EMPLOYMENT TRIBUNALS

Claimant: Miss R. Ogole

Respondent: South Kilburn Trust (a company limited by guarantee)

Heard at: Watford **On:** 5 to 9 and 12 July (in public hearing), 13 & 14 July and 10 August 2021 (in chambers).

Before: Employment Judge George
Mr A Scott
Mr L Hoey

Appearances
For the Claimant: Ms N Gyane, counsel
For the Respondent: Mr S Gill, Counsel

JUDGMENT

1. The claims of direct race discrimination, race related harassment, direct sex discrimination, sex related harassment and victimisation fail and are dismissed.

2. The claimant was not unfairly dismissed.

3. Her claim of unfair dismissal is dismissed.

REASONS

1. This is the unanimous reserved judgment with reasons of the Tribunal to which all three members have contributed.

2. At this final hearing the Tribunal has been considering three consolidated claims brought by the claimant against the respondent, a charity which is in form a company limited by guarantee. The first claim (Case No: 3332192/2018)

was presented on 6 August 2018 following a period of conciliation which lasted from 6 June 2018 to 6 July 2018. The respondent's defence to that was submitted by a grounds of response received on 1 October 2018. The first claim complained of discrimination on grounds of race and sex and redundancy.

3. Following a second period of early conciliation between 29 January 2019 and 1 March 2019, the second claim (Case No: 3313465/2019) was presented on 31 March 2019. By that, the claimant complained of unfair dismissal arising out of her termination of employment, on the face of it by reason of redundancy, on 7 December 2018.

4. The third claim (Case No: 3318920/2019), by which the claimant complained of victimisation, was presented on 5 June 2019 following a period of conciliation from 4 March 2019 to 4 April 2019. These three claims were consolidated on 23 June 2019. There seems to have been some delay in the respondent receiving the second claim and it had to apply to be served with it on 23 August 2019. It had already filed its response to the third claim on 30 July 2019 and, eventually having been served with the second claim form, the response in that claim was received on 4 November 2019.

5. This was shortly before a preliminary hearing before Employment Judge McNeill QC. This was the second preliminary hearing in the proceedings although the first preliminary hearing took place at a time when there was only one claim outstanding and was overtaken by events.

6. At the second preliminary hearing on 13 November 2019 (page 270) the claimant withdrew the claims for victimisation except in relation to the handling of her Data Subject Access Request (hereafter referred to as DSAR) - see the withdrawal judgement at page 269. Judge McNeill QC listed the case for final hearing in March 2020 and made case management orders (page 270 and following). The original listing was postponed on order of Employment Judge Bedeau because an application had been made to extend the hearing length by two days which could not be accommodated by the tribunal.

7. The parties confirmed at the outset of the hearing that the issues remain those to be determined by Judge McNeill QC. In closing submissions, Ms Gyane explained that the claimant withdrew allegation (hh) on page 274 but otherwise all the other allegations were pursued. In replicating the issues within this reserved judgment, we have retained the original paragraph numbering for ease of reference.

8. We have heard oral evidence from the claimant and three witnesses whom she called to give evidence in support: Ms M Ogole - the claimant's sister who had worked for the respondent as a consultant for a period of time; Ms L Bailey - formerly the Employment and Enterprise Manager with the respondent from 2014 to September 2017; Mr A Case - the claimant's Trade Union

representative. The respondent called four witnesses; Mr Mark Alan - the Chief Executive Officer; Mr Mackenzie Chapman, Director of Operations from around August 2017; Mrs Rosamund Dunn – Independent Chair of Trustees of the respondent; Mr Robert Johnson - one of the Trustees. Within this reserved judgment the witnesses are referred to by their initials and no disrespect is intended thereby. They each adopted written statements in evidence and were cross-examined upon them. The paragraph numbers in those statements are referred to in this judgment as MO para.1 to 23 or as the case may be.

9. There was a joint bundle of documents which ran to more than 1800 pages and the claimant provided a cast list and chronology. Both counsel prepared written skeleton submissions which they spoke to in closing and we are grateful for their diligent, professional and proportionate approach to the representation in the case.

The Issues

10. The following agreed issues are taken from paragraph 3 of the order of Employment Judge McNeill QC sent to the parties on 3 December 2019 (pages 270 to 279). The relevant individuals who were not called as witnesses at the tribunal have been identified by their initials.

"*Time limits / limitation issues*

i. The Respondent accepts that the Claimant's claim for unfair dismissal was brought in time.

ii. In relation to the Claimant's race discrimination, harassment and victimisation claims, were those claims presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 (EQA)? Consideration of this issue is likely to include consideration of whether certain complaints constituted acts or conduct extending over a period and, if so, when that period came to an end.

iii. If any claims are out of time, is it just and equitable to extend time?

Unfair dismissal

iv. Was the reason or principal reason for the Claimant's dismissal redundancy or "some other substantial reason" which justified the Claimant's dismissal, namely a business reorganisation, in accordance with section 98(1) and/or (2) of the Employment Rights Act 1996 (ERA)?

v. If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called 'band of reasonable responses'?

vi. The Claimant denies that the alleged redundancy was genuine. She further contends both that the dismissal was procedurally unfair and that it was unfair because it was because of race or sex.

EqA, section 13: direct discrimination because of race

vii. The Claimant defines her race as black.

viii. Her allegations of both race and sex discrimination have been extracted, with the assistance of both parties, from a 179 paragraph document which she sent to the Respondent and the Tribunal on the night of 26 March 2019. The Tribunal has given permission to the Claimant to amend her particulars of claim in case no. 3332192/2018 in the terms of that 179 paragraph document. The Claimant has agreed that the allegations of less favourable treatment which are listed below under the separate heading of race discrimination and sex discrimination are the allegations on which she will rely. She understands that her claims are limited to those allegations. Where dates and paragraph numbers are referred to in the lists of allegations below, the references are to dates and paragraph numbers in the 179 paragraph document.

ix. Did the Respondent subject the Claimant to the following treatment:

a. transferring key elements of her job to Mackenzie Chapman (MC);

b. by Mark Allan (MA) giving her the cold shoulder (para. 10);

c. refusing her sight of a bid for GLA funding (para. 11);

d. by MA requesting that she produce a work log (July 2017) (para. 17);

e. by MA saying “people doing things that they should not be doing” at Glanville away day (3 November 2017) (para. 18);

f. taking away support from the Claimant and setting her up to fail (para. 25);

g. by MC micromanaging the Claimant (30 January 2018) (para.26);

h. by MA and MC dismissing the Claimant’s ideas and preferring those of white agency staff (5 January 2018) (para. 27);

i. by MA engaging marketing professionals to deliver the Claimant’s work (November 2017) (para. 31);

j. by MC selecting [CO] (white) to run an event which the Claimant was meant to be running (January 2018) (para. 34);

k. by MA saying that an image that showed black African drummers was wrong (para. 37);

l. by MA remarking that the Claimant did not travel or visit outside Brent (from 2017) (para. 38);

m. by MA and [JG] making comments regarding visiting Jamaica (May 2017 and 6 December 2016, respectively) (para. 40);

n. by MA stating that the Claimant was “high maintenance” (2016) (para. 43).

o. by JG stating that that the Claimant was “high maintenance” (para. 44);

p. failing to investigate an incident which the Claimant reported to JG when a white, female colleague (unnamed) asked the Claimant to “look at her bum in the ladies’ toilet” (2017) (para. 54);

q. by MA that training was not available for the Claimant to obtain the Chartered Institute of Marketing certificate and that there was no budget for training as previously agreed, contrary to the statement in the Claimant’s 2017 appraisal (and unfair by comparison with [JG]) (March 2018) (para. 57);

r. by MA refusing the staff a Secret Santa in Christmas 2017 in deference to [JG’s] wishes (para. 58);

s. denying the Claimant a pay rise (compared to [JG]) (para. 67);

t. placing the Claimant at risk of redundancy (compared to white staff) (September 2017 to March 2018) (para. 68);

u. by MA taking over part of the Claimant’s work prior to the arrival of MC in July 2017 (para. 74);

v. being “tricked” into redundancy by MC (15 December 2017 to 4 December 2018) (para. 77);

w. being refused the role of Marketing and Communications Manager (8 March 2018) (para. 86);

x. by MC adopting an unfair procedure at a redundancy consultation meeting on 15 March 2018 regarding the minute of the meeting, telling the Claimant not to tell anyone about the redundancy process and putting pressure on the Claimant to accept a settlement (para. 88);

y. allocating the Claimant’s grievance to Ros Dunn (RD) when RD was mentioned in the grievance and when the Claimant had requested that she not deal with the grievance;

z. dismissing the Claimant’s grievance (21 June 2018) (para.106);

aa. by [PB] failing to investigate race and sex discrimination issues raised in the Claimant's grievance (April 2018) (para. 119);

bb. by MA stating that the Claimant's grievance would "go nowhere" (1 February 2018) (para. 120);

cc. by RD blind copying MA into an email dated 13 July 2018 requesting further information from the Claimant regarding her grievance (para. 123);

dd. by RD refusing to speak to people mentioned in the Claimant's grievance during the grievance investigation (18 July 2018) (para. 125);

ee. refusing to provide the Claimant with the minutes of the grievance meetings;

ff. refusing to provide the Claimant with terms of reference for governance review (19 July 2018) (para. 126);

gg. "leaking" the content of the Claimant's grievance to MA, MC and JG (para. 128);

hh. by [PB] saying that the redundancy process was "on hold" and would continue once the grievance investigation was over; [this is the allegation which was withdrawn in closing submissions]

ii. failing properly to investigate the Claimant's grievance and lack of impartiality on the part of Robert Johnson (RJ) in investigating the Claimant's grievance at the grievance appeal (para. 130);

jj. intimidating behaviour by RJ at the grievance investigation meeting (para. 137);

kk. falsification of minutes by RJ (para. 138);

ll. by RJ editing the responses of the Claimant and her Unite representative (para. 140);

mm. dismissing the Claimant on 7 December 2018 (para. 144);

nn. rejecting the Claimant's proposal to have [BZ] attend the Granville opening;

oo. by MA showing the Claimant's work to people inside and outside the organisation suggesting criticism of the Claimant;

pp. by MA ignoring concerns raised by the Claimant on 1 February 2018 in relation to MC's competence and conduct;

qq. subjecting the Claimant's written work to scrutiny, suggesting criticism of her written English;

rr. behaving in an aggressive or angry manner, in particular to one or more female or ethnic minority members of staff?

x. If all or any of that treatment is made out, was that treatment (looking at the individual acts and looking cumulatively) "*less favourable treatment*", i.e. did the Respondent treat the Claimant less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on the comparators specifically referred to above and hypothetical comparators.

xi. If so, was this because of race?

