Case Nos. 2602148/2018
2600711/2019
2602299/2019

EMPLOYMENT TRIBUNALS

Claimant: Miss A Williams

Respondent: Nottingham City Homes Limited

FINAL HEARING

Heard at: Midlands (East) (in public; by CVP) **On:** 10 & 11 May (reading days)
12-14, 17-21, 24-28 May,
11 June, 2 July,
14 & 15 July (deliberations) 2021

Before: Employment Judge Camp Members: Mr J Hill
Ms F French

Appearances
For the claimant: in person
For the respondent: Ms E Hodgetts, counsel

RESERVED JUDGMENT

(1) The claimant's complaints of race discrimination fail.

(2) The claimant's complaints of victimisation fail.

(3) The claimant was not constructively dismissed and her unfair dismissal claim fails.

REASONS

Introduction & summary

1. The claimant was employed by the respondent from November 2007 as a Customer Service Adviser ("CSA") in its Customer Service Centre ("CSC") in Nottingham city centre. She is – as she describes herself – black[1] and is of African Caribbean descent / heritage.

[1] The claimant's "colour" (section 9(1)(a) of the Equality Act 2010) is the aspect of her race that is relevant, and in particular the fact that she is not 'white'. Throughout the hearing, people have been referred to as being either "BME" or "non-BME", and for the purposes of her claim, the claimant

2. Following the announcement on 15 May 2018 that a Miss R Dennis, who is white, had been appointed to the position of Team Leader within the CSC, the claimant began a period of sick leave that lasted from 16 May 2018 until the end of her employment. She raised a grievance of race discrimination about that appointment, and a number of other things, on 9 August 2018 and went through the early conciliation process for the first time from 14 to 15 August 2018. Her first claim form, which was an abbreviated version of her grievance, was presented on 14 September 2018.

3. Second and third periods of early conciliation and claim forms, including allegations of victimisation, followed in January and February or March 2019 and August 2019. On 19 December 2019, the respondent decided an appeal by the claimant against the decision that had been made in May 2019 on her grievance. The claimant resigned on 23 December 2019. Her application of 7 January 2020 to amend her claim by adding a complaint of constructive unfair dismissal was granted on 20 January 2020.

4. At this final hearing, which was to deal with liability only and was heard (surprisingly satisfactorily for such a long hearing; albeit, in the latter stages, disjointedly[2]) entirely via CVP, the following sets of complaints were before the Tribunal:

    4.1 direct race discrimination complaints broadly about two things – an alleged lack of what are described as development and experience opportunities from 2013 to 2018 and the claimant's inability to secure internal promotion in 2017 and 2018;

    4.2 victimisation complaints again broadly about two things – the way the claimant's absence from work from May 2018 was initially managed and the way the grievance and grievance appeal were dealt with, including the outcomes;

    4.3 constructive unfair dismissal, based on an allegation that the subject matter of the discrimination and victimisation complaints was a course of conduct that breached the so-called trust and confidence term.

5. The main reasons we have rejected the claimant's complaints are:

    5.1 time limits, so far as concerns the direct discrimination complaints;

    5.2 the lack of any proper basis in the evidence for deciding that the treatment the claimant complains about was because of race or, in relation to victimisation, was because the claimant did a protected act;

    5.3 the respondent had reasonable and proper cause for much of its conduct that the claimant relies on in her constructive unfair dismissal claim (including the grievance appeal outcome, which is said to be the 'last straw'), there was a

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does not consider, for example, those of Irish descent or light-skinned Jewish people as "BME". To avoid confusion, we shall in these Reasons use the terms BME and non-BME or white and use them in a similar way to the claimant.

[2] The 15 day time estimate – increased from 10 days in March 2021 – proved insufficient for various reasons. Difficulties co-ordinating diaries, and the claimant not being well on a particular day, meant there was a gap of about 2 weeks between the penultimate and last days of evidence, a gap of 3 weeks or so between the last day of evidence and written submissions, and a gap of just under 2 weeks between submissions and the Tribunal considering and making our decision.

considerable gap between the bulk of that conduct occurring and the claimant resigning (meaning its effect on trust and confidence when she resigned would not have great in any event and/or that there would have been affirmation), and none of it was calculated or likely to destroy or seriously to damage the relationship of trust and confidence even at the time.

Issues

6. The list of issues has been discussed at length in two case management hearings in 2020 and was finalised in orders made in November 2020 and March 2021, which have not been appealed or reconsidered. We refer to the list of issues dated 4 May 2021, which should be deemed to be incorporated into these Reasons. We note:

   6.1 neither side made any concerted challenge to the accuracy of that list during the final hearing[3];

   6.2 one or two complaints were withdrawn by the claimant during the hearing. We shall explain which complaints were withdrawn as and when we come to them;

   6.3 later in these Reasons, we shall go through the complaints one by one, by reference to the list of issues and, to some extent, use the numbering from it. In the list of issues: the direct discrimination complaints about development and experience are set out in paragraphs 1(a)(i) to (iv); the direct discrimination complaints about not promoting the claimant into various roles are paragraphs 1(b) to (e); the victimisation complaints are paragraphs 5(a) to (y).

The law

7. The relevant law is comprehensively and accurately set out in the written written submissions of respondent's counsel, Ms Hodgetts, dated 11 June 2021[4]. Rather than unnecessarily repeating in these Reasons the contents of the relevant parts of her submissions in slightly different words, we shall simply emphasise what we see as the three main points.

8. The key legal question we have had to ask ourselves in this case is whether, in accordance with section 136 of the Equality Act 2010 ("EQA"), the evidence proved facts from which we could decide, in the absence of any other explanation, that the respondent was guilty of direct discrimination against, or victimisation of, the claimant. Had the answer to that question been "yes", the burden of proof would have shifted from the claimant to the respondent, meaning the respondent would have to have satisfied us that there was no direct discrimination or victimisation.

9. Generally, in relation to the burden of proof, we have applied the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in Ayodele v Citylink Ltd &

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[3] Nor, absent any discernible change in circumstances, could they have done so successfully, given that it was the subject of case managements orders made by a different Tribunal – Employment Judge Camp sitting without Members – from the full Tribunal dealing with this final hearing.

[4] At our request, but willingly, they were prepared and provided to the claimant several weeks before (on 2 July 2021) the claimant was herself called on to make submissions, to give the claimant plenty of time to read and inwardly digest them and think about her response to them.

Anor [2017] EWCA Civ 1913. What we wanted particularly to highlight is that, although the threshold to cross before the burden of proof is reversed is a relatively low one – "*facts from which the court* could *decide*" – unexplained or inadequately explained unreasonable conduct and/or a difference in treatment and a difference in status[5] and/or incompetence are not, by themselves, such "*facts*"; unlawful discrimination is not to be inferred just from such things – see: Quereshi v London Borough of Newham [1991] IRLR 264; Glasgow City Council v Zafar [1998] ICR 120 HL; Igen v Wong [2005] IRLR 258; Madarassy v Nomura International Plc [2007] EWCA Civ 33; Chief Constable of Kent Police v Bowler [2017] UKEAT 0214_16_2203. Further, EQA section 136 involves the tribunal looking for facts from which it could be decided not simply that discrimination is a possibility but that it has in fact occurred: see South Wales Police Authority v Johnson [2014] EWCA Civ 73 at paragraph 23.

10. The second main point relates to direct discrimination. Direct discrimination involves not just the claimant being treated differently from someone else but her being treated less favourably in a technical sense. A claimant has to show[6] that the respondent treated them less favourably – worse – than it treated or would have treated someone else who is an appropriate 'comparator' in accordance with EQA section 23. Someone is only an appropriate comparator if there are no material differences between their circumstances and the claimant's. In the present case, the claimant relies on comparators whose circumstances were not the same as hers. In addition, her allegations of direct discrimination rely wholly or mainly on nothing more than the fact that someone else, in different circumstances, was treated differently from her. In this, she ignores both the need for less favourable treatment and the need, just mentioned, to point to facts from which the Tribunal could decide that the reason for any less favourable treatment was the protected characteristic of race.

11. The third main point concerns time limits. The claimant's direct discrimination complaints date from many years before she presented her claim form. As we understand it, she argues that the subject matter of all of these complaints form part of a single course of conduct extending over a period, in accordance with EQA section 123(3)(a). The basis for her argument seems to be that there was a policy or practice at an institutional level, either within the respondent as a whole or just within the CSC, of favouring white over BME staff in terms of appointment into managerial roles and providing opportunities for managerial experience.

12. We refer to the summary of the law in this area set out in paragraphs 21 to 23 of Ms Hodgetts's written submissions. The legal problem with this part of the claimant's claim, as we see it, is that the claimant's discrimination complaints in fact concern a variety of different conduct by a number of different people spaced out over a long period time, with no evident connection between most of it other than the fact that it all impacted on the claimant and that she was working in the CSC at the time. To put it another way, if the claimant has been unlawfully discriminated against, it is not in any meaningful sense by the CSC or by the respondent as an institution but by a series of individuals

[5] i.e. the claimant can point to someone in a similar situation who was treated more favourably and who is white, or, in relation to the victimisation claims, did not do a protected act.

[6] Subject to EQA section 136.

employed by the respondent. Describing it as a policy or practice does not make it so; using that description does not explain what it is that is said to link this disparate conduct of a disparate group of people over a period of years as a matter of fact, so as to make it "*conduct extending over a period*" as a matter of law.

13. As we shall explain below, we agree with the respondent that in relation to the discrimination complaints there was almost no relevant conduct extending over a period. This means that those complaints, or nearly all of them, were brought outside of the primary time limit of 3 months[7]. We have therefore had to decide whether the claimant has persuaded us that it would be "*just and equitable*" to extend time to allow those complaints to proceed, in accordance with EQA section 123(1)(b). She has not done so, for reasons we shall explain later, but which include in particular the fact that because of the length of time that has passed since many of the things the claimant is making her claim about happened, the respondent's ability to produce evidence in defence of the claims is severely compromised. If, for example, the burden of proof had shifted onto the respondent pursuant to EQA section 136 in relation to one or more of the discrimination complaints dating from 2017 or earlier, the respondent would in all likelihood have been in great difficulties.

Facts

14. Most of the important disputes of fact in this case concern why things happened rather than what happened. The claimant alleges that other, non-BME individuals were treated better than her in various respects from 2013 onwards. That is undoubtedly true to some extent, e.g. she applied unsuccessfully for jobs where the successful applicants were white. She also alleges that the reason for this was the protected characteristic of race. But the claimant does not know why others made the decisions they did and did what they did; she can't give factual evidence about what was going on in other people's heads, but can only express an opinion.

15. In light of this, and in an attempt to keep our decision to a manageable length, we do not intend to go through every last detail of the history. We have made decisions on some factual disputes, but almost all of those decisions are set out in the part of these Reasons where we also set out what we have decided on the issues.

16. We refer to the "*Joint List of Principal Names*" and to the "*Respondent's Chronology*", both of which should be deemed to be incorporated into these Reasons. The latter document is not agreed, but we do not understand the claimant to dispute its accuracy, nor are we aware of any important inaccuracies in it. Anything we say about the facts, below, that differs from what is in that Chronology is right and the Chronology wrong.

17. We heard evidence from the claimant herself and, for the respondent, from 16 witnesses:

    17.1 Ms C J Aaron, the respondent's lead for Learning and Development, the main part of whose evidence concerned what development and mentoring opportunities the claimant was given between 2013 and 2016;

[7] Plus any early conciliation extension.

17.2 Mr G Pashley, a Director and Company Secretary of the respondent, whose responsibilities include equality and diversity, and who (amongst other things) mentored and coached the claimant in 2014;

17.3 Mr C D J Grogan, a Team Leader in the CSC, who line-managed one of the claimant's comparators, a Mr Britnell, and who has since 2017 been the line manager of a CSA who we shall refer to by his initials as CM, who is BME and disabled, and who the claimant alleges was subjected to less favourable treatment because of race;

17.4 Miss J L Baldwin, another CSC Team Leader, who for a time line-managed two of the claimant's comparators – a Mr Snelgrove and a Mr Kerridge – and who was the Team Leader on duty on the claimant's last day in the office;

17.5 Mr T G Wallace, a BME CSA colleague, and formerly a friend, of the claimant who has since become a Team Leader in the CSC. Part of his evidence was that the claimant made notes in an electronic document of issues or grievances she had with the respondent, which she referred to as her "*insurance policy*";

17.6 Mr M D Snelgrove, the claimant's main comparator, who started off as a CSA in the CSC, who became an acting Team Leader and then actual Team Leader in the CSC before getting a job outside the respondent;

17.7 Miss A Greenwood, a Construction Employability Officer, who was one of the panel who interviewed the claimant and Mr Snelgrove for the Team Leader position in 2017 where Mr Snelgrove was successful and the claimant was not;

17.8 Mr P A Kerridge, at the relevant times employed as a CSA within the CSC but who had two spells acting as Contact Centre Development Officer ("CCDO")[8] as maternity cover, in particular a spell in 2017 to 2018 where there had been a competitive interview process in which he was successful and the claimant was not;

17.9 Mr D P Bolger, a CSA within the CSC who was in work on the claimant's last day in the office;

17.10 Mrs C E Elliott, a senior manager who left the respondent in March 2019, whose responsibilities included managing the line managers of the Team Leaders in the CSC and who was part of the panel that chose Mr Kerridge over the claimant for the CSDO role in December 2017, was part of the panel that chose a Miss Bodell over the claimant for a Team Leader role in February 2018, and was one of the people who in May 2018, after Mr Snelgrove left, decided that a Miss Dennis (and not the claimant or anyone else) should be appointed Team Leader in Mr Snelgrove's stead without there being a fresh recruitment process, on the back of Miss Dennis's performance at an interview she had had in February 2018 as part of the recruitment process that had resulted in Miss Bodell's appointment;

[8] There is some inconsistency in the evidence about the job title, in that it is in places referred to as a Customer Services Development Officer / CSDO role.

17.11 Mr P D Spencer, CSC Centre Manager from September 2017, replacing a Miss Wilkinson in that role. He was line-managed by Mrs Elliott and was the line manager of the CSC Team Leaders. He was on the panels that appointed Mr Kerridge as a Development Officer and Miss Bodell as a Team Leader;

17.12 Ms H P Duncliffe, Senior HR Advisor, who handled the claimant's absence from mid May 2018 and had some dealings with her in relation to her grievance. One of the most helpful things for us she did as part of her evidence was to take us through, and clarify and correct, a document at page 3882 of the hearing file ("bundle") which shows who was appointed, temporarily or permanently, to managerial positions within the CSC between 2014 and 2018, giving their race. That document can usefully be looked at together with one from pages 449 to 451 of the bundle which gives the ethnic breakdown of staff working in each role within the CSC between 2013 and 2018. In summary, despite a high percentage of BME CSAs, there was only one BME manager in the CSC at that time, a Mr Tighe, who was a Team Leader, and he was an agency worker rather than an employee;

17.13 Mrs E J Coxon, Employee Relations Manager, who oversaw Ms Duncliffe's dealings, and had some direct dealings herself, with the claimant in relation to the claimant's absence and her grievance;

17.14 Mr I S W Rabett, at the relevant time Head of Risk Management, who investigated and produced a lengthy report on the claimant's grievance;

17.15 Mrs K J Sheldon, a Deputy Director, who decided the claimant's grievance in the first instance, in May 2019;

17.16 Mr J H Shaw, at the relevant time Director of Investment and Business Services, who dealt with the claimant's appeal against Mrs Sheldon's decision. His decision of December 2019, in particular the suggestion that the claimant and others had only perceived rather than actually having experienced unlawful race discrimination, is relied on by the claimant as the 'last straw' in her constructive unfair dismissal claim.

18. We had put before us paper and electronic files totalling over 4,000 pages. It goes without saying that we were taken to, and had time to read, only a fraction of these documents.

