EMPLOYMENT TRIBUNALS

Claimant: **Mrs Rachel Williams**

Respondents: **London International Exhibition Centre Plc t/as ExCeL London**

Heard: **East London Hearing Centre (by video hearing)**

On: **7, 8, 9, 13, 14 & 15 April 2021 (6 days)**

Before: **Employment Judge G Tobin**
Members: **Ms J Houzer**
Ms B K Saund

Representation
Claimant: **In person**
Respondent: **Mr N Cooksey (counsel)**

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. **The claimant was not unfairly dismissed in breach of s94 Employment Rights Act 1996.**

2. **The claimant was not discriminated against on the grounds of her race, in breach of s13 Equality Act 2010.**

3. **The claimant was not discriminated against on the grounds of her sex, in breach of s13 Equality Act 2010.**

4. **The claimant was not victimised, in breach of s27 Equality Act 2010.**

5. **Of the claimant's 31 substantive complaints of discrimination, 29 are out of time. The claimant's claims of direct race discrimination, direct sex discrimination, and victimisation, save as to 2 claims in respect of her dismissal, are all out of time. If there was any merit in these claims the**

Employment Tribunal would not have exercised its discretion to allow these complaints to proceed.

6. As a consequence of the above, all of the claimant's claims are now dismissed.

REASONS

The hearing

1. This was a remote hearing which had been consented to by the claimant and the respondent. The form of remote hearing was a video hearing under HM Courts & Tribunal Service Cloud Video Platform. All participants were remote (i.e., no one was physically at the hearing centre). A face-to-face hearing was not held because it was not practical in the light of the coronavirus pandemic and the governments restrictions.

Background and the claim

2. The claimant was employed by the respondent, until she was dismissed by reason of redundancy on 14 December 2018. The claimant made a claim to the Employment Tribunal on 7 May 2019, which followed a period of ACAS early conciliation between 12 March 2019 and 26 April 2019. The respondent filed a response to the claimant's claim on 17 June 2019. The claimant claimed that she had been discriminated against on the grounds of her race and her sex, in breach of section 13 of the Equality Act 2010 ("EqA"). The claimant also contended that she was victimised, in breach of s27 EqA. The claimant claimed unfair dismissal, pursuant to s94 Employment Rights Act 1996 ("ERA"). The respondent denied unfair dismissal, race discrimination, sex discrimination and victimisation. Although the claimant lodged her complaint of unfair dismissal within the statutory time limit, the respondent contended that most of her discrimination claims were out of time.

<u>The list of issues</u>

3. The issues were clarified and agreed by the parties prior to the beginning of the hearing. At the outset of the hearing the Employment Judge went through the list of issues to clarify these further. The list of issues was finalised as follows:

1 Unfair dismissal

1.1 The parties agree that the claimant was dismissed.

1.2 Did the respondent have a potentially fair reason for the claimant's dismissal?

1.3 The respondent submits that the reason for the claimant's dismissal was:

1.3.1 Redundancy, or in the alternative;

1.3.2 Some other substantial reason, namely, a business reorganisation carried out in the interests of economy and efficiency.

1.4 As to paragraph 1.3.1:

1.4.1 Can the Respondent show that the requirements of its business for employees to carry out work of a particular kind had ceased or diminished, or were expected to cease or diminish? The claimant avers that the redundancy was a sham.

1.4.2 Was the claimant's dismissal wholly or mainly attributable to that redundancy situation?

1.4.3 If so, was the claimant's dismissal fair In the circumstances? The Tribunal will consider:

(a) The composition of the pool for redundancy
(b) The selection of the-claimant for redundancy within that pool
(c) Whether there was sufficient warning of redundancy
(d) Whether there was adequate and sufficient consultation
(e) Whether there was a sufficient search for alternative employment

1.5 If the dismissal was unfair, what compensatory award is just and equitable? Has the respondent proved that the claimant has failed to mitigate her loss and/or that a Polkey reduction should be made?

2 Discrimination

2.1 Jurisdiction

2.1.1 Does the Employment Tribunal have jurisdiction to hear the claimant's claims?

2.1.2 Are the claimant's claims of discrimination in time?

2.1.3 Do the alleged incidents of discrimination amount to a continuing act?

2.1.4 If the claims are out of time, is it just and equitable for time to be extended?

2.2 Direct race discrimination

2.2.1 Did the respondent treat the claimant less favourably because of her colour and/or nationality and/or ethnic origin and/or national original and/or race contrary to s13(1) EqA?

2.2.2 In particular, did the following alleged acts take place:

(a) In February 2017, James Rees declined a flexible working request submitted by the claimant;

(b) In March 2017, the claimant's email regarding room booking rules and procedures was ignored;

(c) In March 2017, James Rees failed to respond to the claimant's concerns regarding room booking rules and procedures;

(d) In March 2017, members of the respondent's C&E team ignored rules put in place to pursue a client account and to interfere and displace an agreement that the claimant had put in.place;

(e) In May 2017, James Rees declined a flexible working request submitted by the claimant;

(f) In July 2017, James Rees failed to respond to the claimant's concerns regarding room booking rules and procedures;

(g) In August 2017, Andrew Swanston put pressure on the claimant to release a room booking for Katy Gough and questioned the claimant's commercial decision making;

(h) the claimant was prevented from booking larger spaces without prior permission from Andrew Swanston or James Rees;

(i) In August 2017, James· Rees said to the claimant *"you are not doing yourself any favours (signalling to the C&E team), say they don't know what you are doing*.",

(j) In December 2017, Andrew Swanston sent an offensive email to the claimant copying in junior colleagues;

(k) In December 2017, Andrew Swanston said to the claimant "*well ok, if you really want to know, yes I mean it! You feel you are up there (gesturing upwards with his hands), you act as if you are better than the rest of us.*"

(l) In December 2017, James Rees failed. to take action against Andrew Swanston and told the claimant she was alienating herself;

(m) In Spring 2018 a new C&E sales employee contacted a client and introduced herself as their account manager without the claimant's knowledge;

(n) In May 2018, James Rees failed to respond to a flexible working request

(o) On 19 June 2018, James Rees failed to respond to an email from the claimant regarding a flexible working request;

(p) The respondent failed to respond to the claimant's flexible working request within a reasonable time period;

(q) In July 2018 the respondent subjected the claimant to unreasonable conditions in response to her flexible working request which was a month trial period;

(r) On 5 July 2018, the claimant was not invited to a lunch meeting;

(s) In Summer 2018, James Rees did not inform the claimant that he was renegotiating a preferred supplier agreement. James Rees said to the claimant "*this is the sort of deal you should be making*";

(t) On 28 September 2018, the claimant was not invited to a meeting to review a working from home trial period;

(u) [Deleted].

(v) On 30 October 2018, the claimant was deliberately excluded from away day preparations meaning that the claimant had limited preparation time;

(w) on 30 October 2018, the claimant was not included on an organisational chart presented at the away day;

(x) James Rees failed to inform the claimant about the need to prepare updates for quarterly board report. submissions; and

(y) On 1 November 2018, the claimant was excluded from a commercial team away day.

(z) Dismissal.

2.2.3 If so, did each act constitute an act of less favourable treatment because of the Claimant's race?

2.2.4 Who is the comparator whom the claimant alleges was treated more favourably?

2.2.5 If there is no direct comparator, who is the hypothetical comparator?

2.3 Race related victimisation

2.3.1 Did the respondent subject the claimant to a detriment because the claimant did a protected act or because the respondent believed that the claimant had done or may do a protected act contrary to s 27(1) EqA?

2.3.2 Does the alleged protected act meet he requirements set out in s27(2) of the EqA?

(a) On 14 December 2017, following the incident on the same day with Andrew Swanston (see paragraph 2.2.2(k) above) the claimant told James Rees that she was being treated differently and unfairly.