EqA, section 13: direct discrimination because of sex

xii. Did the Respondent subject the Claimant to the following treatment:

a. applying lower standards of performance and conduct to male staff than to female staff and overlooking errors made by male staff but not by female staff (para. 148);

b. by MA commenting on the Claimant's work attire and stating: "You're always wearing black" (including on 12 September 2018) (para. 151);

c. by MA stating that the Claimant was "high maintenance" (2016) (para. 153);

d. by JG stating that the Claimant was "high maintenance" (2016) (para. 155)

e. refusing to give the Claimant a pay rise (para. 157);

f. not upholding the Claimant's grievance or grievance appeal;

g. dismissing the Claimant.

xiii. If all or any of that treatment is made out, was that treatment (looking at the individual acts and looking cumulatively) *"less favourable treatment"* i.e. did the Respondent treat the Claimant less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on hypothetical comparators save where stated otherwise.

xiv. If so, was this because of sex?

EqA, section 26: harassment related to race and/or sex

xv. Did the Respondent engage in all of any of the treatment particularised above?

xvi. If so, was that conduct unwanted?

xvii. If so, did it relate to the protected characteristic of race and/or sex?

xviii. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

EqA, section 27: victimisation

xix. It is agreed that the Claimant did a protected act through her grievance in March 2018 and grievance appeal.

xx. Did the Respondent subject the Claimant to any or all of the alleged detriments which related to her subject access request, made in November 2018, as set out in her claim no. 3318920/19? For the avoidance of doubt, these are the only allegations of victimisation that have been permitted to proceed.

xxi. If so, was this because the Claimant did a protected act?

Remedy

xxii. These issues are set out on a provisional basis and may be amended following the hearing on liability if the Claimant succeeds in whole or in part.

xxiii. If the Claimant succeeds in her claim for unfair dismissal, she seeks compensation only.

xxiv. What is the amount to which she is entitled by way of a basic award?

xxv. What is the amount to which she is entitled by way of a compensatory award for loss of earnings?

xxvi. if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant, at some point, would or might have been fairly dismissed had a fair and reasonable procedure been followed?

xxvii. If the claimant succeeds in all or any of her direct discrimination, harassment or victimisation claims, what is she entitled to by way of an award for injury to her feelings and/or personal injury?

xxviii. What financial losses has she sustained, taking into account her duty to take reasonable steps to mitigate her losses and any possibility that she may have dismissed in any event, even without discrimination? The Claimant cannot recover twice for the same losses.

xxix. Has there been any failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and, if so, what if any adjustment should be made to her compensation to reflect that fact?

Findings of Fact

The Trust's objects, historical background and funding

11. The background of the Trust was set out in RD paras 3 and 4. It was created as a charity in 2009 by Brent London Borough Council with a financial endowment made from proceeds of a land sale that occurred at the end of the New Deal for Communities programme and its purpose and objects are to support the residents of South Kilburn during the redevelopment process. The articles of association of the charity are at page 538.

12. However, there was no physical legacy for the community and the respondent charity (which is hereafter referred to as SKT) had no means of generating any income. It met its costs by drawing upon the capital reserves. As RD says, this could not continue indefinitely without impacting upon the ability of SKT to continue to carry out its objects.

13. There was some limited evidence about the present financial situation of the charity. In an article from the Kilburn Times dated 16 April 2019 (page 1410) a member of the local Labour Party asserted that the reserves of the Trust were £4.5 million. RJ accepted that that figure could have been right at the time but he was clear, and we accepted, that was not a correct estimate of the available reserves at the present time. He said that he was not sure of the amount of current reserves but that £2 million was located for the phase 2 of the Granville and there may be just over £1 million remaining. RD's evidence was that SKT is operating with an annual deficit of expenditure over income of £400,000. We have concluded that her evidence that SKT may need to close operations within 4 to 5 years (during the first 2 of which they will supported by Brent LBC) if they cannot increase their income is realistic and we accept it.

London Borough of Brent regeneration project

14. The claimant referred us to "South Kilburn – the Data" (page 1054a) to demonstrate that, according to data from the 2011 census, the residents of South Kilburn are 83% non-white British and 73% council tenants. 45% of households have income which places them below the poverty line. This is the demographic and the socio-economic situation of the residents of South Kilburn which provides the backdrop to the objects and purpose of the SKT. Part of her arguments are based upon an allegation that the respondent had an objective to attract business from a majority white, majority comparatively affluent population which would, based upon those figures, be likely to come from outside the borough.

15. In his oral evidence, when answering questions in connection with that part of the claimant's case, RJ told us that he was previously the regeneration project officer for South Kilburn and that his team had started the regeneration. His explanation was it was Brent LBC policy to double the population density of the area. The intention and expectation was that this would protect the existing residents' rights to remain in the area while bringing a new population into the area. He accepted that these would have been likely to be more affluent than the existing population as a whole, because the Brent LBC policy was to build

homes available to buy as opposed to solely building council owned rented properties. However, the import of his evidence was that the council's objectives included to protect the interests of existing residents within the regeneration scheme as a whole.

16. RD explained that a decision made by Brent LBC to fund the regeneration of the South Kilburn estate by using the proceeds of one phase to fund the regeneration of the next phase. He stressed that the demographic of South Kilburn was outside the direct control of the SKT and stated his understanding that it was "the direct intention to change the nature of the South Kilburn Estate, with a demographic where 98% were social housing, because the mixed use community housing was doubling in size" meaning a much greater owner occupier population. "[It was an] inevitable consequence that the demographic of South Kilburn was likely to change because of design not happenstance. You have to acknowledge that if you double the size of the housing estate [with] new homes and the existing tenants were promised they could stay in South Kilburn and have got the right to remain there [but] in addition there are another 3,400 homes/people moving in because of regeneration … that is going to make a change."

17. In other words the context to decisions made by the SKT about their needs for particular roles and particular employees in those roles was the policy of Brent LBC to regenerate the South Kilburn area by means of development on the estate which Brent LBC intended to preserve the rights of existing residents but also intended to fund by seeking to attract new, probably owner-occupier, residents to the area which was likely to change the balance of comparative affluence within the borough. These decisions by the council were outside the control of SKT.

The Granville

18. An explanation of how the SKT came to take over the Granville is in RD para.5. In 2013/14 the Trustees decided that that they should use their funds to create a physical presence and legacy which would serve the community and generate income to ensure their long-term viability.

19. At the time, SKT ran premises known as the South Kilburn Studios which are described as a free space for around 20 to 25 business in dilapidated accommodation. RD's evidence was that this was scheduled for demolition. The claimant describes the studios in her para.26 as affordable work and community space for local residents that was managed by the Trust. There was a central space in the middle with offices around the edge.

20. The opportunity came for SKT to apply for a tenancy of the Granville in which they could provide larger space with better facilities for more businesses. Brent LBC bid for the Granville centre and the Trust (as a potential tenant of the space) was a part of that bid. It was a competitive tender against other bidders.

21. MA was asked whether he accepted that this meant that the SKT's focus (and therefore the focus of the claimant's job specification) changed from a focus in

about 2015 upon residents and community to paying customers and corporate customers. He denied that but said that,

> "The demographic in the area was changing so there would be those in the area who had money. So that's an opportunity for the organisation to have some space to rent to people who had money at full blown rates to subsidise the charity which was providing subsidised rates for people in the area with less income. It's not about attracting people from outside the borough to South Kilburn. It's about saying to the people that had money that we have space you can rent and we would benefit from that."

22. According to MA half of the building was going to be business space for start up and existing businesses and the other half for community events. RD told us that the Granville now houses 34 businesses and MA's evidence was that was space for more than 34.

23. It was suggested by the claimant that the corollary to draw from this was that SKT was pursuing a policy of moving from majority black owned businesses to seek to attract more affluent businesses who would be from outside South Kilburn and majority white owned. When this was put to RD her response was

> "Our strategy was to use the building to generate income so people who can afford to pay do and we can subsidise people who can't, regardless of colour. We like to reflect the local demographic. … We are trying to stay a charity in South Kilburn and we have to keep that going"

24. In our view, RD was clear and compelling in her evidence that this was the strategy of SKT and that the strategy was not related to race. As she put it "every time people take about 'white people with money' and assume the dividing characteristic is colour – it isn't, it is money".

25. Our finding is that there simply isn't evidence that supports the claimant's contention on this. Not only did we consider the explanations given by RD, RJ, and MA recorded above to be valid and true, the evidence we consider below, relied on by the claimant to show the execution of the purported policy does not, when analysed, support her alleged narrative.

26. Her contention is based upon the presumption that paying tenants of the Granville were likely to be and were presumed by SKT to be likely to be white people. There is no evidence whatever that the Trustees or managers of SKT made this presumption. It seems to us that the contention potentially applies an impermissible and wrong stereotype that entrepreneurs are unlikely to be black. The contention is not based, for example, in any evidence we have been shown that new tenants of the Granville who were paying a non-subsidised rent were more likely to be white than the tenants of the Studios had been.

27. We find that the Trust's objectives were to become financially more secure without depriving existing tenants of support. However, to do so they needed to have space which paying tenants would pay a market rate for and SKT made no presumptions that those paying tenants would be from outside South Kilburn and no presumption that they would not be majority black.

