. The claimant had been copied into this email, page 216. The claimant considered that what Ms Prescott had set out was not what had been requested by her and she forwarded Ms Prescott's email onto Ms Lindup, copying in Ms McKeever. The email from the claimant comprised a terse message which started with no salutation in which she said "this is not what I had requested and it is not what we had agreed: the claim deadline is this Friday perhaps we can discuss when we meet next", page 216.

15.52 Ms Prescott was not copied into this email. Somewhat inadvisably, given the fraught state of relations, Ms Lindup showed Ms Prescott the email from the claimant on her return from holiday. This is another example of management supporting Ms Prescott to the detriment of the claimant. Ms Prescott was most aggrieved by the claimant's email. It was after this that Ms Prescott decided that she would collate a record of complaints against the claimant.

15.53 She did that over the next few weeks and then on 3 May 2018 she emailed a six page document, together with a number of attachments, to Ms McKeever setting out her concerns, pages 238 – 243. She was supported by Ms Buckley when putting together this document.

15.54 Ms Prescott complained that she felt there had been very little improvement in the claimant's behaviour since November 2017. We

interpose that Ms Prescott had not been privy to the meeting about the claimant between Ms Buckley and Ms McKeever in November 2017. She had obviously been informed about it, given that she made this comment, in what can only be described as a serious breach of confidentiality.

15.55 Ms Prescott described the claimant as rude and unprofessional, she complained that the claimant was unfairly criticising her work, she gave examples of additional tasks that the claimant was asking her to do on top of her normal role, she set out dates when the claimant had arrived late for work, dates when the claimant had cancelled meetings, and she also detailed various incidents involving other team members. She asserted that a colleague, Marcia Harvey, had been very distressed one day at work and when Ms Prescott raised this with the claimant she described the claimant immediately bringing up performance issues with Marcia Harvey rather than providing her with additional support. She described the claimant saying to Julia Jackson Davies in a meeting that she "didn't care about what she had to say" and she described what she termed as a "rude and very unprofessional outburst" by the claimant on 25 April 2018 when she abruptly said in a meeting that she was "fed up of all of this "ni ni ni" talking", mimicking a bird's mouth with her hands as she did so. She complained that the claimant had said, with reference to a previous audit that Ms Prescott was involved in, that it was "messy."

15.56 At the end of her document Ms Prescott stated that she would like senior managers to work with HR to tackle the claimant's behaviour. She stated that she understood that she could ask for this intervention from HR before making this a formal complaint, in the hope that the situation and relationship might be improved through informal action, page 243. In fact the respondent decided to treat this as a formal grievance and Ms Prescott was subsequently invited to take part in a grievance fact finding meeting with Mr Roger Orchard, whose job title was Independent Investigation Officer, on 21 May 2018.

15.57 The claimant was informed that a written complaint had been made against her by Ms McKeever on 14 May. She was informed, incorrectly, that the complaint had been made by a number of staff, page 258, and Ms McKeever said that she would be speaking to HR about next steps to make sure that what Ms McKeever described as the serious complaint was addressed properly. The claimant met with HR on 15 May and was informed that one named member of staff had made a complaint against her which would be investigated and shortly after this Ms McKeever handed the claimant a letter. In this letter it was explained that a complaint had been received from a member of the team about the claimant's alleged behaviour towards that member of the team and the rest of the team and that Mr Roger Orchard had been appointed to investigate the grievance under stage 1 of the respondent's grievance procedure. The

claimant was informed that she would be required to attend an investigatory meeting and that one potential outcome could be disciplinary action being taken against the claimant, page 263.

Discrimination complaint four: the claimant's move

15.58 Whilst handing the claimant this letter Ms McKeever also told the claimant that the advice from HR was that she, Carol Everitt and Rachel Whalley should be moved to the first floor in order to reduce tension. The next day, 16 May, the claimant moved in accordance with this instruction to the first floor (from the second floor) to sit at a bank of 8 desks. Her colleagues Ms Everitt and Ms Whalley did not in fact move with her. She was the only person sitting at this bank of desks and so sat in complete isolation. She moved just 2 days after the complaint by Ms Prescott had been submitted and before any investigation into it had been carried out, and she in fact never moved back to be co-located with her team. The claimant found the move distressing, isolating and humiliating. Some members of staff later approached the claimant to say that they were upset with the way that she was being treated.

15.59 The respondent's evidence as to who the decision-maker was in respect of this move was less than satisfactory. Ms McKeever told us it was HR who decided the claimant should be moved and Ms Pearce (from HR) told us it was line management who made the decision. On balance we think it likely to have been Ms McKeever, fundamentally because it is usually HR's role to advise and line management's role to make decisions based on that advice. Ms McKeever also told us she was advised by HR that it was normal procedure to move the person complained about. Ms Pearce likewise initially told us such a move was standard procedure. However when questioned further about this, and when specifically questioned on how many occasions she had known of this happening, Ms Pearce's evidence changed and it became that it was not standard but had happened "a handful of times", particularly when there was a bullying and harassment grievance. We accept that evidence and find that a move of the person complained about has happened on a number of occasions previously, but it is not standard procedure. What the circumstances of the move demonstrate, we find, is that by now management had little consideration for the claimant, in contrast to the support they were prepared to offer to Ms Prescott. We infer this from the timing of the move and from the fact that the claimant was made to sit entirely on her own and in complete isolation. The move publicly undermined the claimant's role with the rest of the team.

15.60 On 21 May 2018 Mr Orchard interviewed Ms Prescott in relation to her grievance, pages 905 - 921. She made a number of complaints against the claimant many of which, judged objectively, were effectively

concerning what might be considered to be low level rudeness or inappropriate behaviour. For example, Ms Prescott complained that when people approached the claimant she would say “not now I’m too busy”, or she would put a hand out towards a person to stop them talking. Additionally much of what Ms Prescott complained about was based on her perception that the claimant was targeting her. For example she complained that the claimant had deliberately arranged for a meeting on 16 April to take place between 11:45 AM to 1 PM in order to prevent her attending choir practice. Yet there was no cogent factual basis to support this allegation, Ms Prescott relied purely on the fact that meetings were often arranged for first thing in the morning or last thing in the afternoon. Indeed in relation to one specific complaint Ms Prescott herself acknowledged that some of what she was saying about the claimant was based on her perception not on any evidence that her behaviour was targeted at her, page 917. Ms Prescott did make some specific complaints about the claimant; for example she reiterated her complaint about the claimant failing to provide support for Marcia Harvey on an occasion when she had been upset. She stated towards the end of her interview that you would need “a book full of negative words” to describe the claimant.

15.61 Mr Orchard interviewed others in the weeks that followed. Ronnie Fray referred to there being a bad atmosphere on the team, he described the relationship between Ms Prescott and the claimant as volatile, page 1096, and said they did not get on, page 1095. He said that he had never had any issues with the claimant but found Ms Prescott unprofessional, page 1097. Ms Everitt described the relationship between the claimant and Ms Prescott as “fraught”, page 1070 and that Ms Prescott on occasion behaved like a petulant child, page 1070. She stated that she had a good relationship with the claimant, page 1067, but, as set out above, she also described the claimant as “openly bullying” Ms Gibbons, page 1073. She stated the claimant could be unlikeable and got frustrated at work, page 1067. Ms Whalley stated that there was “evident tension” between the claimant and Ms Prescott, they would take the opportunity to have “jibes” at each other, pages 1056 – 1057. She stated her own relationship with the claimant was positive, page 1063. We find, based on the content of these interviews, that it was evident to many of the team that Ms Prescott and the claimant had fallen out. Some people were negative about the claimant, some very positive. For example Ms Kaur, Lead Practioner for NEET, described the claimant as a “bit of a godsend. She has excellent knowledge of the contract. I don’t know what we’d do without her”, page 1225. Managers were more damming of the claimant. Heather Clark stated that there was always a negative atmosphere in the office when the claimant was in, staff appeared demotivated and she had never seen the claimant smile, page 1162. She stated that the claimant was “extremely miserable at work”, page 1160.

15.62 By May 2018 the funding extension for the Impact project had been agreed, meaning that the project would run for another three years. The claimant was informed that an extension had been agreed during a one to one with Ms McKeever on 30 May 2018, pages 266 and 268.

Complaint 5: the appraisal May 2018

15.63 On 31 May 2018 Ms McKeever carried out an appraisal with the claimant. Whilst normally appraisals are carried out yearly the Impact team had recently been moved across into the Education Directorate and Ms Teasdale, the Education Director, had instructed that appraisals should be carried out for all the team straightaway to bring them in line with the Education Directorate. We find that in relation to performance monitoring and re-profiling of targets Ms McKeever told the claimant "it's all minimal and there is no record of what you've done you are grossly underperforming", page 247. In relation to raising profile Ms McKeever told the claimant that she struggled with being positive and that she (Ms McKeever) had heard numerous reports of the claimant being critical; "being positive is about finding solutions and I say you're less than satisfactory and need improvement and need to understand the role of a manager", page 248. We do not find that Ms McKeever shouted at the claimant because the claimant did not lead any evidence to this effect. We have preferred the claimant's account in relation to these comments having been made because the claimant took contemporaneous notes of the meeting which corroborated her evidence, and we also took into account our assessment of the credibility of the claimant and Ms McKeever.

15.64 Turning to the detail of the appraisal itself, Ms McKeever only gave the claimant a score in relation to putting customers first; rated as more than satisfactory, raising the profile, rated as less than satisfactory, demonstrating a can do and tenacious attitude, rated as more than satisfactory and inspiring trust and confidence, rated as less than satisfactory, pages 277 and 278. She also recorded a comment in relation to inspiring trust and confidence that there had been numerous issues throughout the year involving problems with communications with other staff.

15.65 Ms McKeever did not give the claimant an overall appraisal rating and in fact did not give her any mark at all for four of the individual performance measures. Areas such as job knowledge and job skills were not appraised at all. This was a surprising omission given that, as Ms McKeever herself repeatedly told us, the claimant from a technical skills point of view was "OK/good" and given that Ms McKeever, as she also told us, was basing her appraisal of the claimant's performance mainly on the functioning of the team and the project, which was going well. Ms

McKeever therefore chose not to rate the claimant on most of the positive aspects of her performance. Instead she recorded in relation to job knowledge, job skills and punctuality that the claimant was required to provide evidence of her performance throughout the year, page 276, and against encouraging teamwork she commented that she lacked examples and evidence and additional information might be provided by the claimant to give examples of this, page 278. This requirement for the claimant to evidence her performance in order to achieve any mark in these areas was made despite the fact that Ms McKeever had visibility, as she herself told us, of about 60 – 70% of the claimant's work and despite the fact that the team was performing well, which as set out above was one measure of the claimant's performance. Accordingly, we find Ms McKeever was in a position to mark the claimant against these measures. Given the harsh nature of the verbal comments made and the failure to appraise the claimant on most of the stronger aspects of her performance, we accept the claimant's evidence and find that Ms McKeever harshly criticised the claimant during this appraisal and gave the claimant an unduly negative appraisal. The claimant was extremely upset by this appraisal and left work in tears.

15.66 As set out at paragraphs 15.31 – 15.32 above, the claimant's previous annual appraisal had been carried out just six months earlier in November 2017 by Ms Lindup. She had received a good appraisal on this occasion. Ms Lindup had awarded her an overall rating of more than satisfactory and the lowest rating she received against an individual measure was more than satisfactory with some measures rated higher, including well ahead of standard.

15.67 On 7 June 2018 Mr Roger Orchard emailed the claimant concerning the investigation into the complaint made by Ms Prescott. He stated in his email that the respondent had received a grievance (which was not of course entirely accurate; the respondent had received a complaint, which was not described as a grievance, and which the complainant had asked to be dealt with informally, see above). He stated that the grievance related to "a number of concerns about the claimant's management style and interaction with colleagues", page 294.

15.68 He explained that the normal procedure is to give an employee seven days notice of an investigatory fact finding meeting and he said that he was more than willing to give that notice if required but that he did have availability to meet with the claimant on Tuesday 12 June if she was available and consented to the shorter notice, page 294. He informed the claimant of her right to be accompanied.

15.69 On 18 June there was an informal consultation event for the Impact team to discuss the design and function of Impact 2. It was not, however,

a consultation meeting in relation to any proposed or possible redundancies, it was a meeting to look at how the team could improve.

15.70 On 19 June Mr Orchard emailed the claimant inviting her to attend a grievance investigation meeting to take place on 28 June, page 315. Once again the only detail provided in the letter in relation to what was being investigated was that there were a number of concerns about the claimant's management style and interaction with colleagues. By this time Mr Orchard had carried out interviews with 16 individuals. The interviews were somewhat lacking in structure and Mr Orchard's interviewing style tended to be somewhat vague. He would ask questions such as "are you aware of JK causing anyone distress," page 1051. This questioning style, combined with the number of people interviewed, in turn meant that Mr Orchard had by now amassed a large body of information, some of which concerned specific incidents but much of which was no more than a generalisation "she sits hunched at her desk," "she can be rude" etc. He did not attempt to structure this into something more coherent before his meeting with the claimant. No matter how vague or generalised the complaint made about the claimant Mr Orchard considered that it was something that he could put to the claimant, see below.

15.71 Relations between the claimant and Ms Prescott in the meantime continued to deteriorate. In late June the Impact team were awarded a certificate for outstanding team performance at the yearly "star awards," which was sent to Ms Prescott. Ms Prescott emailed the Key Worker team, copying in Ms McKeever and Ms Lindup, informing everyone of the achievement and thanking people for their hard work, page 322. She excluded members of the claimant's part of the Impact team from the email, albeit she did copy in the claimant. This provoked a somewhat sarcastic response from the claimant to her own team members querying whether they were the core team, page 321.