19. The main events are:

April 2013	Claimant (C) is told that "*due to a shortage of resources*" she can no longer do 2 weeks in the Housing Office and 2 weeks shadowing as part of Tenancy Estate Management training she was doing alongside 4 colleagues, and will be given the training in a different way instead. She is the only one affected. Of the 4 colleagues, 1 is BME.
c. May 2013	Aspire to Manage programme launched on Mr Pashley's initiative to manage talent and address succession planning, partly with the

	aim of addressing issues of under-representation within management of minority groups.
2013-2014	C applies for and is accepted onto Aspire to Manage and participates in it. It included detailed individual assessments of candidates' ability to fulfil management competencies by an external assessor, workshops and mentoring, the claimant's mentor being Mr Pashley. The external assessor's report identifies C as having the most significant development needs out of the group.
25/11/13	Mr Sambrook starts a secondment running a customer relations management system project; referred to as Team Leader (TL) but not actually appointed as such. He left the respondent (R) in August 2015.
? 2013/2014	4 individuals including Mr Sambrook participate in Aspire to Manage workshops.
24/4/14	Mr Snelgrove starts as a CSA.
c. June 2014	C alleges that despite Mr Pashley's agreement to her doing this, Mrs Elliott told her that she could not be released to do a whole month of TL experience because of low resource levels.
June 2014	Mr Pidgeon starts an honorarium as TL. It is unclear on what basis and in what circumstances he was awarded it.
Late 2014	Mr Pidgeon & C interviewed for a secondment as TL in the CSC; Mr Pidgeon is successful; starts secondment 5/1/15.
December 2014	Mr Whittaker, previously a TL, appointed CSC Manager to cover for Miss Wilkinson's maternity leave, following a competitive recruitment process. Mr Kerridge starts an honorarium as a CCDO (a managerial grade role) as maternity cover for a Ms Wood, following a competitive recruitment process, in which he was deemed the best applicant, but not good enough to secure a secondment. Mr Britnell starts as a CSA.
30/3/15	Mr Whittaker sends to 5 individuals in the CSC who are known to be interested in career advancement, including C, Mr Wallace and Mr Snelgrove, his draft "Succession Planning Procedure" or "Succession Plan". Essentially, CSOs in the CSC who wanted them would be given career development opportunities if and only if they achieved particular targets. The Succession Plan was formally put in place on 22/6/15. In practice, CSAs who wanted to take advantage of the Succession Plan had to hit particular targets for 3 successive months.

June-Sep 2015	C has significant sickness absence, including from 18/8/15 to 29/9/15.
July 2015	C appraisal. Shows C not meeting targets. C comments: "*I feel supported in many area*[s] *of my development. … I do not feel like I have developed much this year. I feel this is due to my own personal reasons*". Her manager (probably a Mr Barratt at this point) comments: "*Whilst* [C] *has joined the Aspire into management programme it has been disappointing that core personal results have not lived up to expectations. This now needs to be addressed first on a consistent basis before any further developmental opportunities can be agreed*."
Sep-October 2015	If not before, Mr Pidgeon is acting TL for C from 30/9/15 (when she returned from sickness absence). He is, after a competitive process, formally promoted to TL (having previously been on secondment in that post) and formally becomes C's TL on 19/10/15.
October 2015	C asks Mr Pidgeon whether they could "*go through the succession plan together*". Mr Pidgeon replies: "*I haven't forgot about your succession plan just been rather busy, will do my best to sort it for next week*".
November 2015	Miss Baldwin appointed TL, having previously applied, unsuccessfully, for the TL post to which Mr Pidgeon was appointed. At Mr Whittaker's suggestion, C asks for and receives a copy of Mr Snelgrove's Succession Plan pro forma to "*get an idea of what I need to put in mine*".
Nov 2015-Jan 2016	Mr Whittaker leaves R. Miss Wilkinson returns from maternity leave.
January 2016	R introduces a new Absence Management Policy. Having previously asked Mr Pidgeon about the Succession Plan, C enquires of other management. Coincidentally, Miss Wilkinson reviews Mr Whittaker's Succession Planning Procedure and makes amendments to it, in particular adding sickness absence targets to the list of the targets that need to be met by CSAs who wish to access the Succession Plan. In an email of 27/1/16, she refers to "*the pro-forma that needs to be completed by the employee*" and comments: "*I don't believe we should be rewarding high levels of absence*". The claimant does not meet the sickness absence targets because of her sickness absence in 2015.
Jan-Feb 2016	Mr Snelgrove acts as TL for 2 weeks as holiday cover "*as part of his succession plan development*" (quote from email sent by Miss Wilkinson on 28/1/16).

March 2016	Mr Tighe, at the time the only BME TL, leaves R. Mr Snelgrove begins an honorarium as TL in his place, initially for 3 months, but later extended and extended again, until 31/5/2017 (when he was promoted to TL). In a management / HR email of 29/2/16, Miss Wilkinson writes: "*in the short term, until budgets are signed off, I don't know what's happening with this post so we can't recruit to it and I therefore want to give the opportunity for a CSA to look after this post until we know whether we can advertise for a permanent position.* [Mr] *Snelgrove is currently on a succession plan and has covered for Team Leaders in their absence. He is the only CSA that is this far into a TL succession plan and therefore is the only one ready to take on this type of opportunity so rather than opening this up for expressions of interest, am I able to offer him this opportunity on an honorarium for the next 3 months?*"
18/1/17	C completes her succession plan pro forma and sends it to Miss Wilkinson.
21/3/17	Relaunch of R's "Ethnically Diverse Forum" (EDF), which is one of a number of groups R has for staff with particular things in common to meet and discuss work issues and, from time to time, to pass concerns and other things on to senior management. The EDF was for BME staff. At the relaunch, the claimant was made an EDF committee member.
12-13/4/17	C asks for meeting with Miss Wilkinson to discuss her Succession Plan, but then cancels it because, "*after speaking with* [Mr Pidgeon] *yesterday I no longer believe my concerns are necessary*."
May 2017	C competes with Mr Snelgrove (and others) for a TL vacancy. Mr Snelgrove is successful. C's Succession Plan in place (if not before).
June 2017	A Ms Rodney, who is BME, is appointed to the role of Customer Relationship Manager Development Officer by a selection panel including Mrs Elliott; was in competition with a number of white candidates, including Mr Kerridge.
July-Sep 2017	Miss Wilkinson leaves the respondent; replaced by Mr Spencer as CSC Manager.
Sep-Nov 2017	C asked to help Ms Wood with training new recruits. Ms Wood goes off sick and C covers for her for several weeks in total.
November 17	With Ms Wood's encouragement, C applies for a secondment as CCDO, to cover for Ms Wood's imminent maternity leave. She is in competition with others, including Mr Kerridge. The selection panel (Mrs Elliott, Mr Spencer and Ms Wood) appoints Mr Kerridge.

Jan-Feb 2018	Mr Barratt leaves R, producing a TL vacancy, which is advertised. C and others are interviewed by Mrs Elliott and Mr Spencer. Miss Bodell, an external candidate, is successful. R's evidence is that, at interview, Miss Bodell was by some margin the best candidate, that the second-placed candidate – Miss Dennis – was also very good, that there was a significant gap between the two of them and the other candidates, and that the claimant was the 4th best.
Mar-Apr 2018	Contact between C, Mr Spencer and Mr Pidgeon re C's Succession Plan.
Apr-May 2018	Mr Snelgrove hands in notice, meaning there is another TL vacancy. On 1/5/18 Mrs Elliott emails Mrs Coxon: "*We're keen to move this forward quickly, as we interviewed for this post recently and there is an internal candidate we could offer the post to, but we understand she also has another offer to consider. We'd like to make sure she has* [a] *chance to consider the Team Leader post alongside it.*" The "*internal candidate*" being referred to was Miss Dennis. HR gave the go-ahead to appoint Miss Dennis without going through another recruitment process. Her appointment was announced to CSC staff (without previously warning the claimant) by an email from Mr Spencer of 15/5/18.
16 May 2018	C reads Mr Spencer's email. Leaves work. Does not return prior to her resignation.
17/5/18-17/7/18	Correspondence between C and R (mainly Mr Pidgeon, writing on HR advice) forming the subject matter of victimisation allegations (a) to (h). Includes: fit notes from the claimant's GP mentioning stress, depression & anxiety; standard letters to someone absent without leave, including threats to stop pay (sick pay was stopped for a time, before being reinstated and backdated); invitations to welfare meetings and occupational health appointments, which the claimant refused; a request from the claimant's sister to communicate with her rather than with the claimant; reference, in an email from the claimant's sister of 19/6/18, to doctor's advice that the claimant should avoid interacting with the respondent, with a promise to provide a doctor's note to that effect; letters from R of 25/6/18 and 4&17/7/18 to which, respectively, victimisation complaints (e), (g) and (h) relate; the doctor's note, requested by the respondent to be provided by 2 July 2018 at the latest, was not received until 17 or 18 July – dated 16/7/18, from Dr Karrasch, a GP, it advised, "*it would help recovery if she would not have direct contact with her employer for the time being*".
Jul-Aug 2018	Correspondence between R and Dr Karrasch seeking the basis of his advice; C's consent for GP to deal directly with R sought and provided; 20/8/18 letter Mrs Coxon to C re grievance and potential occupational health meeting – subject matter of victimisation

complaint (ha); 20/8/18 telephone conversation Mrs Coxon / Dr Karrasch; 23/8/18 letter Dr Karrasch to Mrs Coxon re C: "*she is happy to be contacted in writing regarding the grievance … It would be reasonable … She is also happy to see your Occupational Health team for an appointment but she would like to attend with somebody who can support her.*"

9/8/18 — Claimant lodges a grievance, alleging discrimination, along similar lines to her first ET claim.

14-15/8/18 — First period of early conciliation.

5/9/18 — Letter Mrs Coxon to C to which victimisation complaint (i) partly relates. Includes: "*I have now had written confirmation from your GP that as you have contacted us directly regarding your Grievance, you are happy for us to contact you to undertake relevant processes to investigate your allegations, as per our Grievance procedure. … In the same letter, your GP also confirmed that you were happy to attend Occupational Health Appointments. As such, with regard to your appointment on 23 August 2018 … it is extremely disappointing to note that you failed to attend. Your GP was notified of the appointment and advised verbally on the 20th August, and then in writing on the 23rd … that there is no health related reason for your non-attendance. … I trust that we can expect your full co-operation moving forward as indicated by your GP.*"

14/8/18 — First ET claim

Letter Emma Coxon to C, in response to one from C dated 9/9/18 complaining that, "*If I was physically incapacitated you would not expect me to attend meetings, nor threaten me/stop my sick pay, yet I am mentally incapacitated and not able to attend meeting[s] for health reasons as specified by my GP. [T]his further unfair treatment is disability discrimination, as outlined in my grievance and is counter productive to my health and return to work*", which includes: "*We do not accept that if you were physically incapacitated we would not expect you to attend meetings. Management of employees does not cease simply due their sickness absence, for those who are unable to physically attend meetings, reasonable adjustments are implemented. Accordingly we deny any allegation of disability discrimination or unfair treatment.*" This is the subject matter of victimisation allegation (hb).

5/10/18 — Letter Emma Coxon to C, following C not attending a scheduled grievance meeting, to which victimisation allegation (i) partly relates. It includes: "*[Mr Rabett] will now proceed to investigate your Grievance based on your written submission only. We do not consider this to be the ideal way forward but without your*

cooperation, notwithstanding the advice contained in your GP's letter to us dated 23 August 2017, we consider that it is not appropriate to wait further to commence the investigation into the points you raise. … we cannot simply cease all forms of engagement, particularly in light of your GP's advice that while you remain unfit for work, there is no medical reason that you are not able to engage with us regarding the management of your absence."

17/10/18 Mr Rabett meets C at C's home to discuss her grievance.

29/10/18 Mr Rabett sends C his typed up notes of their discussion, referred to as her "statement". Victimisation complaint (k) is about the notes / statement. Mr Rabett emails to say, "*When you get your statement, please read carefully through it and either sign it as it is, or make annotated comments it necessary before signing and take a copy before sending it back*".

November 2018 Mr Rabett interviews various other people as part of the grievance investigations.

22/11/18 C's trade union representative, Mr Moreton, emails her to say he has spoken to Mrs Coxon and that the respondent is "*hoping to complete the investigation of your grievance by tomorrow*". Victimisation complaint (s) is partly about this.

29/11/18 C emails Mr Rabett with various things, including an amended version of her statement. Victimisation complaints (l), (m) and (q) relate to this.

6-12/12/18 Welfare meeting C and Miss Bodell on 6/12/18. Discussion on the day and later by email of a proposed occupational health referral form. C objects that it suggests she left work on 16/5/18 abruptly and without any explanation; and that there was no response from her initially regarding occupational health meetings and that she missed a number of appointments. The form is changed, but not to the claimant's satisfaction. Victimisation complaint (n) concerns this.

13/12/18 Occupational health appointment and report. C's concerns about the accuracy of parts of the referral are noted in the report. The report concludes that C is unfit for work and that recovery is not anticipated "*until the resolution of the investigation into the grievance*".

January 2019 Mr Rabett interviews various others in relation to the claimant's grievance, including CM.

25/1/19 - 6/2/19 Correspondence back and forth between Mr Rabett and C about (amongst other things) C's statement. Mr Rabett on 25/1/19 says he has not received a signed statement from C and that he is

proposing to include two documents he has as statements from her in his report. Subsequently (6/2/19) he writes: "*In respect of your statement — I have made an error which was entirely my own oversight. You had returned a signed amendment to me* [on 29/11/18]*, however I filed it in the wrong folder in error, which is why I later wrote to your to state that I could not find a signed statement from you*". Victimisation complaints (l), (m) and (q) concern this.

Also within the correspondence, on 4/2/19, C emails Mr Rabett to say, "*I would … like to be informed of who the deciding officer is and the process of how their decision will be made.*" Mr Rabett does not respond to that part of that email. C also asks for copies of the "*interviewee statements*", to which Mr Rabett responds (in his email of 6/2/19), "*I am still awaiting a signature for one of them. I foresee no issue with sharing these with you once all have been returned, however I will check whether there is a procedure that has to be followed.*" C makes victimisation complaint (r), and possibly, in part, complaint (s), about this.

26/2/19	Mr Rabett's Grievance Investigation Report: 31 pages plus over 700 pages of appendices, including all of the statements[9]. His conclusion, in summary, is that there is insufficient evidence to prove discrimination.
March 2019	Second ET claim (following ACAS EC 15/1/19 – 23/1/19).
26/3/19	Grievance hearing part 1. Present are C, her TU rep, Mrs Sheldon (as grievance decider), Ms Duncliffe (as an HR adviser) and a Ms Mackie (as note taker), plus Mr Rabett and Mr Spencer as witnesses. Ms Mackie's typed-up notes, labelled "*Management Notes*", subsequently approved by Mrs Sheldon and Ms Duncliffe, are 14 ½ pages long. C secretly recorded the meeting (and subsequent meetings) and her transcript of it is 33 pages long.
1-2/4/19	At C's request, 3 additional witnesses are interviewed.
3/4/19	Grievance hearing part 2. Witnesses (in addition to C): Mr Rabett, Mr Spencer, and Mr Pidgeon. Management Notes are 20 pages long. C's transcript is 50 pages long. A professionally produced transcript of parts 1 and 2 of the hearing is 154 pages long.
29/4/19	Grievance hearing part 3. Was due to have been on 9/4 but re-arranged because C unwell. No further witnesses other than C. Management Notes are 17 pages long. C's transcript is 23 pages long.

[9] We shall refer to them as "statements" even though they are notes of interviews because that is how they have been referred to during these proceedings.