(b) On 15 December 2017, the claimant told Adam Chircop of conversation at paragraph 2.3.2(a) above. She said she was being treated differently and unfairly.

(c) The claimant referred to being treated differently and unfairly in the pre-prepared appraisal notes for the annual appraisal to be held on 5 February 2018.

(d) On 5 February 2018, the claimant referred to being discriminated against at the appraisal to James Rees.

The Respondent denies that these constitute protected acts and/or that the statements were made.

2.3.3 In particular, did the following alleged detriments take place:

(a) James Rees delayed approving the claimant's requests for flexible working;

(b) James Rees referred the claimant to Andrew Swanson for answers James Rees could give;

(c) CentrEd had its sale team structure reviewed and reduced whilst the C&E and Exhibitions team received additional sales support; and

(e) James Rees ridiculed and pressurized the claimant about CentrEd not meeting its targets. He talked down at the claimant and did not acknowledge the challenges that the claimant had raised, ·

2.4 Direct sex discrimination

2.4.1 Did the respondent treat the claimant less favourably because of her sex contrary to s13(1) EqA?

2.4.2 In particular, did the following alleged acts take place:

(a) Declined requests for flexible working in February and' May 2017, see 2:2.2(a) and (e);

(b) The respondent failed to respond to the claimant's flexible working request within a reasonable time period; and

(c) the respondent subjected the claimant to unreasonable conditions in response to her flexible working request which was a month trial period

(d) dismissal

2.4.3 If so, did each act constitute an acf of less favourable treatment because of the claimant's sex?

2.4.4 Who is the comparator whom the claimant alleges was treated more favourably?

2.4.5 If there is no direct comparator, who is the hypothetical comparator?

3 Remedy

3.1 If the claimant succeeds in any of her claims, to what compensation is she entitled?

3.2 Has the claimant attempted to mitigate her losses?

The relevant law

4. The relevant applicable law for the claims considered is as follows.

Unfair Dismissal

5. The claimant claims that she was unfairly dismissed in contravention of s94 ERA. S98 ERA sets out how the Tribunal should approach the question of whether a dismissal is fair. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA.

6. The respondent contends that it dismissed the claimant for redundancy. This is a potentially fair reason pursuant to s98(2)(c) ERA. An employee is dismissed by reason of redundancy, within s139(1)(b) ERA if the reason for his dismissal is that the requirement for employees to do work of a particular kind has ceased or diminished. This will clearly cover the situation where the dismissed employee's own job has disappeared through (actual or expected) lack of work; however, it also covers certain reorganisations and restructuring. In *Safeway Stores v Burrell [1997] IRLR 200* the Employment Appeal Tribunal ("EAT") held that the test to establish whether or not a redundancy situation existed under s139(1)(b) ERA, should be a 3-stage process:

    1. was the employee dismissed? If so,
    2. had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish? If so,
    3. was the dismissal of the employee caused wholly or mainly by that state of affairs?

7. In determining at stage 2 above, whether there was a true redundancy situation, the only question to be asked is whether there was a diminution/cessation in the employer's requirement for employees to carry out work of a particular kind, or an expectation of such a diminution/cessation in the future. This was approved by the House of Lords in *Murray and Another v Foyle Meats Limited [1999] IRLR 562*. *Safeway* and *Murray* gave little emphasis to the words "work of a particular kind" as the focus was on causation, so a dismissal is by reason of redundancy if it is attributable to the respondent's diminished need for employees to do work of a particular kind.

8. The respondent also contends that in the alternative it dismissed the respondent for some other substantial reason ("SOSR") of a kind such as to justify the dismissal of an employee holding the position the employee held, pursuant to s98(1)(b) ERA. It is common for respondents to claim a SOSR dismissal in the alternative because redundancy has a technical meaning and there might be the circumstances where a

business reorganisation might not meet this definition. We do not analyse the dismissal under SOSR because the respondent satisfied that this was a genuine redundancy situation.

9. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4) ERA:

> Where the employer has fulfilled the requirements of subsection (1), the determination of the question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.

10. The s98(4) ERA test can be broken down to two key questions:

    1. Did the employer utilise a fair procedure?

    2. Did the employer's decision to dismiss fall within the range of reasonable responses open to a reasonable employer?

11. Accordingly, so far as the unfair dismissal issue was concerned, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to its redundancy situation and the decision to re-organise or restructure the CentrEd part of its business. The case law guidance in redundancy dismissals, such as *Williams v Compair Maxam Ltd [1982] IRLR 83*, emphasized the importance of:

    a. The respondent giving as much warning as possible of impending redundancies to allow those affected the ability to find alternative solutions and/or employment.
    b. Consultation must occur when matters are at a formative stage.
    c. There should be an objective criterion for selection for redundancy.
    d. The respondent must follow a fair selection in accordance with such criteria.
    e. The respondent should make reasonable efforts in respect of alternative employment which could prevent a dismissal.

12. In judging the reasonableness of the employer's decision to dismiss, an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did in fact chose. Consequently, the question for the Tribunal to determine is whether the respondent's decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision is reached: *J Sainsbury plc v Hitt 2003 ICR 111 CA* and *Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA.*

Protected characteristics

13. Under s4 EqA, a protected characteristic for a claimant includes race, which includes: (a) colour; (b) nationality; and (c) ethnic or national origin. S4 EqA also provides that someone's sex is a protected characteristic.

Direct discrimination

14. S13(1) EqA precludes direct discrimination:

> *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.*

15. The examination of *less favourable treatment because of the protected characteristic* involves the search for a comparator and a causal link. When assessing an appropriate comparator, "there must be no material difference between the circumstances relating to each case": s23(1) EqA.

Victimisation

16. Victimisation under s27(1) EqA is defined as follows:

> *A person (A) victimises another person (B) if A subjects B to a detriment because –*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*

17. A "protected act" includes bringing proceedings under the EqA, as well as giving evidence or making allegations that a person has contravened the EqA. There is no need to find a comparator for victimisation as it is only the treatment of the victim that matters in establishing causation; it is possible to *infer* from the employer's conduct that there has been victimisation.

The burden of proof and the standard of proof

18. S136 EqA implements the European Union Burden of Proof Directive. This requires the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.

19. The cases of *Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205* and *Igen Ltd v Wong [2005] EWCA Civ 142, [2005] ICR 931* provide a 13-point form/checklist which outlines a two-stage approach to discharge the burden of proof. In essence, this can be distilled into a 2-strage approach:

    a. Has the claimant proved facts from which, in the absence of an adequate explanation, the tribunal could conclude that the respondent had committed unlawful discrimination?

    b. If the claimant satisfies (a), but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed?

20. The Court of Appeal in *Igen* emphasised the importance of *could* in (a). The claimant is nevertheless required to produce evidence from which the Tribunal could conclude that discrimination has occurred. The Tribunal must establish that there is prime facie

evidence of a link between less favourable treatment and, say, the difference of race and that these are not merely two unrelated factors: see *University of Huddersfield v Wolff [2004] IRLR 534*. It is usually essential to have concrete evidence of less favourable treatment. It is essential that the Employment Tribunal draws its inferences from findings of primary fact and not just from evidence that is not taken to a conclusion: see *Anya v University of Oxford [2001] EWCA Civ 405, [2001] ICR 847*.

21. So, the burden is on the claimant to prove, on a balance of probabilities, a prima facie case of discrimination. The Court of Appeal, in *Madarassy v Nomura International plc [2007] EWCA Civ 33* at paragraph 56. The court in *Igen* 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. It was confirmed that the claimant must establish more than a difference in status (e.g. race or sex) and a difference in treatment before a Tribunal will be in a position where it *could conclude* that an act of discrimination had been committed.