<u>Complaint 6: The grievance investigation meeting 28 June</u>

15.72 On 28 June the claimant's grievance investigation meeting took place, pages 1268 - 1292. The claimant was accompanied by a colleague, Ms Jan Barlow. Mr Orchard took notes of the meeting and he was accompanied by Jas Manku from HR. The meeting lasted for two hours. The specifics of the complaints that had been made against the claimant were not explained to her at the start of the meeting although we accept the respondent's evidence and find that the claimant was told that the meeting concerned a grievance raised by Ms Prescott. We do so because this is what was recorded in the meeting notes, page 1268, and the claimant made no amendments to this part of the notes when given the opportunity to do so, despite making copious amendments elsewhere.

15.73 During the meeting Mr Orchard asked the claimant a large number of rather vague and unstructured questions. For example she was asked whether she engaged in normal day-to-day exchanges with colleagues, “hello, good morning and that sort of thing”. The claimant responded that she did the normal pleasantries when she saw her team, good morning, good afternoon but that she did not do “chitter chatter”, page 1272. She was asked whether she dealt with phone calls and emails using good interpersonal skills “where normal civility is maintained” and responded that she did. She was asked whether she was always open to approaches from staff, was she self-aware and open even in difficult situations. She responded that she was. She was asked whether she saw the need for professionalism at engagement meetings and she said that she did, page 1273.

15.74 However, specific incidents were also put to the claimant; for example she was specifically asked about the incident with Marcia Harvey. She was asked about the meeting that she had called on 16 April 2018 and whether she had set the meeting at the time that she had in order to prevent Ms Prescott attending choir practice, and she was asked whether she had told Ms Prescott that she could not attend the “health champions” and “spring into action” training courses, pages 1279 - 1280. There was a discussion about audits and she was asked whether she had openly referred to the previous audit that Ms Prescott was involved in as “messy”, page 1281. In fact there was a detailed discussion about this audit. It was put to her that she used the F word in the office, page 1284. She was also asked whether she had muttered under her breath about staff, making references to staff as stupid, page 1284.

15.75 The vague questions, however, also continued. “Did she feel that she was the sort of employee that raised the mood in an office or the opposite” and “was she a snappy person”, page 1285 (the claimant described herself as direct not snappy).

15.76 The claimant was asked if she wanted any witnesses to be interviewed as part of the investigation. She put forward five people all of whom were interviewed by Mr Orchard. The last interview took place on 25 July 2018.

<u>The Skills Team Away day 4 July 2018</u>

15.77 On 4 July the respondent held a Skills Team away day. An organisational chart was produced for it. So far as the Impact team was concerned the seven Impact Key Workers were shown on the chart as still reporting into the Impact team leader, Ms Prescott. Ms Prescott was shown on the chart as reporting directly into the Employability Skills Manager, Ms Lindup. The claimant was shown on the organisational chart

with only three direct reports, the Impact apprentice, Carol Everitt the Impact Project Administrator and Rachel Whalley, Impact Data Quality and Monitoring, page 328f.

15.78 Whilst this structure reflected the arrangement that had been in place since early 2018 the claimant had been informed at the time that the change was temporary and there had been no consultation or discussion with the claimant about this becoming a permanent arrangement. As set out above whilst management of the Key Workers was not a significant part of her role the removal of this did still amount to a reduction in responsibility for her.

15.79 On 12 July 2018 Ms Grocott emailed the Impact team informing them that a feedback session would take place on 20 July to discuss the action plan for the team going forward, page 358. An agenda for the meeting was sent out. Included in the agenda were slots for presentations on performance (by the claimant), Finance (Ms Everitt), Quality (Ms Prescott) and Commissioning (Gurbaksh), who was from Dudley LAB (Lead Accountable Body).

15.80 In a meeting with the claimant on 18 July Ms Lindup acknowledged that the claimant's work stream for this feedback session was not finished and she told the claimant that she was not expecting it to be finished. Ms Lindup said to the claimant that for the purposes of her presentation she was happy for the claimant to use a slide prepared by a colleague, Joe Burley page 367.

The Verto red risk

15.81 On 19 July 2018 Ms Lindup emailed the claimant asking her why she had created a red risk on the respondent's Verto system. The claimant had recorded that claim nine might not be submitted on time due to other work on planning for Impact 2 that had been requested, page 372. The entry had been made by the claimant as a risk against Ms Grocott's name in June, page 374. The claimant had written in the risk register that the core team would have to manage significant pressure and highlight any support required. A red risk entry automatically generates an alert to the senior management team. Ms Lindup and Ms Grocott had first noticed the red flag about a week prior to 19 July but had done nothing about it at that time save for agreeing that the claimant would be asked to remove the red flag. Ms Lindup asked for the entry to be removed in her email to the claimant of 19 July, page 372.

15.82 We reject the respondent's evidence that this entry was "malicious", which we considered to be deliberately overstating matters, and we also reject the respondent's evidence that the claimant's actions with regard to

Verto were something that brought the respondent into disrepute. When Mr Orchard was asked to explain this he told us that he had been advised that it might be possible for a member of the public to obtain a copy of a red report via a Freedom of Information Act request. It seemed to us to be highly unlikely that the respondent would genuinely have considered there to be a significant risk that a member of public might request a copy of the risk register for the Impact team under a Freedom of Information Act request but even if the respondent considered that there was a chance that this might happen it was not clear to us why disclosure of this would bring the respondent into disrepute. We asked Mr Orchard that question and his response was that he did not know why it would bring the respondent into disrepute. When it was pointed out to him that he had said in his witness statement that it would bring the respondent into disrepute his response became that the red flag identified Ms Grocott as the person who was putting the project at risk. Which might well have informed us as to why Ms Grocott was upset about the entry but failed to answer the question as to how it could possibly be said to be something which brought the respondent into disrepute. We also reject the respondent's evidence that this was such a serious matter that it amounted to gross misconduct. Had it done so we have no doubt that Ms Lindup and Ms Grocott would have acted on it as soon as they saw it, which they did not, paragraph 15.81 above. We considered this to be an example of the respondent deliberately exaggerating the seriousness of the claimant's actions both for the purposes of the disciplinary case and for the purposes of this hearing.

15.83 We do, however. accept the respondent's evidence and find that this was an inappropriate use of the risk register - effectively the claimant was using it to vent her ongoing frustrations at the under resourcing issues which it was not disputed were affecting her part of the Impact team.

20 July 2018 meeting

15.84 As set out above on 20 July 2018 a meeting, which was a feedback session on planning for Impact 2, was scheduled to take place. There were mainly internal attendees for the meeting but there was one external attendee from Dudley LAB. A pack of presentation slides was produced in advance of the meeting, pages 405 – 424. On the first page was an agenda. According to the agenda each person in charge of the four Impact team workstreams was to give a presentation. The claimant was allocated 5 minutes for her presentation, the presentations on finance, quality and commissioning were all allocated 20 minutes, page 406. On balance we accept the evidence of Ms Grocott and find that the reason why the claimant was allocated only 5 minutes for her presentation, compared with 20 minutes for her colleagues, was that whilst it had been agreed that the claimant would prepare something for the meeting it had also been agreed

that she could continue to work on her work stream the week following the meeting, and thus at this point she was effectively only presenting on a small part of her work area.

15.85 On a page headed “sign off procedures” the following had been written; “send to JK if available or alternative when appointed”, page 422. On balance, whilst we had an element of doubt, we accept the respondent’s evidence and find that what was meant by these words was that the respondent was going to appoint a second person to also be responsible for sign off, not that the respondent was appointing an alternative person to fill the claimant’s role, as the claimant suggested. We accepted the respondent’s evidence because in cross examination Ms Lindup and Ms Grocott were consistent as to what the meaning of these words was.

15.86 There were very differing accounts given of the meeting of 20 July, from the claimant on the one hand and Ms Lindup and Ms Grocott on the other. We considered, however, that the most reliable account of that meeting was provided by neither the claimant, Ms Lindup or Ms Grocott but by Ms Everitt during her interview with Mr Orchard on 2 August. As we commented earlier in these reasons it is evident from that interview that Ms Everitt had a balanced and measured view of the claimant, and accordingly we considered her account could be relied upon.

15.87 Based on Ms Everitt’s interview we find that the claimant was very angry during the meeting, and could be heard muttering under her breath and banging her pen on her notebook, page 1079. She was rude to both Ms Lindup and Ms Grocott and interrupted Ms Grocott rudely. She sounded aggressive and Ms Everitt was embarrassed, moving her chair away from the claimant. When it came to the claimant’s turn to present she stated that she had not had time to prepare anything. Ms Grocott put up the slide that had been prepared for the claimant’s slot and asked the claimant to talk everyone through the process. She dismissed that as a suggestion and did not say anything about what she had been tasked to present. She was visibly angry and frustrated.

15.88 Very soon after the 20 July meeting, we know not exactly when, Mr Orchard was requested by Jas Manku from HR to provide a summary of the grievance investigation. He sent this to Ms Manku on 23 July, page 1766 – 1767. He had not completed all of the grievance interviews at the time when he sent this summary. He reported that many people who worked directly with the claimant had expressed issues with her style and interpersonal skills. Others were positive, he said, but these people did not tend to work with the claimant directly.

The claimant’s suspension

15.89 On 23 July 2018 the claimant was informed by Ms McKeever that the Director of Education, Meredith Teasdale, had decided to suspend her pending an investigation. The claimant was told that the suspension related to the 20 July meeting. The claimant received a letter the next day, page 398, which stated that she was suspended with immediate effect due to allegations of gross misconduct which were described in the following terms;
Breach of the Council's core behaviours as contained in the code of conduct for employees in relation to;
Treating colleagues with dignity and respect, and
Inspiring trust and confidence.

15.90 It was stated that this related to several alleged incidents and behaviours some of which were currently being investigated as part of the grievance procedure, as well as more recent incidents which may amount to;
Undermining of colleagues,
Refusal to perform agreed task in meeting,
Bringing the Council into disrepute.

15.91 The claimant was informed that the suspension was "without prejudice" and that the investigation would be conducted by Mr Roger Orchard. He, of course, was the person responsible for investigating the grievance against the claimant.

15.92 The respondent therefore decided to include as part of the disciplinary case matters raised by people in the grievance investigation and did so whilst the grievance investigation was still ongoing.

15.93 The claimant acknowledged receipt of the suspension letter by email dated 24 July and she asked for specifics of the alleged incidents and behaviours, page 401. The response from Ms McKeever was that there was a process to follow and details of the complaints needed to be gathered, page 402. She did reiterate, however, that the incident referred to the meeting on the previous Friday.

15.94 On 6 August 2018 the claimant received a letter from Mr Orchard inviting her to attend a disciplinary investigatory meeting to be held on 14 August, pages 425 - 426. She was informed of her right to be accompanied. With regard to the potential disciplinary charges the letter simply set out the exact wording that had been used in the suspension letter, see paragraphs 15.89 – 15.90 above.

15.95 The very broad and vague description of the potential disciplinary charges meant that, the meeting of 20 July aside, the claimant had to

attend the investigatory meeting with no real idea of what specific incidents on which dates involving which people were being investigated. Moreover, we find that Mr Orchard himself had not at any stage considered or identified which of the incidents that had come to light during the grievance investigation he was now investigating as part of the disciplinary case. We base this finding on Mr Orchard's oral evidence that there was no document which existed identifying the particular incidents from the grievance investigation that were included within the disciplinary investigation, and on the fact that he was also unable to explain this to us verbally. As we set out at paragraph 15.70 above, what the respondent had at this stage from the grievance investigation was a huge mass of information, generated from numerous interviews, much of which contained no more than assertions or broad and vague generalisations about the claimant's behaviour (such as she could be rude or dismissive). That said, as we have already set out at paragraph 15.70 above, Mr Orchard did not consider this to be any bar to him treating this type of information as part of the disciplinary case. He considered that all the negative conduct that had been described to him fell within one or other of the very broadly worded potential disciplinary charges set out in the claimant's suspension letter, and that no further clarity was needed. Mr Orchard considered that what the claimant needed to be informed of at this stage was the broad allegations as set out in the letter, and nothing more.

Disciplinary investigation meeting 14 August 2018

15.96 Mr Orchard was accompanied by Jas Manku from HR and the claimant was accompanied by her work colleague, Jan Barlow. Both the claimant and Ms Barlow took copious notes during the meeting.

15.97 Mr Orchard started the meeting by asking if the claimant objected to the use of her grievance investigation meeting notes within the disciplinary process or whether she would want the same questions asked again, page 1297. The claimant's response was to ask what the specific allegations were, which ones were currently being investigated and which ones were said to constitute gross misconduct. She stated that by not informing her of the specific allegations in advance of the meeting her ability to prepare and contribute meaningfully had been significantly limited, page 1297. The claimant asked Mr Orchard to explain how the notes of the previous grievance meeting related to this disciplinary hearing and he responded that the allegations were part of the grievance and the disciplinary and it would save a lot of time not to have to ask the questions again. The claimant's response to this was that she did not understand because the grievance investigation was still ongoing. The claimant was asked twice more whether she objected to the notes of the grievance meeting being used or would she like Mr Orchard to ask the same

questions again, and both times the claimant queried what the allegations against her were. Ms Manku interjected at that point saying that "it was fine." Ms Manku did not explain what she meant by this but it seems that the respondent then decided that the grievance investigatory notes would form part of the disciplinary hearing and the questions concerning complaints that had been made about the claimant's behaviour in the grievance interviews were not put again. Mr Orchard did not make clear to the claimant which allegations arising out of the grievance investigation now formed part of the disciplinary case. He was unable to do so because he had not done that himself, paragraph 15.95.