16/5/19	Mrs Sheldon's grievance decision (19 pages plus over 200 pages of appendices). Grievance not upheld but recommendations made.
7/6/19	Grounds of appeal against grievance decision submitted by C's TU rep.
20/6/19	Grievance appeal hearing part 1. C covertly records. Adjourned to enable C and her TU rep to better prepare the appeal.
25/6/19	C provides new grounds of appeal, highlighting over 50 specific points.
July-Sep 2019	Correspondence about arranging the next part of the appeal hearing and about alleged inaccuracies in the Management Notes. C provides her notes – in fact transcripts – without explaining that they are transcripts from recordings.
15/8/19	3rd ET claim (ACAS EC 14/8/19).
25/9/19	Grievance appeal hearing part 2. C confirms she recorded previous meetings and agrees to provide recordings.
October 2019	C provides recording; R commissions an independent expert report to compare Management Notes with transcripts; report of 3/11/19 concludes, "*I do not feel that any errors or inaccuracies were anywhere near significant enough to influence the reader towards a significantly inaccurate view of the discussions and the overall context*".
6/11/19	Grievance appeal hearing part 3. Present are: C, her TU rep, Mr Shaw as decision maker, a Ms Leishman from HR, & Mrs Sheldon (to answer questions about her decision).
19/11/19	Grievance appeal decision (19 pages) – conclusions include: "*There is some limited evidence suggesting poor treatment towards to you, however. I am satisfied this was not less favourable treatment. I find the evidence shows ineffective management practices consistent across other members of staff irrespective of race … it is my view that the Company has done everything it could reasonably do to investigate and respond to your Grievance. // I am grateful to you and all the officers. involved for examining the issues you have raised so thoroughly. It is clear you and some of your colleagues hold the perception that they have been treated less favourably and that, in turn, this is due to race. … it is clear that there are recommendations, which must be urgently implemented, … to tackle this perception.*"
23/12/19	C resigns by email: "*I am writing to inform you that i am resigning from my position of Customer Service Advisor, with immediate effect. Please accept this as my formal letter of resignation and a*

> *termination of our contract. I feel that i am left with no other choice but to resign in light* [of] *my recent experiences regarding the appeal of my race discrimination grievance. Regrettably this has been the last straw in a long succession of unfavourable treatment*".

Findings & decision on the issues – overview

20. This a claim by one individual in relation to what happened to her. It is not an equal opportunities audit of the respondent, or even of the CSC. We are, in other words, looking at particular decisions individuals made and things individuals did in relation to the claimant and her comparators at particular times. Whether she appreciates this or not (and she appeared not to during the hearing, towards the start of it at least), she is, necessarily, accusing particular individuals of discrimination and victimisation. What we have to ask ourselves is whether there is evidence to support a finding that those particular individuals were – consciously or unconsciously – influenced by race, or by an actual or prospective protected act.

21. One of the main pieces of evidence the claimant relies on in relation to her discrimination claim is the evidence about the racial make-up of the CSC over the years and lack of BME management in the CSC.[10] On the evidence we have, we could not possibly say that there were significant relevant racial disparities across respondent as a whole. We also note that we only have diversity data relating to race. The claimant, in the words of Mr Wallace, "*viewed the world through a racial lens*". Because this is a race discrimination case, we, too, are inevitably looking at things through the prism of race. We do, though, bear in mind that race is only one aspect of diversity. When thinking about equal opportunities, the respondent has to, and clearly does, think about other protected characteristics as well. It is almost impossible for any large employer like the respondent to ensure that all parts of itself are representative of the organisation as a whole, or of the local community, in terms of all aspects of diversity.

22. Nevertheless, the lack of BME managers in the CSC between 2013 and 2018 is, at first blush, striking. However, when relying on this evidence, what the claimant is in fact asking us to do is to infer that particular managers had a discriminatory mindset when taking particular decisions in relation to her at particular times; and to do so on the basis of a collective failure, largely of different people, to ensure that some BME individuals were promoted over a long period of time; a period during only some of which the particular managers being accused of discrimination were working in the relevant part of the organisation; and in the absence of evidence that BME people were even applying for the relevant jobs, or in a position to take advantage of honorarium opportunities and the like.

23. Another thing the claimant asks us to infer discrimination from is the treatment afforded to comparators and to other BME staff. However, the people allegedly responsible for that treatment were different managers from those dealing with the claimant.

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[10] See paragraph 17.12 above.

24. In summary: we cannot infer that a particular manager or decision maker was racist in connection with the claimant from the fact other managers and decision makers were or may have been racist at other times and in relation to other people; we cannot infer that one person was discriminatory from conduct by some other person.

25. Further, even if the evidence supported a conclusion that there was racist decision-making in the CSC, it would be undermined by what has happened subsequently: a number of BME people being promoted into management positions in the CSC from 2019 onwards. In relation to this, the claimant during the hearing at times seemed to be suggesting that this might be a deliberate ploy by the respondent to weaken her claim. The idea that relevant decision makers in the CSC were racist up to 2018 and (presumably) continued to be so, but appointed BME people not on merit but in response to a Tribunal claim against the respondent – is fanciful and insulting to those who were appointed.

26. If there is a link between the claimant's grievance and recent appointments of BME staff to management positions, it in all likelihood stems from the fact that the investigation into the grievance revealed that a number of BME people perceived that there was race discrimination and this was putting them off applying for jobs. It is evident to us that managers were previously unaware, and were rather horrified to learn, that this was the case. Once they were aware that there was this perception, they were able to tackle it directly (as recommended by Mrs Sheldon and Mr Shaw), and this will have led to BME staff applying for promotion who had not previously done so.

27. In conclusion on this point, the respondent's apparent willingness to appoint BME people to posts within the CSC, albeit after the time period the claimant makes her claim about – but at a time when many of the same decision-makers were in post as in 2018 – undermines her case that the respondent was corporately unwilling, within the CSC at least, to promote BME people to management positions because of institutional racial prejudice.

28. The fact that some BME staff were put off applying for jobs because of a perception that there was race discrimination may well help explain why BME managers were not appointed in the CSC. If the percentage of BME staff applying for management positions was significantly lower that the percentage of non-BME staff, one would expect the numbers appointed to be significantly lower. Given this, and given the relatively small number of Team Leader ("TL") vacancies there were between 2013 and 2018, the fact that no BME employees were appointed as TLs is not particularly anomalous as a matter of statistical probability.

29. We have just used word "*perception*", which the claimant objects to in this context. She objects to it to such an extent that she relies on its use in Mr Shaw's grievance appeal decision as the 'last straw' for the purposes of her constructive unfair dismissal claim. We think the reason the claimant objects to it is because she misunderstands what is meant by a statement to the effect that a particular person's perception is that there was race discrimination, but that the reality is different. It is a misunderstanding that, in turn, stems from a misunderstanding of what unlawful discrimination is as a matter of law. A white person being treated better than a BME person does not automatically mean race discrimination. It seems that the claimant thinks the existence of a "*racial*

disparity" is in and of itself proof of racism: see paragraph 30 of her written submissions in particular. But by itself, a white person being more favourably treated in a given situation than a black person is not evidence that the reason for the more favourable treatment was race; by itself, it shows us next to nothing about what the reason for the difference of treatment was. It does not show this any more than it would be shown by – say – a BME person being successful at interview for a particular job at the expense of a number of white applicants.

30. We shall go into this in a little more detail later in these Reasons, but the context within which the word "*perception*" was used by Mr Shaw was in connection with statements from people who gave evidence for the purpose of the claimant's grievance to the effect that they saw BME people and white people being treated differently. What they actually seem to be referring to, in so far as it is possible to tell from statements that have not been tested in cross examination given several years ago in very particular circumstances, is that a white person – Mr Britnell – had more and better opportunities than some BME people. Even assuming the positions of Mr Britnell and of the allegedly less favourably treated BME people were comparable, it can't be assumed from fact that Mr Britnell is white that the reason for his more favourable treatment was something to with race, any more than it would be assumed from their different ages that the reason was something to do with that.

31. By saying that people perceived discrimination but that their perception was mistaken, the respondent was not suggesting that they were lying, merely that the explanation for the difference in treatment they had observed was not what they thought it was.

32. Our final point before dealing with specific complaints and issues concerns positive action. Generally in relation to positive action, we refer to paragraphs 112 to 114 of Ms Hodgetts's written submissions, with which we agree.

33. It is part of the claimant's case that the respondent should have made her a manager because she is BME and BME people were underrepresented in management in the CSC. Doing that would have been unlawful so-called positive discrimination.

34. There are very limited circumstances in which forms of positive action are permissible, set out in sections 158 and 159 of the Equality Act 2010. In recruitment and promotion, an employer can in some circumstances prefer a candidate from a disadvantaged group to an equally qualified (including in terms of performance at interview and so on) candidate from a non-disadvantaged group. The respondent could also have taken steps to encourage BME staff in particular to apply for promotion. In fact, the respondent did exactly that, at a corporate level, by Aspire to Manage, for example. Lawful positive action was not something that CSC management could just do off their own bat, nor something that would in practice ever happen just within the CSC. Even had they wanted to, it was never within the power of management simply to appoint the claimant to a particular post on the basis that she was BME.

Time limits

35. Given when the first claim form was presented and the dates of early conciliation, any claim about something that happened before 15 May 2018 is out of time, subject to the

discretion to extend time on a "*just and equitable*" basis. The claimant's race discrimination claims all pre-date 15 May 2018. The last of them is about the appointment of Miss Dennis. Although this was announced on 15 May 2018, the decision to appoint was made on or about 2 May 2018.

36. The entire discrimination claim therefore has time limits difficulties even if there was relevant "*conduct extending over a period*" in accordance with EQA section 123(3)(a). Moreover, there is no substantial basis for saying that there was such conduct in relation to almost all of the discrimination allegations, in that the decisions criticised were made by different people at different times for (ostensibly) different reasons; and the only discernible basis for linking them is, essentially, a misplaced allegation of corporate or institutional racism.

37. We ask ourselves whether it would be just and equitable to extend time. Asking this leads to another question: why was no Tribunal complaint made earlier?

38. The only explanation put forward by the claimant during the hearing was fear of reprisal. We do not accept that. There is no evidence to support it beyond the claimant's say-so. For example, she has not mentioned someone in the past raising such issues and then being victimised for doing so, or anything like that. We agree with what is said about it in paragraphs 42(d) and 120 of Ms Hodgetts's written submissions. We accept Mr Wallace's evidence about the claimant telling him she was noting things down as she went along as an insurance policy: he is unlikely to be mistaken about something like that and has no obvious motive to make it up. She had – or had access to – union representation and seems to have known her rights. She certainly did not allege during the hearing that ignorance of substantive or procedural law was responsible for her not making a claim sooner. We can speculate as to what the reasons might be, but we have to base our decision on evidence, not speculation.

39. On the evidence, we have no idea why the claimant made no claim in the many years during which she alleges she was discriminated against. The burden is on her to persuade us that it would be just and equitable to extend time and she simply hasn't done that. She cannot begin to do so in the present case without explaining why the claim was late. To persuade us, all she is left with is the fact that if the primary time limit is applied, her discrimination claim will fail. We do not think that that alone would make it just and equitable to extend time. That is the nature of time limits. In addition, the claimant has 20 or so victimisation complaints that are not affected by time limits, so dismissing the discrimination claims on a time limits basis does not leave her with nothing.

40. Even if the claimant had been able to point to something making it potentially just and equitable to extend time, the 'balance of prejudice' would come down in the respondent's favour, at least in relation to all complaints relating to Mr Pidgeon and those dating from before 2017. Mr Pidgeon died in May 2020, having been off sick since September 2019. Whatever his other merits, he was not good at making and keeping notes and documenting things. As the claimant had not raised a grievance or other substantial complaint with the respondent about the subject matter of her Tribunal claims before her grievance of August 2018, the respondent had no warning of a need to collect and retain material. Memories will have faded; potential witnesses will have

become uncontactable; relevant documents will have been lost or destroyed. We accept, then, that the passage of time means the respondent lacks potentially important evidence and information that it would have had if the claimant had made her claim before she did.

41. Finally in relation to time limits, we note that there is nothing in Ms Hodgetts's written submissions on the issue – see paragraphs 42, 49, 57-58, and 68-69 in particular – with which we do not disagree to any significant extent.

42. In all the circumstances, we decline to exercise our discretion to extend time; we are not satisfied it would be just and equitable to do so.

Direct race discrimination

43. We shall now go through the race discrimination complaints, as set out in the List of Issues, one by one.

(a)(i) She was not given an equal opportunity to gain relevant experience, in that: when granted Tenancy Estate Management training in 2013, C was not permitted to train as long as or as consistently as white comparators

44. The only real evidence before us relating to this complaint is contemporaneous documentary evidence, in particular an email to the claimant of April 2013 which is at page 458 of the hearing bundle. On the basis of that email and the claimant's answers to questions put to her about it in cross-examination, what happened was that a group of 6 staff within the CSC, including the claimant, were in line to do some training and by the time it got to the claimant's turn (it looks like it may well have been done alphabetically by surname) the training was restricted to certain days a week, because having staff out training for a whole week at a time had impacted on service levels within the CSC. The claimant was the only one who was affected. The relevant question for us is: why did this happen? The only evidence we have is that it happened for the reasons set out in the email; and that the claimant was the only one to be affected because she happened to be the last one in line to do this training. There is no reason at all to think that her race might have had anything to do with it, in that one of the other 5 members of staff who were not affected was BME.

(a)(ii) When C was accepted onto the Aspire to Management Programme in late 2013, despite 3 requests by C, R's Head of Service Mrs Elliott told C that she could not be released to do TL experience for a whole month because of low resource levels in CSC

45. The claimant alleged in her witness statement that it was Mr Pashley who said she should be given a whole month of TL experience. However, he has no recollection of doing so and believes it highly unlikely he would have done so, for various reasons, not least that Aspire to Manage was all about personal development, not gaining experience. His evidence about Aspire to Manage and about the probability of the claimant being given a month of TL experience was confirmed by Mrs Elliott. There is no contemporaneous evidence of any such thing being requested by the claimant or suggested by Mr Pashley. Such contemporaneous or near-contemporaneous evidence as exists points the other way. There was an email exchange in July 2014 between Mr Pashley and Mrs Elliott in which he states, "*To help with her development [the claimant]*

could do with a little supervisory experience / work even if it's on a temporary or one off basis." Mrs Elliott responded positively to this. If the claimant was right and Mr Pashley had been wanting her to have a month's TL experience in late 2013, and Mrs Elliott had vetoed this, that would surely have been mentioned in the email exchange in mid 2014, and wouldn't Mr Pashley be pushing for more than temporary or one off "*supervisory experience*"? This claim therefore fails on the facts: what the claimant alleges happened did not happen.

46. We are not saying that we think the claimant was deliberately not telling us the truth, in this or in any other respect. The human brain is an unreliable recording device and memory fades and warps over time. It is far more likely that the claimant misunderstood or misinterpreted what was said and/or has subsequently misremembered what went on than that she is lying.

47. We should add that in relation to this discrimination complaint as to all of the others, even if we were satisfied that the claimant's allegations were true, there is nothing from which we could conclude that the protected characteristic of race had anything to do with it.

48. Examining this Tribunal complaint has highlighted a number of things of wider relevance to the claim.

    48.1 As part of Aspire to Manage, the claimant was being mentored by a very senior person within the respondent, which was an excellent opportunity for her. Most people in most jobs – certainly non-managerial jobs – would never in their entire working lives get a comparable opportunity. She was assigned Mr Pashley as a mentor even though she was the joint lowest rated on external assessments of the people on Aspire to Manage. Those assessments don't appear to have been racially biased, in that (amongst other things) the joint highest scoring candidate – someone who went on to become Equality and Diversity manager – was BME.

    48.2 The respondent was evidently looking to provide the claimant with development opportunities in 2013 and 2014 and Mrs Elliott was receptive to that. As the claimant's race was no obstacle in 2013 and 2014, it seems most unlikely that it suddenly became one later, however poorly she was treated after 2014.