22. Even if the Tribunal believes that the respondent's conduct requires explanation, before the burden of proof can shift there must be something to suggest that the treatment was due to the claimant's race. In *B and C v A [2010] IRLR 400 EAT* at paragraph 22:

> The crucial question is on what evidence or primary findings the tribunal based its conclusion that The claimant would not have feared further violence from a female alleged aggressor (and so would have accorded her due process). As we have already noted (paragraph 19), the tribunal does not spell out its thinking on that point. There was no direct evidence on which such a conclusion could be based; no such situation had ever occurred, and the tribunal refers to no admission by C, or other evidence of his attitudes, that might have supported a view as to how he would have behaved if it had. It is of course true that the tribunal was in principle entitled to draw appropriate inferences from the nature of the behaviour complained of. C's behaviour was certainly sufficiently surprising to call for some explanation: in the public sector in particular, it is second nature to executives to follow appropriate procedures, and the explanation offered by The claimant for his failure to do so in the present case – namely that he was seeking to avoid repeat violence (see paragraph 16 above) – is irrational since he could have mitigated the risk to precisely the same extent by suspending the claimant. But the fact that his behaviour calls for explanation does not automatically get the claimant past 'Igen stage 1'. There still has to be reason to believe that the explanation could be that that behaviour was attributable (at least to a significant extent) to the fact that the claimant was a man. On the face of it there is nothing in C's behaviour, all the surrounding circumstances, to give rise to that suspicion.

23. It is not sufficient to shift the burden onto the respondent, that the conduct is simply unfair or unreasonable if it is unconnected to a protected characteristic. In *St Christopher's Fellowship v Walters-Ellis [2010] EWCA Civ 921* at paragraph 44:

> The respondent's bad treatment of the claimant fully justified findings of constructive unfair dismissal, but it could not, in all the circumstances, lead to a finding, in the absence of an adequate explanation, of an act of discrimination. Non-racial considerations were accepted as the explanation for the respondent's similar treatment of the claimant in the other instances in which the claimant alleged race discrimination in relation to participation in recruitment. In the case of Ms Hayward, the respondent made a genuine mistake about the nature of the relationship, which they would not have made if they had properly investigated the nature of the relationship with the claimant and communicated with her, but their failure to do so was accepted to be the result of a genuine belief. The fact that it was mistaken could not, in the context of scrupulous attention to recruitment procedures, reasonably be held to have the effect of indicating the presence of racial grounds and so shifting the burden of proof to the respondent to prove that he had not committed an act of race discrimination.

24. In the case of *Nagarajan v London Regional Transport [2000] 1 Mr Chircop 501*, Lord Nicholls stated at 512-513:

> Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds, even though it is not the sole ground for the decision. A variety of phases, with different shades of meaning, have been used to explain how to legislation applies in such cases: discrimination requires that racial grounds were a cause, the aggravating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phases, as well as subtle distinctions, are better avoided. So far as possible. If racial grounds or protected acts has a significant influence on the outcome, discrimination is made out.

25. Employment Tribunal's adopt the civil standard of proof, which is on the balance of probabilities, i.e. more likely than not.

Time limits for discrimination proceedings

26. Claims of discrimination in the Employment Tribunal must be presented within 3 months of the act complained of, pursuant to s123 EqA. Acts of discrimination often extend over a period of time, so s123(3)(a) EqA goes on to say that "conduct extending over a period is to be treated as done at the end of the period". In addition, Employment Tribunals have a discretion to extend the 3-month period if they think it *just and equitable* to do so, under s123(1)(b) EqA.

The evidence

27. After a short case management conference and a review of the list of issues, we (i.e. the Tribunal) retired to read the witness statements and the documents that had been identified for preliminary reading. The Employment Judge advised the parties at the commencement of the hearing that, as a matter of course, Employment Tribunals do not read the entire hearing bundle. If a document is important and relevant then that document needed to be referred to us, either in a witness statement or being specifically referred to the Tribunal at the hearing.

28. We heard direct (i.e. oral) evidence from the claimant. The claimant confirmed her statement dated 20 July 2020 and was cross examined by Mr Cooksey on behalf of the respondent. The Tribunal also asked a number of questions for clarification. The claimant adduced additional evidence from Mr Samuel Cole, the claimant's brother, and Ms Delphine Lohezic. Mr Cole and Ms Lohezic did not give oral evidence because, from reading their statements, it did not appear that they could assist us with determining the issues in dispute. So, we took into account their statements and gave them the weight we thought appropriate in respect of the issues to be addressed.

29. We heard directly from James Rees who was the Executive Director (Conferences & Exhibitions) and the claimant's line manager. Mr Rees had provided a witness statement dated 17 July 2020. We also heard from Andrew Swanston, who was the Head of Sales – Conferences & Events. Mr Swanston had provided a witness statement dated 16 July 2020. Adam Chircop, the Head of Human Resources, gave evidence and provided a statement dated 17 July 2020. Finally, we heard from Simon Mills who was an Executive Director and has previously provided a statement dated 16 July 2020. All of the respondent witnesses were questioned by the claimant and, again, the Tribunal asked questions of clarification.
30. We considered a bundle of documents in excess of 1,100 pages.

Our findings of fact

31. We set out the following findings of fact, which we determined were relevant to finding whether or not the claims and issues identified above have been established. We have not determined all of the points of dispute between the parties, merely those that we regard as relevant to determining the issues of this case as identified above.

32. In assessing the evidence and making determinations, we placed particular reliance upon contemporaneous documents as an accurate version of events. We also place some emphasis (and drew appropriate inferences) on the absence of documents that we expected to see as a contemporaneous record of events. Witness statements are, of course, important. However, these stand as a version of events that was completed sometime after the events in question and are drafted through the prism of either advancing or defending the claims in question. So, we regard them with a degree of circumspection as both memories fade and the accounts may reflect a degree of re-interpretation.

33. The claimant commenced employment with the respondent on 24 October 2016 as a Business Development Manager ("BDM") for CentrEd which was a meeting and training facility at ExCeL London. The CentrEd facility had been open for business from January 2016.

34. On 19 December 2016 Mr David Pegler (the former Chief Executive Officer) held a senior managers lunch, for which the claimant was not invited.

35. On 6 March 2017 the claimant circulated an email about booking rooms at CentrEd and attached a revenue and year planner.

36. Mr Pelger held an away day with the Conference & Exhibition ("C&E") senior team on 8 March 2017 and the claimant was invited to this away day.

37. On 29 and 30 March 2017 the claimant undertook a review of the CentrEd structure with Mr Chircup. The claimant made changes which took effect from May 2017.

38. The claimant circulated an email about a Preferred Partnership Agreement with client GRG for 2017.

39. On 18 July 2017 the claimant recirculated an earlier email about room bookings which had been sent on 6 March 2017. Mr Rees responded to that email the same day.

40. On 1 August 2017 the claimant sent an email to Mr Swanston regarding booking issues relating to Katy Gough (C&E Account Manager).

41. The claimant attended Mr Pegler's meeting to the 2018 budget and on 9 November 2017 the claimant circulated and email about the CentrEd Revenue/Yield Planner for 2018.

42. On 30 November 2017 the claimant, Mr Rees and Samantha King met with client GRG at their offices.
43. A clear the air or mediation meeting occurred on 14 December 2017 between the claimant and Mr Swanston. Also present were Mr Chircop and Mr Rees.

44. On 19 December 2017 Mr Jeremy Rees[1] (the respondent's new Chief Executive Officer) held pre-lunch drinks, to which the claimant was invited.