15.98 Mr Orchard then asked the claimant some detailed and specific questions about the meeting on 20 July 2018, in particular about whether she had refused to give her presentation. In addition he also asked, for example, whether she had been angry in the meeting and had banged her pen on her notepad, page 1303. The claimant maintained that she had presented at the meeting and denied the other behaviours put to her, pages 1307 and 1308**.** She was also asked about the red warning she had put on the VERTO system and about naming Ms Grocott as the risk owner without informing her she had done this. This interview was the first time that the claimant had been made aware that this specific issue was under investigation. Mr Orchard considered that this allegation fell under the charge of undermining colleagues, as set out in the claimant's suspension letter, and that as this allegation fell under this charge no further information about it need to be provided to the claimant in advance of the hearing. There were detailed discussions about the red flag, pages 1308 – 1313. The claimant was also told that both Ms Grocott and Ms Lindup had said that they could no longer work with her, page 1315.

15.99 The very next day, 15 August 2018, Mr Orchard emailed two of the respondent's HR advisers and said this:
"a very large scale investigation that was once a grievance has now become a disciplinary we are at the very end of it now and I have no doubt it will become a hearing. There may well be a "conversation" with the employee, page 1808". We infer from this that internal discussions were by now underway about the claimant's future with the respondent.

The Restructure

15.100 On 20 August 2018 restructure proposals for the Impact team, pages 653 – 663, were discussed and approved at two Leadership team meetings; the joint People Leadership team and the Education Leadership team. Whilst Ms Lindup had done much of the work on the re-structure proposal it all fell within Ms McKeever's ultimate area of responsibility as she was Head of Skills, page 328(f). Once the proposals had been approved work then started on reviewing job descriptions and consulting

with the union. All the Impact team bar the claimant were written to on 31 August and invited to attend a consultation meeting to take place on 12 September. They were told that during the meeting there would be discussions around the proposed changes, the reason for the proposed changes, how the proposals might affect individuals, the process to be followed and timescales, and alternatives to the proposed changes, page 705.

15.101 It was decided that the Key Workers and their team leader, Ms Prescott, would continue to report into the Employability Skills Manager Ms Lindup. It was further decided that additional resource would be given to the side of the team which dealt with performance management, quality, commissioning, finance and monitoring of obligations to ensure compliance with ESF rules and regulations, – i.e. to the claimant's side of the team, page 656. In fact we find, based on Ms Lindup's verbal evidence, that one of the purposes of the restructure was to enable the respondent to provide additional resource to this side of the team.

15.102 As set out above, up until now performance management, quality, commissioning, finance and monitoring of obligations had all been dealt with by the claimant, the Impact Project Administrator, Ms Everitt and Rachel Whalley, the Data Quality and Monitoring Officer, with some assistance from an apprentice. It was decided that the three substantive roles would be deleted and replaced with four substantive roles; Project Compliance Coordinator, which was graded at G7, Project Compliance Officer, which was graded at G6, (both managerial roles) Quality and Commissioning Officer and Finance Officer, page 657. Across the Impact team as a whole a further substantive post was deleted, namely Employer Engagement Officer and a new post was created of Impact Progression and Sustainment Officer. In total therefore four roles were deleted and five roles were created. Some changes were also made to the job descriptions for most of the roles.

15.103 The roles in the new structure were all evaluated and graded. The outcome of this was that all staff affected by the restructure, bar the claimant, were what the respondent terms "assimilated" into the new structure i.e. they were automatically placed into one of the roles within the new structure. The respondent's criteria for assimilation is that the role in the new structure is at the same grade as the old role and there is at least an 80% match between old and new role in terms of responsibilities and functions. The claimant was informed that she could not be assimilated from her Project Coordinator role into the Project Compliance Coordinator role because this was graded at G7 whereas her existing role was G8.

15.104 We accept the claimant's evidence and find that the role of Project Compliance Coordinator was to all intents and purposes exactly the role that the claimant had been carrying out in 2018 and that the respondent had simply re-named her old role. We make this finding for the following reasons. The role had responsibility for performance of the Impact team – i.e. delivery against targets, as the claimant had. It had responsibility for finance - both submission of claims and overall budget management for the team, as the claimant had. It had responsibility for quality, namely quality of the Key Worker files and documentation, making sure it was in line with ESF requirements and dealing with audits to ensure the same, as the claimant had. It had responsibility for commissioning; i.e. placing contracts with external providers, as the claimant had. Lastly it had responsibility for ensuring compliance with ESF rules, as the claimant had, page 633.

15.105 We accept the claimant's evidence in this regard because it was consistent with the Impact Project Compliance Coordinator job description, in particular the description of the job purpose and role, page 633. We also took into account the verbal evidence of Ms Lindup. When describing the changes to the role she told us that there was a change in the job title of the role from Project Coordinator (the claimant's role) to Project Compliance Coordinator and that the job description for the Project Compliance Coordinator role was changed to make it clearer what the *existing* (our emphasis) areas of responsibility for the (Project Compliance Coordinator) role were. Accordingly neither of these were actual changes to the role at all. Ms Lindup did also eventually identify as a change that ultimate managerial responsibility for the Key Worker team was not part of the Project Compliance Coordinator role, but this change had in fact already been implemented in early 2018, see above. Moreover we have accepted the claimant's evidence that this was a relatively small part of her original role, paragraph 15.43. We also took into account in making our finding that the two roles were the same the submissions that the respondent prepared for the claimant's appeal against her dismissal in which it was said that *"*it was necessary *to change the job title of Project Coordinator to Project Compliance Coordinator* (our emphasis)*,* to ensure that the job purpose and role were clearly stipulated to ensure the project met all of its performance management, financial, quality, commissioning and monitoring obligations", paragraph 15.155 below - i.e. again a reference to a change in job title between the two roles not to more substantive changes. Lastly, we took into account that when asked during the appeal hearing how many "really new posts" were created in the restructure Ms Lindup's response was, "really just the Quality role, paragraph 15.156 below." This was a reference to the Quality and Commissioning Officer role.

15.106 On 17 August the claimant requested a list of attendees for the 20 July meeting from Ms Manku, page 1781, and these were forwarded to her on 20 August, page 1782.

15.107 On 23 August the claimant handed to Ms Manku amended notes of her investigatory interview with Mr Orchard as well as a written submission, pages 1296 – 1323. In her submission the claimant stated that she had not received any details of the specific disciplinary allegations, or which allegations were currently being investigated and neither had she been told which were considered to be gross misconduct. She stated this meant that she had been unable to properly prepare for the hearing. In relation to the Verto red flag she stated that this had not been raised at any time before nor mentioned when she was suspended and she set out in detail why she considered the red flag to be correct. She provided an account of the meeting of 20 July stating that she had given a verbal presentation on performance but had been cut short by Ms Grocott. She provided a list of 11 people who she explained were "from the list of attendees of the feedback meeting on 20 July" and she asked that they be approached as witnesses on her behalf, pages 1322 and 1323.

15.108 On 24 August Ms Manku from HR wrote to the claimant to inform her that the respondent was not prepared to speak to any of the witnesses that the claimant had put forward. Ms Manku said this, page 432:
"You have requested that the independent investigator speaks with an additional 11 witnesses but you have not provided any information or explanation demonstrating the relevance of these witnesses in this investigation.
On that basis and in order not to cause any unnecessary delays in the investigation it has been decided that these additional witnesses will not be spoken to."

15.109 We infer that the respondent was, by this point, engaged in an entirely one-sided and partial (i.e. lacking in objectivity) investigation the purpose of which was to secure the claimant's exit from the respondent. We draw that inference for the following reasons:
The respondent, as set out above, refused to speak to any of the witnesses put forward by the claimant. Yet all of the names put forward by the claimant were people who were present at the meeting on 20 July (which of course Ms Manku was well aware of not least because she had supplied the claimant with a list of the names of the attendees just four days earlier). The claimant's conduct and behaviour during the meeting of 20 July was one of the main incidents under investigation. The respondent's assertion that the claimant had failed to explain the relevance of the witnesses was untrue because the claimant had explained when she submitted the list of names that the people were all

attendees at the meeting in question. We took into account also that Mr Orchard's explanation in evidence as to why he did not interview any of these people lacked cogency. He told us that he had already spoken to three witnesses who were at the meeting and so it would have been disproportionate to speak to any more. But it transpired that what he meant by this was that he had spoken to the two complainants, Ms Lindup and Ms Grocott, and only one person who might be considered to be independent. In such circumstances it is difficult to see why it would be disproportionate to speak to more independent witnesses, particularly given the scale of investigation that the respondent had been prepared to carry out in respect of Ms Prescott's grievance against the claimant. We took into account our finding that the respondent deliberately exaggerated the seriousness of some of the claimant's action, paragraph 15.82 above. We also took into account Mr Orchard's email of 15 August, sent at a point when the grievance investigation was still ongoing and when the disciplinary investigation was still in its infancy, saying that he had "no doubt" there would be a (disciplinary) hearing and that there may be a "conversation" with the claimant, which was clearly a reference to a conversation about exiting the respondent. Lastly we also took into account the respondent's conduct during the meeting of 12 September, for which see below.

15.110 Around the end of August 2018 Mr Orchard was told by HR to put his disciplinary investigation on hold. The respondent was by now looking at alternative ways to achieve the claimant's exit from the Council, see below.

15.111 On 7 September 2018 the respondent wrote to the claimant asking her to attend a meeting on Tuesday 11 September with Denise Pearce, Head of HR, and Marie Marenda, HR Business Partner. It was stated in the letter that the meeting had been arranged to formally consult with the claimant on the forthcoming Impact team restructure and to discuss the current ongoing disciplinary investigation. The claimant was informed that the rest of the Impact team would be consulted separately, page 436.

15.112 The claimant immediately asked for clarification of whether the meeting was part of a formal consultation process in relation to the restructure or a meeting that was part of the current disciplinary investigation, stating that she did not understand how it could be both, page 434. She also requested a copy of all policies relating to restructures, redeployment and redundancy, a copy of any information that might have been shared with the team about the restructure proposals, a copy of the restructure proposals and, in particular, details of how her post would be impacted.

15.113 The response from the respondent was that the meeting would comprise a formal consultation on the Impact team proposals first of all and then there would be an update on the disciplinary investigation, page 434. The claimant was informed that nothing had been shared with the team yet about the restructure as they would be formally consulted after the respondent had met with the claimant, and the claimant was also informed that she would be provided with all the information relating to the restructure proposals at the meeting, page 434.

15.114 In fact, as set out above at paragraph 15.100 above, the rest of the team had been invited on 31 August to a consultation meeting to take place on Wednesday 12 September. In contrast to the claimant they were told that during the meeting there would be discussions around the proposed changes, the reason for the proposed changes, how the proposals might affect individuals, the process to be followed and timescales, and alternatives to the proposed changes.

15.115 The meeting with the claimant took place on 12 September, not 11 September as the respondent had originally intended. Prior to the meeting Ms Pearce obtained figures for voluntary redundancy for the claimant. This had not been requested by the claimant. The respondent also decided that it would not be appropriate for Ms McKeever to attend this meeting because of the "ongoing issues between the claimant and Ms McKeever." We base this finding on paragraph 21 of Ms Pearce's witness statement.

Meeting of 12 September

15.116 Ms Pearce gave the claimant a copy of the restructure slides, pages 619 - 631, and informed her that her role was impacted and was deleted. She was told that her role of Impact Coordinator (G8) was to be replaced by two roles; Compliance Coordinator (G7) and Quality and Commissioning Officer (G6). She was told that these roles were ring fenced and she could apply for them but if she was not successful she would be made redundant. The claimant asked what the rationale was for this change and Ms Pearce responded that she did not know. That was the full extent of the respondent's consultation with the claimant concerning the restructure. Ms Pearce then said that there was an alternative if the claimant wanted. Ms Marenda and the claimant's colleague, Ms Barlow, were at this point asked to leave the meeting. Ms Pearce said to the claimant that she could consider redundancy now and she would receive £9,000 for compulsory redundancy or £13,000 for voluntary redundancy. She went on to say **"**you could be dismissed anyway if someone says they can't work with you but you have to get through the disciplinary". The claimant complained that the respondent's behaviour was vindictive pointing out that she had been under a grievance

investigation since May and a disciplinary investigation since July. Ms Pearce responded; “they are separate. I won’t let anything happen until you decide. Sometimes it’s better to be out”. We accept the oral evidence of Ms Pearce and find that making an offer of voluntary redundancy to a person who is subject to disciplinary proceedings is very unusual.

15.117 Ms Barlow and Ms Marenda returned to the meeting at this point. Ms Barlow asked; “if Jas goes what happens to the other stuff”. Ms Pearce responded “ it goes away - we would sign a settlement agreement that you wouldn’t take us for unfair dismissal and we’d give you a good reference. If there is a hearing and you are not dismissed you could still be dismissed because people said they can’t work with you. With the restructure you get compulsory redundancy not voluntary redundancy”, pages 437 – 440. (note; neither party asserted that this conversation was privileged).

15.118 The claimant felt under a great deal of pressure. She did not consider the offer of voluntary redundancy to be a genuine offer, she viewed it as a threat that if she did not take voluntary redundancy she risked leaving with nothing. She considered that the respondent was by this time determined to exit her either via the grievance/disciplinary process, the restructuring or by pressurising her to take voluntary redundancy.