28. There is a particular comment attributed to RD in a report on a meeting, apparently in April 2019 upon which she was cross-examined. The print out of a report in the Kilburn Times starts at page 1408 and, at page 1411, RD is quoted as saying

> "We strongly support delivering broader community membership, including those members who are new to South Kilburn and new to community involvement and are certainly not represented here today."

29. The suggestion appeared to be that by that she meant that the groups represented at the meeting (at which objections to the planned provision in the Granville were aired) were from BAME groups and she wanted those from white groups to be represented going forward. RD denied that saying that the particular group who are quite resistant to change, representatives of the local Labour Party, are white and not black and that community groups who felt strongly about the redevelopment were mixed race. We accept that evidence. There is nothing in the comment itself which supports the inference we are asked to make from it. The photograph of those airing their objections appears to us to show a group of people of diverse ethnicities, insofar as this can be judged fairly from the photograph. In any event, there is nothing from which to judge the ethnicities of those whom RD described as not represented.

30. The success of the bid to take over the Granville and to develop the space as an entrepreneurial hub (described as an Enterprise and Community Hub) led to changes in the needs of the respondent for particular skills on the part of its staff. See, in general, the document proposing organisational change at page 690a and following.

The claimant's role and experience

31. The job offer made to the claimant, who joined SKT as the Communications and Engagement Manager on 30 March 2015, is at page 476. Her job description is at page 979 which shows that she was responsible for the Communications and Events Officer and reported to the Chief Executive, who at the time of her appointment was MA. It was a new role.

32. The job description explains that that "the key areas of focus over the next year will be Employment and Enterprise, Young People, Health, Advice, Community Support, Neighbourhood Management, and the Physical Legacy of South Kilburn". The postholder has, as the first stated objective, communications and engagement work. Apart from key accountability 3 – which is using Trust communications tools, in effect, to help businesses market themselves although the word "market" is not used - marketing is not mentioned as being part of the role. The person specification does not require marketing experience.

33. When the claimant was interviewed for the Marketing and Communications Manager role, she provided her CV to the interview panel. In that she set out her previous experience (page 690u) in which she claimed to be involved in her work for SKT in some activities which could be described as marketing– most notably

"Marketing and promotion of the Granville – generating valuable sales leads through a range of tactics".

34. The stated experience in previous employments included that, when working for the YMCA, she was the External Communications and Marketing Officer. Her description of achievements in that employment does include examples of marketing activity at officer level but no information about the results of the activity by the claimant.

35. In his evidence about the interview on 5 March 2018, MA said that the claimant had not provided evidence about the impact of any marketing activity and he did not think that the Granville was open or that she had provided evidence of converted sales for space in the Granville.

36. He was also asked what he saw as being the difference between communications and marketing. His response was

> "Communications is exactly what C doing and doing well; producing flyers and leaflets for projects, writing leaflets for newspapers and press releases, sharing information. Marketing was specifically about selling a service or product to people so that they would buy that product or service. We wanted people to buy work space or event space to hold their weddings or their parties. … Here the claimant could share information to people but she didn't present evidence of marketing resulted in buying a product and generating an income for that organisation. It's different. We were looking for examples of person conducting a marketing campaign which led to someone buying a product or service."

37. We accept that this was the distinction which he drew between communications and marketing and that it was evidence of the latter which, as we shall see in more detail, SKT was looking for when seeking to appoint a Marketing and Communications Manager. Our analysis of the claimant's CV is that, taken without further explanation of the activities she had carried out, it does not provide evidence of marketing which led to someone buying a product or service. Furthermore, the role to which she was appointed in 2015 did not require that within the job specification.

38. It is true that a role can develop over time. One of the factual matters which is necessary for us to consider is the extent to which the claimant was, as time went on, carrying out marketing activities in the way those activities were explained by MA.

39. Page 487 is her appraisal meeting on 9 May 2016 for the appraisal period April 2015 to March 2016. Section 3 sets out the future performance objectives which are all communications based.

40. Page 690o is an appraisee preparation form for the same appraisal period. Based upon that, and upon the claimant's answers in cross-examination, we accept that SKT was not seeking to produce an income at that point therefore the claimant did not have evidence of doing so. This is not a criticism of her nor is there any suggestion that she was not doing the job she tasked with in anything other than an entirely satisfactory way. The form was the means by which the

claimant evidenced how she had achieved her objectives including, she said, by "developing a marketing and communications presentation for staff to be delivered in a marcoms workshop". The start of movement towards incorporating marketing into the role is there although we did not hear that the marcoms workshop in fact took place.

41. The appraisal for the following year is at page 690j – a meeting on 5 May 2017. The future performance objectives have the words "and marketing" added to the first objective, which is consistent with the requirement for marketing becoming important to the respondent at this time. We note that the claimant is described (page 690k) as a

> "highly valued part of the Trust, bringing a wide range of skills and experience, and an emotional intelligence that we need as an organisation. Rita's understanding of South Kilburn and the people there helps her think carefully about our comms, resulting in great events and materials which reach out to people."

42. Our view on the appraisal documentation from May 2017, is that it does not provide evidence that the claimant had been doing marketing but evidence that the respondent wanted marketing to play some part in her role.

Staff changes

43. Acquisition of the Granville and the prospect of that opening as an Enterprise and Community Hub triggered a change in the roles and skills needed by SKT which took place over the period of the claimant's employment. Sometime prior to May 2017, the decision was taken to recruit an Operations Director. A document proposing a changed structure to the team dated 18 May 2017 evidences why SKT decided to recruit an Operations Director – see, in particular, note 1 and 2 on page 690a and note 4 on page 690b. We accept that MA, the CEO, was engaged in strategic work and project managing SKT's role in the Hub and that the then Operations Manager (JG) did not have capacity to do all that was required and that was projected to become a more acute problem with the move to the new premises. Therefore it was proposed to change the structure by recruiting a new full time Operations Director "to oversee the operations, and to take on the line management of the existing management team to allow CEO to be more strategic".

44. The second recommendation which was adopted was to recruit a new Hub Manager immediately, prior to taking over the Granville.

45. This document supports what MA and MC said about reason for MC's recruitment which was to take some of MA's workload away from him including to take on the line management of the existing management team. That management team were JG (Operations Manager), the claimant (Communications and Engagement Manager), and the Community Projects Manager (RR).

46. As at May 2017, LB was working as the Employment and Enterprise Strategic Lead on a consultancy basis. She had resigned in 2016 and MA had persuaded her to say asking "what could make you stay". She had asked for more flexibility which was granted in terms of her becoming a consultant so she could work with other partners and focus on strategic areas. She was also relieved of the line management responsibilities shown by the structure on page 690a. This enabled her to work with other charities and do more social impact work.

47. Her oral evidence mirrored MA's evidence to the effect that he had tried to persuade her to stay and had seemed to her to be genuine in his desire that she should do so. We consider it to be a notable omission from her witness statement that she does not mention her 2016 resignation and MA's persuasion of her to stay. The omission causes the statement to present an unbalanced account of her relationship with MA. She also says in LB para.42 that she later learned the employment department and "other key community services were cut". However, she accepted in oral evidence that the DWP program for the over 50s was cut which meant that the decision about that project was out of SKT's hands. To the extent that her statement suggests that SKT made decisions from which it can be inferred they had a policy to move away from supporting existing service-users it is also unbalanced as a result of this omission.

48. LB finally stopped working for SKT in September 2017 at which time there was a further discussion between her and MA about terms on which she might stay but, on LB's account,

> "What he had put forward for me to do I didn't agree with it. The vision for the area of work I looking after was not clear so I didn't want to be part of it and I felt from his actions he wanted to minimise the work happening for employment. I was the lead for employment – [SKT was to have a] focus on the enterprise hub. That didn't fit with my ambition"

49. These are two notable omissions from her statement: first that MA persuaded her to stay by making concessions to her personal preferences and secondly that there was an external factor in scaling back the employment department. Her oral evidence leads us to conclude that the parting of the ways was because terms could not be agreed and she was professionally interested in an area of work which she recognised as being no longer a key focus of the Trust. The persuasion by MA of LB to stay does not fit with the claimant's narrative of Trust pursuing a deliberate policy of exiting black and female employees. This example is exactly the opposite. The omissions from LB's statement causes us to think that her evidence is less reliable as a result.

50. The changes envisaged by the Trust in May 2017 did not happen as originally envisaged and certainly not in the timeline set out in the organisational change document. The need in the communication area was described as a lack of capacity "to market a new Hub, and … some additional expertise at a high level to support us as we plan our business-to-business marketing in relation to our business space and venue hire." This would require an updated job description for the Communications and Engagement Manager and the document envisaged that

this would be done by 14 July. However, the incoming Operations Director (MC) was not in post until 24 July 2017.

51. The claimant sat in on part of MC's interview. MA wanted to involve her and we are of the view that this action is inconsistent with the allegation that he was not interested in her views. The claimant agreed that MC was the best candidate. In her witness statement the claimant recounts MA saying that another candidate, who was black, was never going to get the job. She also states that she presumed that the reason for this comment was that he was black but when her oral evidence was that MC would have been seen as the better candidate than the individual in question she appears to have no basis for that presumption.

52. In the event, the role of Operations Manager was assimilated into the Facilities and Office Manager role: JG (white male) was assimilated into that role on 21 July 2017 (page 1066a). The Community Projects Manager in the old structure was held by RR (a female of non-white ethnicity). This role was funded by the charity itself (in that it was not funded from grants for particular activities) and, according to MA, they could not afford to continue to fund it and the role ceased. We accept this evidence.

53. The Enterprise Hub Manager was a new role. DI (a black female) started in this role just after MC started as Operations Director. In his para.86, MA gave unchallenged evidence that LB could have applied for this role or for the operations director role but told him that she was not interested. As we have already said, SKT also made a decision to cease the Employment and Enterprise strand of their operations because they were no longer going to receive the DWP funding for that activity. The co-ordinator and advisers roles within that team were therefore affected by the cessation of that activity.