45. On 23 January 2018 the claimant sent an email to Mr Rees about the booking procedures for the South Gallery or CentrEd rooms.

46. The claimant attended her annual appraisal meeting with Mr Rees on 5 February 2018

47. On 6 February 2018 the claimant circulated an email to confirm the preferred partnership agreement renewed with GRG for 2018.

48. A meeting took place to review C&E 2018 numbers on 8 February 2018. Mr Jeremy Rees, Mr Rees, Mr Swanston, Jane Hague (Head of Business Development), Samantha Shamkh (Head of Conventions) and the claimant attended this meeting.

49. The claimant submitted her flexible working request to Mr Rees on 10 April 2018. The claimant resent this on 19 June 2018 and 11 July 2018. The respondent responded to the claimants flexible working request on 11 and 19 July 2018. Mr Rees met with the claimant on 17 July 2018 to discuss terms of the claimant's flexible working arrangements. The claimant's request is approved subject to a 1-month trial period.

50. On 5 July 2018 a board lunch took place for which the claimant was not invited.

51. On 10 July 2018 Mr Rees signed a revised agreement with GRG for 2018.

52. The claimants flexible working trial period ended on 25 September 2018. No review was carried out by Mr Rees or by Human Resources at the end of this trial period.

53. On 4 October 2018 Mr Rees and Mr Chircop met with the claimant and gave her notice that she was at risk of redundancy.

54. Redundancy consultation meetings took place between Mr Rees, Mr Chircop and the claimant on 10 October 2018, 23 October 2018, 25 October 2018, 5 November 2018 and 20 November 2018 (i.e. 5 in total).

55. On 30 October 2018 a C&E team awayday took place which the claimant attended and on 1 November 2018 a commercial team awayday took place to which the claimant was not invited.

56. The claimant raised concerns about the redundancy consultation process on 4 November 2018. The claimant complained of the workplace culture and employees leaving. Significantly, the claimant did not raise any complaint of discrimination nor did she say anything that could be implied to be possible race discrimination or sex discrimination.

57. At the redundancy consultation meeting of 20 November 2018, the respondent confirmed that the claimant's employment was being terminated on the grounds of redundancy.

[1] We shall refer to Mr Jeremy Rees in full where appropriate so as to distinguish him from Mr (James) Rees and avoid possible confusion.

58. The claimant appealed her redundancy on 29 November 2018. The claimant's solicitor wrote to the respondent raising an unfair dismissal claim on 7 December 2018. There was no allegation of race discrimination or sex discrimination.

59. The claimant's employment with the respondent terminated on 14 December 2018.

60. On 20 December 2018 the claimant attended her appeal meeting with Mr Mills. This was the first time that the claimant raised possible race discrimination.

Our determination

61. Notwithstanding we dealt with our findings of fact in chronological order, so far as determining the claimant's claims for clarity we shall address these in the broad sequence that the allegations are set out in the list of issues, save that we deal with the out of time issues at the end.

Unfair dismissal

62. The respondent's case is that it dismissed the claimant fairly. Because redundancy has a technical definition the respondent contends that if the claimant was not dismissed for redundancy pursuant to s98(2)(c) ERA then, in the alternative, the claimant was dismissed (under the wider categorisation) for SOSR such as to justify the dismissal of an employee holding the position which the claimant did.

63. As identified by the Employment Judge during the hearing, it is not the role of the Tribunal to determine the correctness or otherwise of business initiatives or business decisions. The claimant's arguments that the respondent did not make sufficient efforts or improvements to make CentrEd viable may or may not have force; however, this is not a matter that the Tribunal can properly determine as we do not have the business expertise to undertake any extensive business review of capital investment and management changes. Irrespective of how they arrived at that situation, the respondent has shown that the requirements for employees to undertake the work in which the claimant was engaged (i.e. a BDM in CentrEd) had ceased or diminished or was expected to cease or diminish.

64. CentrEd did not make the financial contribution to the business as envisaged. This was raised with the claimant and her business targets were reduced. By the third quarter of 2018 Mr Rees was sufficiently concerned [Hearing Bundle page 526] to undertake a review of the commercial model.

65. The respondent considered whether elements of the BDM role could be absorbed by the wider C&E sales team. The requirement for a BDM proactively seeking new business had diminished. The respondent's case was there would likely be similar revenue generated without further capital expenditure and the claimant also made this point, so there is a clear rationale. The respondent contended that without increased business and/or revenue further capital investment was not justified. This is also a rational view that falls within the range of reasonable responses available to an employer in such circumstances.

66. In respect of sufficient warning of the redundancy, the claimant was appropriately notified of redundancy situation on 4 October 2018. The reason for the redundancy

situations and how this effected the claimant was explained, so that she could raise meaningful points during consultation. It commonplace for employers to provide figures for redundancy payment as part of the redundancy consultation exercise, so the Tribunal does not regard this, in itself, to indicate that the outcome was pre-determined. The letter handed to the claimant at the meeting of 4 October 2018 [HB533] indicated that no decision had been made and the claimant was told that she was "at risk" only. The claimant did not say at this meeting that the redundancy was due to negative or discriminatory behaviours from others. Nor did she raise this in the email exchanges to arrange further consultation meetings. At the first consultation meeting (i.e. 10 October 2018) Mr Chircop recapped the discussion of the redundancy notice/warning meeting and the claimant made no challenge to what was said. It was not until the claimant's letter of 5 November 2018 that she contended that she was told she was redundant on 4 October 2018. Even if the parties were unclear in their terminology, we do not determine that the respondent had decided to dismiss the claimant on 4 October 2018 or before.

67. The first consultation meeting discussed the pool for redundancy. CentrEd was a discrete entity for which there was largely a separate team. CentrEd was treated differently to the respondent's main business. Mr Rees and Mr Chircop discussed with the claimant why her role was considered to be unique, i.e. dedicated to CentrEd. CentrEd was the focus of the structural re-alignment and it was this stand-alone business entity that the claimant had the operational responsibility for. The nature of established relationships with clients was different as were the hiring arrangements. In essence the claimant was brought in a specialist to grow that part of the business faster. CentrEd was not the success envisaged, but that was no fault of the claimant, hence this was not regarded as a performance matter. There was a demonstrable difference between the claimant's operational and management responsibilities and that her senior colleagues and heads of departments whom the claimant contended should form part of her pool.

68. The respondent's decision that the claimant's role was unique and that there was a pool of one, is rational and within the reasonable range of responses. We cannot say that no reasonable employer would reach the same conclusion.

69. Following the notice/warning of redundancy meeting (of 4 October 2018) there were 5 further consultation meetings where the relevant issues were discussed. These were: 10 October 2018; 23 October 2018; 25 October 2018; 5 November 2018; and 20 November 2018. Our scrutiny of the meeting notes and correspondence shows an extensive dialogue between Mr Rees (and Mr Chircop) and the claimant.

70. Most of the consultation centred on the claimant's assertion that without further investment there would be little prospects of increased revenue and the respondent's reluctance to provide further investment without a guarantee of further business or returns. The redundancy pool/criteria was discussed in detail at the first, second and fifth redundancy consultation meetings and the claimant had the opportunity to raise any submissions (or arguments) in respect of this through the process. The respondent set out its position before the fifth consultation meeting as why it considered the claimant's role unique.

71. By the fifth consultation meeting the claimant seems to accept that she has had sufficient opportunity to raise any issues as she pressed the respondent to get on with

the process. By this stage it was clear that the claimant did not accept the respondent's business decision on CentrEd but there was no substantial dispute other than the inclusion of other staff in a selection pool.