15.119 We find as a fact that the respondent did then put the claimant under pressure to take voluntary redundancy. We infer this from the fact that Ms Pearce not once but twice during the meeting of 12 September told the claimant, in the context of discussions about voluntary redundancy, that even if she was not dismissed as part of the disciplinary process she could still be dismissed on the basis that people had said they could not work with her, see above. There were then no less than seven separate attempts on the respondent’s part after this discussion to pursue voluntary redundancy further with the claimant, see paragraphs 15.124, 15.125, 15.127, 15.128, 15.139 and 15.142 below, and some of the comments made by Ms Marenda, whilst discussing VR with the claimant during these later conversations, were clearly designed to encourage the claimant to think about how difficult it might be for her to return to the workplace. For example:

“Can you see yourself being happy back here?” And; “its all in your perception and people have complained about you, it is all perception ……would you want to come back to that.,” paragraphs 15.128 and 15.139 below

15.120 We find as a fact that the respondent, and in particular Ms McKeever, Ms Lindup, Ms Pearce and Ms Manku, with assistance from Mr Orchard and Ms Marenda, were by now intent on exiting the claimant by

whatever means were available. We infer this from our earlier finding that Mr Orchard's disciplinary investigation, conducted with the assistance of Ms Manku, was partial and one sided and designed to ensure the claimant's exit, paragraph 15.109 above, from our finding that Ms Pearce and Ms Marenda put pressure on the claimant to take voluntary redundancy, paragraph 15.119 above, from our finding that there were internal discussions taking place about having a conversation with the claimant prior to the restructure and whilst the disciplinary case against the claimant was still in its infancy, paragraph 15.99 above, from the wholesale failure on the part of Ms Pearce, Ms Marenda and Ms McKeever to carry out any meaningful consultation with the claimant concerning the restructure, paragraphs 15.116 and 15.122 and from our finding that the respondent had made it appear as if the claimant's role had been deleted in the re-structure, when in fact it continued to exist, paragraphs 15.104 and 15.105. The restructure was the responsibility of Ms McKeever and Ms Lindup, assisted in the main by Ms Manku.

15.121 We infer that the respondent made it appear as if the claimant's role had been deleted in the re-structure as a means of achieving the claimant's exit from the Council, and we do so for the following reasons. The claimant's role was the only role in the re-structure that was "deleted" and in fact on our findings it was "deleted" when it actually continued to exist in the new structure, paragraphs 15.104 and 15.105. There was no meaningful consultation with the claimant about this change, see paragraphs 15.116 above and 15.122 above, and in fact Ms Pearce was wholly unable to explain to the claimant what the rationale for the "deletion" of her post was despite one of the purposes of the 12 September meeting allegedly being to consult with the claimant about the restructure. The respondent then made it well nigh impossible for the claimant to apply for the two alternative roles in the new structure which were ostensibly open to her, for which see more below. Moreover, prior to the claimant's appeal, Ms Lindup queried if the team could be informed that the claimant *would be* (our emphasis) leaving in March, not might be leaving. Ms Manku then responded to this email in the following terms, page 537b (and see paragraph 15.154 below):
"We need to mindful (sic) of sharing any information, we have an appeal pending and she is still our employee, and if word gets out, there is a potential grievance." – i.e. her response was not that nothing should be said because the appeal might overturn the dismissal but that nothing should be said because if word got out at that point (we interpose that the claimant was definitely leaving) the claimant could raise a grievance. We also took into account our finding that by now the respondent was attempting to exit the claimant by this time by whatever means possible, paragraph 15.120 above and designing the restructure to make it appear as if the claimant's role had been deleted was entirely consistent with this.

15.122 The claimant was, of course, still on precautionary suspension from duty, one of the terms of which was that she was not permitted to contact anyone at work. Accordingly, in terms of consultation, it was particularly important that the respondent be proactive in taking steps to ensure that there was proper consultation. It did not do so. In fact we find there was a complete failure on the respondent's part to carry out any meaningful consultation. As set out above there was no meaningful consultation with the claimant during the meeting of 12 September and, in any event, the main purpose of that meeting, we find, was to see if the claimant could be persuaded to take voluntary redundancy.

15.123 The claimant was finding the situation at work increasingly hard to cope with. On 13 September 2018 she visited her GP and was certified as not fit for work for six weeks with what was termed work-related stress, page 443.

15.124 Ms Pearce chased the claimant for a decision on voluntary redundancy on 14 September and again on 20 September. During the conversation on 20 September Ms Pearce said to the claimant "I've been instructed to do the hearing, this is the alternative." "We prefer VR, you don't need to put yourself through this". She said that she would arrange for the disciplinary to be held off until at least Monday.

15.125 On 24 September Ms Pearce asked the claimant to let her know by the following day what her decision was on the offer.

15.126 On 26 September 2018 the claimant submitted some feedback on the consultation, pages 451 – 455. Amongst other matters she pointed out that her post was the only post to be displaced in the proposed restructure, she stated that she had not been issued with any minutes for the meeting on 12 September, and she stated that she had not received a one to one consultation meeting with her manager. She said that she had inadequate information on the rationale for the displacement of her post and said that there was in any event a match in excess of 80% in duties between her current role of Impact Project Coordinator and the new role of Impact Project Compliance Coordinator.

15.127 On 27 September 2018 the claimant queried her redundancy calculation figures and on 5 October Ms Pearce emailed the claimant confirming that some of the figures had been incorrect. She set out the revised figures and stated that if the claimant left on this basis the respondent would not progress the disciplinary hearing and an agreed reference would also be used which would not refer to the disciplinary investigation or the current sickness absence, page 459.

15.128 On 11 October Ms Marenda contacted the claimant to state that the respondent considered that they were at the end of the process with regard to the settlement agreement which the respondent had seen as an easy way for the claimant to get out of the situation, and she said “can you see yourself being happy back here?”

15.129 On 24 October the claimant’s GP again certified the claimant as unfit for work with what was termed stress-related problems, page 464.

15.130 On 14 November 2018 Ms McKeever wrote to the claimant responding to the claimant’s letter of 26 September in which she had provided feedback on the restructure. In this letter Ms McKeever asserted that a formal consultation meeting had been held with the claimant on 12 September and that individual consultation was available to all employees and any such request from the claimant would have been granted, page 473. She was told that her role of Project Coordinator did not meet the criteria for assimilation because it was a G8 role whereas the Project Compliance Coordinator was G7. Ms McKeever went on to say that the post of Project Compliance Coordinator was a ring fenced job opportunity which the claimant could apply for, as was the Quality and Commissioning Officer role.

15.131 Ms McKeever stated that during Impact 2 planning meetings it had been stated that the compliance, performance management, quality and financial functions required additional capacity. This additional capacity had been met now in the new structure with the clear delineation of the roles of Project Compliance, Finance, Quality and Commissioning.

15.132 Ms McKeever stated that the role of Impact Quality and Commissioning Officer would provide added capacity within the team to monitor contracts and provide quality control within the project. The other roles of Finance Officer and Compliance Officer would provide the additional roles required within the compliance functions of the team. It was explained that all three roles would be managed by the Project Compliance Coordinator, page 475.

15.133 On 16 November 2018 Jas Manku from HR wrote to the claimant informing her that as a result of the restructure her post was deleted and she was at risk of redundancy, pages 479 – 480. She was informed that ring fenced recruitment was being used for new posts or posts for which duties had substantially changed or were of a higher grade. It was confirmed that she had ring fenced opportunities for the Impact Project Compliance Coordinator and Impact Quality and Commissioning Officer roles. The claimant was told that if she wished to apply for these posts she should complete an application form and return it to Ms Lindup, page 479. She was told that the interview would be held on 27 November and she

was asked to report to Ms McKeever on her arrival. She was also informed that if she did not apply for the posts “compulsory redundancy will apply”.

15.134 The claimant considered that she was in an impossible situation. She understood from this letter that her application form would be reviewed by Ms Lindup and the interview would be with Ms McKeever, neither of whom, she considered, would assess her application fairly. Neither did she consider it realistic to expect her to apply for posts that reported to two managers who had said they could not work with the claimant. The claimant raised her concerns verbally with Ms Marenda of HR.

15.135 The claimant had in mind Ms Lindup and Ms Grocott. Mr Orchard had told the claimant during her interview of 14 August that they were no longer prepared to work with her, paragraph 15.98 above. Ms Lindup had in fact said during her interview with Mr Orchard on 31 July 2018 that she felt she could no longer work with the claimant because, as she put it, the claimant had purposely undermined managers by her actions at the meeting (of 20 July) and by the entry the claimant had made on the Verto system, page 1008. Ms Grocott had said during her interview with Mr Orchard on 31 July that she felt she could not “under any circumstances” trust the claimant again and could not work with her in the future, page 1138.

15.136 The arrangements that the respondent had made for the interviews were that the interviewing panel for the two roles would be Ms Lindup, Ms McKeever and Kevin Cadman from HR, page 501**.** We find that the composition of the panel demonstrates that the respondent had no intention of allowing the claimant to be successful if she applied for the roles. As set out above Ms Lindup had already decided that she could no longer work with the claimant and relations between the claimant and Ms McKeever were such that the respondent had decided it would be inappropriate for Ms McKeever to attend the meeting with the claimant on 12 September, see paragraph 15.115 above. If it was best for Ms McKeever not to participate in this meeting it is difficult to see how she would give the claimant a fair interview.

15.137 On 21 November 2018 the claimant was again certified as unfit for work by her GP with work-related stress, page 498.

15.138 The claimant did not attend for the interviews and Ms Lindup emailed Ms Marenda, Ms McKeever, Ms Grocott and Ms Manku on 27 November to say that the claimant had not attended the interviews and that she now wished to start recruitment to the vacant posts, page 501.

15.139 Ms Marenda spoke to the claimant on 29 November and informed her that the respondent would be pressing on with compulsory redundancy and that in parallel the disciplinary investigation was proceeding and a final report was about to be presented. She was told that she "still might have a chance to do things differently." Ms Marenda said to the claimant; "its all in your perception and people have complained about you, it is all perception and the risk is that you could be dismissed and then you have nothing". She said "would you want to come back to that," "I can't tell you how it will end don't you want it to go away." The claimant was told to think about taking voluntary redundancy.

15.140 On 4 December 2018 Ms Manku wrote to the claimant stating that she was at risk of redundancy and inviting her to attend a meeting with Ms McKeever on 11 December to discuss redeployment and to finalise details of the termination of her employment, pages 515 – 516.

The asserted protected act

15.141 On 4 December 2018 the claimant lodged a formal grievance with the respondent, pages 517 – 518. She sent it to Ms Pearce. In her letter she stated that she had been subjected to bullying, harassment and victimisation by Ms McKeever, citing in particular her conduct during supervision meetings. She asserted that the allegations of gross misconduct that she was subject to and the displacement of her substantive post in the team restructure had all been constructed to engineer her dismissal from the organisation based on Ms McKeever's direct discrimination and personal bias against her, page 517. She complained that others had also undermined her and that policies had not been followed. She stated that Ms McKeever's victimisation of her had progressively worsened since November 2017 and that she was removed from the team and then suspended on spurious grounds. She complained that the disciplinary investigation had been unnecessarily prolonged, particularly given the respondent's decision in August not to allow the claimant to rely on any of her witnesses. She stated that she had serious concerns around how the investigation could be reasonable or fair.

The Dismissal meeting

15.142 The meeting of 11 December to discuss the claimant's redundancy took place. Ms McKeever and Ms Manku were both present at the meeting. The claimant was handed a letter in which it was confirmed that her contract was being terminated, it was said on the grounds of redundancy. The claimant was informed that her employment would end on 6 March 2019 and she was informed of her right to appeal. It was also stated in the letter that every effort would be made to find the claimant alternative employment before her final termination date, pages 519 –

520. A few minutes later Ms Marenda approached the claimant and told the claimant to let her know if she wanted VR, “then this can go away.”

15.143 At this point the claimant had not had any acknowledgement from the respondent of her grievance. We accept and find that she was upset by this as she considered her grievance raised important complaints. It was, in the claimant’s view, an example of the respondent shutting down possible avenues to resolve matters. On 17 December Ms Manku sent an email to Ms Marenda in which she asked if an investigating officer for the claimant’s grievance had been appointed. Ms Marenda’s response was that she had sent Ms Manku a meeting invitation for the next day; after the HRBP catch up “we can discuss the whole JK thing then”, page 1808.

15.144 On 17 December the claimant submitted a formal appeal against the redundancy dismissal decision, page 523.

15.145 By way of letter dated 24 December 2018 the respondent acknowledged receipt of the claimant’s grievance, page 526. The letter was written by Ms Pearce. In her letter Ms Pearce stated that the claimant had raised a formal grievance about the following:
“*what you perceive* as bullying, harassment and victimisation by your line manager,
what you perceive to be a failure to follow policies and procedures in relation to the grievance investigation and disciplinary investigation,
what you perceive to be a failure to follow policies and procedures in relation to the restructure.”
(all our emphasis)

15.146 We find that Ms Pearce’s repeated use of the word “perceive” demonstrates that the respondent had an instantly dismissive reaction to the claimant’s complaint.

15.147 Ms Pearce went on to say in her letter that in accordance with the respondent’s grievance policy it would not be appropriate to undertake a new investigation into the issues the claimant had raised. “These issues are directly related to ongoing processes which are yet to be completed”.

15.148 In fact the part of the grievance policy relied upon by the respondent, paragraph 3.10, page 1374, does not state, as the respondent asserted, that if issues were raised in a grievance which related to ongoing processes the grievance would not be investigated. What paragraph 3.10 states (taking disciplinary proceedings as an example) is that if an employee is subject to disciplinary proceedings and they then raise a grievance the grievance procedure will run concurrently with the disciplinary process and it will only be in exceptional

circumstances that the disciplinary process will be suspended in favour of the grievance.

15.149 On 21 December Ms Manku wrote to the claimant informing her that Mr Orchard had now completed the grievance and disciplinary investigations and submitted a report to Ms Teasdale, Director of Education. The claimant was informed that as a result Ms Teasdale had concluded that the respondent should proceed to a disciplinary hearing, page 1331.

15.150 On 18 January 2019 Ms Pearce wrote to the claimant stating that further to the letter of 21 December, in which the claimant had been informed that the disciplinary investigation was completed and a report submitted to Ms Teasdale, Ms Teasdale had concluded that the respondent should proceed with the disciplinary hearing, page 529.