    48.3 To develop the previous point: Aspire to Manage was, as already mentioned, positive action the respondent took. Everyone on it in the claimant's 2013 intake was from a disadvantaged / under-represented group. BME individuals made up 31 percent of applicants, but 40 percent of those accepted onto Aspire to Manage – a success rate of 50 percent, compared to a success rate of one in three (33.3 percent) for white British applicants. For the respondent to fund Aspire to Manage, which was very expensive, particularly bearing in mind public sector budgetary constraints at that time of 'austerity', and to put the claimant through it, is evidence of the respondent's willingness in principle to provide opportunities for BME people and for the claimant in particular. The respondent can potentially be criticised for not doing more specifically in relation to the CSC and for, as it were, taking its eye of the ball in relation to racial diversity in management in the CSC between 2014 and 2018. But any suggestion that the respondent was corporately racist, and/or racist towards the claimant on an ongoing basis, is

contradicted by what the respondent did for the claimant in terms of and in connection with Aspire to Manage in 2013 and 2014.

49. In her evidence, the claimant made a further allegation of discriminatory treatment, relating to the participation of 4 individuals in Aspire to Manage workshops (see towards the top of page 8, above), namely that they had been able to participate without going through the application process that she had been through. The position, on the basis of substantially undisputed evidence, was as follows:

    49.1 the 4 did indeed participate in workshops that were part of Aspire to Manage;

    49.2 they did not participate in any other part of Aspire to Manage;

    49.3 the reason for their participation was that they were all newly appointed or promoted managers or acting managers who needed particular training and it was convenient and efficient for them to receive the necessary training by doing these workshops, because they were running anyway. It had nothing to do with race;

    49.4 it is difficult to see how, on any sensible view, this could be said to constitute less favourable treatment of the claimant or a detriment to her;

    49.5 in any event, if it was (and we don't think it was) less favourable treatment of the claimant, it was equally less favourable treatment of everyone else on Aspire to Manage, the majority of whom were not BME. This underlines the point that the reason for the treatment was not the protected characteristic of race;

    49.6 no unlawful discrimination was therefore involved.

(a)(iii) Between 2013 and 2018, C was not given support, development and experience opportunities, including covering the Team Leader role, despite her requesting that opportunity; in particular in connection with the Team Leader interview in 2014;

(a)(iv) Although C was invited to a meeting in 2015 about a proposed Succession Plan with four other individuals, between October 2015 and April 2017 there was no meaningful progress with C's Succession Plan. C says that in 2015/2016 she was denied the opportunity to apply to the Succession Plan and secure consistent Team Leader experience due to alleged poor performance and sickness absence, whereas Mr Britnell was given those opportunities despite comparable levels of sickness and allegations of poor performance in 2015 to 2017.

The claimant relies on Mr Britnell, Mr Snelgrove, Mr Whitaker, Mr Pidgeon, Mr Sambrook, and Mr Kerridge as comparators. Among other things R says that C initially had to improve her own behaviours to be in a position to advance; she was interviewed for the position of Team Leader in 2014 and gave a poor interview, which C subsequently accepted in the grievance process; and she has had opportunities to develop. C will say that another black employee, CM, was also not given the same development opportunities as white employees.

50. We will examine all these allegations together, as there is considerable overlap between them. We think it is convenient to separate them into, on the one hand, an

allegation about not being given team leader experience and, on the other, allegations about not being appointed to posts or secondments and not being offered honoraria.

51. We shall start with some general observations.

52. Based on what the claimant said to us during this hearing, her view was and is that if she wasn't carrying out what she thought of as the important parts of the TL role within CSC for significant periods of time, she was not getting any worthwhile or useful experience. Consequently, she puts no or little value on things the respondent facilitated for her and/or suggested to her that were, objectively, valuable experience and potentially helpful to her career development, such as: doing an NVQ level 3; mentoring an apprentice[11]; the mentoring she got from Mr Pashley (she put so little importance on this that she forgot about one of her meetings with him, which, considering their relative positions within respondent's management hierarchy, was a surprising oversight); intermittent opportunities to carry out parts of the TL role; performing management/quasi-managerial functions in a different role, in particular the period she spent covering for Ms Wood in late 2017, which involved her single-handedly training new starters.

53. The claimant's views in this respect tie in with her case about the reasons for others' success and her lack of success in job applications. Although she is, on paper at least, saying that a significant part of the reasons why she did not get jobs was her race, it became clear to us during the hearing that what she was really saying was that she was not successful because she did not have experience of (as we have just put it) "*carrying out what she thought of as the important parts of the TL role within CSC for significant periods of time*" and the reason that others – Mr Snelgrove in particular – were successful was that they did. She did not appreciate, and possibly still does not appreciate, either that other experience had value and could be used at interview (something shown by the appointment to TL in the CSC of external candidates – people who had no experience at all of being a TL in the CSC); nor that performance at interview – interview technique – could be as or more important than TL experience. We note, for example, that: Mr Pidgeon, who had extensive management experience before he joined the respondent, was unsuccessful the first three times he applied for a TL post, something he attributed to his unfamiliarity with competency-based interviews[12]; and Mr Wallace applied for at least 30 roles before he was successful (in 2019) and that what he felt had made all the difference was coaching on interview technique he had had from his TL.

54. To a significant extent it was for the claimant, just as for anyone else seeking career progression within the respondent, to make the most of the opportunities given to her. She did not do so. For example, Ms Aaron – Head of Learning and Development; a senior manager, with a wealth of useful and relevant knowledge and experience – offered to mentor the claimant on career development and job application skills in the Spring of 2016 and arranged a session with the claimant that the claimant did not turn up for, having forgotten about it. Ms Aaron then offered to arrange a session on another date, but the claimant did not get back to her. Similarly, at a mentoring session in

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[11] The claimant started doing this in the second half of 2014, with Miss Wilkinson's support.

[12] He said this when interviewed during the grievance process.

November 2014, Mr Pashley was unable to do some of the job interview work with the claimant he had been intending to do because she had not prepared for it beforehand.

55. A further example is the claimant's failure to draft her succession plan pro forma before January 2017. The claimant seeks to blame her TL, Mr Pidgeon, for the fact that it was not prepared sooner. However, although she would need to go through it with him before it could be implemented, this would be after she had done the initial draft, the onus being on her to prepare one. She did not need anything from Mr Pidgeon in order to do this: when she eventually got around to doing it, it was without Mr Pidgeon's help and was done using as her template the plan that Mr Snelgrove had used previously, provided to her by Mr Snelgrove over a year earlier.

56. The claimant was or became, it seems, somewhat fixated on opportunities to act in the Team Leader role in the CSC, to the exclusion of all else. This has, we think, rather distorted her perception of what occurred. An illustration of this is that when it was suggested to her that she could apply for jobs outside of CSC to get application and interview experience, she saw this as people wanting to get rid of her from the CSC. Her distorted perception has almost certainly contributed to her making this claim.

57. In fairness to the respondent, against whose current and past staff the claimant has made a large number of serious allegations of discrimination and victimisation – allegations that had we upheld them could have been career-ending for some individuals – we should make clear that this is not one of those race discrimination cases where we agree that the claimant has been badly treated but decide the case against her because we are not satisfied that the reason for the treatment was the protected characteristic of race[13]. Although, inevitably, mistakes have been made by various managers within the respondent over the years, the claimant has not, objectively, been treated badly at all.

Team Leader experience

58. In this section of these Reasons, we are looking at experience covering for TLs and performing TL tasks, as distinct from honorariums or secondments as TLs.

59. The claimant was, as best we can tell, given a reasonable amount of TL experience (and other valuable relevant experience), but she has discounted it. We have already discussed this. One of the reasons she has discounted it is that it wasn't an honorarium. It seems to us that the nub of her claim in practice[14] is Mr Snelgrove and the fact that he had an honorarium whereas she did not. We shall return to this.

60. In relation to TL experience of the kind we are looking at, the evidence we have is rather scant. Opportunities were provided by individual TLs to relevant CSCs within their teams ad hoc and no one kept a record of what individuals did, let alone how much TL experience a particular CSC in one TL's team was getting compared with those in other

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[13] To be clear: we aren't satisfied of that in the present case either.

[14] As in many cases, the claimant's position in theory, on paper, is in a number of respects different from her true position, as it emerged during the hearing, from her own oral evidence and from what she put and said when cross-examining the respondent's witnesses.

TLs' teams. The claimant's evidence on this consists largely of her recollections and impressions of what she and her comparators were doing several years ago, in circumstances where she has been in dispute with the respondent since 2018 and has evidently convinced herself that she has been the victim of a racist campaign to prevent her advancement. Overall, the evidence on the issue is poor and of limited value to us in trying to compare the quantity and quality of the opportunities for experience different CSCs were given.

61. What we can say with some confidence, having considered in particular the totality of the claimant's own evidence, is that she is not in fact alleging that any of her comparators gained more TL experience of the type we are considering than she did other than Mr Snelgrove and Mr Britnell. In any event, there is no substantial evidence about the amount of TL experience any of her comparators gained other than those two and no proper basis for us to find that any of the others were more favourably treated than her in this respect.

62. It is important to note that, as we have just mentioned, the amount of TL experience given to CSCs was in the hands of their TLs; and that Mr Snelgrove and Mr Britnell had different TLs from the claimant. What this means is the claimant is asking us to decide that Mr Pidgeon[15] directly discriminated against her not because he treated others more favourably but because other TLs did. From the material we have, we could not conclude that Mr Pidgeon would have treated others better than her, let alone that he would have done so because of race.

63. The specific allegations about TL experience that are not directly to do with honorariums or secondments are very much tied up with the succession plan. In the context of a race discrimination claim relating specifically to the CSC, it is relevant that:

    63.1 the succession plan was something exclusive to CSC;

    63.2 it was initially promoted to just 5 people, who had expressed an interest in advancement, of whom 3 were BME;

    63.3 the people who sought to take up the succession plan included the claimant and at least one other BME individual – CM – and did not include a number of people who were successful in terms of achieving promotions and gaining opportunities that the claimant did not gain, such Mr Wallace. (We note, in passing as it were, that the claimant's allegation that Mr Wallace was not "*granted access*" to the succession plan is incorrect. He could have had one had he wanted to; he didn't. That the claimant made this allegation, on the basis of seemingly no evidence at all, and that she persisted with it even after receipt of Mr Wallace's witness statement, illustrate the extent to which her conviction that the respondent is racist has affected the case she has put forward in Tribunal).

64. It is also relevant that, at least at the time, the claimant seems to us to have thought that being on a succession plan was an almost guaranteed route to promotion. This was not the case, but we agree with Mr Spencer's and Ms Aaron's evidence to the

[15] See paragraph 66 below.

effect that the whole idea of succession plans had perhaps not been fully thought through, because of a tendency to generate false expectations amongst those on them that they would get a particular role. That certainly seems to have been what happened in the claimant's case.

65. The claimant's first specific allegations around the succession plan are that her entry onto it was unnecessarily delayed, and that the reasons put forward for not allowing her onto it applied equally to, but were not enforced against, comparators.

66. Mr Pidgeon did not become the claimant's TL until 2015, and it is Mr Pidgeon who is the target of this part of her claim. She has not made any particular criticisms of Mr Barratt, her previous line manager, and in the last performance appraisal form that was completed before Mr Pidgeon took over, the claimant indicated that she felt supported in many areas of her development.

67. The reason the claimant did not start on her succession plan in 2015 is: from the outset, the criteria for going onto a succession plan included meeting performance and behavioural targets; the claimant needed to have met those targets for 3 consecutive months; she had not done so before 29 December 2015 at the earliest.

68. The claimant had not met all of the targets at the time of her appraisal in July 2015 and 1-2-1 in August 2015. She was then off sick until 29 September 2015. She suggested that Mr Pidgeon had told her in September or October 2015 (she initially said September, but was then reminded she had not returned from sickness absence until the end of that month and that Mr Pidgeon did not become her team leader until then) that the period she had been off sick would be counted towards the 3 month period during which she had to meet targets. We think she must be mistaken about this. It would make absolutely no sense to treat an employee who was not performing satisfactorily before a period of sickness absence as doing so during that period for any purpose, let alone for the purposes of access to a succession plan.

69. In fairness to the claimant, it is clear that Mr Pidgeon was himself confused about how succession plans worked at this time. It may be – the evidence is unclear – that he had not previously had a subordinate who was potentially in line to go on a succession plan and who wanted to do so. He had only been a TL in the CSC – or acting as such – since January 2015.

70. Mr Pidgeon looks to have been confused in at least two respects. First, he appears to have thought that it was for him to draw up the claimant's succession plan pro forma rather than for her to draw it up and then go through it with him. Secondly, he does not seem to have realised that the claimant had not been meeting her performance targets – or, at least, he failed to mention this to her when she emailed him about the succession plan in October 2015. We can see how this failure may have led her to think that she could go onto the succession plan at that time, when in fact she could not.

71. We ought to say something about the late Mr Pidgeon at this point. We are reluctant to criticise someone who is unable to defend themselves, but it is relevant to the claimant's claim – which involves alleging that Mr Pidgeon was a racist – that paperwork and procedural matters were not his strong point. We can see this from, amongst other

things, his own appraisal of May 2017. On the limited evidence available, he appears to have been disorganised. We accept what Miss Baldwin says about him in paragraph 7 of her statement. In addition, he had significant personal issues which clearly affected him deeply and had an adverse impact on his work in 2017 and 2018. There is no evidence that he was a more effective manager of white staff than of BME staff.

72. The earliest the claimant could possibly have gone on a succession plan was, then, January 2016. But it was – coincidentally – in January 2016 that Miss Wilkinson first had cause to look at the succession plan. One of the things she picked up was that there was nothing in it about staff having to meet the respondent's sickness absence targets of 3 occasions and/or 10 days in a rolling 12 month period. She decided to introduce that as an entry criterion.

73. We accept that it was legitimate for Miss Wilkinson to do this. She felt – understandably so to our mind – that it ought to have been a criterion all along. If people aspire to be managers, then as a bare minimum they should be expected to meet targets. There is no reason to think that it was introduced as a criterion for any reason other than this.

74. As mentioned above in the chronological narrative of events, January 2016 was also the first time, as best we can tell, that the claimant asked management above Mr Pidgeon about her succession plan. In places in her evidence and during the hearing, the claimant seemed to be alleging that her doing this was the trigger for Miss Wilkinson adding sickness absence targets to the succession plan entry conditions; and/or that they were added specifically to 'get at' the claimant. If the claimant is making that allegation, we reject it. It had in fact been decided that they should be added before the claimant sent a relevant email to anyone other than Mr Pidgeon – an email to HR on 27 January 2016. The claimant's own evidence is that she was told by Mr Pidgeon that she could not go on the succession plan because of her sickness absence record before she sent that email. Her email was then forwarded to Miss Wilkinson, who explained in her reply to HR why she had (past tense) made the changes to the "*qualifiers that need to be achieved before they are able to start on a succession plan*" which were shown in an attached document.

75. Once a sickness absence criterion was put in place, the earliest the claimant could possibly go on a succession plan became 29 September 2016.

76. The situation from 29 September 2016 to the end of the year is unclear. In particular, as we mentioned in paragraph 70 above, Mr Pidgeon may well have been confused as to who had to do what to get a succession plan up and running and may well have been under the false impression that it was for him to draw up the claimant's succession plan pro forma, or in some other way to initiate the process.[16] However, what is clear is that by late December 2016 at the very latest, the claimant knew that she had to draft her own pro forma and she was asking Mr Snelgrove for assistance with it.[17] Why she did

[16] In addition to an email suggesting this that he sent to the claimant in October 2015, there is a comment in the record of a 1-2-1 meeting between Mr Pidgeon and the claimant dated 16 November 2016 about trying to finish the pro forma "*by the end of November*" that could be a comment from him or from her.