72. The criteria considered when assessing whether there should be a pool of one was reasonable, and the claimant did not identify others at that stage. The claimant's case was that because she was effectively a salesperson it was irrelevant whether the product was different. The respondent did not accept that position. Assuming (which we do) that the claimant had the requisite personality and ability to re-orientate her sales skills from the small- to medium-size business opportunities, the respondent was entitled to consider the time that it would take for sufficient experience to be gained in selling huge niche events and in developing the relationships that needed to be established. The respondent assessed this as taking around 6 to 12 months, which we accept. Given the claimant's seniority and her cost to the business it is within the range of reasonable responses that the respondent took into account this factor when considering whether the roles were interchangeable.

73. The claimant appealed her decision to dismiss. She disputed the business rationale, Compared CentrEd with other sales teams who also did not hit target. She said that the C&E team had always sold CentrEd space and that this meant that, to some degree, her role and those roles in the C&E team were interchangeable. This point had been addressed by the respondent in the consultation as had the respondent's determination that she undertook a substantially different role from the other heads of departments and similar managers.

74. Under the circumstances we regard consultation on the definition of the pool has been adequate. We note that the claimant made no criticisms of the appeal process in her evidence, and this is significant. Her dispute was largely that she disagreed with the over-arching business decisions and the comparative assessment of roles undertaken by Mr Rees.

75. Neither the respondent nor the claimant identified any suitable alternative employment. All vacancies that existed were provided by the respondent to the claimant, but the claimant did not identify, at that relevant time, any that she wanted to pursue any or that she regarded as suitable alternative employment.

76. Therefore, with regard to the management decisions and assessment made as falling within the range of reasonable responses available to the employer in such circumstances. The claimant's dismissal for redundancy was fair both in respect of the substantive reasons and the process followed.

Direct Race Discrimination

77. The claimant described herself as black. So her comparator should be someone who was not black in substantially the same circumstances as the claimant. The claimant identified a number of actual comparators in the preliminary review on the first morning before we started hearing evidence.

78. Because much discrimination could be unconscious and/or there might be little direct evidence to prove discrimination, s136 EqA and the case law recognises that discrimination may be difficult to prove. Therefore, we have a shifting burden of proof.

As stated above the Tribunal is required to adopt a 2-stage approach: first, to identify such facts which, in the absence of any other explanation to the contrary, could amount to discrimination; and then second, if the burden of proof transfers, the respondent will then need to establish that it did not discriminate against the claimant. Following the line of authorities from *Madarassy,* a mere difference of treatment and protected characteristics (e.g. race and sex) is not sufficient; something more is required for the burden to pass to the employer to establish that discrimination has not occurred.

79. Allegation 2.2.2(a), (e), (n), (o), (p), (q) and (t) deal with the claimant's complaints against the respondent in respect of flexible working. The claimant approached Mr Rees about working from home 1-day per week. Mr Rees did not respondent to correspondence initially; however, he eventually responded in the positive. The claimant was initially frustrated that she perceived Mr Rees lack of response as being dismissive. We accept Mr Rees' explanation that he was very busy particularly because as soon as human resources became involved matters progressed promptly. Had the claimant followed the appropriate policy then her criticisms of Mr Rees' tardiness may have had more resonance. The claimant identified her comparator as Mr Terry Bower (a white employee). For this exercise Mr Bower is not a valid comparator as his home working was raised and agreed at the time he was recruited, which was in December 2016. So Mr Bower was appointed on agreed flexible working arrangements. He did not make a flexible working application because his employment terms included this provision, i.e. his contractual arrangements provided for this at the outset. The claimant referred to Ms Hague and Ms Shamkh at the outset of the hearing when we were trying to identify possible comparators for the list of issues but despite prompting, she was unable to provide us with appropriate evidence on their flexible working arrangements during the course of the hearing. In any event the claimant did not make a flexible working application within the terms of the flexible working policy which mirrored the statutory scheme and, significantly, the claimant did not have the length of service to qualify for flexible working until October 2017. So, any hypothetical comparator would need to be based upon these essential features.

80. The claimant subsequently raised flexible working in writing on 10 May 2018 [HB398-399], 19 June 2018 [HB415] and 11 July 2018 [HB444-445], but she did not copy in Human Resources which was a term of the policy. HR only became aware when Mr Rees forwarded them a copy of the claimant's email [HB444], so the argument that Mr Rees discriminate against the claimant by not addressing her earlier emails does not make sense when set against this unprompted, if belated, action. Mr Rees said that he was very busy, which we accept given the abundant, clear and contemporaneous evidence on this. Finally, the claimant said that he did verbally acknowledge her application of May 2018, at least, which indicates that he did not deliberately ignore that application, on that occasion.

81. The respondent's flexible working policy made it a requirement for any valid application to copy in Human Resources. The claimant did not do this, so her flexible working application was, initially at least, not addressed promptly. This was precisely why such a requirement was inserted in the policy, i.e. for HR to oversee the process and not leave this to busy managers. Therefore, we reject the claimant's criticism of the respondent in this regard when she failed to follow an essential requirement of the policy.

82. The claimant was eventually afforded flexible working, but she objects in 2.2.2(q) to having been offered this on a 1-month trial period. A key element of any analysis of race discrimination would be to compare the claimant's offer of flexible employment against the arrangements of any comparator. The claimant was not able to identify anyone in the company who was given flexible working without a 1-month trial period. The claimant did not raise any contemporaneous complaint about this so, if she was concerned, we do not have clear evidence on the arrangements made for other staff. In the Tribunal's assessment, a trial period is acceptable in any such process particularly when the job and/or the employee do not have a lengthy period of service. Trial periods can be useful to persuade an employer to accept some degree of initial flexible working particularly in circumstances where it may not be clear-cut that such arrangements would work. So we do not see the imposition of a trial period as amounting to less favourable treatment per se. In the circumstances of the claimant's case there were no onerous terms connected with the trial period and the claimant merely objected to the fact that the respondent reserved its position.

83. The 1-month trial period was not excessive so in such circumstances we do not regard this as amounting to less favourable treatment – in any event. If the imposition of the 1-month trial period was less favourable treatment, then there was nothing to suggest that the claimant's race was a material factor.

84. In respect of allegation 2.2.2(t), there was no review of the flexible working arrangements on 29 September 2018 and the claimant continued to work under the new arrangements. The claimant did not raise any concerns as to the lack of review.

85. If the claimant was concerned that the trial period created some degree of uncertainty then she should have raised this with Mr Rees. The fact that shr did not and that this did not feature in the consultation exercise that followed shortly thereafter led us to deduce that there was no significant uncertainty or detriment to the claimant.

86. Allegation 2.2.2(b), (c) and (f) surround room bookings and the alleged ignoring of CentrEd procedures. These complaints are made against Mr Swanson and Ms Gough. On 17 February 2017 the claimant is recorded as making positive comments about her work colleagues (which she accepted) and no evidence was adduced as to why these 2 individuals would start treating her badly or ignoring her emails in March 2017 due to her race.

87. On 6 March 2017 the claimant emailed a year planner following a supportive email exchange with Mr Rees [See HB170, 182]. The claimant also issued diary management guidelines to the C&E team in respect of offering space to clients if the booking did not meet minimum revenue and emphasised that the seasonal rates were the basis of room hire only bookings [HB241]. The claimant confirmed that separate guidelines were to be issued for selling CentrEd rooms to non-CentrEd business. This was endorsed by Mr Rees at that time by email to the wider team [HB241]. The claimant accepted at the hearing that she believed at the time that Mr Rees support was genuine, and she did not expect him to do more. Mr Rees contended in evidence that he emphasised in meetings that the sales team should use the claimant's yield planner for CentrEd business, which is consistent with the documents. The claimant appeared to make Mr Rees's point in her email of 8 August 2017 to Ms Gough that core CentrEd rooms should be left to CentrEd to sell, and should be sold by the C&E team only in exceptional cases.