54. The job description for the Marketing and Communications Manager in the proposed structure was not finalised until early 2018 (which we consider in more detail below). It is at page 690e. The claimant accepted that there were some changes compared with her role and that the focus was communications and marketing in combination – which she stressed to be of the Granville not the Trust.

55. The key accountabilities of the Marketing and Communications Manager role includes: develop campaigns "that drive the uptake of the Trust's income generating services, such as rental of workspace, venue hire at The Granville and other related services". We also note the 3rd bullet which shows the post holder would be required to deliver events which "lead to people taking up one of our income generating offers". It is true that there would continue to be communications and engagement activities. This include "ensuring The Granville is accessible to the diverse population of South Kilburn". However the person specification requires "marketing related experience in launching and promoting new produces and/or services" and a "demonstrable track record of creating campaigns that are directly attributed to improving revenue streams". The questions for interview should be structured around the person specification and our view is that it should not have been a surprise to anyone reading this person specification that these would be matters which needed to be evidenced in interview.

Findings on events prior to redundancy

56. There was an incident reported to MA in 2015 where an employee of the radio station tenant of SKS used monkey chants directed to another tenant using the communal space. The latter was a church whose members were described by LB as being Jamaican. This was, clearly, a deplorable incident. The relevance to the present claim is whether, as alleged by the claimant the reaction by MA shows either a mindset on his part that is itself racist or that he was not taking an incident of racism seriously – that he showed a failure to be sufficiently anti-discriminatory, in effect.

57. The claimant's evidence was that she had been informed of the incident by LB and (see her para.31) that MA had mentioned the incident at a managers meeting but seemed to her to be more preoccupied with the perpetrator being transgender and in establishing whether the church was homophobic rather than considering the position of the church as a victim. It is also alleged that as a result of the incident, the church was asked to leave the Studio. The claimant's other information about the incident is second hand hearsay and we do not consider it to be reliable evidence.

58. This allegation was denied by MA. His oral explanation was,

> "The allegation was that a member of the radio station had made racist remarks or gestures in presence of members of the church. The person who ran the radio spoke to the leader of the church and they agreed that if the radio station wrote to the church – I presume apologising – that would be resolved. The radio station wrote and the church accepted. I asked for it to be investigated – I asked [the person] who runs the radio station to speak to … the volunteer – the allegation was between the church organisation and radio not the SKT. We were providing the premises and those two were renting space."

59. In response to the allegation that he had removed the church from the building, MA's oral evidence was that it was a separate issue. The services typically went on for the whole of the day which meant either that the businesses could not use that space or they needed to come out of the premises they rented into the central area which was being used by the church in the middle of the service. MA's view was that the church should move to another building because it was not appropriate for the service to take place in what was effectively being used at the same time as a business space.

60. Taking into account the primary objects of the respondent, the explanation provides a logical reason to ask the church to move from the space which we find to have genuinely been MA's reason. This was a non-discriminatory reason. We also find that the reason MA didn't take further action in relation to the racist incident was that he genuinely thought it had been resolved between the two tenants.

61. The claimant has argued that the circumstances in which a number of black female members of staff left the employment of the respondent and their experiences during their employment support an inference that the respondent was seeking to exit black female staff as part of its alleged policy of seeking to

attract more affluent, presumed white, tenants. The circumstances relating to those individuals is analysed in the section below which concerns RD's investigation of the claimant's grievance, in which she raised those allegations for the first time.

Management of the claimant by MA and MC

62. Complaint is made by the claimant that MA and JG making comments regarding visiting Jamaica (in May 2017 and on 6 December 2016, respectively). The claimant's statement evidence on this is her para.55 and LB also gave oral evidence about a specific incident when MA stated that he would not visit Jamaica. She dated it from the Christmas Dinner in December 2016 (her para.27 and following). In her statement she said that the comment was made by MA and JG "as though they were disgusted with the country" and commented about her own travels there. However, when cross-examined about it, she agreed that she had immediately understood that the comments were motivated by their understanding about how gay men were sometimes treated at that time in Jamaica; that they were made in the context of perceived homophobia in Jamaica.

63. According to LB, she then pointed out to MA that them "it's a small island and in small country areas find people with certain views and I did explain the history as to why there is homophobia there". However she thought it unfair to think that all Jamaicans were homophobic and that such an attitude needed to be nipped in the bud.

64. In principle, her points were well made and, were we able to infer that MA or JG were making generalisations about the attitudes of Jamaican people generally that would give us cause for concern. However, we find that such generalisations were not MA's reasons for saying he would not want to visit Jamaica – which is the limit of what his said. We accept MA's evidence on this point. He is in a settled relationship with another man. It seemed to us that his judgments about where he would go on holiday were made, in part, with a view to where he and his partner would feel safe. He was completely credible in his explanation to us for his judgment. The distinction he made with stopping over in Dubai does not detract from that. It was a judgment he made based upon how long he was present in the country and where he was staying. Neither party has taken us to objective evidence that undermines what MA said he believed to be the position towards gay men in either country. His concern about Jamaica was based upon reports he had read about treatment of gay men by some individuals there and not upon a stereotypical view of Jamaicans generally.

65. The claimant first made a covert recording of a conversation with MA on 20 February 2017. The reason for her decision to do so is difficult to understand. There are two transcripts of this recording in the bundle: the first was done professionally but does not capture every sound and remark of the interlocutors. It seeks to elide the words into a more readable form. The other has been prepared by the claimant and, in it, she has attempted to record everything. We have generally referred to the fuller version of the meeting of 20 February 2017 (page 533a).

66. In their conversation, the claimant spoke to MA about his conduct prior to and in sending an email on 13 February 2017 which is at page 690e(vii). It is a general reminder sent to the heads of department including the claimant asking them to remind their teams of office etiquette which might be described as an encouragement to adopt a respectful approach to co-workers. Since it was sent to the claimant, LB, RR and JG, we do not see a valid reason why the claimant should have felt singled out.

67. It is this conduct and email which is the principal incident relied upon by the claimant as an alleged instance of MA behaving in an aggressive or angry manner, in particular to one or more female or ethnic minority members of staff. Our view is that the way claimant described the incident, face to face with MA, within a week of the incident doesn't amount to an description of him having an aggressive or angry manner. We consider this to be a description she has applied to the exchange long after the event and not a reliable indication of her impressions at the time. She dealt with such upset as she then felt by discussing with MA after which she said felt much better and she accepted that his actions did not relate to race or sex at all.

68. The discussion recorded in the transcript about that email and the precursor to is, in our view, in no sense an admission by MA of poor behaviour on his part. The exchange at page 533rr is, at most, an acknowledgment that he dealt with it the wrong way and C says that she wouldn't necessarily say that. It is notable that, in this conversation on 20 February 2017, the claimant only makes a low key comment saying that the email came across as a bit of a telling off. She refers to "clearing the air" about her feelings about MA's communications saying that she doesn't mind being reprimanded (page 533oo) but she questioned whether she had done something wrong and, if so, that MA should be able to tell her (page 533rr).

69. According to her witness statement evidence, by this point she was upset because he regularly comments on her wearing black clothes; favoured JG over things like Secret Santa and has not addressed JG's performance. However, when the claimant says that JG was treated more favourably than her, in that respect, this is not the case because she was not being criticised for her performance. Further, according to her statement, by this time MA was giving her "the silent treatment".

70. She doesn't mention these things. She does mention the communication on 13 February 2017. We understand that it takes a lot of courage to raise allegations of discrimination but she did not have to say that she thought these matters were race discrimination. Had she been genuinely upset about incidents, she could just have express her unhappiness with matters at work. She was able to express her perception that the email might have been directed at her and was reassured about that point.

71. This is not isolated evidence. The claimant's preparation form for her appraisal (page 690a(xvii) at page 690b(ii) dated 28 April 2017 included no complaint by her that she was unsupported by SKT or by her line manager; indeed she was

positively saying that she was being supported. In oral evidence she agreed there were “no serious problems. It wasn’t a rollercoaster.” However she claimed that MA had behaved in a racist and sexist way but she had chosen not to fight it, at the time she had written the preparation form, “he had apologised and in my mind I still had hopes for the Trust and him”.

72. All that MA had acknowledged was that he could have handled the communication of office etiquette better. It is an unexplained inconsistency in the claimant’s factual case that her own perception of her treatment at this time is such that she considers it to justify a covert recording of her manager in order to catch dishonest behaviour and yet the contemporaneous evidence shows her to have been reassured by the clearing of the air (see the exchange at page 533fff), in an appropriate and professional exchange, such that two months later she is praising the support she receives. We find the record of the covert recording and the appraisal form to be evidence to which considerable weight should be given about the claimant’s position at the time.

73. Particular complaint is made that MA took over part of the claimant’s work prior to the arrival of MC in July 2017 (issue (ix)(u). The oral evidence from MA which we accept was that he took over the marketing of The Granville which was an area of growth and could not reasonably be said to be paid of the claimant’s work at that time.

74. The claimant also complains that MA transferred key elements of her job to MC; see C para.88. Our finding on this is that anything which was done was entirely due to the recruitment of another level of management between the claimant and MA and there is no evidence that the situation would have been different had the claimant been of a different race or sex. It is clear that the need for another level of management had genuinely and reasonably been identified by the respondent because of the changes in their activities and this is supported by the written proposal at page 690a.

75. The claimant’s allegation that MA had been “giving her the cold shoulder” is contrary to the impression given from covert recording (p.533hhh and 533ggg) where she describes thinking that he had been treating her like a child but felt reassured that he wasn’t and felt much better. Later on, when MC arrives, we are persuade that MA was not so much giving the claimant the cold shoulder as giving MC the space to become her line manager because their relationship within the organisational structure had changed.

76. It may be that the claimant was not fully aware or accepting of the consequences of that organisational structure and this might also explain why she complains that MA refused her sight of a bid for GLA funding. We found MA’s evidence on this persuasive which was that he did consult with her on aspects of it but that the bid as a whole was confidential because it was a competitive bid and in its entirety not circulated to the middle management team.