[17] See also paragraph 55 above.

it then and not before is substantially unexplained. She did not complete it until 18 January 2017 and could not have started on a succession plan before then.

77. In so far as the delay from the end of September to late December 2016 is down to anyone other than the claimant, it seems to have been down to Mr Pidgeon. There is nothing in the evidence from which we could draw an inference that he caused this delay due to racial prejudice. In so far as he was to blame for not doing something he needed to do before the claimant could draft her pro forma, the most likely explanation is that it was a product of his own disorganisation. In the contemporaneous paperwork, he comes across as very willing in principle to do things, but bad at actually getting around to doing them.

78. There was further delay of several months between 18 January 2017 and the claimant actually starting on her succession plan. To explain this delay, we are significantly handicapped by not having evidence from Mr Pidgeon. The conclusions reached in the grievance process were that this delay was not adequately explained. To an extent, we agree. However, based on what evidence we do have, at least part of the reason seems to have been that Miss Wilkinson was concerned that the claimant was still not behaving as she would expect someone with managerial ambitions to behave. There is also a problem with lateness flagged up. These matters appear from the written record of a 1-2-1 meeting on 16 February 2017. We agree with Ms Hodgetts's submissions that it is from this date, rather than from the January date, that there is an absence of an explanation for why the claimant could not go onto the succession plan.

79. Regardless of the date from which there is no apparent explanation for the delay, there is no good reason at all to think that race was a factor. That is so whether the delay was the fault of Miss Wilkinson or Mr Pidgeon or both.

80. Between the email exchange of 12 to 13 April 2017 (see page 10 above) and the succession plan starting some time the following month, the delay seems to be down to Mr Pidgeon.

81. Reviewing what happened with the succession plan in the first 5 months of 2017:

    81.1 there was a period from mid January to around mid April where the claimant did not go onto a succession plan seemingly, at least in part, because Miss Wilkinson felt she was not ready;

    81.2 from around mid February onwards, another factor was probably Mr Pidgeon's disorganisation;

    81.3 particularly bearing in mind the very positive messages coming from Miss Wilkinson to the claimant when the claimant eventually started her succession plan, especially in her email to the claimant of 17 May 2017 (which the claimant herself clearly saw as positive at the time), it does seem most unlikely that the reason for this delay was racial prejudice towards the claimant. And once again, there is no good reason to think that it was.

Support, development & experience & TL interview 2014

82. This part of the Reasons covers the same ground as paragraphs 60 to 82 of Ms Hodgetts's written submissions, which we agree with and which go into considerably more detail than we will.

83. In discrimination complaint a(iii), the only specific thing the claimant mentions is the interview for a secondment as TL in late 2014, in which Mr Pidgeon was successful and she was not. We are considering this here and now, out of order, because by the end of the hearing we remained in the dark as to exactly what she was alleging in relation to this. If it is a complaint about not getting a TL secondment in or around December 2014 and/or about Mr Pidgeon's honorarium as TL from June 2014, it probably belongs later in these Reasons; if about "*support, development and experience*" of other kinds, it belongs earlier.

84. As set out above, apart from complaint a(ii), the claimant's complaints about experience not involving honoraria and secondments – those in relation to which there is anything approaching vaguely adequate evidence, at least – concern the period from late 2015 onwards and are encapsulated within complaint a(iv). Also as set out above, on any fair and sensible view, what the respondent did for the claimant in 2013 to 2014 by and in connection with Aspire to Manage was support and development of the highest order. This was a way in which she was significantly more favourably treated than Mr Pidgeon, who was not on Aspire to Manage and was not, for example, mentored by Mr Pashley.

85. There is no discernible complaint specifically about preparation for the 2014 interview itself. Nowhere has the claimant suggested, for example, that she asked for specific help in connection with that interview that the respondent refused her but gave to Mr Pidgeon, or anything else of that nature.

86. We don't think the claimant is alleging there was discrimination when Mr Pidgeon secured the TL secondment, even though at some points during the hearing she suggested she was alleging as much. An allegation to that effect was one of several that had to be put to the respondent's witnesses by the Employment Judge because the claimant was unwilling or unable to do so. However, what the claimant says about it in her witness statement – in paragraph 19 – is to the effect that she did a poor interview and failed to secure the post because she did not have the TL experience Mr Pidgeon had gained through doing an honorarium. The long and the short of it is that there is no reason to think that Mr Pidgeon gained the secondment other than on merit, on the basis of his performance at interview.

87. That leaves the honorarium Mr Pidgeon secured in June 2014. We discuss honoraria generally later in these Reasons, from paragraphs 117 to 126, and we refer to that discussion. In relation specifically to Mr Pidgeon's honorarium:

    87.1 why it existed, and why and how it was decided it should be Mr Pidgeon's and not the claimant's or anyone else's, is essentially unknowable given the limited evidence that still exists;

87.2 that said, Mr Pidgeon had had extensive management experience before he came to the respondent, whereas the claimant, although she wanted to be a manager, was (as Ms Hodgetts put it in her written submissions) "*still at the beginning of closing [a] very significant development gap*";

87.3 the claimant's case that there was race discrimination here is in reality solely based on the claimant being BME and Mr Pidgeon being white, which is an insufficient basis for the complaint.

TL experience – Mr Snelgrove

88. We are now going to deal with activities carried out by those on a succession plan and the comparison that claimant draws in relation to this between herself and others. We have already explained that the only others who seem to us to be relevant in this respect – on the evidence as presented to us – are Mr Snelgrove and Mr Britnell.

89. We have previously referred to the fact that no one – including the claimant herself – kept a tally of how much TL activity the claimant and her comparators did and that the evidence on this issue is poor. The claimant's belief that they did significantly more than her may well simply be down to the fact that that was what she thought was or was going to be the case, that people tend to see what they expect to see, and that memory plays tricks on everyone. It is impossible for us to determine with any degree of certainty what the precise position was.

90. Nevertheless, on the basis of Mr Snelgrove's own evidence, we think the claimant is right that – even putting his honorarium completely to one side – he probably did get more TL experience than she did. In particular, he seems to have acted as TL for significant periods, for example as holiday cover, in a way the claimant did not.

91. One reason for the claimant having fewer opportunities than Mr Snelgrove was her inability to take advantage of them. For example, she was going to cover for her TL in March 2015 when he was on holiday. This did not happen – as the claimant conceded in cross-examination – because she didn't meet targets. In contrast, at all relevant times Mr Snelgrove met his targets and had no behavioural issues.

92. In any event, it is clear to us from many people's evidence, in particular that of Mr Snelgrove himself, Mr Sambrook, and Mr Wallace, that Mr Snelgrove was in many ways an exceptional individual, not just in terms of his abilities, but in terms of his drive. Every time volunteers were asked for to do something, he 'stuck his hand up'; he actively sought out development opportunities rather than, as the claimant did, waiting for them to come to him; he was, as the claimant put to him in cross-examination, nicknamed "golden boy" and was referred to as "having a halo". He also benefitted from supportive managers whose support was considerably more effective than – on the evidence – any support provided to anyone by Mr Pidgeon.

93. Our conclusions in relation to Mr Snelgrove are that:

    93.1 he had more and better opportunities than everyone else, not just than the claimant or other BME people, and this was because of how he was and how he was perceived as an individual rather than because he is white;

    93.2 the people (other than Mr Snelgrove himself) responsible for him getting those opportunities – principally Mr Sambrook – were different from the person (other than the claimant herself) primarily responsible for her getting fewer opportunities: Mr Pidgeon;

    93.3 to repeat a point we have already made, we cannot, as a matter of logic or law, infer that a person is racist from the fact that they treat someone worse than someone else treats someone else. By asking us to decide that Mr Pidgeon discriminated against her because he treated her worse than Mr Sambrook treated Mr Snelgrove, that is what the claimant is wanting us to do.

94. The claimant relies on an allegation that CM, also BME, received less favourable treatment in terms of development than one or more white people. In relation to CM, as with the claimant, the only realistic comparator – the only white person who evidently received better opportunities – is Mr Snelgrove. The comparison between Mr Snelgrove and CM in fact appears no more appropriate than that between Mr Snelgrove and the claimant, as CM's line manager was different from Mr Snelgrove's. However, on what little evidence we have relating to this, we cannot say absolutely definitively that CM and Mr Snelgrove were not comparable in accordance with EQA section 23. Even if, though, we assume that they are comparable, and that CM was less favourably treated, and that the reason for this less favourable treatment was race, that would not help the claimant's case at all. It would not do so because it would not begin to show that Mr Pidgeon (who, as best we can tell, had no involvement at all either in CM's allegedly less favourable treatment or in Mr Snelgrove's allegedly more favourable treatment) was or might have been a racial discriminator. Once again: we could not infer that Mr Pidgeon was consciously or unconsciously racially prejudiced from a finding that someone else was.

TL experience – March to May 2018

95. There is one further subsidiary issue relating to the claimant's succession plan that we think we ought to address: what happened in 2018 between the appointment of Miss Bodell and that of Miss Dennis? In early March 2018, the claimant sent Mr Spencer a copy of her succession plan and he gave her detailed feedback on her interview. The claimant's evidence is that her succession plan was not progressed to any significant extent between then and the start of her long period of absence from 16 May 2018. Mr Spencer's evidence during the grievance process was that he spoke to Mr Pidgeon to check whether any support was needed with the succession plan. At the hearing, his evidence on this point was rather confused – unsurprisingly so given that he was being asked to recall events that would not have been particularly significant to him at the time more than 3 years' later; Mr Pidgeon's evidence during the grievance process likewise.

96. The question seems to be: did Mr Spencer actually speak to Mr Pidgeon about helping the claimant to get on with her succession plan – meaning the lack of progress was mainly Mr Pidgeon's fault; or did he forget – in which case he at least shares the blame? Given the lapse of time and the lack of witness evidence from Mr Pidgeon, it is not possible for us to decide this question one way or the other. We suspect even Mr Spencer does not know any more. We don't think we need to answer it. There may have been a lack of communication between them, or a miscommunication between them, or Mr Pidgeon simply failed to provide the claimant with opportunities despite Mr Spencer speaking to him about it, or – most likely – there was a combination of things (including the claimant not going back to Mr Spencer to tell him that Mr Pidgeon was still not, in her view, facilitating enough opportunities for her)[18]. The conclusion of the grievance process – which is the information the claimant had at the time she resigned – was, broadly, that it was Mr Spencer's fault. If we assumed there was less favourable treatment here (and we are not satisfied there was), whether we went on to assume it was Mr Spencer's fault, or Mr Pidgeon's fault, or that they were both at fault, there would be no facts from which we could conclude that the protected characteristic of race was the reason for the treatment. By far the most likely explanation would be simple oversight; there would be, and is, no basis for inferring anything more sinister.

TL experience – Mr Britnell

97. There is no solid, objective evidence of Mr Britnell doing significant amounts of TL work. Like the claimant and Mr Snelgrove, he did some of what has been referred to during the hearing as stats, but nothing else of any substance. The claimant believes otherwise, but that seems to be based on mis-assumptions and mis-reading of some of the documentary evidence. For example, she has assumed that whenever Mr Britnell was at Mr Grogan's (his TL's) desk, he was getting TL experience. We have heard from Mr Grogan, and he was clear in his evidence – and he is in a much better position to know than the claimant – that Mr Britnell was not doing lots of TL work and in particular was usually not doing TL work when sat at Mr Grogan's desk. When cross-examining Mr Wallace, the claimant sought to get him to agree with her that Mr Britnell was someone who was consistently getting TL experience and Mr Wallace volunteered that what he saw at the time was that there were only two people who were getting lots of TL experience and they were Mr Snelgrove and the claimant herself.

98. The claimant alleges that Mr Britnell was more favourably treated than her because – she alleges – he exceeded sickness targets but, unlike her, was not prevented from going on the succession plan for a year. The situation is not entirely clear, but she is probably right that: he did indeed have sufficient sickness absence at one point to hit a trigger for activation of the respondent's attendance management process, which had it been activated would for a time have completely prevented him even being considered for a succession plan; but it was not activated and he therefore wasn't prevented from accessing a succession plan for that reason. The reason for this is

[18] We also note what Miss Hodgetts says about this in paragraphs 156 and 157 of her written submissions, none of which we substantially disagree with.

similarly unclear, but it was down to his line manager – who was not Mr Pidgeon: either they didn't realise, or they decided in their discretion not to activate it[19].

99. Mr Britnell was underperforming and not meeting his targets; he also had behavioural issues; his 1-2-1s are clear that he was being taken to task in this respect. He was told in terms at appraisal – just as the claimant was – that he needed to perform consistently for 3 successive months and he never did so. Ultimately, he was dismissed for serious misconduct, or left when facing serious misconduct charges. Most importantly for our purposes, he never went onto a succession plan. The documentary and other evidence is entirely clear to us in that respect; the claimant has simply misinterpreted it.

100. In conclusion:

    100.1 Mr Britnell was not more favourably treated than the claimant in any relevant respect;

    100.2 if we are wrong about that, there is no reason to think that the reason for this had anything to do with race;

    100.3 there is no evidence that Mr Pidgeon, the alleged discriminator against the claimant, had anything to do with how Mr Britnell was treated.

Evidence from BME staff during the grievance

101. A number of BME CSAs gave evidence during the grievance process to the effect that they felt there was discrimination within the CSC. The claimant relies heavily on this, and we have carefully considered whether it is something that reverses the burden of proof in accordance with EQA section 136. Our conclusion is that it is not.

102. There are three general points we bear in mind before we look in detail at what each of the relevant BME members of staff said.

    102.1 First: the individuals who expressed the view that they thought there was discrimination did not know why one person was treated differently from another, and in particular did not know that it was because of race, any more than the claimant did or does.

    102.2 Secondly: these individuals were nominated by claimant as people she wanted the respondent to interview as part of her grievance. She presumably did so on the basis that she thought they would support her. They were not necessarily representative of BME people throughout the CSC, let alone the respondent as a whole. Mr Wallace, for example, did not share their apparent views. In 2017, the EDF did a survey of ethnic minority employees in the respondent and although many had concerns around career progression, something like 95

[19] In relation to this second option, it is relevant that if Mr Britnell did exceed sickness absence targets, it was by a few days only; the claimant's sickness absence record was significantly worse than his.

percent[20] said they would recommend the respondent as an employer to friends and family. It is doubtful they would have said this had they thought the respondent institutionally racist.

102.3 Thirdly, and perhaps most importantly: we have not heard from these individuals ourselves. All we have to go on is their 'statements'[21]. We do not know whether, had they been called as witnesses – and it was open to the claimant to do so just as much as this was open to the respondent – they would still have said the same things. And we do not know how much their evidence would have been undermined by cross-examination, even if they had said the same things.

103. We start with the statement of Ms N Ring. At the time she spoke to Mr Rabett (January 2019) she clearly thought that white people were advantaged. She also said that BME people did not go for jobs because they didn't think they would get them. We also understand from other evidence that Ms Ring did not herself apply for any relevant jobs during the period with which the claimant's claim is concerned. In terms of specific facts that her evidence gives us, her perception that there was discrimination does seem to come down to the fact – which is an agreed fact – that for a period within the CSC, there were no BME managers or acting managers. When she was asked specifically about the claimant, the one and only person she named as having been more favourably treated in terms of opportunities other than actual appointments to TL positions was Mr Britnell; and in terms of specifics in relation to Mr Britnell, she seems to be thinking wholly or mainly about the honorarium. Ms Ring appears, then, to have perceived discrimination on the basis of much the same things as the claimant; she does not really add to the factual basis for having that perception.

104. What Ms Ring said was almost certainly affected by her friendly relationship with the claimant and by her belief that the claimant should have got a TL job because she "*had all the skills to do the job effectively*", in contrast to Miss Dennis, who at the time she evidently did not rate. What this failed to take into account was how the claimant had performed at interview, something Ms Ring can have had no idea about.