15.152 On 18 January 2019 the claimant attended work to clear her locker. She was handed a letter inviting her to attend a disciplinary hearing to be held on 12 February. She was told that the allegations to be considered were;
Breach of the Council's core behaviours as contained in the code of conduct… In relation to treating colleagues with dignity and respect and inspiring trust and confidence,
Matters linked to the alleged undermining of colleagues,
A refusal to perform agreed tasks in a meeting,
Bringing the Council into disrepute as a result of these alleged actions.

The claimant was advised that these allegations were considered to be gross misconduct, pages 529 – 530.

15.153 The claimant was also provided with Mr Orchard's disciplinary report and appendices which ran to some 493 pages.

15.154 On 23 January 2019 Ms Lindup emailed Ms Manku and Ms Marenda, copied to Ms Grocott and Ms McKeever, asking if she was now in a position to inform the Impact team that the claimant would be leaving the respondent in March, page 537b. Ms Manku responded to this email in the following terms:
"We need to mindful (sic) of sharing any information, we have an appeal pending and she is still our employee, and if word gets out, there is a potential grievance. The team would have realised by now that you have recruited to all vacant posts so JK will not be returning," page 537a.

15.155 On 25 January Ms Manku wrote to the claimant inviting her to an appeal hearing in respect of her dismissal to take place on 15 February,

page 538. Management prepared a submission for the purposes of this appeal hearing, pages 598 – 608 (together with appendices). In this report it was stated that the claimant's Project Coordinator role was reviewed in light of the need to ensure that the post holder was able to dedicate the majority of their role to overseeing the compliance, performance management, finance and quality functions of the service, page 604. It was stated that **"**it was therefore necessary to change the job title of Project Coordinator to Project Compliance Coordinator, to ensure that the job purpose and role were clearly stipulated to ensure the project met all of its performance management, financial, quality, commissioning and monitoring obligations", page 606 paragraph 3.11.

15.156 The disciplinary hearing was subsequently rescheduled to 21 February at the claimant's request. She received an invitation to the rescheduled hearing on 30 January, page 539. The appeal hearing against compulsory redundancy took place on 15 February. On the panel for the purposes of this hearing were Ms Teasdale, Mr Hague who was a direct report of Ms Teasdale's, and Ms Mattu from HR. We accept the claimant's evidence and find that during the course of the hearing Ms Lindup was asked how many "really new" posts were created in the restructure and her response was, really just the Quality role, page 589. We accept the claimant's evidence because she was able to produce contemporaneous notes of the meeting which were clearly, as best as she was able to do, written verbatim.

15.157 By way of letter dated 18 February 2019 the claimant was informed that her appeal against her redundancy dismissal had been dismissed, page 596. On 22 February Ms Marenda informed the claimant that in light of the appeal decision the respondent had decided that the disciplinary hearing would not go ahead. This was confirmed to the claimant in writing in a letter dated 22 February in which the respondent asserted that management had a duty to investigate the concerns raised against her by a member of her team regarding her alleged behaviour and that had resulted in a thorough disciplinary investigation which had recently been completed. It was said that as the claimant's employment was due to terminate shortly it had been decided that the disciplinary would not progress to a hearing at this stage, page 597.

The Law

16 Section 13 of the Equality Act 2010 states that:
(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

17 Section 23(1) provides that on a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

18 The burden of proof is set out in section 136 of the Equality Act which states:
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

19 It is well established that the term "because of" in the Equality Act has the same meaning as that given to the words "on the ground of" under the legacy legislation; see for example **Onu v Akwiwu [2014] ICR 571**. Accordingly we directed ourselves as follows. When dealing with claims of direct discrimination the crucial question that has to be determined in every case is the reason why the claimant was treated as she was, Lord Nicholls **Nagarajan v London Regional Transport [1999] ICR 877**. As Lord Nicholls stated in the case of **Nagarajan**;

"Section 1(1)(a) is concerned with direct discrimination, to use the accepted terminology. To be within section 1(1)(a) the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to inquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances. The crucial question just mentioned is to be distinguished sharply from a second and different question: if the discriminator treated the complainant less favourably on racial grounds, why did he do so? The latter question is strictly beside the point when deciding whether an act of racial discrimination occurred.

20 That the focus is on, in a "reason why" case, what was in the decision maker's mind (consciously or subconsciously) was emphasised relatively recently in the case of **CLFIS v Dr Mary Reynolds [2015] EWCA Civ 439.** In order to discriminate the putative discriminator must, of course, have knowledge of the protected characteristic, see for example **Gallop v Newport City Council UKEAT/0118/15** and **Hair Davison Ltd v Macmillan UKEAT/0033/12.** It is trite law, however, that the protected characteristic does not need to be the only or even the main reason for the treatment, **Igen v Wong [2005] ICR 931**.

21 So far as the burden of proof is concerned, the proper approach has been addressed by the Court of Appeal in **Igen Ltd v Wong [2005 IRLR 258**, **Madarassy v Nomura International plc [2007] ICR 867** and **Laing v Manchester City Council [2006] IRLR 748**.

22 However it was explained in **Amnesty International v Ahmed [2009] ICR 1450** that where explicit findings as to the reason for the claimant's treatment can be made this renders the elaborations of the "**Barton/Igen** guidelines" otiose. This approach was expressly endorsed by the Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37**. Lord Hope emphasised again that the burden of proof provisions have a role to play where there is room for doubt as to the facts necessary to establish discrimination, but that in a case where a tribunal is in a position to make positive findings on the evidence one way or another, they have no role to play.

23 Accordingly although a two stage approach is envisaged by s.136 it is not obligatory. Where the two stage approach is adopted Mummery LJ explained in **Madarassy** that the approach is as follows:

> 55. In my judgment, the correct legal position is made plain in paras 28 and 29 of the judgment in **Igen Ltd v Wong**:
>
> > '28 … The language of the statutory amendments [to section 63A(2)] seems to us plain. It is for the complainant to prove facts from which, if the amendments had not been passed, the employment tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination. It does not say that the facts to be proved are those from which the employment tribunal could conclude that the respondent 'could have committed' such act.
> >
> > 29. The relevant act is, in a race discrimination case …. that (a) in circumstances relevant for the purposes of any provision of the 1976 Act (for example in relation to employment in the circumstances specified in section 4 of the Act),(b) the alleged discriminator treats another person less favourably and (c) does so on racial grounds. All those are facts which the complainant, in our judgment, needs to prove on the balance of probabilities.'
>
> 56. The court in **Igen Ltd v. Wong** expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

24 Therefore, the burden is on the claimant to establish facts from which a tribunal could conclude on the balance of probabilities, and absent any explanation, that the alleged discrimination had occurred. At that stage the employer's explanation for the treatment - the subjective reasons which caused the employer to act as he did - must be left out of the account. It was also explained in **Madarassy** that the facts from which discrimination could be inferred can come from any evidence before the tribunal, including evidence from the respondent, save only for the absence of an adequate explanation.

25 The need for there to be something more than a difference in treatment and a difference in status has been emphasised repeatedly by the EAT, see for example **Hammonds LLP & Ors v Mwitta [2010] UKEAT 0026_10_0110** and Mr Justice Langstaff in **BCC & Semilali v Millwood UKEAT/0564/11,** paragraph 25.

26 Whilst something else is therefore needed to reverse the burden "not very much" needs to be added to a difference in status and a difference in treatment in order for the burden to be on the respondent to prove a non discriminatory explanation, paragraph 56 **Veolia Environmental Services UK v Gumbs UKEAT/0487/12**. This might include the fact that the respondent has given inconsistent explanations for the treatment, although it is the fact of the inconsistency not the explanations themselves that move the burden across, paragraph 57 **Veolia**, as well as a finding that an explanation for the treatment is a false one or a witness is lying in relation to the explanation, paragraph 59 **Veolia**. It cannot, however, include a failure by the respondent to call a relevant decision maker as a witness. That may be relevant at the second stage but is not a matter from which an adverse inference can be drawn at the first stage as the failure to provide an explanation cannot be taken into account at this point, **Royal Mail Group v Efobi [2019] EWCA Civ 18**. There is certainly no requirement that there needs to be a finding of something happening that is obviously and blatantly discriminatory to reverse the burden, paragraph 55 **Veolia**. **Metropolitan Police v Denby UKEAT/0314/16:** "The authorities do not require the tribunal at the first stage to blind itself to evasive, economical or untruthful evidence from the respondent which may help the tribunal decide there are facts which suffice to shift the burden, paragraphs 43 and 49".

27 The issue of precisely what can be taken into account at stage 1 was revisited by the EAT in **Nasir and anor v Asim [2010] ICR 1225**. In this case it was said that, paragraph 70:

It is always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on the grounds of sex or race. The context may, for example, point strongly towards or strongly against a conclusion that harassment was on the grounds of sex or race. The Tribunal should not leave the context out of account at the first stage and consider it only

as part of the explanation at the second stage, after the burden of proof has passed.

See also **Metropolitan Police v Denby UKEAT/0314/16**, paragraph 48, “there is nothing wrong with the tribunal…. considering all the relevant evidence at the first stage … even if some of it is of an explanatory nature and emanates from the employer”.

28 In considering the burden of proof each allegation or complaint should be looked at separately, **Essex County Council v Jarrett UKEAT/0045/15**, although in the event that a particular complaint is found to be substantiated that in itself may well be such evidence as justifies the reversal of the burden of proof in respect of other allegations, **Jarrett.** Likewise if a particular complaint is not substantiated that may equally inform a decision on the reversal of the burden of proof on another complaint, although it will not be decisive of it, **Jarrett**. It is always important to look at the totality of the evidence. The Court of Appeal in **London Borough of Ealing v Rihal 2004 IRLR 642** paragraphs 31 – 32, applying the approach of the Employment Appeal Tribunal in **Qureshi** is authority for the proposition that in determining whether the less favourable treatment was on the proscribed ground, a tribunal is obliged to look at all the material put before it which is relevant to the determination of that issue, which may include evidence about the conduct of the alleged discriminator before or after the act about which complaint is made. The total picture has to be looked at.

29 At the second stage, the respondent is required to prove that they did not contravene the provision concerned if the complaint is not to be upheld. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever because of, in this case, race since "no discrimination whatsoever" is compatible with the Burden of Proof Directive. That requires the tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that (in this case) race was not a reason for the treatment in question. If the respondent fails to establish that the tribunal must find that there is discrimination.

30 In **Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16**, in the context of whether unreasonable treatment supports an inference of discrimination the EAT said, paragraph 97;
It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal’s own findings. Merely because a tribunal concludes that an explanation for certain treatment is

inadequate, unreasonable or unjustified does not by itself mean the treatment is discriminatory since it is a sad fact that people often treat others unreasonably irrespective of race, sex or other protected characteristic.

31 In **London Borough of Islington v Ladele [2009] IRLR 154** Mr Justice Elias said this about unreasonable treatment;
"It may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one." As Lord Browne-Wilkinson stated in **Zafar v Glasgow City Council [1997] IRLR 229**:
" it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee that he would have acted reasonably if he had been dealing with another in the same circumstances."

32 It is trite law that direct discrimination requires there to have been less favourable treatment of the claimant. That is not the same as unfavourable treatment. Treatment may be unacceptable, inappropriate, bullying or irrational but it may nonetheless be no less favourable than that given to others. It is implicit in the concept of direct discrimination that a person (actual or hypothetical) in a similar position to the claimant who did not share the claimant's protected characteristic would not have suffered the less favourable treatment. Establishing less favourable treatment therefore involves a comparison of the claimant's treatment with the treatment of others, actual or hypothetical, (the statutory comparison). Section 23 identifies how that comparison should be made; the circumstances between the claimant and their comparator must be the same or not materially different. Where there is a true actual comparator, asking the less favourable treatment question may be the most direct route to determining if there has been less favourable treatment and the reason for the less favourable treatment; but where there is a hypothetical comparator or a dispute as to the relevant circumstances of the actual comparator relied on it may be better to focus on the reason why question rather than getting bogged down in "the often arid and confusing task" of constructing a hypothetical comparator.

Harassment

33 Harassment is defined as follows:

> "26(1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic and
>
> (b) The conduct has the purpose or effect of –

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

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

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect."

34 Section 40 prohibits harassment in the workplace and states:

"An employer (A) must not, in relation to employment by A, harass a person (B)… who is an employee of A's."

35 Accordingly, there are three different elements to the statutory test to be considered. In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**, a case bought under the RRA, it was explained that it is a healthy discipline for a tribunal specifically to address each of the three elements and to ensure that clear factual findings are made on each in relation to which an issue arises.

(1) *The unwanted conduct*. Did the respondent engage in unwanted conduct?

(2) *The purpose or effect of that conduct*. Did the conduct in question either:
(a) have the *purpose* or
(b) have the *effect*
of either (i) violating the claimant's dignity or (ii) creating an adverse environment for her ? ("the proscribed consequences".)

(3) *The relationship of the conduct to the protected characteristic.* Was that conduct related to the claimant's protected characteristic?

36 So far as effect cases are concerned, in the case of **The Reverend Canon Pemberton v The Right Reverend Inwood [2018] EWCA Civ** 564 Lord Justice Underhill reformulated the guidance that he had given, whilst sitting in the EAT, some years previously in **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**, as to the approach to be taken by Tribunals to harassment claims. It is now as follows, paragraph 88;

37 In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4) (a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective

question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4) (b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then (even if the claimant did feel that his dignity was violated or an adverse environment created) it should not be found to have done so.