77. In about July 2017 MA requested that the claimant produce a work log. According to MA para.35, this was also something about which the claimant was

happy at the time. This is some two months after the paper identifying a need for further resource in communications. The claimant accepts that, at the time, she was overworked. This is consistent with the log, rather than being in order to bully or harass the claimant, being done for a short period primarily to help her manage her work more effectively but also to provide information about the job content at a time when the business requirements were in flux. We accept that this was the reason for it.

78. There is a disagreement between the parties about the particulars of an alleged incident when the claimant complains that JG failed to investigate her complaint to him that a white, female colleague (unnamed) asked the Claimant to “look at her bum in the ladies’ toilet”. On MA’s account, it took place prior to JG’s arrival and he replaced the female colleague in question.

79. As the claimant described the incident, which she said had happened sometime in 2017, the claimant readily accepted that the female employee’s conduct was not race or sex discrimination or harassment but she considered it to be highly inappropriate. Her oral evidence was to the effect that she’d told MA about it and he had spoken to the individual. It emerged in oral evidence that the incident is not relied upon as alleged less favourable treatment of the claimant by not investigating the female employee’s conduct. It is more that it is said to be an illustration of favouritism by MA of JG who, it is alleged, should have managed it differently. However the claimant was not facing criticism of her management at any time and we do not see that any such inference can be made when, so far as MA was concerned, he had resolved the incident about the female employee’s comment to the claimant’s satisfaction. On any view, the incident can fairly be described as historic and no contemporaneous complaint was made.

80. As far as any criticism of the claimant’s management is concerned, when there was a grievance against her by her direct report the Trust backed her. She now seeks to rely upon an alleged comment that the grievance against her that “the grievance isn’t going anywhere” as evidence that in the Trust all grievances are predetermined. That does not seem to us to be a reasonable inference to make in the context of the exchange she relates. It is also contrary to the narrative she seeks to present that the Trust treats black female employees more harshly than others.

81. There had been an incident in which the claimant was late arriving at a meeting with contractors and MA made a remark to the effect that the claimant did not or did not often travel or visit outside Brent. The claimant’s allegation about this is set out in her paragraph 93 and following and MA covers the allegation in his paragraphs 31 to 33.

82. The claimant sought in final hearing to claim that she had been so badly affected by his comments that she was “violently sick with a bad headache and breathing problems” such that an ambulance had to be called. The fact of her illness was confirmed by MA. However we were struck by the fact that this apparently occurred at a meeting on 5 June 2017, only a few months after the conversation which was covertly recorded and yet the claimant made no attempt to raise her concerns with MA about how his comment had made her feel. It seems

extremely unlikely to us that had she believed at the time that her illness was a reaction to this particular comment she would not have said so, given the apparently easy relationship at about that time which appears from the transcript of 20 February 2017 and the lack of any complaint after 5 June 2017 to MA or to anyone else.

83. It is common ground that the claimant had been late and although any comment made may have discomforted the claimant, that does appear to have been an important part of the context. We accept that MA was trying to make excuses for the claimant's lateness and that was the reason why the comment was made. It is not related to Brent LBC having a proportionately large ethnic minority population or to present the claimant as uncultured.

84. We think that the complaint about MA saying words to the effect that "people are doing things that they should not be doing" on 3 November 2017 is likely to be a misunderstanding of words used in a talk about organisational change, as explained by MA in his para.41. We accept that it is probable that words were said to the effect that in the future things needed to be done differently. The context was the change in focus of the Trust with fundamental change in its objectives and activities with the opening of the Glanville and it was not targeted at any individual or intended as a criticism of the actions of any of the staff in their pre-change roles.

85. The other particular incident referred to in para.119 of the claimant's statement, is a complaint that MA disclosed that he had been talking to marketing professionals. This appears to refer to the allegation at issue 3(ix)(i) (page 272) that he had engaged such professionals to deliver the claimant's work.

86. The background to this period of time includes that the claimant had suffered a family bereavement in particularly distressing circumstances and been given a period of compassionate leave. She had been on sick leave immediately prior to this for sinusitis and then was signed off work for 2 weeks due to personal stress following that bereavement (see the Occupational Health report at page 690d(vi) and the claimant's description on page 1078). The subsequent OH referral recommended that she avoid stress and this led, ultimately, to a stress risk assessment which took place on 7 Dec 2017 (See page 1111 – MC's email about his meeting with the claimant to discuss the OH report and the stress risk assessment itself at page 690c(x)).

87. Furthermore, the claimant had, we find, expressed herself to be busy with existing aspects of her work (see MA para.39) and the marketing professionals were not intended to be a permanent outsourced resource as the redesign of the job description shows. Details of the marketing resources engaged by the respondent are in MA para.48. They recruited JH, a black man, and a marketing agency headed by a white woman (whose name is not given). In the last quarter of 2017, we accept that MA did not know that the claimant's role would be redundant and that she would undergo a non-competitive interview for the new Marketing and Communications role.

88. In that context we find no ulterior motive on the part of MA for engaging additional marketing resource. It was needed. There were grounds for concern about the impact on the claimant of stress given her recent sickness. The OH report upon the impact of grief was that the expectation was for a full recovery but that the claimant "may feel vulnerable to perceived work-related pressures or adverse circumstances in the short term." The recommendation, put in our words, was that she should be eased her back into work and given support with her workload. We find this and the need for specific advice on developing their brand more plausible reasons for engaging marketing professionals than the claimant's allegation that MA was trying to undermine her.

89. The above findings are also relevant to our conclusions on the claimant's allegation that the respondent removed support from her and setting her up to fail. This is a broadly phrased allegation which seems to us to be contrary to a number of pieces of evidence. We see from page 1103 that in November 2017 the claimant provided details to MC of a training course which she wanted to undertake. MC's response was "Please do go ahead, really happy to see you looking into how you can use your training budget". Although this training was not organised that was due to the claimant not pursuing it. MC's email shows that he was enthusiastic about her taking time for suitable training.

90. The purpose for which MO was originally recruited (in early 2017) was as support for the claimant with a particular event when she had lack of reliable resource in her department. The respondent recruited MO when C asked for support in the absence of direct reports. The claimant argues that the exchange at pages 1076 to 1078 show that, in asking MO not to revert to her in relation to a particular report the deadline for which fell at a time when the claimant was certified unfit to work, she was being undermined whereas, we find, MA was seeking to protect the claimant from workplace pressures at a very difficult time while aware that MO was, herself, grieving for the same family member. We are also mindful of the fact that the respondent gave the claimant leave in order to prepare for the non-competitive interview.

91. These are all evidence of continued support of the claimant and we reject the allegation that support was taken away from her or that she was set up to fail.

92. As we have already said, a stress risk assessment was carried out on 7 December 2017. However, the claimant did not get the notes of this assessment (page 690d(x)) until 4 January 2018. She disputed the accuracy of them but she made no corrections at the time. We think, based upon her practice in other cases, that she would have done so had she wanted to and therefor, contrary to what she now says, they are a fair reflexion of matters discussed as far as they go. In the meeting of 7 December 2017, the claimant expressed herself to be well supported by her line manager (MC). "We are a good team and people are generally friendly. These is no tensions within the office that could cause undue stress and likewise conduct is professional". No suggestion is recorded at this time that the claimant is unhappy at work at all, let alone that she thinks that there is endemic racism and a campaign to remove a certain race or gender from the Trust. We are of the view that had that been her view at the time, had she had reasonable grounds for that belief at the time, she would not have been so

positive about the support she was receiving from MC and the atmosphere at work generally. After all, the point of the meeting was to explore whether there were particular sources of workplace stress.

93. Another specific complaint made by the claimant is that MA and MC dismissed her ideas and preferred those of white agency staff. This is said to date from 5 January 2018 and, as it was explored before us, was pursued against MC and not MA. The cross examination of MC did not put the case that he had preferred the ideas of the white agency staff but reflected the claimant's statement allegation (paragraphs 178 to 179) that she had been "shut down" by MC and that the agency staff had been shocked and stated that her ideas were relevant because she knew more about the organisation than he did. This was denied by MC and he made the point that, without more information from which to answer the allegation, it was plausible that she had said something with which he did not agree and something else with which he did agree, and that he had said so.

94. As pursued this was just an assertion by the claimant. There was not enough information to enable us to judge that the claimant was disadvantaged in anything that MC said because we are not told what the idea was or what was said in response. Furthermore, the aspect of comparison with white agency staff was not made out in the evidence ultimately relied upon by the claimant. There is no evidence, for example, that if the agency staff said that the claimant's ideas were worth consideration that was given any greater weight by MC than when they had been said by the claimant. As such, there is nothing from which to infer that race had anything to do with MC's conduct.

95. Shortly afterwards, MC wrote an email to the claimant (page 1149) in which he asked her to carry out certain tasks in relation to two Twitter accounts in which, among other things, he said "This can also mark the handover of social media back to you". This was alleged to be inappropriate micromanaging; to set out in such detail. Another example was said to be the email at page 1153 dated 30 January 2018 which was alleged to be an inappropriate action in chasing the manager who manages social media.

96. We accept MC explanation that the first was an appropriate amount of detail to provide in order to outline to the claimant what he hoped her to achieve as she took back management for social media. As to the email the following day, MC's explanation was,

> "We were leading up to one of the single most important milestones of SKT in opening the Granville and the aspiration was for work space and venue bookings to be secured up to the launch date […] and social media was a key component in that aspiration. For there to have been no social media activity in the period leading up for that was of concern so I asked what the reason for it was."

97. It is true that there is a relatively short period between the claimant resuming responsibility for social media and the email on page 1153 and that it is politely but briefly phrased. However, in the context outlined by MC it was legitimate for him to be concerned and to expect frequent output on Twitter. We do not think that MC was micromanaging the Claimant as alleged by these emails or by the

short run of emails at page 1154 to 1156. In one, MC asked all managers to add a banner publicising The Granville to her email signature and thanks the claimant when she offers to help those who may not know how to do so. This seems unremarkable to us.