105. In summary, in terms of facts, Ms Ring does not add significantly to the evidence we already have.

106. The next relevant individual who gave evidence during the grievance process was CM. Taking his two statements as a whole, what he was saying was that in his opinion he had been the victim of discrimination, but that he wasn't sure whether it was race or disability discrimination. If we look at facts rather than opinion, the allegation of discrimination again seems to be based on a comparison with Mr Snelgrove, in particular in relation to his honorarium, which CM wrongly thought was a secondment. (We shall discuss honoraria and secondments later in these Reasons). Once again, what CM had to tell the grievance investigation does not materially add to the evidential picture.

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[20] We have only an email explaining the result of the survey "*so far*", sent at a time when "*a few*" uncompleted questionnaires were outstanding.

[21] The notes of their interviews.

107. As far as we know, CM did not apply for any TL or other management job at any relevant time.

108. Ms S Bibi was another BME individual who gave evidence as part of the grievance process. She alleged favouritism and did not explicitly allege race discrimination, although arguably that is implicit. Yet again, her allegations appear to be based on facts that are uncontroversial and already before us: the lack of BME representation at management level and the fact that over a period of time a number of white people and no BME people were made TL.

109. Ms Bibi did not apply for any relevant role at any relevant time.

110. The position of the next BME grievance witness, Ms R Damani, was similar: she perceived favouritism; the particular person she referred to in that respect was Mr Snelgrove; she thought BME employees were held back, but that was seemingly on the basis of the lack of BME TLs; in terms of facts, she adds nothing not already in the evidence before us; she was not interested in promotion and had not applied for any relevant role.

111. Finally, on 1 April 2019, a Ms P Amalean, who like Ms Damani was not herself interested in promotion, told the investigating officer: "*My opinion is that she* [the claimant] *was treated unfairly. She did the Aspire to Manage course, and was given some Team Leader responsibilities e.g. monitoring breaks. Those of us in* [Mr] *Pidgeon's team felt that she would get a Team Leader role, that she was being lined up for. I was surprised she didn't get it. … I personally think she was treated unfairly when she was unsuccessful for the Team Leader's role, as she had been trained and had the skills required.*" This is interesting evidence in two respects in particular: she believed the claimant was getting TL experience; she gives the impression that she thought the claimant was being lined up for and was entitled to get a TL job because she did Aspire to Manage.

112. Ms Amalean adds nothing further of relevance to us. She does make an allegation about a Ms Fenton (who was appointed a TL after the period with which the claimant's claim is concerned) and a training course, but we have had no evidence about that from anyone else, including the claimant.

The EDF

113. The broad allegation the claimant makes relating to the EDF is that it was unsupported or inadequately supported by the respondent. There is no particular free-standing complaint of discrimination – the allegation is said to be one of the things from which an inference of discrimination can be drawn.

114. In relation to the EDF, there is a similar point to be made as one we have already made about other parts of the claimant's case: what happened with the EDF is only relevant if the individuals said to have failed to support the EDF are the same individuals as those alleged to be responsible for things the claimant is making Tribunal complaints about; they aren't, or, at least, don't appear to be.

115. Only two specific substantial allegations are made concerning the EDF. The first is that only two people from the CSC were permitted to attend EDF meetings at a time.

115.1 We are not entirely sure, but we think that the two person limit was indeed in place, but applied only to non-committee members. In other words, if someone was on the committee (as the claimant briefly was) they could attend as of right. The claimant has made no allegation that when she was on the committee she sought to attend and was not allowed to, or anything like that.

115.2 Most employers do not have anything like the EDF – a support group operating during normal office hours that employees could take time out of their normal working day to attend, without reduction in pay.

115.3 The EDF was company wide. It was one of a number of different forums that operated. We can see that in particular parts of the respondent with a relatively high percentage of BME people, such as the CSC, having a two person limit might seem insufficient to the people working there. However, there is no evidence that more favourable limits applied to other forums, of which there were several. In addition, we can see that from a management perspective, in a busy area like the CSC, having even two people away from their desks at a time could be difficult to accommodate; particularly bearing in mind that there might be other people attending meetings of other forums as well.

115.4 The EDF forum was in other respects well supported by, and had the ear of, senior management, particularly Mr Pashley.

115.5 We do not think we could possibly properly infer that the claimant was discriminated against in terms of development opportunities and promotion within the CSC from the fact that there was this limit on the numbers who could attend this forum.

116. The other specific thing that was raised with us in relation to the EDF was an email complaint from a past chair of the forum, a Mr Riley, of March 2016. He was complaining that the respondent had not responded to questions that he had asked. The gist of what he was saying was that the EDF had ceased to operate. Mr Pashley was asked about this when giving evidence. He told us he had responded to Mr Riley's questions and we have no good reason to disbelieve him. Looking at the questions Mr Riley seems to have thought were unanswered for ourselves, it appears to us that Mr Riley was seeking to blame the respondent for his own failings in relation to the EDF. Taking his complaint at face value, he was under the mistaken impression that it was for senior management to organise the forum, rather than – as it was – for the members of the forum to organise it themselves as they saw fit. It is puzzling that Mr Riley did not just take it upon himself to get the forum back up and running again, or direct his complaints and criticisms to the last person to be the chair of it. Be that as it may, senior management did organise a relaunch of the forum (along with others) as part of its organisational and development strategy for 2017 to 2019. In conclusion, Mr Riley's misplaced complaints to senior management outside of CSC have no bearing at all on whether the claimant was the victim of discrimination by managers within the CSC.

Honorariums & secondments

117. Honorariums and secondments were both ways in which someone could 'act up' into a particular role. The honorarium or secondment that has been discussed the most during this hearing is Mr Snelgrove acting as a TL on an honorarium from March 2016 to May 2017, when he secured a permanent TL post.

118. In the evidence before us, there is a lack of complete clarity as to the basis upon which honoraria were offered. We have seen two policies covering honoraria – an old and a new; and the former is in many ways clearer than the latter – but what is plain from all the evidence is that the purpose of honoraria was not to give staff experience to help with their development. Instead, they were a pragmatic measure to cover a role where this was necessary for an indefinite period that was expected to be 3 months or less. If there was definitely a permanent vacancy, the respondent had to go through a normal, formal recruitment process. If there was a vacancy for a fixed short term period, e.g. maternity cover, that would be dealt with by formally recruiting to a secondment position.

119. The exception to what has just been described is a situation that Mr Kerridge found himself in in late 2014. He applied and was interviewed for a maternity cover secondment. He was deemed the best applicant, but did not do well enough to be offered the secondment. However, because the CSC needed to fill the role as a matter of urgency, he was offered an honorarium to cover most but not all of it. See paragraph 4 of his witness statement.

120. There is no evidence of honoraria ever being arbitrarily offered at a manager's discretion as an alternative to going through a normal recruitment process for a secondment or a permanent vacancy, which is what the claimant wanted to happen with TL roles in 2018.

121. To be given an honorarium, the employee had to: first, be deemed by management as capable, immediately, of performing the role; secondly, ready and willing, at the time it arose, to do it.

122. Another important thing relating to honoraria we should highlight is that the idea – put forward by the claimant, CM and others – that an honorarium that rolled over beyond its original up-to-3-month period (as many of them, most particularly Mr Snelgrove's, did) should be moved from one employee to another, in the interests of fairness, is naïve. It stems, we think, from the misconception that honoraria were all about providing development opportunities for employees, rather than fulfilling the respondent's needs. For the sake of stability and continuity, once someone started an honorarium in a particular position, it was sensible and reasonable for them to continue in post until the honorarium came to an end. We agree with the respondent that, for example, it just wouldn't work to have people's line managers changing every few months.

123. It has to be said that the respondent is partly responsible for the misconception we have just mentioned. It failed clearly to set out in policy documents the circumstances in which honorariums might be offered. A number of people – not just the claimant – believed that honorariums were for development opportunities (rather than serving a

different purpose, but being development opportunities as a matter of fact) and that because Mr Snelgrove had been offered one, the claimant was entitled to be offered one too.[22] Moreover, the basis upon which honoraria were offered was even less clear at the time of the events with which this claim is concerned than it is now.

124. Turning to specific honoraria and secondments, we refer again to Ms Duncliffe's evidence and to the document that appears at page 3882 of the bundle. There are one or two errors in that document that Ms Duncliffe corrected, but none of them make any difference to what we have to say about this.

125. In relation to all or virtually all of the secondments or honoraria featured in that document, other than those we have already mentioned:

    125.1 the claimant is not suggesting (or, if she is suggesting this, the suggestion is unfounded) she applied for them or, in relation to honoraria, was in a position to be offered them;

    125.2 we do not know whether any suitably qualified BME people applied for them or, in relation to honoraria, were in a position to be offered them;

    125.3 we don't know who made decisions to offer secondments and honorariums to particular people, nor on what basis they did so.

126. In short, there is no evidential basis for us to conclude that individuals who were involved in decisions relating to the claimant that she is making her claim about consistently favoured non-BME people over suitably qualified BME people.

Mr Snelgrove's honorarium

127. The only honorarium that is potentially relevant to the claimant's claim and in relation to which we have anywhere near adequate evidence upon which to form any relevant conclusion is Mr Snelgrove's.

128. The first thing to note in relation to Mr Snelgrove's honorarium is that the claimant is not alleging that at the stage it was awarded to him – March 2016 – it should have been awarded to her instead. In not making that allegation, she is being realistic: apart from anything else, she was not on a succession plan at that time, for reasons we have already explained.

129. The claimant's case, as put forward at this hearing, is three-fold: CM should have been offered the honorarium; alternatively, it should have passed to CM at some stage between March 2016 and May 2017; the claimant should have been offered an honorarium in 2018 because by then she was on a succession plan, as Mr Snelgrove got an honorarium when he was on his succession plan. We have already considered, and dismissed, the second and third of these.

[22] For example a Mr B Lewis, who said as much in a statement provided by the claimant dated 30 November 2018.

130. As to the suggestion that CM should have been offered the honorarium that Mr Snelgrove was offered:

130.1 this is the claimant's claim, not CM's;

130.2 from the contemporaneous documentation, in particular section 5 (dated 4 April 2016) of an honorarium request form dated at the top 4 March 2016, only Mr Snelgrove and CM were "*on TL progression plan*" and at the time CM was off work on long term sickness absence. In other words, Mr Snelgrove was lucky enough to be in the right place at the right time. We have no good reason not to take that document at face value. It was prepared years before the claimant's grievance or claim.

131. The claimant has highlighted the fact that in the honorarium request form, it stated, "[we] *propose to offer this as a development opportunity for a CSA who is currently on TL succession plan*" and that, similarly, in the email of 10 March 2016 announcing the honorarium to staff, it stated that Mr Snelgrove, "*will be covering the role as a development opportunity as part of his succession plan*". It is plain to us that that this did not mean the reason an honorarium was being requested was to provide a "*development opportunity*" to Mr Snelgrove; nor that the purpose of honoraria generally was to provide development opportunities. In the context, what was being said was that it was being offered to him rather than to someone else because he was on a succession plan and that it would, in fact, provide him with a development opportunity.

132. The claimant also argues that there is a discrepancy or contradiction between what was said by Miss Wilkinson in an email of 29 Feburary 2016 about the (at that stage prospective) honorarium – "*In the short term, until budgets are signed off, I don't know what's happening with this post so we can't recruit to it*" – and how the contents of that email were described in Mr Rabett's report: "[Miss Wilkinson] *states that, due to budgetary uncertainty, a team leader vacancy is to be covered on secondment*[23]". When cross-examining Mr Rabett, the claimant suggested to him that "*budgetary uncertainty*" was something completely different from what was meant by "*until budgets are signed off*". The claimant has simply misunderstood this; there is no discrepancy or contradiction. Mr Rabett explained the situation to us and we accept his evidence because it is entirely consistent with the contemporaneous documentation and accords with our experience (and because the claimant is in no position to contradict it; she knows nothing about it):

132.1 budget sign-off is an annual process;

132.2 around financial year end, managers prepare budgetary forecasts, which have to be signed off by executive management teams and finance;

132.3 until the budget is signed off, the manager can't be certain that it will be;

[23] The reference to a secondment here is an obvious mistake; no one – including the claimant – has suggested otherwise.

132.4 a manager wants to avoid finding themselves in a position where they recruit someone to a permanent position only to find that the budget for that position is not signed off;

132.5 what Miss Wilkinson was saying in her email – something accurately paraphrased in Mr Rabett's report – was that she was unable to recruit to a permanent position at that stage because she was uncertain as to whether the budget for a permanent position would be signed-off.

133. In conclusion:

133.1 the reason an honorarium was offered at all is clear – there was a vacant post that needed to be filled, but at the point it became vacant there was uncertainty as to whether the budget would be there to pay for someone to occupy it as a permanent position;

133.2 the reason it was offered to Mr Snelgrove is also clear – when the post fell vacant, he was the only CSA who was both considered capable of doing it and was in a position to start straight away. There is no reason in the evidence to think that race entered into it;

133.3 the reason he remained in post, rather than the honorarium passing to someone else like CM, was practicality and a desire for stability and continuity. Again, race was not a factor.

(b) C was not appointed to the position of team leader in May 2017. C relies on the successful white candidate Mr Snelgrove as a comparator. R says that the appointee was the top-scoring candidate and that C's own interview did not have enough depth.

134. This complaint was withdrawn part-way through the hearing. What the claimant continued to argue was that: the reason Mr Snelgrove was appointed and she was not was he had more experience than her; the reason for that was he is white and she is BME. The second part of that allegation is what we have just been considering and have just rejected.

(c) C was not appointed to the position of Development Officer in December 2017 despite having acted in that role previously. C relies on the successful white candidate Mr Kerridge as a comparator. R says that the appointee was the top-scoring candidate; and C was nervous in interview and her presentation was not good, as C accepted in the internal grievance.

(d) C was not appointed to the position of team leader in March 2018. C relies on the successful white candidate Miss Bodell as a comparator. R says that C was ranked fourth in the selection process, and the appointee was the top-scoring candidate.

135. Mr Spencer, who had only started in post in September 2017, gave fairly detailed evidence about both appointment processes during the grievance investigation, evidence that he essentially repeated before us and that was not, on any points of detail, directly challenged by the claimant in cross-examination.

136. In relation to the Development Officer position:

136.1 the presentation the claimant had to give as part of the interview process did not cover the brief, was not of great quality and was not effective;

136.2 the examples the claimant provided to the competency based questions[24] were not strong and the same examples were used to cover a number of different questions;

136.3 the claimant was nervous and did not seem to have prepared adequately;

136.4 the claimant "*didn't score highly*".

137. In relation to the Team Leader interview in February 2018:

137.1 there was a roleplay, in which the claimant's performance was "*not … bad*", but she ran out of time before she finished, meaning she didn't cover all of the points she ought to have done;

137.2 she was nervous in the interview itself, and although she performed better than on the previous occasion, her competency examples were still not very strong, and other candidates scored significantly higher in this respect when asked the same questions.

138. The respondent's case is straightforwardly to the effect that the successful candidates were the ones who did best at interview. We remain uncertain what the claimant's true case is. In particular: is she genuinely saying the respondent's witnesses are lying and in fact she was the best performer at interview (which would beg the question as to how she would know that)?; or is it that she should have secured the roles regardless of her performance at interview? We suspect the latter.[25]

139. This is a convenient point to look at some of the evidence around the claimant's approach to interviews. The claimant believed TL experience was of pre-eminent importance and gave us the impression that she thought interviews hardly mattered at all. We mentioned something about this in paragraphs 52 and 53 above. Under cross-examination, Mr Wallace introduced her to the (to us) unremarkable notion that a relatively inexperienced job applicant could, through performance at interview, secure the job at the expense of someone who was more experienced and who would actually do the job better. She seemed genuinely shocked, as if it had never occurred to her before that something like that could happen.