Victimisation

38 Victimisation is defined is section 27 EA10 as follows:

> "(1) A person (A) victimises another person (B) if A subjects B to a detriment because –
>
> (a) B does a protected act
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act –
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether express or not) that A or another person has contravened this Act;

39 The Equality Act definition therefore requires the tribunal to make three findings: whether a protected act was done and, if so, whether the claimant was subjected to a detriment; and, if so, whether that was because of doing the protected act. There is no requirement under the Equality Act for a comparator. "Because of" has the same meaning as for direct discrimination.

Submissions

40 Mr Bryan, for the respondent, reminded us of the wording of each of the relevant statutory provisions and gave us a brief explanation of how the law was to be applied. He did not address us on the characteristics of any hypothetical comparator for the purposes of the direct discrimination claim. He then went

through each complaint in turn reminding us of relevant parts of the respondent's evidence. In relation to Ms McKeever's failure in her witness statement to identify herself as the decision-maker in respect of the claimant's dismissal Mr Bryan told us that she had "not fully appreciated" her role as dismissing officer because HR were taking the lead with the redundancy process. We asked Mr Bryan to address us specifically on the facts the respondent relied on to prove that there was a redundancy situation and that this was the reason for the claimant's dismissal. His response was that the claimant was put at risk, there was a restructure, she was given the opportunity to apply for two new roles which were well within her remit but she did not apply. We asked Mr Bryan whether he would agree or disagree with the suggestion that the respondent had not led any evidence to the effect that there was a diminution in the respondent's requirement for work of a particular kind to be carried out. He agreed this was the case but he said there was a diminution in the number of employees required to carry out the work because of the deletion of the claimant's role.

41 Ms Kaur only addressed us very briefly. She told us that she had not been able to go back over the evidence for the purposes of her submission because it was too traumatic for her. She stated that in the absence of any rational decision-making or concrete evidence from the respondent she still asserted that she had been subjected to race discrimination. She stated that all she could conclude was that the respondent had a personal agenda based on individual prejudices and that the respondent misappropriated its processes in order to engineer her dismissal. The claimant stated that she was grateful that she had been given her voice over the last two weeks and that was all she had wanted. She told us her absolute belief was that the treatment of her was because of her race. None of the treatment was fair or reasonable and voluntary redundancy was only a way to get her out and buy her silence. She told us she would never recover.

Conclusions and further findings of fact

Complaint 1: following a complaint having been made against the claimant in April 2017 Ms McKeever when speaking to the claimant about it did not allow her to give her version of events nor did she tell the claimant when the incident was alleged to have happened.

Direct race discrimination

42 This complaint is only partially factually correct, paragraph 15.26. On our findings the claimant was given an opportunity to respond to the allegations made against her. It is factually correct that Ms McKeever did not provide the claimant with the dates as to when the incidents were said to have occurred. We were prepared to assume that the burden of proof had moved across to the respondent in respect of this complaint. We concluded that the reason why this occurred was that Ms McKeever had not herself been provided with any dates for the incidents. Clearly, therefore, she was not in a position to pass the dates onto

the claimant. This is a non-discriminatory explanation that is in no sense whatsoever because of race.

Harassment related to race

43 We were prepared to accept that not providing the dates of the incidents was unwanted conduct. We did not consider that the actions of Ms McKeever could be characterised as conduct that had the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we were prepared to assume for the purposes of this analysis that it could have had that *effect* on the claimant, particularly given her own perspective. We did not conclude that there were facts from which we could conclude that the conduct of Ms McKeever in not providing the dates was related to race. There was nothing on the claimant's case to link or associate this element of Ms McKeever's' conduct with race and consequently it did not appear to us that the burden of proof had reversed. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Ms McKeever was not in any way related to race. The reason for the conduct was that Ms McKeever had not been provided with the dates. The concept of conduct "related to" a protected characteristic goes wider than the "reason why" but there still requires to be some connection between the conduct and the protected characteristic. We conclude that no such connection existed.

Complaint 2: on 14 December 2017 Ms McKeever tried to encourage other members of staff to make complaints against the claimant.

Direct race discrimination

44 This complaint, on our findings, is factually accurate. Ms McKeever did actively encourage members of staff to make complaints against the claimant, paragraph 15.39. We were prepared to assume that the burden of proof had moved across to the respondent. We concluded that the reason why Ms McKeever tried to elicit complaints against the claimant was that Ms Buckley was persisting in making complaints about her but the complaints, when they were raised, were anonymous and lacking in detail and Ms McKeever felt that this made it hard to take action to deal with them. We accept this explanation because, by this point in time, Ms Buckley had three times raised issues with management about the claimant, paragraphs 15.19, 15.23, 15.35, on the last occasion just 2 weeks prior to the 14 December meeting, and informal discussions with the claimant, paragraphs 15.26 and 15.19, had not prevented further complaints being made. It was a difficult situation with, on the one hand, matters continuing to be raised and, very likely, a perception of a need to be seen to be doing something, but on the other hand an inability to do so because the complaints were lacking in detail and were anonymous. Ms McKeever took the steps that she did to try to break this impasse. This is a non-discriminatory explanation that is in no sense whatsoever because of race.

Harassment related to race

45 We have little doubt that encouraging complaints to be made against the claimant was unwanted conduct. We did not consider that the actions of Ms McKeever could be characterised as conduct that had the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we concluded that the claimant had proved that it had that *effect* on the her. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Ms McKeever was not in any way related to race. The reason for the conduct was as we have set out in paragraph 44 above. Accordingly, the conduct was not caused by the protected characteristic of race and there was nothing to suggest on the evidence before us that it was associated with race in some other way.

Complaint 3: in April 2018 Ms McKeever introduced a system of weekly 15 minute meetings with the claimant.

Direct race discrimination

46 This complaint is factually accurate, paragraph 15.49. We were prepared to assume that the burden of proof had moved across to the respondent. We concluded that the reason why Ms McKeever set up the weekly meetings is because Ms Lindup and Ms Grocott had complained to her that they were finding it hard to communicate with the claimant and she thought this might improve communication and the operations of the team. This is a non-discriminatory explanation that is in no sense whatsoever because of race. We accept this explanation because we have found as a fact that Ms Lindup and Ms Grocott were complaining about the claimant, paragraph 15.48, and we considered that this, and the history of complaints about the claimant, made it likely that Ms McKeever would feel the need to take some action to try to improve the situation when these complaints were made.

Harassment related to race

47 We have little doubt that introducing the weekly meetings was unwanted conduct. We did not consider that the actions of Ms McKeever could be characterised as conduct that had the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we concluded that the claimant had proved that it had that *effect* on her particularly given her own perspective. We did not conclude that there were facts from which we could conclude that the conduct of Ms McKeever in setting up the weekly catch up meetings was related to race and consequently it did not appear to us that the burden of proof had reversed. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Ms McKeever was not in any way related to race.

The reason for the conduct, as set out above, was that Ms Lindup and Ms Grocott had complained to Ms McKeever that they were finding it hard to communicate with the claimant and she wanted to take action to improve this.

Complaint 4: on 15 May 2018 Ms McKeever moved the claimant to the first floor away from her team

Direct race discrimination

48 This complaint is factually accurate, paragraph 15.58. There was no actual comparator for the purposes of this complaint and neither the claimant nor the respondent addressed us on the characteristics of the hypothetical comparator. We considered that the comparator would be a person who was not British Indian against whom a complaint concerning poor interpersonal skills had been lodged by a direct report working within the team, which the respondent had decided to treat as a formal complaint, and in relation to whom there had been a history of similar low level formal and informal complaints. We concluded that the claimant had proved facts from which we could conclude that she was treated less favourably than this comparator because of her race. Those facts were as follows. The respondent was inconsistent in its evidence as to who the relevant decision-maker for the move was. Ms McKeever told us it was HR and HR told us it was Ms McKeever. On balance we found it was Ms McKeever. But, it appeared to us, Ms McKeever was unwilling to "own" the decision and take responsibility for it, hence in her evidence attributing the decision to HR. Moreover, the respondent was inconsistent in its evidence as to whether or not it was standard practice to move someone in this situation, paragraph 15.59. Additionally, as we have found, paragraph 15.60, the circumstances surrounding the move demonstrated a particular lack of regard for the claimant. The claimant was moved practically as soon as the complaint was received and prior to any investigation being carried out into it to ascertain whether there was any substance to the complaint. Having said that she would be moved with the two colleagues with whom she worked most closely the claimant was in fact the only person moved and she was moved to a bank of eight desks which, claimant aside, were completely empty, paragraph 15.58. She was left in total isolation, therefore, and publicly undermined in front of her team, paragraph 15.60. This went above and beyond, in our view, conduct that could simply be considered to be unfair or unreasonable, it was conduct that appeared to be targeted at the claimant personally.

49 Accordingly, the burden of proof moved across to the respondent in respect of this complaint. We concluded that the respondent had proved that the reason why the claimant was moved was in order to reduce tensions on the team. The relationship between the claimant and Ms Prescott was by now poor, paragraphs 15.50 and 15.51. There was a significant amount of evidence that this was the case from the grievance interviews carried out by Mr Orchard with other members of the team, paragraph 15.61, and from this it can be inferred that

the fall out between the two was public, paragraph 15.61. Consequently we accept that tensions were running high. Ms Prescott had just raised a complaint against the claimant alleging poor interpersonal skills on her part. It would not have been appropriate to move Ms Prescott, as she was the complainant, and accordingly rather than trying to manage the situation with everyone remaining in situ the respondent took what it no doubt perceived as the easier option of moving the claimant. This is a non-discriminatory explanation that is in no sense whatsoever because of race.

Harassment related to race

50 We have little doubt that moving the claimant was unwanted conduct. It seemed to us, given the circumstances of the move that we have already described, that the actions of Ms McKeever could be characterised as conduct that had the *purpose* (i.e. done with the intent of) of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we in any event also concluded that the claimant had proved that it had that *effect* on her. We concluded in particular that the way in which the move was carried out, leaving the claimant isolated and publicly undermining her in front of her team, violated her dignity, and we have found that the claimant found the move distressing, isolating and humiliating, paragraph 15.58 above. We also concluded that this conduct created the proscribed *environment* because, despite being a single incident, the effects of it were of a much longer duration; the claimant never moved back to be co-located with her team, paragraph 15.58. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Ms McKeever was not in any way related to race. The reason for the conduct was that the respondent took the easier option of moving the claimant, rather than moving the complainant or trying to manage everyone in situ, in order to reduce the very evident tensions on the team, and there was no cogent evidence before us to suggest that these tensions were themselves in some way related to race.

Complaint 5: on 31 May 2018 Ms McKeever deliberately and unfairly marked the claimant down in her appraisal, shouted at her and was abusive.

Direct race discrimination

51 This complaint is, essentially, factually accurate. Ms McKeever did give the claimant an unduly negative appraisal which ignored many of the positive aspects of the claimant's performance. Whilst we have not found that Ms McKeever shouted at the claimant or that she was abusive, as such, we have found that she was harshly critical of her, paragraphs 15.63 and 15.65.

52 There was no actual comparator for the purposes of this complaint and neither the claimant nor the respondent addressed us on the characteristics of the hypothetical comparator. We considered that the comparator would be a

person who was not British Indian who was good at many aspects of their role but who was a weak performer in the area of interpersonal skills and about whom complaints had been made in this regard. We concluded that the claimant had proved facts from which we could conclude that she was treated less favourably than this comparator because of her race. Those facts are the overwhelmingly positive appraisal that the claimant had received from Ms Lindup in November 2017, paragraphs 15.31 – 15.32, as compared to the overwhelmingly negative appraisal that the claimant received from Ms McKeever just six months later. It is not just the degree of difference between the two appraisals in such a relatively short period of time which moves the burden of proof across to the respondent but also the fact that, at the time when Ms Lindup carried out her appraisal, complaints had already been made against the claimant in respect of her interpersonal skills, paragraphs 15.19, 15.20 and 15.31, and whilst this was noted in the appraisal the claimant still received a good appraisal overall. We also took into account the fact that Ms McKeever refused to appraise the claimant against areas of her work that, based on Ms McKeever's own evidence, she was in actual fact in a position to mark the claimant on and which she herself thought were good, or at the very least "ok", paragraph 15.65. That seemed to us to be an inconsistency in approach that required an explanation. Accordingly, the burden of proof moves across to the respondent.

53 In relation to the comments that we have found Ms McKeever made; *"it's all minimal and there is no record of what you've done you are grossly underperforming" and "being positive is about finding solutions and I say you're less than satisfactory and need improvement and need to understand the role of a manager"* there was no explanation advanced by the respondent as to why these comments were made; the respondent's position was simply that, as a matter of fact, the comments were not made. Accordingly, this aspect of the complaint succeeds by way of an application of the burden of proof and the respondent's failure to advance an explanation.

54 As to the remainder of the appraisal, Ms McKeever's explanation essentially was that her assessment and marking of the claimant reflected Ms McKeever's observations and concerns in relation to the claimant's interpersonal skills, as well as identifying her areas of strength and good performance, paragraph 34 of Ms McKeever's witness statement. Whilst we accept that, in part, some of the appraisal was based on Ms McKeever's concerns about the claimant's interpersonal skills (hence her comment in the appraisal that there had been numerous issues throughout the year involving problems with communications with other staff) we conclude that this is not an explanation which is adequate to discharge the burden of proof on the balance of probabilities that race was not a reason for the treatment in question.