88. The claimant was taken to a whole raft of emails by Mr Cooksey which demonstrated the competitive, sales-orientated environment. There was no indication of any other possible motivation other than this grab for profit in this highly target driven environment.

89. The claimant referred to this issue in the consultation of 25 October 2018. However, this was in the context that some of the sales team were not willing to follow her guidance. There was no suggestion that Mr Rees ignored the claimant's concerns nor was there an allegation (or even suggestion) of discrimination by Mr Swanston, Ms Gough or the rest of the C&E sales team.

90. Allegation 2.2.2(d) concerned allegations in respect of the Grass Roots Group or GRG, which was a venue finding agent and a customer of the respondent's business. This allegation is made against Ms Gough and Mr Bower. The claimant became one of the 2 account managers for GRG in March 2017. Ms Gough was the other key account manager [HB191], although we accept the respondent's evidence that Samantha King took over from Ms Gough for a short while and Natasha Dickinson took over from Ms King on 26 March 2018. The claimant put together a strategic key account plan for GRG in late April 2017 [HB193-195] and emailed various individuals in early June 2017 notifying them of a Preferred Agreement with GRG. We note that there was not a clearly defined client relationship management system in this workplace such that the Tribunal has experienced in similar circumstances. The witnesses, and particularly Mr Rees, recognises this, although we do not imply that there was an unstructured or free-for-all in approaching clients for business. So the rigidity implied by the claimant in looking to GRG for business was not present.

91. There is not the evidence to support this allegation the individuals identified above – or any other of the respondent's sales or other staff – approached GRG to interfere or displace the agreement that the claimant had put in place. Accordingly, the burden of proof does not shift to the respondent.

92. Allegation 2.2.2(g) is in respect of a dispute about a room booking and the allegation that Ms Gough and Mr Swanston failed to follow appropriate procedures. The dispute flows directly from the issues determined in (b), (c) and (f) above. Ms Gough had a client for CentrEd and the claimant regarded Ms Gough as selling space too cheaply. Mr Swanston became involved because he seemed keen for his team member to sell the space even at a low rate rather than have the space go unsold. The claimant contended that she had a client for the space, and we heard evidence in detail about the process of confirming bookings, particularly when various clients seek to reserve conference or events space with the respondent at popular times. The correspondence referred to the Tribunal appeared measured and business-like. It was claimant who increased the temperature because she believed that her colleague's potential sale was taking precedent over the claimant's work in progress. The claimant's email of 7 August 2017 to Mr Swanston gave him reason to believe that the claimant's booking was not confirmed so he wanted to secure the business for the C&E client. Matters culminated with the claimant's email to Mr Swanston of 7 August 2017. The dispute appeared confined to what the Tribunal perceived as a sales dispute about securing limited sales space for two competing leads. The claimant made no contemporaneous complaint that her race might be behind this matter and the Tribunal could not understand how race would be a feature in what was obviously a sales dispute. We could not see where any less favourable treatment occurred. Even if there was some

less favourable treatment in respect of someone persistently wanting to sell space that the client believed was allocated to one of her clients, this was in no way related to the claimant's race.

93. Allegation 2.2.2(h) centres on whether the claimant was prevented from selling or booking larger event spaces (outside CentrEd in EcCeL) without prior permission from Mr Swanston or Mr Rees. There is no dispute between the parties that the C&E team were able to sell CentrEd spaces as this was a long-established practice prior to the claimant joining the respondent.

94. The evidence of all concerned was that the claimant was brought in to focus on selling the smaller South Gallery rooms, which were the CentrEd part of the business. The claimant drew up guidelines for the sale of such space but there was no prohibition on the C&E team selling such space. As noted above, tensions arose when the wider sales team did not follow the claimant's guidance on selling CentrEd space. There were no clearly defined guidelines for the selling of the larger event space but the sales team were highly experienced in this regard. Given that the claimant whole focus was on CentrEd, and given that she lacked experience in selling the very large Excel-type events, it was understandable that Mr Swanston and Mr Rees would want to know, and approve, of the claimant's initiatives in this regard. Mr Rees was clear that the claimant's remit was to sell CentrEd space. We cannot trace any example of when the respondent refused to take a booking for larger space from the claimant, so this appears more to be a dispute about parameters of the claimant's role. This complaint does not appear to be in issue at the time because it was not raised in any form of contemporaneous complaint, nor did it feature in the claimant's detailed letter from her solicitors. Indeed, the solicitors letter refers to the claimant selling larger spaces including exhibition halls and seeking permission does not appear to be an issue.

95. Under the circumstances, we do not see that there was any less favourable treatment in respect of this allegation. However, for this complaint there is no actual comparator, the comparator is a hypothetical Business Development Manager who was not black. We accept that the claimant was brought in to manage CentrEd so we do not regard this as an allegation of less favourable treatment and we determine that a CentrEd BDM who was not black would need prior permission from senior C&E managers before contracting for such large space.

96. Allegation 2.2.2(i) is in respect of the comment that Mr Rees accepts he said. The context has been dealt with under allegation (g). Mr Rees explained at the hearing that he was merely relaying the perception of the C&E team because there was tensions over sales. There is no reason that Mr Rees would make this up and this explanation is entirely consistent with the contemporaneous correspondence. We accept that Mr Rees said the comment so that the claimant was aware of the tensions over sales and to help her build bridges with the wider sales team. Whether or not the onus should have been on a relatively new employee to fit in with the established culture of a wider sales orientated environment is irrelevant. The comment appears to be business-related and fact sensitive. The Tribunal did not view the comment as offensive or even "marking the claimant's card" so we do not regard this as less favourable treatment. The claimant made no complaint about this during the course of her employment so, initially at least, we are not persuaded that she viewed this as offensive. It is difficult to see how this comment relates to the claimant's race so under the circumstances we dismissed this allegation.

97. Allegation 2.2.2(j) centred on a email that Mr Swanston sent the claimant on 13 December 2017 [HB313-314] about the revenue from a client booking. Mr Swanston copied in 2 individuals to his email. Mr Swanston asked 1 individual to transfer the money and the claimant to (please) doublecheck before asking for bookings to be changed. The claimant took exception to this and wrote a blunt reply to Mr Swanston, which copied in Mr Rees and Mr Chircop [HB312]. Other than objecting to the email's content, the claimant could not really say why she found Mr Swanston email to be offensive. Mr Swanston's email did not appear to the Tribunal to be offensive, and he appeared to have copied in appropriate people to his email. The claimant's response indicates that there was a substantive dispute over this matter that does not appear to be related to the claimant's race.

98. The claimant appears to have been annoyed over Mr Swanson's response in respect of an operational matter. Mr Chircop organised a meeting to deal with what he perceived to be either a complaint or some degree of discord. At the meeting Mr Chircop attempted to defuse the tension but when this could not be resolved the meeting was ended after about 20 minutes. The claimant did not bring up anything to do with her race (or wider discrimination) during this episode. Essentially this was a spat between colleagues over revenue, which the claimant escalated to the respondent Head of Human Resources but did not raise any discrimination issue. If there was less favourable treatment in Mr Swanston trying to grab the claimant's revenue or in his remark that the claimant should doublecheck before claiming the revenue, then this was outweighed by the claimant's heavy-handed response. We are clear that she "gave more then she got". This is the type of exchange that happens regularly in every workplace. Mr Swanston email was not offensive. We are not satisfied that he would not have spoken to a hypothetical comparator in a similar way. This complaint is dismissed.