140. There was some discussion during the hearing of the well-known STAR[26] technique of answering competency-based interview questions, with which this Tribunal is very familiar. We were rather surprised by the claimant's evidence that she was unaware of

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[24] This was a typical public sector interview, where applicants were expected to show how they met various competencies required for the job by giving examples of things they had done in the past.

[25] See paragraphs 33 & 34 above.

[26] Situation – Task – Action – Result.

it until after her unsuccessful job application in May 2017, given that she had long been interested in advancement and had applied for jobs and that there was – apparently – significant information about it available on the respondent's electronic 'Learning Zone', which the claimant had accessed for other purposes, not to mention what is available about it on the public internet. It seems to us that the only way in which she could have been ignorant of it would be if she hadn't ever given serious thought to how to approach interviews. We were also surprised by her not taking notes of feedback given to her after unsuccessful interviews, something she told us she hadn't done. In the circumstances, it does not surprise us that her performance at interview[27] was worse than that of others, such as Mr Snelgrove and Mr Kerridge, who clearly had thought about and sought to learn about interview technique.

141. What our decision on these complaints comes down to is this: is there any reason in the evidence to doubt the respondent's witnesses' evidence and in particular to doubt that the reason Mr Kerridge and Miss Bodell were appointed and the claimant was not was that they performed better than her at interview? The answer is: no. Adding a little[28] to that answer with particular reference to Mr Spencer:

    141.1 the claimant's allegation that the reason he did not appoint her because of racial prejudice has nothing to back it up beyond her bare assertion. In contrast, his assertion that racial prejudice does not enter into his recruitment decisions is supported by the fact that he was the hiring manager responsible for the promotions of Mr Wallace and Ms Bibi in or around 2019;

    141.2 as previously mentioned, what the claimant really seems to be saying in relation to the early 2018 TL vacancy is that it should have been given to her, perhaps as an honorarium. We have already explained that it would have been unlawful positive discrimination for Mrs Elliott and Mr Spencer to have appointed her on the basis that she was in a position to do the job and is BME. Additionally, if the suggestion is that it should have been an honorarium, Mr Spencer does not hold with honoraria and there have been none in the CSC in his time.

(e) C was not appointed to the position of team leader in May 2018. C relies on the appointed white candidate Miss Dennis as a comparator. R says that this candidate scored second in the selection process in March and given the proximity of that selection process it was appropriate to rely on those results to appoint the second-scoring candidate to the second vacancy.

142. This is a race discrimination complaint. We are therefore not looking at whether it was fair and reasonable for Miss Dennis, rather than the claimant or anyone else, to be appointed a TL in May 2018 and for this to be done in the way in which it was done, i.e. without a fresh recruitment process and on the basis of her performance at interview 2 to 3 months earlier.

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[27] See paragraph 14 of Mr Grogan's statement in relation to the claimant's particular weaknesses in putting the STAR technique into practice.

[28] See also paragraph 138 of Ms Hodgetts's written submissions, with which we agree.

143. The question for us is whether she was appointed and the claimant was not because she is white and the claimant is BME. Our answer is the same as that given to the similar question posed in relation to complaints 1. (d) and (e) above: no. Our reasons are also similar:

143.1 there is no proper basis for doubting the respondent's evidence that Miss Dennis was the second best candidate at interview after Miss Bodell and performed significantly better than the claimant, and that the claimant was fourth best;

143.2 given that this was the case, once the respondent had decided not to go through another recruitment process, there was nothing odd or suspicious about it choosing Miss Dennis over the claimant – it would be odd for the respondent to do anything else;

143.3 the contemporaneous management / HR correspondence around Miss Dennis's appointment, entered into at a time when the respondent can have had no idea that the claimant or any third party, let alone an Employment Tribunal, would ever see it, is entirely consistent with the respondent's evidence to the effect that Miss Dennis was appointed because she was deemed to be a good candidate for a vacant TL post on the back of her performance at interview; and that there had been a full TL appointment process only recently. There is no hint in that correspondence that any thought at all was given to the claimant, or to race, or to any consideration other than that there was a vacancy that needed to be filled and that Miss Dennis was a suitable person to fill it; and that there was a need for speed because Miss Dennis was considering another job offer at the time.[29]

144. Although we do not criticise the respondent for appointing Miss Dennis, it is, to say the least, unfortunate that the respondent did not think about the claimant and her feelings in connection with that appointment. Mrs Elliott and Mr Spencer knew that the claimant had wanted a TL role for some time and was unhappy about not getting the TL role in February 2018. Had they given it a moment's thought, they would have realised that she would be even more unhappy to find that she would have no chance to apply for the May 2018 TL vacancy and that someone else would simply be appointed to it. She really ought, out of courtesy and kindness, to have been spoken to and told face to face what was happening and why it was happening before the email announcement of Miss Dennis's appointment went out to everyone. We can understand why the respondent would not do this a long time before sending the email, but it could surely, for example, have been done earlier in the afternoon it was sent. Doing this may well not have made any positive difference to what has happened since, but it might conceivably have done.

Discrimination – summary

145. All of the discrimination complaints fail because:

145.1 they are out of time;

[29] See the middle of page 11 above.

145.2 there was no less favourable treatment – the named comparators are inapt and there is no good reason to think that an EQA section 23 compliant hypothetical comparator would have been treated any differently;

145.3 there is no valid basis for thinking that race was a factor.

Victimisation

2. It is accepted that C did a protected act or protected acts as follows: (a) lodging her grievance dated August 2018; (b) presenting ET Claim No. 2602148/2018 in August 2018; (c) presenting ET Claim No 2600711/2019 in March 2019; presenting ET Claim No 2602299/2019 in August 2019.

3. Did C do a protected act or acts in March 2018 by complaining that she had not been afforded the opportunity to act up into the team leader role?

4. Between March 2018 and August 2018, did R believe that C might do a protected act?

146. On the basis of her own oral evidence, the claimant did not do a protected act until lodging her grievance on 9 August 2018. Victimisation complaints (a) to (h) concern things that happened before then, apart from a bit of (c). Those complaints could therefore only succeed if the alleged victimisers acted because they thought she was going to do a protected act.

147. Even if they otherwise had merit, and they don't, the complaints arising before 9 August 2018 would fail because there is no evidence of any member of management being aware that the claimant thought there was a discrimination issue prior to her raising her grievance. She does not say she raised allegations of race discrimination with anyone in management before then; nor that anyone else did on her behalf. As best we can tell, in early 2018 no one in management had any particular concerns about the claimant of any kind, let alone concerns that she would raise a grievance.

148. Above, we criticised the way the respondent handled communicating news of the appointment of Miss Dennis to the claimant. Management could, had they thought about it (which they evidently didn't), have anticipated she would be upset about the appointment. They probably did guess, when she went off on 16 May 2018, that the reason was most likely that appointment. But it is quite a leap to go from that to the conclusion that they knew or suspected she would express her upset by raising a grievance of discrimination about it. This is particularly so given that – to the best of our knowledge – she had never complained of race discrimination to management, or raised a grievance of any kind, before.

149. There is a further general point to be made, relevant to the whole of the victimisation claim: even supposing the respondent's management did think she might raise a grievance of discrimination – and even after she had raised her grievance and presented her first Tribunal claim – why would they respond by doing the things the claimant is making her victimisation claim about? If that question is posed in relation to most of the detriment allegations, the obvious answer is: "they wouldn't".

150. In every victimisation case, it is necessary to examine the particular actual or anticipated protected act and the alleged detriments and to ask ourselves whether the former provides a logical basis for anyone to want to subject the claimant to the latter. Protected acts come in all shapes and sizes; so do detriments. It is not necessarily the case that any protected act, of any kind, made in any circumstances, provides a reason for somebody to subject the claimant to any detriment at all, still less to every kind of detriment.

151. The claimant alleges that part of the respondent's motivation was to ensure that its reputation was not damaged by a finding of discrimination. Although we have rejected her allegations, that is not an inherently implausible motive. But it potentially explains only some of the alleged detriments. In relation to others, her reasoning appears to consist of nothing more than that things she did not like occurred and that this happened after she did protected acts.

5. Did the following acts set out constitute unfavourable treatment because of any of the protected acts at paragraphs 2, 3 and 4 above accepted to have occurred or found to have occurred?

(a) On 17 May 2018 R misrepresented C as leaving site without notice on 16 May 2018 and being AWOL;

152. We agree with Ms Hodgetts that:

152.1 victimisation allegations (a) to (j) should be looked at in the context of the respondent's absence management policy;

152.2 we should bear in mind that the respondent had legitimate concerns about absenteeism and about the fact that the longer someone is off work sick, the less likely it is that they will ever return successfully, if they return at all.

153. We also note that it is reasonable for an employer to want to keep in contact with an absent employee and to want more information about her reasons for being absent than that she doesn't feel well enough to attend. An employer that completely leaves the employee alone, even if it thinks this is what the employee wants, risks being accused down the line of being uncaring and neglectful. In addition, employees have obligations too. That an employee is too ill to work does not mean she is completely free to do as she pleases in her dealings with her employer.

154. Allegation (a) concerns the letter sent to the claimant by Mr Pidgeon on 17 May 2018. It was based on the respondent's then first standard letter sent to staff who were suspected of being absent without leave, i.e. who had unexpectedly left work and/or failed to attend work without following the respondent's procedures. The letter does not say that the claimant left site without notice. What it says is "*we have not heard from you*" since 16 May 2018. It is to the effect: that the respondent does not know why the claimant was off work on 17 May 2018; and that she had not followed the respondent's absence management policy. All of that was factually correct, even on the claimant's version of events.

155. In her witness statement, the claimant says that on 16 May 2018, just before she left, she told Miss Baldwin (the TL on duty at the time) that she was, "*too distressed to be at work*". On basis of the claimant's oral evidence, together with that of Miss Baldwin,

we reject the suggestion made in the statement immediately afterwards that Miss Baldwin granted her leave.

156. For the respondent to be told the claimant was too distressed to be at work does not explain the reason for the absence in any meaningful way. And the absence management policy required employees to phone in sick on the first day of absence – in this case on the 17th – something the claimant did not do. The claimant is suggesting that all she needed to do was to say to Miss Baldwin that she was distressed and was leaving, but how was Miss Baldwin to know from that that the claimant was going off sick for an indefinite period? For all Miss Baldwin knew when the claimant walked out on 16 May 2018, she was going to return to work later that day.

157. The letter of 17 May 2018 did not contain any misrepresentations and the reason it was sent was because the claimant had left work and had then failed to follow the respondent's absence management procedure and had ignored Mr Pidgeon's attempts to contact her by phone.

(b) On 21 and 22 May 2018 R misrepresented C as not contacting R;

158. This complaint is about a voicemail Mr Pidgeon left for the claimant on 21 May 2018, referred to in an email exchange between them of 21 to 22 May 2018. Mr Pidgeon left a message for the claimant to say – accurately – that she had not been in touch with him. This was in accordance with the absence management process which required contact directly with the absent employee's line manager on or before the fourth day of absence. The claimant misinterpreted the voicemail as suggesting that she had not contacted anyone at the respondent between her going off sick and 21 May 2018. He then replied to her email about this in a well drafted, conciliatory email. There was no detriment and it had nothing to do with Mr Pidgeon worrying that the claimant was about to make allegations of discrimination, which was not a worry he had.

(c) Since C started her sickness absence from work in May 2018, inviting her to meetings and insisting upon her attendance; specifically, on 30 May 2018, 5 June 2018, 8 June 2018, 4 July 2018, 14 August 2018, 10 September 2018, 14 September 2018;

159. It is entirely right and proper, and to do otherwise is potentially a breach of a duty of care, for an employer to seek to contact an employee who is off sick with a condition that does not have a clearly defined prognosis and return to work date, to arrange welfare and occupational health meetings. What the respondent did in this respect in relation to the claimant was entirely in accordance with policy. The reason there were so many letters of invitation was the claimant's lack of engagement.

160. We have the benefit of hindsight and there is a danger to that. We – and the respondent – now know both why the claimant had gone off sick, in detail, and the extent of the effect what had happened was having on her mental health. But at the time, all the respondent knew was that:

    160.1 an employee with no significant history of stress-related absence had suddenly gone of sick;

160.2 she had possibly done so because of Miss Dennis's appointment, but possibly for some other reason of which the respondent knew nothing;

160.3 she was refusing even to speak to her line manager over the phone.

161. We do not think it would have been appropriate for the respondent in those circumstances just to have stopped contacting her altogether for weeks at a time, which is what the claimant apparently wanted the respondent to do. The respondent did what it did because it reasonably thought it was the right response to an employee behaving as the claimant was.

(d) On 11 and 12 June 2018 R failed to respond to C's request for a postponement of a meeting until C's sister intervened;

162. It is right that the claimant asked for a postponement of a meeting and Mr Pidgeon refused, and that this was followed by a request on the claimant's behalf from her sister, which Mr Pidgeon granted. But there was nothing untoward or unreasonable about what Mr Pidgeon did – he was just following policy and (no doubt) HR advice. The reason it took the claimant's sister's intervention for the postponement to happen is that the claimant had up to that point failed to provide the respondent with more information about why she was off work than that she felt stressed. The email Mr Pidgeon sent to the claimant in which he refused her request explained why he was doing so: "*I'm sorry you are feeling so unwell, however the purpose of the occupational health referral and our welfare meeting is to explore what is causing you to feel that way, what can be done to stop you feeling that way and what can be done to support you at this time.*" The claimant's sister's letter which got a different response provided considerably more factual information, referred to legal rights, and contained a threat to take the matter further. Understandably, Mr Pidgeon immediately sent it to HR and continued to follow their advice – which in this instance was to allow the claimant to postpone the meetings; in particular to postpone an occupational health meeting to 20 June 2018.

163. Once again, all the respondent was doing was reacting reasonably to a difficult situation in which the claimant was essentially refusing to engage with it as an employee off sick would normally be expected to.

(e) On 25 June 2018 R asserted that C left work without explanation and that no contact had been made on 18 May 2018;

164. There is considerable overlap between this complaint and victimisation complaint (a), dealt with from paragraph 154 above. It relates to Mr Pidgeon's letter to the claimant of 25 June 2018. It was a reasonable letter in tone and contents, given the claimant's lack of engagement. The relevant parts of the letter were factually correct and, in any event, Mr Pidgeon wrote what he wrote because he believed what he was writing to be true. He does not say in the letter that no contact had been made on 18 May 2018.

(f) On 3 July 2018 R withdrew her sick pay;

165. The respondent did indeed do this. The reason it did was that the claimant continued not to engage and, in particular, failed to send to the respondent a note from her doctor which had been promised by 22 June 2018.

(g) On 4 July 2018 R asserted that C had not provided any medical evidence;

166. What was written in the relevant part of Mr Pidgeon's letter of 4 July 2018 – "*I have not received the information from your GP which was initially anticipated to be received by 22 June*" – was factually correct.

(h) On 17 July 2018 R asserted that it had not yet received the GP letter, and declined to communicate through C's sister;

167. The relevant letter dated 17 July 2018 was from Mr Spencer. We can see from the surrounding internal respondent emails that when it was sent the GP's letter, dated 16 July 2018, had not yet arrived.

168. So far as concerns the refusal to communicate with the claimant through her sister: the claimant remained an employee; the respondent had yet to receive any medical evidence justifying communicating through a third party; the respondent had not received clear written confirmation of the claimant's consent for it to discuss her employment affairs with her sister. Most responsible employers would have declined to communicate with an employee's relative in comparable circumstances.

(ha) In a letter received by C on 20/8/18, R implied that only when she attended the meeting scheduled, would R move her grievance to the next steps, contrary to advice from the GP;

169. This is the first complaint that entirely post-dates a protected act.

170. The letter in question, from Mrs Coxon, is ambiguous. Although it could be read as having the meaning this complaint attributes to it, it could only be a detriment to the claimant had she in fact read it that way. She gave no evidence to the effect that she had done so. See paragraph 182 of Miss Hodgetts's written submissions.