55 We reached this conclusion because it was simply not true to suggest, as Ms McKeever did, that she had appraised the claimant in relation to her areas of strength and good performance as well as her weaker areas of performance. Ms

McKeever failed to assess the claimant's performance at all in relation to many of the stronger areas of the claimant's work. The claimant received no marking at all in relation to job knowledge, job skills and encouraging teamwork, paragraph 15.65; all rated as more than satisfactory by Ms Lindup just 6 months earlier, paragraph 15.32, and no marking for punctuality rated as well ahead of standard (the highest score) by Ms Lindup. Instead Ms McKeever simply inserted into the comments box for each of these measures that the claimant was to provide evidence of performance throughout the year to demonstrate the measure in question to show on what basis the claimant had made her own self assessment, paragraph 15.65. Shorn of any context this requirement might be taken to suggest that Ms McKeever, as a relatively new manager to the claimant, simply had insufficient evidence to appraise the claimant in those areas. But that was flatly contradicted by the evidence. As we have found Ms McKeever had sight of roughly 60 - 70% of the claimant's work, she had formed a view that the claimant's technical skills were OK/good and she considered that one measure of the claimant's performance was how the team were performing and the team was performing well, paragraph 15.65. Ms McKeever therefore had sufficient information on which to conduct these parts of the appraisal and to do so in a positive light. Accordingly, we reject the respondent's explanation. Neither did we consider that there was any other explanation identified in the evidence that might realistically explain the reason for this treatment and in the absence of an adequate explanation this complaint succeeds.

Harassment related to race

56 As this is a successful complaint of direct race discrimination then by virtue of section 212 of the Equality Act this cannot also be an act of harassment related to race.

Complaint 6: On 28 June 2018 Mr Orchard held a lengthy grievance meeting with the claimant during which he failed to explain to her what the allegations against her were.

Direct race discrimination

57 This complaint essentially fails on the facts. At the start of the meeting Mr Orchard told the claimant that he was investigating a grievance made against her by Ms Prescott, paragraph 15.72 above. Where specific incidents had been raised by Ms Prescott these were put to the claimant and she was asked about them, paragraph 15.74. It is true that during the interview Mr Orchard also asked the claimant a large number of broad and vague questions, paragraph 15.73, but that style of questioning simply reflected the way that Mr Orchard had gone about his investigation. As set out above, paragraph 15.70, as a result of the way he went about his interviews he had amassed a large body of information by the time he interviewed the claimant much of which was no more than generalisations about her behaviour "she sits with her head down at her desk"

"she can be rude" etc. Mr Orchard considered that a complaint of this nature was still an allegation. So, whilst there was a lack of specifics in some of what he discussed with the claimant, that was not a failure to explain what the allegations were, it reflected the fact that much of what Mr Orchard considered to be an allegation was in reality no more than a vague or generalised complaint about the claimant, paragraph 15.70. Looked at in this way he did put the allegations to the claimant. Of course, this meant that the claimant was, in part, presented with an amorphous mass of information from which it would have been impossible to pick out the actual specifics of an alleged incident, but that is an issue which would have gone to the fairness of the disciplinary process. It is not relevant to whether the complaint is factually accurate.

Harassment related to race

58 As set out above, this complaint fails on the facts.

Complaint 7: there was substantial delay in investigating and concluding the grievance against the claimant

Direct Race Discrimination

59 It is factually correct that there was substantial delay in investigating and concluding the grievance. The grievance was lodged on 3 May 2018 and the claimant was told that the combined grievance/ disciplinary case would not be progressed any further on 22 February 2019. We were prepared to assume for the purposes of analysing this complaint that the burden of proof had moved across to the respondent.

60 We concluded that the respondent had proved that the reason why the delay occurred was as follows. Once the grievance was lodged the respondent started what was a large scale grievance investigation. Sixteen people were interviewed, which took some time, before the claimant was interviewed on 28 June, paragraph 15.72. Within a few weeks of the claimant's interview the incident during the 20 July meeting had occurred. The respondent then decided to roll together the grievance and disciplinary investigations, paragraph 15.90. The claimant was interviewed in respect of this on 14 August, paragraph 15.96. Around the end of August this investigation was put on hold, paragraph 15.110, whilst the respondent explored other means of exiting the claimant, in particular VR, paragraph 15.119. That being unsuccessful the respondent then informed the claimant that the investigation phase had finished and she would be moving to a disciplinary hearing in January 2019. However by this point the claimant had already been issued with notice of dismissal, which had been issued on 11 December 2018, and it was only once the appeal in relation to that had concluded on 18 February that the claimant was informed on 22 February 2019 that the disciplinary would not be progressed, paragraph 15.158. In summary therefore the reasons for the delay were; firstly, the size of the investigation,

secondly, the decision to roll together the grievance and disciplinary investigation, thirdly, the respondent's decision to delay this process whilst other discussions took place and finally waiting for the outcome of the claimant's appeal against her dismissal before confirming to the claimant that the disciplinary matter would not go ahead.

Harassment related to race

61 We conclude that the delay was unwanted conduct. We did not consider that the actions of Mr Orchard could be characterised as conduct that had the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we concluded that the claimant had proved that it had that *effect* on the her. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Mr Orchard was not in any way related to race. The reason for the conduct was as we set out in paragraph 60 above. The concept of conduct "related to" a protected characteristic goes wider than the "reason why" but there still requires to be some connection between the conduct and the protected characteristic. We conclude that no such connection existed.

Complaint 8: The decision to suspend the claimant

Direct race discrimination

62 It is factually correct, of course, that the claimant was suspended. The relevant decision maker was Ms Teasdale. She was not a witness before us. We were prepared to assume that the burden of proof had moved across to the respondent. Even in the absence of hearing from Ms Teasdale we concluded that the respondent had proved that the reason why the respondent suspended the claimant was because of the claimant's behaviour at the meeting on 20 July. Before us the claimant denied that anything untoward had happened at this meeting. Had we resolved this factual dispute in the claimant's favour that would, of course, have been a very relevant finding of fact calling into question the reason for her suspension. However, we have found that at this meeting the claimant was angry, muttering under her breath and banging her pen on her notebook, that she was rude to both Ms Lindup and Ms Grocott and that she refused to present her presentation, paragraph 15.87. Whilst we were mindful that we have found that, in respect of the disciplinary case that followed, the respondent gave us an exaggerated view of the seriousness of some of the claimant's behaviours, we did not consider that sufficient to undermine the clear chronology around the suspension; i.e. there was an incident at the meeting on Friday 20 July and the claimant was suspended the next working day, on Monday 23 July whilst that (and other matters) were investigated. This is a non-discriminatory explanation that is in no sense whatsoever because of race.

Harassment related to race

63 We have little doubt that suspending the claimant was unwanted conduct. We did not consider that the actions of Ms Teasdale could be characterised as conduct that had the *purpose* (i.e. done with the intent of) of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we concluded that the claimant had proved that it had that *effect* on the her. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Ms Teasdale was not in any way related to race. The reason for the suspension was the claimant's behaviour during the meeting of 20 July. Accordingly, the conduct was not caused by the protected characteristic of race and there was nothing to suggest on the evidence before us that it was associated with race in some other way.

Complaint 9: at the disciplinary meeting on 14 August Mr Orchard failed to make clear to the claimant what the allegations were and added new allegations and the claimant had no opportunity to prepare.

Direct race discrimination

64 We understood there to be two parts to this complaint; firstly that Mr Orchard failed to make clear to the claimant during the meeting what the allegations were and secondly that the claimant was not informed by Mr Orchard in advance of the disciplinary investigation meeting that new matters, specifically the Verto red flag incident, were under investigation. The first part of this complaint itself divides into two; the allegations that arose from the grievance investigation and the more recent allegations concerning the 20 July meeting and the Verto red flag. In relation to the second part of this complaint, this essentially fails on the facts. Mr Orchard discussed the claimant's conduct during the meeting of 20 July and the Verto red flag incident in detail with the claimant, paragraph 15.98.

65 He did fail to make clear to the claimant which allegations arising out of the grievance investigation now formed part of the disciplinary case, paragraph 15.97. We were prepared to assume that the burden of proof had moved across to the respondent and we concluded that the respondent had proved that the reason why the claimant was not given this information was as follows. Mr Orchard himself had not at any stage considered or identified which specific incidents raised in the grievance investigation he was now investigating as part of the disciplinary investigation, paragraph 15.95. He considered that the claimant had been told in her suspension letter what the "allegations" were and that all the conduct that had been described to him during the grievance investigation fell within one or other of the very broadly worded potential disciplinary charges set out in the claimant's suspension letter, paragraph 15.95. He did not consider that further clarity was needed, paragraph 15.95. Again this meant that the claimant was left in a position whereby it would not have been possible for her to identify the actual specifics of many of the alleged incidents arising out of the grievance

investigation, but that is an issue which would have gone to the fairness of the disciplinary process not to the reason why this happened

66 It is correct that the claimant was not told in advance of the hearing that the Verto red flag was under investigation, paragraph 15.98. We were prepared to assume that the burden of proof had moved across to the respondent and we concluded that the respondent had proved that the reason why the claimant was not given this information in advance of the hearing was that Mr Orchard considered that the claimant had been told in her suspension letter what the "allegations" were and he did not consider that further information needed to be provided by him in advance of the hearing, paragraph 15.98. The respondent had said in this letter that the disciplinary matters under investigation were;

Breach of the Council's core behaviours as contained in the code of conduct for employees in relation to;
Treating colleagues with dignity and respect, and
Inspiring trust and confidence.
It was stated that this related to several alleged incidents and behaviours some of which are currently being investigated as part of the grievance procedure, as well as more recent incidents which may amount to;
Undermining of colleagues,
Refusal to perform agreed task in meeting,
Bringing the Council into disrepute.

The Verto matter, he considered, fell under the charge of undermining colleagues, and the claimant had been notified of this "allegation" already, paragraph 15.98. (note; we reject his evidence that he also considered it fell under bringing the respondent into disrepute for the reasons we have already set out.) This is a non-discriminatory explanation that is in no sense whatsoever because of race.

Harassment related to race

67 This fails on the facts in relation to the 20 July meeting and the Verto red flag incidents. In relation to the allegations against the claimant that Mr Orchard considered arose out of the earlier grievance interviews we did not consider that the actions of Mr Orchard could be characterised as conduct that had the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we concluded that the claimant had proved that it had that *effect* on the her. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Mr Orchard was not in any way related to race. The reason for the conduct was as we set out in paragraph 65 above. Accordingly the conduct was not caused by the protected characteristic of race and there was nothing to suggest on the evidence before us that it was associated with race in some other way.

68 As to the second part of this complaint (the introduction of the Verto red flag matter) we conclude that the introduction of this for the first during the investigatory meeting was unwanted conduct. We did not consider that the actions of Mr Orchard could be characterised as conduct that had the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her but we concluded that the claimant had proved that it had that *effect* on the her. However, on the assumption that the burden of proof had reversed, we concluded that the conduct of Mr Orchard was not in any way related to race. The reason for the conduct was as we set out in paragraph 66 above.

Complaints 10 and 13: the claimant was told her post was deleted and the claimant's dismissal

Direct race discrimination

68 Given that the claimant had to be told that her post was deleted in order for the respondent to then be able to inform the claimant that she was dismissed we considered that these two complaints were inextricably linked and should be analysed together. The treatment complained of did occur on our findings of fact; the claimant was told (by Ms Pearce) that her post was displaced and she was dismissed. The relevant decision maker for the dismissal was Ms McKeever. We infer that the person who decided to tell the claimant that her post was deleted was Ms Pearce (this was not actually specifically addressed in evidence). The hypothetical comparator would be someone who was not British Indian who was managing a team subject to a restructure and against whom there was a disciplinary investigation ongoing in respect of her interpersonal skills and conduct.

69 We concluded that the claimant had proved facts from which we could conclude that she was treated less favourably than this comparator because of race. Those facts are; our finding that Ms Pearce and Ms Marenda put pressure on the claimant to take voluntary redundancy, paragraph 15.119 above, our finding that Mr Orchard had deliberately exaggerated the seriousness of some of the claimant's conduct for the purposes of the disciplinary case, paragraph 15.82, our finding that Mr Orchard with the assistance of Ms Manku was conducting a one sided disciplinary investigation the purpose of which was to secure the claimant's exit from the business, paragraph 15.109, and our finding that internal discussions were underway about exiting the claimant at an early stage of the disciplinary investigation and prior to final decisions being made on the restructure, paragraph 15.99 above. All of these findings combined demonstrate a level of determination on the respondent's part to exit the claimant from the Council. Indeed, we have found as a fact that Ms McKeever, Ms Lindup, Ms Pearce and Ms Manku, with assistance from Mr Orchard and Ms Marenda, were intent on exiting the claimant by whatever means possible, paragraph 15.120. This level of determination to exit the claimant by, on our findings, whatever

means possible, calls for an explanation of the decision to inform the claimant that her post was deleted and the decision to dismiss her. Lastly, we also took into account the very significant degree of negativity demonstrated by Ms McKeever towards the claimant during the appraisal in May 2018, paragraphs 15.63 and 15.65 above, and the fact that a complaint of race discrimination against Ms McKeever has already succeeded in relation to this matter, see paragraph 55 above. We considered that to be significant given that Ms McKeever had overall responsibility for the re-structure and was the decision maker for the dismissal, Accordingly, the burden of proof moves across to the respondent.

70 Ms Pearce's explanation for telling the claimant that her post was deleted was that it was in fact deleted under the restructure. We reject that explanation. For the reasons that we have already set out at paragraphs 15.104, 15.105 and 15.121 above, we have found that the claimant's role continued to exist. Closely linked to this the respondent's explanation for the claimant's dismissal was that she was redundant following the deletion of her post in the restructure. We reject this; the post was not deleted and there was not a redundancy situation. There was no evidence whatsoever led by the respondent to the effect that there was a diminution in the respondent's requirements for *work* of a particular kind to be carried out. Neither, we find, was there a diminution in the respondent's requirements for *employees* to carry out work of a particular kind. The claimant's post remained within the structure; it had simply been renamed, paragraph 15.104 above, and the restructure actually led to an increase in the number of managerial employees on the team, paragraph 15.102 above. This was not a case where the respondent had re-organised so that one employee was now doing the work formerly done by two.