98. The claimant made another covert recording, this time with MC, on 30 January 2018 (page 602a in the fuller transcript). In that she broached with him the subject of the email at page 1153. As we say, in the context it's a straightforward question about what communications activity there has been at an important time in the Trust's activities. It was a reasonable management enquiry. However, the claimant is clearly able to express her view that he was micromanaging her (page 602c). This gave MC the opportunity to say what he meant and give an example of what he wanted. He then said that "maybe that email flew out more quickly than it should have" but that "I think we need to find a compromise where we're getting material out and you're doing the valuable pieces of work that you're doing" (pages 602j to 602k).

99. This again shows the claimant able effectively to raise issues which she may have felt uncomfortable raising, explaining her perspective and apparently reaching an understanding.

100. MC is criticised for selecting CO (a white woman) to run an event which the Claimant was meant to be running. The allegation is made against MC in the List of Issues but appears, in fact, to be made against MA. This is covered in the claimant's statement para.170-171 and by MA at his para.49. It is clear from a emails from the claimant on 27 February 2018 (page.690c(xiii)) and 7 March 2018 (page.1202) that the claimant was involved in preparing the brief for potential contractors which had been through more than one iteration. This suggests that a contractor was going to be recruited for the launch event as well as the marketing and communications manager and that that had been decided on prior to her interview. In other words, at a time when the claimant was expected still to be in post (see below) and in addition to and not instead of the claimant.

101. It also appears that the claimant was raising the example of CO as that of someone who was forgiven mistakes. This was denied by the respondent but, even were there evidence of this, it would not without more provide evidence from which it could be inferred that the reason was CO's race or that MA had a discriminatory attitude in general.

102. On 1 February 2018, despite apparently having sorted things out directly with MC, the claimant approached MA about the email on page 1153 and recorded that conversation covertly (page.610a in the fuller version).

103. When preparing publicity material for The Granville, urging people to Save the Date, the claimant proposed using an image that showed black African drummers in the Granville Community Garden (page 690c(ix)). On 1 March 2018, MA mailed her saying "I don't like it. The photo is wrong. It's a dance troupe and a block of flats, which doesn't really represent The Granville." He asks if there are

any other photos to use and, if not, that no photo should be used. This was ultimately the decision made (page 706a).

104. The claimant accepted in her oral evidence that he assumed that his criticism of her draft had to do with race. MA's explanation was that The Granville is a building and he wanted a photograph of the building not of the block of flats. The respondent ultimately used the picture of the drummers on the website and in an advertisement feature about the new facilities (page.1446 where it appears together with a photograph of the front of the building). That is consistent with MA's explanation. We reject the claimant's evidence that MA said that the photograph was too community. The claimant did not include reference to this in her grievance which was presented only about three weeks later. It is surprising that she did not if she thought it was evidence of a discriminatory mindset by MA.

105. We accept MA's explanation. It is consistent with the advertisement feature and with what he says in the email on page 690c(x).

106. The evidence about the allegation that MA commented on the claimant's work attire by stating "You're always wearing black" did not, we find, substantiate the allegation that it had been more than once. As MC says (in his para.84) it cannot have been on 12 September 2018 since the claimant was not in employment then.

107. According to the claimant and LB it happened much more frequently than once. However, the claimant did say that it happened before the "heart-to-heart" on 20 February 2017. Given the topics which she was prepared to raise with MA then, we think that she would have mentioned any discomfort she felt at repeated comments that she frequently wore black had it been a cause of concern for her at that time. As we have already said, LB's credibility generally has been adversely affected by her failure to provide full information about MA's attempts to persuade her to stay with the respondent.

108. We prefer MA's account. This happened once in the circumstances which he described in his paragraph 84. It happened in context of a conversation about what a number of people in the office were all wearing and, as such, was a normal conversation about clothing in the office about what people wearing. There was no indication to MA at the time that he had given offense. The claimant commented upon him wearing colourful belts.

109. The claimant alleges that MA stated that she was "high maintenance" (see, for example, the claimant's statement at para.126).

110. Our impression of MA was a bit diffident, careful and sensitive about giving offence. So our view is that it would be uncharacteristic for him to utter the words "high maintenance". On the other hand, the claimant is not consistent and sometimes not proportionate in how she describes events or actions. For example when, in oral evidence, she alleged that minutes have been fabricated (such as MC's amendments to the stress risk assessment notes at

page.690d(x))). This is also true of the allegation that RJ's minutes were falsified. We consider this to be a heightened inference to draw when considering both that the meeting of 24 August 2018 was recorded and there was a transcript available, RJ instructed the administrator to prepare minutes only from the recording. There was no subterfuge and to describe the minutes as falsified is not a reasonable inference.

111. These are occasions when the claimant has used heightened language to describe events which has some basis in fact but have an obvious innocent explanation. As a result of our assessment that the claimant has a tendency to exaggerate what has been said or done or to put an unreasonably negative spin on actions we have come to the conclusion that the claimant is not accurately reporting the words of MA when she accuses him of saying she was high maintenance.

112. This is also an allegation made against JG who was not called to give evidence by the respondent. However in oral evidence the claimant explained that she did not believe that JG had ever said to her that she was high maintenance but that his views could be implied from statements teasing her about wanting unicorn water when she asked for spring water. It is clear to us that this was something she didn't want JG to say. However, even without having heard from him an taking the claimant's evidence at its highest, we can infer from that or from any evidence that JG had sung a particular pop song at the Christmas party that he was targeting the claimant or that he was applying a racial or gender-based stereotype.

113. One of the claimant's allegations of sex discrimination is that the respondent applied lower standards of performance and conduct to male staff than to female staff and overlooking errors made by male staff but not by female staff (sex discrimination issues 3.xii.a above). As explained in evidence before us this was not not an allegation about the treatment of the claimant personally. The claimant did not given evidence that she had been less favourably treated by being performance managed when comparable males were not. As an allegation of propensity or from which a particular mindset could be inferred, it was not borne out by the facts uncovered within the governance report (which starts at page 912). GA (male) had brought a grievance against the claimant against a context of performance and disciplinary issues which had not been upheld (see top line on page 921). The overall findings at page 927 (albeit based upon small absolute numbers) showed that of 7 people failing probation, 3 were BAME women and 2 were BAME men. There was evidence (pages 927 to 928) which we accept, that there were legitimate reasons for disciplining those subject to a formal disciplinary process. The alleged underperformance by JG on which there was common grounds (failure to renew insurance) had been raised with him. MA remarked in oral evidence that he did not take formal action against the claimant when she was late on a couple of occasions. Taken as a whole, there is no evidence to support the claimant's assertion that lower standards of performance and conduct were applied to male staff that to female staff.

114. The allegation in relation to training is that MA said that training was not available for the claimant to obtain the Chartered Institute of Marketing certificate

and that there was no budget for training as previously agreed. The claimant points to a statement in her 2017 appraisal and compares her treatment with that she claims was received by JG. She gave evidence in her statement (para.92) that MA had said that this training would be available in her appraisal. She went on to say that it never materialised even when she requested it – although she did not specify in the statement when she said the request was made. The only other evidence she gave about this was that in her interview MA had said that this training was not available (claimant's statement para.218). When asked about this in oral evidence, the claimant accepted that she had never gone to MC and said there was a course she could do and that she had not raised it before the interview on 15 March 2018.

115. In the claimant's amended supervision notes from a meeting with MC on 26 October 2017 (page 690c(xvi)), the claimant is recorded as having said that she needed to develop professional skills and expertise and it was agreed that she would pursue the training agreed in the last appraisal. "[MC] encouraged the budget to be used and [the claimant] makes time to invest in her development." The reason the claimant apparently did not have training in marketing prior to the interview seems to us to have been to do with the claimant not allocating time to pursue training and not with management taking a position that training was not available for the claimant. In the appraisal (page 690j @ 690l) the question was asked what additional skills, knowledge or resources did the claimant need to develop and deliver the marketing strategy for a business hub? No specific training course was mentioned.

116. Since there was a budget of £500 per person for training, we consider it unlikely that a request for training by the claimant in her interview was rejected outright. We reject that allegation. The question of whether the claimant was appointable subject to training is one which we will address when considering the interview process as a whole.

117. Another complaint of less favourable treatment is that MA refused the staff a Secret Santa in Christmas 2017 allegedly in deference to JG's wishes. The claimant refers to this as being an example of special treatment of JG (see her statement at para.74). She does not say that, in doing so, she was treated less favourably – it is implicit that the Secret Santa exercise did not take place for any of the staff so all were treated the same. She does not say that it was her request or explain how she was treated less favourably in relation to this incident; it is alleged that it illustrates favouritism of JG by MA. We prefer MA explanation that he was conscious that it was not within everyone's budget to spend on Secret Santa (MA para.44). It was suggested in cross-examination – although this was not the claimant's case as set out in her statement – that MA was stereotyping the majority black company as being low income. He denied that, referring to some staff being on part time contracts and this seems to us to be a plausible and credible explanation.

118. In early February 2018, when the claimant was asked to recruit celebrities for the Granville launch, the claimant told MC that there was a possibility that she could get a celebrated, black writer to attend the Granville opening (see the claimant paragraph 169). MC was "unable clearly to recall the conversation" (MC para.33)

but understood from what the claimant said about the writer than he was close to a political movement.

119. We can understand why the SKT should be keen that they should be seen as apolitical and open to all and accept that that was an objective of the Trust.

120. MC gave clear and consistent evidence that when the claimant mentioned the writer, he had no knowledge of him. We think it fair to describe the individual as relatively well known, however, having carefully considered MC's evidence that he had not at that time heard of him, we accept it. The claimant describes him in her statement as "a black writer, social activist and member of the Rastafarian movement" but does not say how she described him to MC. Her allegation was that the reason why the suggestion of the writer being present at the open was rejected was because he is pro-black but accepted in oral evidence that she had made that assumption because MC had not given a reason for rejecting her idea.