171. Further, the respondent's only motivation in sending the letter was to try to get the claimant to attend an occupational health and a welfare meeting. The respondent – not unreasonably – saw this as being in the claimant's best interest, the respondent being mindful of the fact that the longer the claimant was off work, the less likely it was that she would return.

(hb) In a letter received on 14/9/18, R denied all allegations even prior to having an investigation, and as such it appeared to C that R had already made a decision without investigating;

172. We don't believe it genuinely appeared to the claimant from the letter that the respondent had already made a decision on her grievance without investigating; and whether it did or not, that was not the appearance objectively given.

173. The letter, from Mrs Coxon, was not well worded. The bit of it the claimant is complaining about – "*Management of employees does not cease simply due to their sickness absence, for those who are unable to physically attend meetings, reasonable adjustments are implemented. Accordingly we deny any allegation of disability discrimination or unfair treatment*" – was a direct response to her letter dated 9 September 2018 in which she criticised the respondent's attempts to get her to attend meetings, stating, "*If I was physically incapacitated you would not expect me to attend meetings, nor threaten me/stop my sick pay, yet I am mentally incapacitated and not able to attend meeting for health reasons as specified by my GP. [T]his further unfair treatment is disability discrimination, as outlined in my grievance*". That criticism was at the time separate from the claimant's grievance, and by writing what she wrote Mrs Coxon was plainly not expressing a view on the merits of the grievance. Instead, she was defending herself against an unfair charge the claimant was levying against her.

174. Moreover, everyone, including the claimant, knew or ought to have known that the grievance was going to be investigated and decided by an independent person, not by Mrs Coxon or someone else from HR.

(i) On 5 September 2018 and 5 October 2018 R misrepresented the contents of her GP letter;

175. The relevant part of the GP's letter, which was sent following the telephone conversation between the GP and Mrs Coxon on 20 August 2018, is: "*After talking with the patient I can inform you that she is happy to be contacted in writing regarding the grievance letter that she sent to you. It would be reasonable, and I think you also have a legal obligation to respond to this. She is also happy to see your Occupational Health team for an appointment*".

176. There was no relevant misrepresentation of the letter's contents in Mrs Coxon's letter to the claimant of 5 September 2018. Mrs Coxon states, rightly, that the GP had written something to the effect that there was no health related reason for the claimant's non-attendance at an occupational health meeting on 20 August 2018 that had been arranged.

177. The letter's contents are misrepresented in Mrs Coxon's letter of 5 October 2018, in that, in summary, Mrs Coxon suggests the GP has given the go-ahead to grievance meetings. The reason Mrs Coxon suggested that was that she had read into the GP's letter something the GP had told her in her conversation with him on 20 August 2018.

178. Deliberately writing something erroneous to the claimant about a letter the claimant had a copy of and could read for herself would be a very peculiar thing for Mrs Coxon to do in any circumstances, let alone as a response to a claim or grievance. What could Mrs Coxon possibly hope to gain by doing so? The reasons these and similar letters were being written was nothing to do with any protected acts and was:

    178.1 the respondent wanted the claimant, in her own best interests, to engage with occupational health and with welfare meetings;

178.2 the respondent wanted the claimant to go through a proper grievance process – again in her own best interests – rather than trying to do it on paper and without the claimant being interviewed by the investigator and grievance decision-making officer.

(j) R sent high volumes of correspondence;

179. It did, but only because of the claimant's lack of engagement and cooperation.

(k) R's typed up statement contained omissions, misrepresentations and reframing;

180. This complaint relates to the notes / draft statement Mr Rabett produced of and from his interview with the claimant in October 2018.

181. What the claimant means by this complaint, in our view, is no more than that when she received the first version of Mr Rabett's write-up of their meeting, it didn't say absolutely everything she wanted it to. We still do not understand what, even on the claimant's own case, could sensibly be viewed as "*misrepresentations*". We also can't identify any "*reframing*" that the claimant could possibly take exception to.

182. There were three reasons for "*omissions*":

182.1 they were things the claimant had not said to Mr Rabett, but which she wanted to add and which she may later have persuaded herself that she had said;

182.2 they were things that were already clearly set out in her grievance letter, which everyone knew were parts of her grievance;

182.3 they were things that Mr Rabett was not able to capture in his notes, which he was making on paper or on a laptop balanced awkwardly on his knees in the claimant's front room, it being impossible to make verbatim notes without being able to write shorthand, which Mr Rabett couldn't.

183. Mr Rabett's draft statement / notes was being – and was always going to be – sent to the claimant for her additions and amendments. She could change and add whatever she liked. No one would choose to victimise someone else in this way.

184. The length and thoroughness and balance of Mr Rabett's report is impressive and demonstrates the time and care he devoted to it. There may be one or two factual errors in it, but the idea that he deliberately altered and distorted things to weaken the claimant's grievance is almost preposterous.

(l) Between 29 October 2018 and 29 November 2018 C was not permitted to provide her own grievance statement, and ignored C's amended statement sent on 29/11/18;

(m) between 29 October 2018 and 29 November 2018 R resisted C's attempt to amend her grievance statement, and ignored C's amended statement sent on 29/11/18;

(q) R tried to submit inaccurate statements to the grievance decision maker; but upon C's challenge, R changed course;

185. It is simply not true that the respondent refused to allow the claimant to provide her own statement, or resisted attempts by her to amend her statement, or did anything else of that kind. All that happened – see paragraphs 190 and 194 of Ms Hodgetts's submissions for more details – was that Mr Rabett misfiled a statement the claimant had submitted. As soon as he realised what had happened, he put it right and apologised profusely. His final report contained all the statements from the claimant, in every version, she wanted it to.

(n) On or before 12 December 2018 R misrepresented the position in the Occupational Health referral in two respects, and in meeting notes;

186. There was no misrepresentation.

187. This complaint relates to essentially the same allegation as victimisation complaints (a) and the first part of (e), dealt with above: that the respondent suggested the claimant had 'gone AWOL' and the claimant believed she hadn't. It arises because of the difference of view between the claimant and the respondent as to whether the claimant had complied with her responsibilities under the attendance management procedure between 16 and 18 May 2018. We have already explained that we think the respondent is broadly right about this.

188. In any event, the claimant had the opportunity to express her own view to occupational health and evidently did so.

(o) In December 2018 R failed to pay the agreed amounts when sick pay was reinstated;

(p) In January 2019 R ignored C's request for a financial breakdown of sick pay;

189. These complaints have been withdrawn.

(r) R failed to answer questions regarding her grievance or provide information requested;

190. We think this complaint concerns Mr Rabett not answering questions posed about the grievance by the claimant in an email dated 4 February 2019, in particular, "*who [is] the deciding officer and the process of how their decision will be made*".

191. Looking at our notes of Mr Rabett's cross-examination, we don't think this allegation was ever put to him. Certainly, it was not put to him in terms that he had failed to answer the questions because the claimant had raised a grievance of discrimination. And it would be a decidedly odd way for him to victimise her, were he minded to do so.

192. The questions the claimant was asking were questions we would have expected her to know the answers to, through having discussed the grievance with her trade union representative and/or through reading the grievance procedure; and which she could readily find out the answers to by the same means if she did not know them.

193. Mr Rabett's failure to answer these questions was almost certainly an innocent oversight.

(s) R attempted to conclude the grievance process without C having had access to the evidence;

194. The respondent attempted no such thing.

195. If this complaint relates to the claimant's trade union representative's email of 22 November 2018 stating that the respondent was "*hoping to complete the investigation of your grievance by tomorrow*", that statement in that email was untrue and was a mistake for which, so far as we can tell, he was solely to blame.

196. Ms Hodgetts in her written submissions suggests the complaint might be about Mr Rabett not providing the claimant with copies of all of the statements he had taken. They were provided to her, as they were always going to be, well before the grievance process was concluded, when she received a copy of Mr Rabett's report.

(t) R failed to gather relevant information in the grievance process;

197. None of the three of us on this on this Tribunal can remember seeing as detailed a grievance report as the one Mr Rabett prepared. It is impossible to gather 100 percent of the relevant information, and there comes a time when any reasonable investigator has to say to themselves that they have done enough and that they need to produce their report. Mr Rabett himself told us – and we accept – that he was disappointed about his inability to obtain some information that could be relevant; but we ask, rhetorically, what more could he reasonably have been expected to do other than request it repeatedly, as he did?

198. The notion that Mr Rabett deliberately did not request the handful of things that the claimant now alleges were of vital importance – an importance we suspect they have only assumed in the claimant's mind because they were not requested and obtained – in order to slant the grievance report against her is bordering on the absurd.

(u) R misrepresented and/or reframed and/or omitted information;

199. If this includes a complaint about the contents of the statement from the claimant Mr Rabett prepared in October 2018, we have already dealt with it – see paragraphs 180 to 184 above.

200. If this includes a complaint about the contents of Mr Rabett's report[30], we repeat the comments we have already made about its excellent quality and paragraphs 184 and 198 above in particular.

201. What it actually seems to be about is the differences between what is in the Management Notes and in the transcripts of the grievance hearings.

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[30] We don't think such a complaint is actually before the Tribunal, but the claimant may be wanting it to be.

202. In her submissions, Ms Hodgetts has gone through and discussed a number of the differences in detail. We don't disagree with anything she has written about this issue, but we don't think it is necessary for us to do the same as her.

203. In short, the differences identified by the claimant between what is in the Management Notes and what is in the transcripts of the covert recordings the claimant made are not, objectively, of any significance at all. There is not a single instance the claimant has pointed to of omissions from the Management Notes that substantially weakens her case from how it would be if the Management Notes were a verbatim transcript.

204. The Management Notes were not, and did not purport to be, verbatim, and no one could reasonably expect them to be so. They were produced by a note taker who plainly did her best. We can compare the notes to the transcript and see for ourselves that the note taker actually did an excellent job of accurately capturing the gist of what was said. This is another part of the claimant's case in relation to which it is difficult to find a suitable adjective to use other than absurd. The claimant has to be suggesting that somehow the note taker, Ms Mackie, produced something close to verbatim notes, which were then filleted to take out a handful of things that the claimant considers to be important, at the same time leaving in over 99 percent of the other important information. If what had been left out was one or two vitally important things, then the allegation would have at least some plausibility; as it is, it has none.

(v) R failed to provide documents;

205. Apparently this relates to minutes of EDF forum meetings.

206. Our first point in relation to this is: what possible relevance did the minutes have to the claimant's grievance?

207. The second point is that the EDF minutes were the responsibility of the EDF, not the respondent. If they were of such importance to claimant, why didn't she, through her trade union representative, contact the past chairs of the forum to get copies; indeed, as a former EDF committee member, why didn't she have copies of the minutes herself?

208. The third and final point is there is no good reason to doubt the respondent's evidence, which was that many minutes didn't seem to exist. See paragraphs 199 to 200 of Ms Hodgetts's written submissions for further details of this.

(w) There were delays in the grievance process;

209. Withdrawn.

(x) The grievance findings dated 16 May 2019;

(y) The grievance appeal outcome.

210. The claimant's essential case is that no employer could legitimately, in good faith, reject her grievance. She is, in our view, completely wrong about this. The respondent rejected her grievance for similar reasons to the reasons we have rejected her claims.

We would echo Mrs Sheldon's overarching conclusions (quoted by Ms Hodgetts in submissions): "*I understand from meeting with you that you feel hurt, misled and let down. I believe that this is due to poor management and communication in supporting your aspirations, managing your role and your expectations for promotion.*"

211. Of course neither the grievance outcome nor the appeal outcome was perfect. A handful of errors were made in the grievance; these were picked up on in the appeal. There is nothing out of the ordinary about either the grievance outcome or the appeal outcome, nor anything else that we consider to be sinister or to be suggestive of an ulterior motive.

212. We think that however Mrs Sheldon and Mr Shaw had framed their decisions, the claimant would be dissatisfied with them because they did not uphold her grievance of race discrimination. She could not accept – and she continues not to accept – that one or more white people can be more favourably treated than one or more BME people, and can believe they have been the victims of race discrimination, without that necessarily being so.

213. We are satisfied that the reason Mrs Sheldon and Mr Shaw produced the outcomes they produced was that those outcomes genuinely reflected their views; and they were reasonable views to hold.

Victimisation - summary

214. All complaints of victimisation fail because nothing the respondent did that the claimant is making those complaints about was undertaken because of a past or anticipated protected act. The respondent acted for other reasons, principally – putting things that were just mistakes or oversights to one side – that it reasonably believed what it was doing was the appropriate thing to do.

215. All complaints of victimisation dating from before 9 August 2018 also fail because they pre-date any protected act and none of the people accused of victimisation before then had any inkling at the time that the claimant might do a protected act.

216. In addition, some of the complaints of victimisation fail on the facts – i.e. the respondent did not do what the claimant accuses it of having done – and/or on the basis that there was no relevant detriment.

Constructive unfair dismissal

10. Did the matters set out at paragraphs 1 and/or 5 above, and/or the suggestion by R that C and others had (only) perceived discrimination, separately or cumulatively constitute a fundamental breach of contract?

217. As the allegation that the claimant was constructively dismissed relies on no more and no less than the subject matter of all the complaints of discrimination and victimisation that we have already considered in detail, we can be very brief.

218. The answer to the question posed in the heading of this section of the Reasons is: no. Nothing that happened that the claimant complains about had a significant impact on

the relationship of trust and confidence between employer and employee even at the time, let alone when she resigned.

219. We emphasise that we have to assess the question objectively; it is not, as a matter of law, about how the claimant actually felt. We don't doubt that the she had, subjectively, lost all trust and confidence in the respondent by the time she resigned.

220. Out of the things the claimant has brought her claim about, the respondent's biggest errors along the way were probably: not progressing the succession plan in the early part of 2017 or between March and May 2018; not telling the claimant about Miss Dennis's appointment before it was formally announced; and Mr Rabett mislaying her statement at the end of 2017 and the start of 2018. None of those things was at all close in time to her resignation. If there was a breach of trust and confidence at the time of the last of them, in May 2018, the claimant had undoubtedly affirmed the contract by the time of her resignation on 23 December 2019, 18 months later.

221. In any event, if they had all happened together within a short space of time, they would not even then have breached the trust and confidence term[31]. Assessing them in an objective way, they were unimportant by the time the claimant resigned.

222. Putting those three errors to one side, the respondent had reasonable and proper cause for most of what it did that is the subject matter of the claimant's claim and that is remotely close in time to her resignation. For example, it had reasonable and proper cause for: Mr Kerridge's, Miss Bodell's and Miss Dennis's appointments in 2017 and 2018 (on the basis that they were the best performers at interview); the correspondence with the claimant and her sister between May and October 2018 (which was a legitimate response to the claimant's lack of engagement); the grievance and grievance appeal outcomes.

223. The claimant resigned because Mr Shaw decided she had not been the victim of race discrimination. There was, as just mentioned, reasonable and proper cause for that decision and it is not capable of being a last straw as a matter of law. To repeat something set out earlier in these Reasons, to say that there are perceptions of discrimination is no more than to say that people think there has been discrimination. To say that those perceptions are wrong it not to doubt the word of the people who have them, or otherwise to attack their good faith; it is merely to say that there is insufficient objective evidence of discrimination actually having taken place, bearing in mind that unlawful race discrimination is not just a white person receiving more favourable treatment in a particular situation than a BME person.

224. In conclusion, the claimant was not constructively dismissed and therefore her unfair dismissal claim, just like all her other claims, fails.

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[31] The "trust and confidence term" is the term in every contract of employment that the employer will not, without reasonable and proper cause, conduct itself in a way calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the employee.

Employment Judge Camp

22/10/2021

Sent to the parties on:

22/10/2021……..

For the Tribunal:

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