71 In any event, even had the respondent proved that there was a redundancy situation we would not have found that this was the reason for the claimant's dismissal. That is because we have found that the apparent deletion of the claimant's post was engineered in order to secure her dismissal, it was a sham designed to achieve the claimant's exit, paragraphs 15.120 and 15.121, not part of a genuine redundancy situation.

72 We therefore rejected the respondent's explanation. We were mindful, however, that as set out in **Kent Police v Bowler UKEAT/0214/16: "**All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal's own findings. Merely because a tribunal concludes that an explanation for certain treatment is inadequate, unreasonable or unjustified does not by itself mean the treatment is discriminatory."

73 We therefore considered whether, on the evidence, we could make a positive finding that there was a complete non-discriminatory explanation for the respondent's treatment of the claimant; namely her conduct and behaviour towards her colleagues. Were the claimant's interpersonal skills the reason why the treatment complained of occurred? We have little doubt that it was part of the reason for the treatment given the period of time over which low level difficulties in relation to the claimant had been reported, and the difficulties that the respondent, and Ms McKeever in particular, for some reason had in addressing this situation effectively. However, the real question for us was whether this explanation was adequate to discharge the burden of proof on the balance of probabilities that race was in no sense whatsoever a reason for the treatment.

74 We concluded that it was not. We reached this conclusion for the following reasons. Had this been the explanation for the respondent's treatment of the claimant we would have expected the respondent to tell us in evidence that this was the case. It could, after all, have been a completely non-discriminatory reason for the treatment. Yet the respondent did not do this. Instead the respondent persisted in putting forward what was effectively a false reason for the treatment. We took into account that some of the respondent's behaviour went beyond what might be considered to be ill thought out or unreasonable treatment to something that was more personal and targeted at the claimant, for example the unexplained negativity from Ms McKeever towards the claimant in her appraisal in May 2018. We took into account that the respondent went to great lengths to achieve the claimant's exit; conducting an unfair and partial disciplinary investigation, putting her under pressure to take VR, and engineering the restructure so that it could be claimed the claimant's post had been deleted when it had not. All of which required a substantial degree of collusion between various senior managers and HR, specifically Ms McKeever, Ms Lindup, Ms Pearce and Ms Manku, with assistance from Mr Orchard and Ms Marenda.

75 We also drew an adverse inference against the respondent in relation to Ms McKeever's wholesale failure to either identify herself as the relevant decision maker for the dismissal or to set out a rationale for the dismissal. We took into account that there were many other examples of this respondent having formed a particularly negative view of the claimant; deciding to treat Ms Prescott's complaint against the claimant as a formal grievance when Ms Prescott herself had requested for it to be dealt with informally, the disciplinary investigation officer referring to a likely "conversation" with the claimant whilst the *investigation* stage of the disciplinary process was still ongoing and prior to any formal decisions having been made on the restructure, Ms Pearce's overtly sceptical response to the claimant's grievance (which contrasts very starkly indeed with the way the respondent reacted when Ms Pearce raised her informal complaint) and the decision to make it impossible for the claimant to succeed in securing either of the alternative employment opportunities that were available by structuring the interview panel in the way that it did. Taken together these factors demonstrate an overall level of personal animus towards the claimant which

makes it impossible for us to conclude on the balance of probabilities, and in the absence of the respondent advancing this as an explanation, that the claimant's interpersonal skills were the reason for the conduct about which complaint is made.

Harassment related to race

76 As these are successful complaints of direct race discrimination then by virtue of section 212 of the Equality Act they cannot also be acts of harassment related to race.

Complaint 11: Ms Pearce and Ms Marenda putting the claimant under pressure to take voluntary redundancy

Direct race discrimination

77 We have found as a fact that this treatment did occur, paragraph 15.119 above. The comparator would be someone who was not British Indian, who had a history of low level complaints being made against her in respect of her interpersonal skills and who was subject to a disciplinary investigation in respect of various interpersonal skills issues. We concluded that the claimant had established facts from which we could conclude that she was put under pressure to take voluntary redundancy because of her race. Those facts are; our finding, based on Ms Pearce's oral evidence before us, that it was "very unusual" for the respondent to offer voluntary redundancy to a person who was undergoing a disciplinary investigation, paragraph 15.116, our finding that a group of individuals, which included Ms Pearce and Ms Marenda, were intent on exiting the claimant by whatever means and our conclusion, set out above, that the claimant's subsequent dismissal was an act of race discrimination.

78 Accordingly the burden of proof moves across to the respondent. Ms Marenda was not called to give evidence and therefore we heard no explanation from her. Ms Pearce denied that the claimant had been put under pressure. Her initial explanation for "offering" the claimant voluntary redundancy was that this might have been available to the claimant as part of the compulsory redundancy process. However, when questioned about this further, her explanation became that the reason the offer was made was that the respondent "is a fair employer and we do not like to see people dismissed without anything" and "I wanted to see Jas go with something".

79 We reject this explanation for the following reasons. Firstly, as set out in paragraph 78 above, Ms Pearce was inconsistent in her evidence as to why the "offer" occurred, which we considered undermined the cogency of the explanation. Secondly, as we have already set out, the claimant was not "offered" voluntary redundancy, there was consistent pressure applied to her over an extended period, and the availability of voluntary redundancy as part of a

compulsory redundancy process did not explain this pressure. Thirdly the claimant would have "gone with something" whether she took voluntary redundancy or was made compulsorily redundant; the difference between her compulsory redundancy and voluntary redundancy figures was a few thousand pounds. Fourthly, the claimant was not in fact redundant. Moreover, insofar as Ms Pearce was saying the respondent was simply being a decent employer this was an explanation that was completely lacking in cogency given our findings as to how the respondent treated the claimant. Lastly we took into account that we have rejected the respondent's explanation for the claimant's dismissal. We considered that this also called into question the respondent's explanation for "offering" - i.e. pressurising - the claimant into taking VR, given that the respondent's attempts to exit the claimant via VR were closely linked to the dismissal and part of a continuing course of conduct.

80 Once again we considered whether we could find that the reason why the respondent put the claimant under pressure to take voluntary redundancy was because of the personality clashes/interpersonal skills issues but for all the reasons that we set out at paragraphs 74 and 75 above we concluded we could not.

Harassment related to race

81 As this is a successful complaint of direct race discrimination then by virtue of section 212 of the Equality Act this cannot also be an act of harassment related to race.

Complaint 12: the respondent refused to investigate the claimant's grievance of 4 December

Direct race discrimination

82 We have found as a fact that this treatment did occur. The relevant decision maker was Ms Pearce. The comparator would be someone who was not British Indian, who had a history of low level complaints being made against her in respect of her interpersonal skills, who was currently subject to a disciplinary investigation in respect of various interpersonal skills issues and who the respondent was about to exit under what was termed a redundancy process. We concluded that the claimant had established facts from which we could conclude that the claimant was less favourably treated than this comparator because of race. Those facts are; Ms Pearce's instantly dismissive reaction to the claimant raising a grievance, paragraphs 15.145 and 15.146 (i.e. the nature of the refusal, which suggests a degree of personal animus, not the refusal itself), the fact that some of the claimant's other complaints of race discrimination, both against the respondent in general, and against Ms Pearce in particular, have succeeded and our finding that Ms Pearce was one of the group of people who were working

together to secure the claimant's exit from the Council. Accordingly, the burden of proof moves across to the respondent.

83 Ms Pearce put forward a number of explanations as to why she refused to investigate the grievance. We have already rejected her evidence that the grievance policy stated that if a grievance was raised about an ongoing process then the grievance would not be considered separately to that process, paragraph 15.148. In her witness statement Ms Pearce also asserted that the issues raised in the claimant's grievance had already been investigated. We wholly reject that explanation. There had been no investigation of the claimant's assertion that the displacement of her substantive post in the team restructure had been constructed to engineer her dismissal from the organisation, there had been no investigation into her assertion that Ms McKeever had directly discriminated against her. There had been no investigation into her complaint that the disciplinary investigation had been unnecessarily prolonged particularly given the respondent's decision in August not to allow the claimant to rely on any of her witnesses, and no investigation into her complaint that there were serious concerns around how the investigation could be reasonable or fair.

84 In her verbal evidence before us, however, Ms Pearce moved away from these two matters being the reason for her refusal to investigate. Instead she asserted repeatedly that the reason why she refused to investigate the grievance was that, in her view, the points raised by the claimant in her grievance were all mitigation points that could be looked at as part of either the ongoing redundancy process or the ongoing disciplinary process. We reject that explanation for the following reasons. Had it been the case that the respondent genuinely took this view then the respondent would surely have informed the claimant of this before the meeting took place on 11 December at which she was dismissed, in order that the claimant could make a decision about whether to pursue these points in this forum. It is in any event difficult to see how Ms McKeever, who was conducting the dismissal meeting on 11 December, could possibly have properly formed any view on whether she herself had behaved in a discriminatory manner. Consequently we think it very unlikely that Ms Pearce genuinely thought that the claimant's principal complaint, that the displacement of her substantive post in the team restructure had been constructed to engineer her dismissal from the organisation based on Ms McKeever's direct discrimination and personal bias against her, was something that could have been raised by the claimant as "mitigation" and investigated as part of that meeting. Lastly, it was wrong in any event for Ms Pearce to categorise the claimant's grievance as raising mitigation points relating to ongoing processes. The grievance went far beyond what could possibly be considered to fall within the ambit of the redundancy or disciplinary process. For instance the claimant complained of bullying, harassment and victimisation by Ms McKeever during supervision meetings, and she said that Ms McKeever's victimisation of her had progressively worsened since November 2017, all of which fell far outside the remit of either process.

85 On a number of occasions in her oral evidence Ms Pearce also made the point that the claimant's grievance had been raised "very late in the day". On the balance of probabilities we considered that this much more accurately reflected Ms Pearce's thought processes at the time. We infer and find that the respondent, with its mind already made up that the claimant would be dismissed, did not want to deal with the claimant's grievance because it did not want to delay the claimant's dismissal, and that was what Ms Pearce had in her mind when she made her decision. After all, the claimant raised her grievance on the very same day that the respondent wrote to the claimant inviting her to attend the final stage meeting under the redundancy process, paragraphs 15.140 and 15.141. We considered whether that (not wanting to delay the dismissal) could be said to be an explanation that was in no sense whatsoever because of race. We concluded that it was an explanation that was tainted by race for the following reasons. Ms Pearce was part of the concerted effort to exit the claimant, paragraph 15.120, a process which ended in the claimant's dismissal, and this dismissal we have found is an act of race discrimination. Therefore, her reason for refusing to investigate the grievance was that she did not want to delay what we have found to be a discriminatory dismissal. Accordingly, the refusal to investigate the grievance was inextricably linked to the decision not to delay the (discriminatory) dismissal and we concluded that it could not therefore be said that her explanation was in no sense whatsoever because of race.

Harassment related to race

86 As this is a successful complaint of direct race discrimination then by virtue of section 212 of the Equality Act this cannot also be an act of harassment related to race.

Time limits

87 The successful claims of race discrimination occurred between 31 May 2018 and 6 March 2019. The claim form was submitted on 16 August 2019 and, allowing for the amount of time spent in early conciliation, the dismissal complaint was well within time. The other complaints, if they were stand alone matters, were on their face out of time. The respondent, however, did not submit that any of these prior complaints, if successful, were stand alone matters that did not form part of a continuing act. We deal with our conclusions on this issue briefly therefore. We concluded that all the successful complaints were part of a continuing discriminatory state of affairs. This was clearly not a succession of unconnected or isolated specific acts. Ms McKeever carried out the 2018 appraisal, oversaw the re-structure (and the asserted deletion of the claimant's post) and made the decision to dismiss the claimant. Ms McKeever, Ms Pearce and Ms Marenda were all part, on our findings, of the concerted effort to exit the claimant, paragraph 15.120, as was Ms McKeever. As part and parcel of this course of conduct Ms Pearce and Ms Marenda put the claimant under pressure to take VR and Ms Pearce refused to investigate the claimant's grievance

because the respondent did not want to delay the dismissal. All of the later incidents formed part of a chain of events leading to the claimant's dismissal. The appraisal complaint was of a different nature but the link in the chain so far as this complaint is concerned is Ms McKeever herself.

Victimisation

88 The respondent conceded that the claimant's grievance letter of 4 December was a protected act. There were three complaints of detriment:

Complaint 1: the refusal to investigate the claimant's grievance

89 Ms Pearce, of course, did know of the claimant's grievance. However even on the assumption that the burden of proof had moved across to the respondent we would have found that the reason for the refusal was that the respondent did not want to risk any delay to the dismissal decision to which they were already committed, see our analysis above. It was not because the claimant had done a protected act.

Complaint 2: in February 2019 the claimant was given very little notice of the disciplinary hearing

90 This complaint fails on the facts. The claimant received two invitations to a disciplinary hearing in 2019; on 18 January she was invited to attend a disciplinary hearing on 12 February, paragraph 15.153, giving her some three weeks notice of the hearing and on 30 January she was invited to attend a disciplinary hearing on 21 February, paragraph 15.157 – again giving her some three weeks notice of the hearing.

Complaint 3: the claimant's dismissal

91 The relevant decision maker was Ms McKeever. There was no evidence before us to suggest that Ms McKeever had any knowledge of the claimant's grievance at the point when she made the decision to dismiss, and neither was she asked about this in cross examination. In the absence of any knowledge of the protected act it cannot have operated on the mind of Ms McKeever when she made her decision to dismiss. Accordingly this complaint fails.

Unfair dismissal

92 For the reasons that we have already set out the respondent has failed to prove that redundancy was the reason for the claimant's dismissal. Accordingly, the respondent has failed to establish a potentially fair reason for dismissal and the claimant's unfair dismissal claim therefore succeeds.

Case No: 1306737/19
Employment Judge Harding
Dated: 30 March 2021