121. We do not think it possible to make detailed findings about exactly what the claimant said because neither she nor MC gave clear evidence about the words used. It was put to MC that the claimant had said that the writer was pro-black but she herself did not expressly say that. However, we are persuaded that whatever the claimant did say caused MC to think the writer, who was not known by name to him, was affiliated with a political movement. He reasonably thought that that was something which SKT did not want to be associated with. Everything about way the respondent planned the launch event to invite the whole community demonstrates to us that they planned it to be an entirely inclusive and diverse event. It would be inconsistent with that approach to reject the suggestion that a particular celebrity be invited on grounds of race. We have concluded that MC did not apply a stereotypical view when saying he thought the idea unsuitable but reacted because of something that the claimant actually said which caused him to think there was a risk of politicisation were this writer to be invited.

122. No examples were provided to us of the allegation that MA had shown the claimant's work to people inside and outside the organisation other than that of the impact report (see the email dated 1 November 2017 from MA to the claimant at page 1098). It appears from the email that MA had shown a draft impact report to JG (and not to people outside the organisation) "to give it a proof read too (sic) as someone who hasn't been involved". JG's comments suggest some alterations to style and some grammatical or typographical corrections. MA states that he is "happy for you to decide which ones to proceed with, some of it may just be style which doesn't need changed". This suggests that MA acknowledged that there can be two equally valid styles of writing and rather than being critical of the claimant he states that she can have the last word. MA's evidence, which we accept, is that if he was writing a document he would himself ask someone to proof read it and denied that it was to subject the claimant to scrutiny and criticism. The reason he had chosen JG was that he had not been directly involved in drafting the impact report and therefore could be objective about the report (MA para.42). In this, the claimant does not appear to have been less favourably treated.

123. One allegation which arises out of the conversation between the claimant and MA on 1 February 2018, and which the claimant covertly recorded (page 610a and following) is that he ignored concerns raised by her about MC's competence and conduct and told her that any grievance would go nowhere. The covert recording does not support the claimant's evidence that she did raise such concerns. Her evidence was that the recording did not capture everything but ended part way through the conversation and that she dictated a note shortly afterwards as an aide memoire about the part of the conversation which had not been covertly recorded. That note is at page 610hh.

124. We have considered whether to accept the claimant's evidence about this (see her paragraph 201) or whether to accept MA's evidence that he told her that if she had any concerns about her treatment she should submit a grievance (MA para.72). The transcript of the covert recording does appear to end in the middle of a sentence (page.610gg). However that does not, of itself, answer the question about whether the note on page 610hh is a reliable record about what was discussed.

125. There is nothing to say how long after the meeting the note was dictated. It is recorded that the meeting took place "today" but not at what time the dictation was made. The transcript of the recording shows that the claimant quite quickly raises her difficulties with MC (see page 610b) and MA tells her that if "it's about [MC] then you need to speak to him unless it's something more formal and then you speak to me". This is consistent with his evidence to us that he said that he wasn't going to get involved unless it was formal (see also page 610g).

126. Elsewhere, the transcript shows that the claimant explained that she had been upset by the email (referred to at paragraph 98 above), that she had spoken to MC about it, that he had apologised and she had accepted his apology (page 610k). After MA drew the distinction between her trying to resolve things informally (in which case he would not get involved) or whether it was more formal, the claimant says that "if it continues then for me that is the next step "(page 610h).

127. We contrast that with the wording of the claimant's note at page 610hh which records something similar, using far more explicit words than the claimant actually used (to judge by the covert recording) when talking to MA.

> "I did say to him that I would escalate the situation if it continued and he said basically explicitly that disciplinaries are pointless. It won't go anywhere, and I said to him, "Really?", and he said, 'These things always end badly, people don't like each other, no one ever stays. One person has to leave."

128. We consider that what she records in her dictated note is inconsistent with her previous tone (as we see from the covert recording); it is a significant change of tone for her to be so vehement. Her evidence was that, despite having already discussed making it formal and moved on, the discussion returned to that topic in the section which was not captured and that was when the comment she relies upon as suggesting a grievance would be pointless and as not taking her complaint seriously was made. We reject that evidence. It would be inconsistent

with the discussion which was recorded where, overall, MA made clear that the claimant could make grievance if she wanted to. We prefer MA's evidence about this conversation. In any event, the claimant herself makes clear that she was talking about a potential grievance against MC. The covert recording shows a conversation in which she reports an incident which she felt necessary to speak to MC about but for which he had apologised and she had accepted his apology. There was nothing further that MA should have done as a result of the information provided to him at that stage. We rejected the allegation that MA said words to the effect that the claimant's grievance would "go nowhere" during this conversation.

The redundancy process

129. The Trust Handbook includes a Redundancy Policy which is at page 378. In paragraph 4.3 of the policy (page 383) there is a discussion of the approach to offering suitable alternative employment under that policy. In judging whether or not a post is suitable alternative employment to be offered to an employee, there should be considerations of, among other things,
    a. The job content and person specification of the new post, and
    b. The responsibility and status of the new post.

130. We also note paragraph 4.3.5 (page 385) which sets out, in essence, the question those considering redeployment of existing employees need to make when considering whether a vacant post is a suitable alternative. This provides that,

> "An individual will only be redeployed into the new post where their ability to carry out the requirements of the post (or their potential to do so within a reasonable period with such level of training as is regarded reasonable and within the resources of South Kilburn Trust to provide) is established by means of the selection process."

131. It is clear from the organisational change report (page 690a) that the claimant's job description was intended to be reviewed as far back as May 2017 and that that did not happen within the timescale originally envisaged. No evidence has been put before us to show that the claimant knew that that was a possibility at the time.

132. The record of the stress risk assessment on 7 December 2017 (page 690d(x)), which we have accepted to be a reliable document, shows that MC and the claimant discussed her workload and it was recorded that there was a lot of input into communications at that time due to the pending launch of the Granville.

133. Although the claimant has alleged that the respondent refused to give her a pay rise, she accepted that she was twice awarded inflationary pay rises and had never asked for a pay rise or role evaluation before the events of December 2017 to February 2018. The complaint of sex discrimination at issue (xii)(e)

should not be understood as being that she was never given a pay rise but is linked to the review of the claimant's job description which MC agreed should also involve a review of the appropriate salary for the role. The claimant contrasts her treatment to that of JG.

134. Part the claimant's complaint is that she was "tricked" into redundancy by MC and this allegation arises out of the review of her job description with which MC had been tasked.

135. On 15 December 2017, the claimant met with MC who told her that he was working on the marketing and communications work plan for the Granville for the next 6 months. He provided the document at page 690y and remarked that there were "no nasty surprises in the document". The claimant said (her para.173), and we accept, that MC told her that he was still working on amended her job description and she would be presented with a final copy of it in the New Year.

136. The inference we draw from that that this was not the first time a revision of the job description had been mentioned and this is consistent with the claimant's information to PB (in the grievance investigation meeting – page 736k) that there had been discussions around changing her role which dragged on for around three months. However, it is accepted by the respondent that MC did not warn her of a potential redundancy on 15 December 2017 when he told her that he was "still working" on an amended job description. We find that, if he was still working on the job description then, as at 15 December 2017, it had not yet been reviewed by MA or the HR advisers.

137. We see that, on 2 January 2018 - page 1124q, MC sent the claimant the 2018 Marketing Plan saying it was for discussion "some details are not finalised such as who the work is allocated to and some of the timeframes".

138. On the claimant's account, on 4 January 2018 when discussing the potential changes to her role, MC asked her whether her salary had even been reviewed. When she told him that it hadn't he said that they would get it reviewed. She went on to say that she asked whether the salary review could be backdated and MC replied that she should make her case on that. This led her to provide the email at page 690a(i). The fact that this was provided to make the claimant's case for deserving a retrospective pay review explains why it addressed her existing job description and put forward as the "additional activities take up in the last year".

139. The application for any pay review to be retrospective was rejected and the claimant does not specifically complain about that. The email is principally relevant as evidence of what the claimant put forward as being her key achievements since the April 2017 appraisal. We consider that this provides minimal evidence of C being involved in marketing activities in 2017as that term was understood by MA and MC. She obtained sponsorship of an event in the sum of £5,000. She claimed to have developed and implemented the command marketing calendar but it was disputed by the respondent that that was in fact done.

140. MC's account of 4 January 2018 is that it was the claimant who asked for a pay review rather than he who raised it. Nothing turns on who first raised the question pay review. However, we do take note of the way the claimant described the conversation in the grievance investigation meeting with PB on 12 June 2018 (page 736k). There she told PB that MC asked whether she'd had the role reviewed and then she asked whether the salary could be reviewed and that was agreed. It was when she asked for any review to be backdated that MC asked her to put forward her case on backdating which led her to put forward the email at 690a(i) as we have already said.

141. Given that MC's account corresponds to the claimant's earlier version of events, we tend to think his recollection is more reliable. We are clear that the claimant did know that her job description was being reviewed and that marketing was to be the main focus of the role going forward because it was to be a key objective of the organisation. Hence the detailed marketing plan worked on by MC. We do not think that a firm decision had been made by 4 Jan 2018 that the differences between her existing role and the new role meant that the claimant could not be assimilated into Marketing and Communications role.

142. By an email of 15 January 2018 (page 1126a) MC instructed an organisation called 26Consulting to benchmark the salaries of the Facilities & Office Manager and the Communications and Marketing Manager. JG had been in the Facilities role for 6 months at that point, having been assimilated into that role from the Operations Manager role. We find that MC then agreed with RD and MA that the successful candidate for Marketing and Communications Manager would have a salary of £38,000 (being the top of the benchmarked figures) in order that that should be the same as JG's salary (although that was set at the middle of benchmark figures). In his initial email, MC forwarded the first job description and sent the second one on 19 January 2018.