99. Allegation 2.2.2(k) is in respect of the meeting Mr Chircop organised following the email exchange in (j) above. Although this was supposed to be some form of a mediation meeting, it was not successful. Mr Swanston and Mr Chircup said that the claimant was not properly engaged, and her body language was negative. Mr Swanston accepts he made criticism of the claimant in the terms broadly alleged. The comment does not contain a racially discriminatory remark on the face of it, nor does it imply a racial slur. On the face of it, the comment criticises someone for adopting a superior or overbearing attitude. Mr Swanston was told to repair a seemingly fractured relationship with the claimant and his account was that he was genuinely attempting to meet her halfway. This was a difficult meeting, and it did not go well. Mr Swanston perceived the claimant was taking the high ground where this was not justified, and he was frustrated and lost his temper. He said that the claimant was alienating herself and that she did not accept she did anything wrong. He perceived the claimant as having a superior and dismissive attitude towards him, which infuriated him particularly taking into account his seniority. It is clear that both the claimant and Mr Swanston felt disrespected by the other. Mr Chircop told him off for his outburst and told him to repair the relationship. Mr Swanston said "it was not his finest hour" and the comment appeared to Tribunal as nothing more than an inappropriate spat.

100. It is quite clear that Mr Swanston was criticising the claimant. He felt slighted and lashed out. Under the circumstances he acted unprofessionally. He realised this as can be seen in the aftermath and also in his evidence at the hearing. The explanation proffered, which we accept, is in contrast to race being a material factor. There is

nothing to suggest that Mr Swanston would not have reacted in a similar intemperate manner to a non-black colleague in similar circumstances.

101. Allegation 2.2.2(l) relates to the criticism that the claimant has made against Mr Rees for failing to take action in respect of (k) above. The claimant did not think she had done anything wrong so there was limited scope to take matters further. We note that there was some attempt to draw a line under the incident in email exchanges between Mr Swanston and the claimant over the Christmas period. The claimant never suggested that Mr Rees – or anyone else – should take disciplinary or further action against Mr Swanston although we note that Mr Rees spoke to him about his unprofessional outburst. So far as we can tell the matter ended there - and that was appropriate. The claimant implies that she expected disciplinary action to be taken against Mr Swanston. We reject such a suggestion is wholly inappropriate. Both individuals behave like children and Mr Swanston was more foolish because he lost his temper and made an outburst. Any further action on either party would have been inappropriate and disproportionate. We reject this complaint.

102. Allegation 2.2.2(m). As stated above Natasha Dickinson became the GRG joint account manager sometime around May or June 2018. Ms Dickinson wrote to the client to say that she was the main point of contact, was incorrect. Ms Dickinson was new to the business and in the C&E Sales team and it seemed she was either unaware of the client arrangements or she was hoping to secure the business from this client for herself. Either way we cannot see how this is attributable to the claimant's race, particularly as Ms Dixon was corrected fairly promptly. The claimant conceded in cross examination that Ms Dickinson did not contact GRG without her knowledge so as to embarrass her or undermine he; and she specifically accepted that this was not due to race. Despite being invited to withdraw this allegation the claimant pursued the allegation. The Employment Judge asked the claimant to explain the race discrimination in this issue which the claimant could not, although she said that this was not a particular issue of concern. This allegation does not make sense because the claimant accepted at the hearing that there was no discriminatory intention, so this claim is also dismissed.

103. Allegation 2.2.2(r) is made against Mr Jeremy Rees, who was the respondent's Chief Executive Officer. We did not hear from Mr Jeremy Rees, nor his personal assistant Ms Mumtaz Adam, who sent out invitations and organised a lunch. The respondent adduced evidence that the claimant had been invited to at least one other similar lunch event (in December 2017). However, the lunch in question was a board lunch on 5 July 2018. Those invited were senior managers also referred to as "heads of" various departments. The respondent's de facto head of finance and head of operations did not carry that title but they had a number of direct reports into them so this together with their areas of operation as well as their demonstrable seniority distinguished their circumstances from that of the claimant who, although she described herself as effectively the Head of CentrEd, was in effect the business lead and not at the same level as those identified colleagues.

104. When this matter was discussed during consultation it was raised by the claimant as an issue in respect of her status and no complaint of discrimination was made. In the absence of any contemporaneous complaint of discrimination it is difficult for us to take this allegation further, particularly as the respondent's explanation in respect of status within the organisation appears credible and the claimant was not at the same level

as her colleagues who attended the lunch. There appears to be no less favourable treatment in this instance because a CentrEd BDM who was not black would not have been invited to this lunch anyway.

105. Allegation 2.2.2(s) relates back to client GRG who had negotiated terms of business with the respondent. In June and July 2018 Mr Rees renegotiated the existing deal in an attempt to generate more business. Mr Rees advised the claimant of the new terms prior to agreement on a new deal and the claimant raised her concerns [HB436-442]. As Mr Rees did inform the claimant that he was renegotiating a preferred supplier agreement the factual element of this claim fails. If the claimant contends that the comment made by Mr Rees implies some form of criticism, about claimant not doing this, then this aspect of the complaint was not made clear at the hearing. The claimant had expressed reservations about some parts of the deal, so it appears she was fully engaged on this issue and no criticism seems to have come from Mr Rees. This claim is not made out so therefore it fails.

106. There is no dispute that, so far as allegation 2.2.2(v) is concerned, Mr Rees decided at short notice to arrange a C&E team awayday for 30 October 2018. There was some dispute over the claimant not been afforded adequate time to prepare; however, from what we could ascertain the claimant was expected to make a short presentation from information largely available. The claimant did not feel she had sufficient time to put together some slides and Mr Rees allowed her to miss the sales meeting in order to put together her presentation. The claimant contended that she was the last to be told but, even if this was correct, we could detect no disadvantage. The claimant was not criticised for her presentation, so we do not find that there was any less favourable treatment in this regard. As there was no less favourable treatment there can be no discrimination.

107. For allegation 2.2.2(w) we compared the organisation chart for the awayday [HB599] with a more detailed organisation chart of July 2018 [HB420-432, especially 426]. This showed the claimant at a similar level to Mr Swanston and identified wider team membership. We accept the respondent's submission that other individuals are excluded who are not of the same ethnicity as the claimant, for example KO'M. Lucy Merritt (the respondent's head of marketing and communications) prepared the latter organisation chart and she does not feature as part of any allegations made against the respondent or other individuals. It may or may not have been an error to omit the claimant from the organisation chart for the awayday. Even if this was a deliberate act, we cannot see how this amounted to less favourable treatment for the claimant as Ms Merritt used the organisational chart to explain her new team and her line reporting to the Chief Executive Officer. The claimant never suggested that she fell within Ms Merritt's reporting arrangements. So we do not accept that this amounts to less favourable treatment of the claimant (even if a relevant comparator could be established).

108. Re allegation 2.2.2(x), we accept that Mr Rees did inform the claimant about the need to prepare updates for quarterly board report submissions. Mr Cooksey proved bundle reference at pages 176, 179, 236, 266, 301, 407, 503 and 635. The allegation is not made out, so it is dismissed.

109. The claimant did not attend the awayday meeting of 1 November 2018 as contented at allegation 2.2.2(y). This was because CentrEd was not on the agenda [HB619-620].

This was a meeting for more senior people with larger accounts. The awayday centred on the respondent's core business and there was limited time to discuss this. CentrEd was not core business and if anything arose concerning CentrEd Mr Rees said he would be able to cover it, which we accept. The claimant raised this matter during her consultation [HB586] and she said that the reason she had not been invited was that Mr Rees believed she would no longer be part of the business by that stage. If the claimant's contention was true, then this would exclude race discrimination. In any event, we are not satisfied that this amounts to less favourable treatment towards the claimant as it reflected CentrEd's position within the business.

110. Allegation 2.2.2(z), relates to the claimant's dismissal. As can be seen from our analysis of the unfair dismissal point, the claimant was (fairly) dismissed by reason of redundancy. The claimant did not argue that her dismissal was due to her race during the consultation process. The claimant was dismissed, and this is capable of amounting to less favourable treatment. However, there was nothing to suggest that this dismissal was discriminatory. The respondent operates in a commercially competitive environment, which the claimant accepted. The claimant was brought in to increase revenue through CentrEd. The commercial game was not sufficient. The respondent did not blame the claimant because neither Mr Rees nor anyone else raised capability or individual performance concerns. The underperformance of CentrEd was dealt with as a structural or strategic matter hence the redundancy. There is no basis upon which the Tribunal could determine that a hypothetical not black CentrEd BDM would be treated differently.

111. The claimant failed to establish the requisite facts for the above allegations. Consequently, the burden does not pass to the respondent to prove that they did not discriminate. We are satisfied that for the reasons set out above, that the respondent has not subjected the claimant to any less favourable treatment due to the claimant's race.

Race -related victimisation

112. Under s27(d) EqA, a protected act would include making an allegation (whether or not express) that someone has contravened the EqA. This is to be given a broad interpretation according to *Aziz v Trinity Street Taxis Limited [1998] IRLR 204*. No comparator is required for a victimisation complaint, although the protected act must be the reason or part of the reason why the claimant was treated as she was: *Greater Manchester Police v Bailey [2007] EWCA Civ 42*5. This means there must be a causal link between doing the protected act and suffering a detriment or unfavourable treatment because of the protected act.

113. In respect of the meeting of 14 December 2017 and the meeting of 15 December 2017 the claimant accepted that she did not raise issues of race discrimination with Mr Rees or Mr Chircup nor did she mention the word discrimination. The claimant accepted that she did not raise race discrimination or discrimination or less favourable treatment in her appraisal notes of 5 February 2018. The claimant accepted in cross examination that she did not raise anything to do with her ethnicity or the ethnicity of others whom she claimed treated her unfairly in respect of the exchanges of 2.3.2.(a) to (c). Accordingly, we find that the claimant did not raise or do anything that could amount to a protected act within the terms of the EqA.

114. The contented protected act at 2.3.2(d) warrants a slightly more detailed analysis because the claimant contended at her dismissal appeal that she had raised possible race discrimination at her appraisal with Mr Rees on 5 February 2018. The claimant accepted that her signed appraisal form [HB331-341] did not refer to being discriminated against. The claimant accepted in cross examination that at her appraisal she did not tell Mr Rees she had been treated unfairly due to her race or other protected characteristic. The claimant did raise concerns about unfair treatment, but this was in relation to commercial decisions and the competitiveness of colleagues in the C&E team. At no stage did the claimant refer to the ethnicities of her colleagues. The appraisal document was detailed, and we are satisfied that if the claimant had made a complaint of discrimination or did anything so as to satisfy the terms of s27(2) EqA then this would have been documented in her appraisal form or, at least, raised in correspondence thereafter.

115. Because we determine that the claimant has not raised a protected act, then it follows that all the allegations of victimisation must fail. Consequently, we dismiss the claimant's allegations of victimisation.

Direct sex discrimination

116. The claimant's allegations of direct sex discrimination at 2.4.2 (a) to (c) mirror her direct race discrimination claims at 2.2.2(a), (e), (p) and (q). Our analysis under direct race discrimination applies equally to these claims of sex discrimination. At the outset of the hearing when discussing comparators for the race claims, the claimant mooted Ms Hague and Ms Shamkh as possible actual comparators, but we did not hear evidence of their flexible working arrangements. The fact that the claimant articulated her belief that these 2 females were afforded flexible working arrangements raises considerable doubt for her arguments in respect of sex discrimination. We were not provided with a direct comparator so the hypothetical comparator would be a male BDM of similar service to the claimant who did not make an application in accordance with the flexible working policy. As stated under the previous analysis, we did not make any findings of fact sufficient to transfer the burden of proof to the respondent to establish that race in no way a material factor in the claimant's allegations. Similarly, we find that the claimant has not established sufficiently that her sex could be the reason for any less favourable treatment. These complaints are dismissed.

117. So far as claimant's dismissal is concerned, allegation 2.4.2(d), again for the reasons set out above under unfair dismissal and race discrimination we do not include that the claimant's dismissal could amount to sex discrimination.

Time limits/jurisdiction

118. We do not understand Mr Cooksey's calculation of the limitation dates. Under s123 EqA the claimant has a time period in which to issue proceedings of 3-months less a day from the alleged discriminatory acts. Discriminatory conduct extending over a period of time is to be treated as done at the end of that period: s123((3)(a) EqA. However, as we make no findings of discrimination against the respondent there can be no continuous acts.

119. The time limits for a failure to do something runs from when the discriminator decides not to do it: s123(3)(b) EqA. If there is no evidence about when the discriminator failed to do something, then the time limit should run from when she or he does an act inconsistent with the alleged omission or upon a period in which she or he might reasonably have been expected to do it: s123(4) EqA.

120. The early conciliation period complicates matters by extending the appropriate statutory time limit for the parties to attempt to resolve matters (which they did not). So, the time limit under s123 EqA does not run during the early conciliation period and the claimant has up to 1-month following early conciliation notification to issue proceedings. The claimant issued proceedings on 7 May 2019 which was within 1-month of the ACAS early conciliation notice of 26 April 2019. Therefore, the *stop-the-clock provisions* apply, so that the limitation period runs 3-months less 1-day backwards from the start of early conciliation, which was 12 March 2019. Therefore, we calculate that any claim arising before 13 December 2018 is out of time.

121. The claim of unfair dismissal has been brought within the requisite time limit under s111 ERA. All of the claims of discrimination are out of time except those relating to the claimant's dismissal at allegation 2.2.2(z) and 2.4.2(d). The oldest allegation arises in February 2017, so this allegation is approximately 1 year and 10 months out of time and the most recent allegation is around 1½ months out of time.

122. There is no presumption that Tribunal's should extend time, the claimant must persuade the Tribunal that it is just and equitable to do so: *Robertson v Bexley Community Centre, [2003] IRLR 434*. Furthermore, the remedy of Employment Tribunal proceedings is considered to be sufficiently well known that ignorance of such recourse will not normally be accepted as an excuse for non-compliance with any time limit (see *Read in Partnership Ltd v Fraine UKAEAT/0520/10*, *John Lewis Partnership v Charmaine UKEAT/0079/11* and *Walls Meat Co Ltd v Khan [1979] ICR 52.* The statutory time limits should be sufficient for the claimant to investigate her options promptly and issue proceedings within the necessary 3-month period.

123. The claimant said nothing about the statutory time limits in her witness statement. Most of her discrimination claims are substantially out of time. When asked the claimant said that she was not fully aware of the statutory time limits and she believed the discrimination was part of a continuous act. Although most of her claims are against Mr Rees, she does make claims against other individuals and with regard to discrete matters. These claims extend over a protracted period of time. So even if she was successful, we would regard most of the discrimination as being discrete acts engaging separate time limits. The claimant was able to comply with the unfair dismissal time limits. We are not satisfied that it is just and equitable to extend any statutory time limits under s123(1)(b) EqA. If there were any merit in respect of the claimant's claims of discrimination, with the exception of her claims in respect of a discriminatory dismissal, we would not allow these claims to proceed to remedy.

Summary

124. We reject the claims of unfair dismissal. We also reject the claimant's claims in respect of race, sex and victimisation. Proceedings are now dismissed.

Employment Judge Tobin
Date: 20 July 2021