143. MA's statement evidence (para.43) is that he was aware in December 2017 that MC agreed to review the claimant's job description with 26Consulting. This is directly contrary to the email evidence (which evidences only a salary benchmarking exercise) and also MC's oral evidence which was that reviewing the job description would be out of their remit. He goes on to say in the same paragraph that the proposal for the job description was something they obtained independent advice as a consequence of which they decided not to independently review the claimant's then role but review the pay for the proposed new role.

144. We find that it is common ground that, on 4 January 2018 , the claimant was not warned that Engagement and Communications Manager role was to be deleted. By the week of 15 January 2018, when he forwards the revised job descriptions to 26Consulting, MC knew that was role henceforth known as Marketing and Communications Manager (as it is worded on the job description). The claimant was still unaware that her existing role was regarded as redundant. We also note that MA was on leave in January 2018 which probably delayed finalizing the revised job description.

145. Chronologically, there are then the meetings between the claimant and MC on 30 January 2018 and between the claimant and MA on 1 February 2018 which she covertly recorded. She expresses herself as being shocked that MA informed her that he wasn't sure about her marketing skills. This is a reference to page 610u to y where he said (editing out the claimant's non-verbal answers)

> "I suppose I need to … I don't fully understand your knowledge and skills in this area … So that's why, in a way we want to try to bring in some other people to try and help us … I think the big shift is that what we've done is community communications. So we've been putting information out .. umm. Well, if what we're doing now is that we need people to call us up and say, I'm interested in that space. So it's a shift from communications and community communications to marketing […] and that I hadn't seen you do. I'm not saying you can't, umm but I want to see more marketing stuff and creative ideas of the different ways we can do marketing that are not coming from me."

146. This is entirely consistent with the explanation to us about the difference MA saw between communications and marketing and was not, we find, a lack of confidence in the claimant's abilities but a reflection that her role had not up to that point involved much marketing but that was going to change. We understand that communication is very important in marketing because the opportunity and the brand need to be effectively communicated in order for the target client to know how to access the service. However MC and MA used the term marketing to refer to the element of the role which converts communication to and engagement with an individual into securing a paying customer. That is the distinctive and defining element of the Marketing & Communications Manager's role as it was finalised in January or February 2018.

147. The claimant was told that her existing role would be redundant on 6 February 2018. The extent to which MC disagreed with the claimant's paragraph 206 was that he disagreed that *the claimant's* salary was reviewed but said that he had told her that the salary for the *new role* was benchmarked. This is consistent with the email from 26 Consulting at page 1126a. We accept that, at some time between 4 January and 6 February 2018 the respondent received advice that the changes in the job description between the Communications and Engagement Manager role and the Marketing and Communications Manager role were so significant that it was necessary to carry out a redundancy and selection process. The respondent's redundancy policy does provide for this. We accept MC's oral evidence that the claimant could not be assimilated into the role because independent HR advice had been received by him and MA that the roles were material different.

148. It is true that we have not been taken to written advice or to board minutes or internal emails to date the receipt of this advice more precisely. From the claimant's perspective it must have come as an unpleasant surprise because the meeting on 6 February 2018 was the first indication that she had that her role was being deleted from the structure. No doubt she was caused uncertainty when she had not expected to feel uncertainty but we reject the allegation that this amounted to a trick or that she was in some way tricked into redundancy.

149. The claimant was sent a letter to confirm that she was at risk of redundancy on 13 February 2018 (page 690a(x)). This informed her that the her post would be deleted and said that her options were to apply for one of three current vacancies which included the Marketing and Communications Manager role.

> "Should you wish to apply for either of these your application will be considered on a ring-fenced basis, and following an appropriate selection process, if you meet the criteria required for the role you will be appointed. You will not be assess against any other candidate."

150. We are satisfied that, both in terms of the change in job description and the details provided by the claimant about the tasks she was doing compared with the tasks to be undertaken by the Marketing and Communication Manager, the changes to the role were very significant. We are also satisfied that the new role was genuinely needed. We therefore conclude that it was appropriate for the respondent to make the appointment to the new role by requiring the claimant to undergo a non-selective interview for this role which was ring-fenced for her and by deleting her existing role from the structure. The uncertainty about the time at which the respondent realised that this was necessary does not seem to us to be a reason to doubt the respondent's explanations for their actions.

151. It was suggested by the claimant that MC edited the notes of her supervision with him on 26 October 2017 (page 690c(xvi)) in order to minimise the amount of work she had done, in particular to minimise her involvement in marketing. We reject that and accept MC's evidence that he had corrected typos and made changes in order that the notes were written in the third person. Additionally, we accept his evidence that

> "Marketing would not have been taking place - marketing is [done] with [the] aspiration to produce an exchange and there was no such activity taking place at that time. We were still in the communications phase."

More reliable documents to show whether the claimant was involved in substantial amounts of marketing prior to the creation of the role of Marketing and Communications Manager are her appraisal and her email dated 5 January 2018.

152. We reject the claimant's evidence that MC told her that she had to resign in order to apply for the Marketing and Communications Manager role We think it likely that that is what she understood because it caused her to take union advice, as AC confirmed. However it would be clearly wrong in law and it is inconsistent with the letter he sent a few days later so our conclusion is that, whatever it was that he did say, it was not that the respondent had a requirement that she should resign in order to apply for the new role.

153. It seems that the proposed consultation meeting on 22 February 2018 did not happen, possibly because the claimant applied for the vacant role of Marketing and Communication Manager role although there is no documentary evidence to show a communication expressly confirming this. Her application was made

by a covering letter dated 28 February 2018. She was interviewed on 5 March 2018.

154. The claimant's criticisms of the interview are set out in her paragraphs 214 to 219 and are that:

   a. MA was unexpectedly on the panel;

   b. She was told when she walked in that it was just a chat but it actually felt to her like a set up. See page 824 and the claimant's answer to Q.4.4 asked during the grievance appeal meeting with RJ – she told him that she approached it as though it was for a new job.

   c. MA was very harsh and fired questions at her;

   d. She was not allowed to talk about any of her achievements at the Trust;

   e. She had to prepare a marketing strategy for the Granville on the spot because she had not been forewarned of the need to do so;

   f. She wasn't asked communications based questions.

   g. She was told she would not be able to be trained up to a Chartered Institute of Marketing qualification.

155. The panels' interview notes are in the bundle: MC at page 618; MA at page 623 and RD at page 629. The questions seek evidence based answers and are apparently designed to be relevant to establishing whether the claimant had the experience and qualities sought on the job description. Questions such as 4 & 5 allow answers to be given which can be objectively tested. The answers were scored independently with different scores given by the different interviewers. The claimant was given time off to prepare for the interview (RD para.41 – evidence which was unchallenged).

156. In our view, it was entirely reasonable for the panel to ask a question about marketing strategy given the requirements in the person specification. The claimant wasn't asked to present a marketing strategy for The Granville – she was asked "What is your strategy to ensure the highest uptake of workspace and venue hire and maintain this over the next 2 years?". She was not asked for a fully fashioned presentation – which she would have to be warned about. This was the key activity for the role in the next twelve months and that was well known to the claimant so it was reasonable to expect her to be able to answer that question.

157. We don't read anything into the passage in parentheses in question (5). The panel knew it was a ring fenced interview with only one applicant and it was not expected by the claimant to be a rubber stamping interview but one which would fairly test her abilities for the role. In that context it is not unfair to probe the candidate's approach to marketing the two different potential sources of revenue (see her answer to RJ in the grievance appeal to the effect that she

hadn't intended to make the mistake of thinking that because it was a ring-fenced interview it would not be probing).

158. We accept that the additional questions were appropriate follow up questions (or supplementary questions as MC said) rather than an attempt to catch her out. The questions were predominantly focused upon marketing because that was what Trust needed from the post holder. That was also clear from MC's answers to RJ at the grievance appeal (page 899 answer A.18.0) when he said that whoever was appointed should be better than him at marketing.

159. The claimant's evidence that the panel stopped taking notes part way through the evidence does not cause us to conclude that the panel did not pay attention to the answers she gave. All the questions have answers filled in. It was not suggested before us by the claimant that the interviewers' notes do not fairly reflect the answers which she gave. She does not argue that the scores are not suitable scores for the answers which she gave. She scored and average of 25.3 – the benchmark for being appointable was 27. It was argued, in effect, that this was a near miss and that any deficiency could be bridged by training.

160. We note that MC had turned down an application by the claimant for leave which would have been taken just before the launch. This was because he expected her to be in post and she was critical for the team in the opening of the Hub in the marketing role (page 899 A 15.0 in the minutes interview RJ and MA). This suggests that MA and MC had expected the claimant to be successful. They expected her to be appointable and that is also consistent with MA's comments about his belief about her capabilities in the covertly recorded minutes of 1 February 2018 meeting.

161. In grievance appeal the claimant told RJ that, in the interview, MA had told her that she had to talk about new ideas (page 826 A4.8). This is slightly but significantly different to being told that you cannot talk about past achievements. We did not have direct evidence on when that was said but if the claimant was asked to focus upon strategy for future in role that contains different elements to her current one then it was not, in our view, an unreasonable comment. Her explanation of this criticism is different again when she explained it in her grievance: see page 659 para.k where MA is described as saying that examples of activities done for the Trust were good examples but that the panel wanted to hear some other things. We find that the respondent did not exclude relevant examples from her role at SKT because they note them in the record of her answers.

162. So far as training is concerned, the reason that the training referred to in the appraisal (page 660) was not implemented was that the claimant did not approach MC with a costed request for training to use the allocated staff training budget. We reject the claimant's evidence that she was told she could not have specific training during the interview. In our view, the respondent's evidence that, even with training, the claimant was not appointable is justified by the evidence that was in front of them in terms of the answers that she gave.

163. When MC was cross-examined about the specific point that the claimant was close to being appointable and that training and a trial period should have been offered, his evidence was that he did not think that that was fair on the Trust. "… the launch of The Granville was the single biggest milestone in organisation - giving up 2 weeks [to train the claimant] when there were 6 weeks to the event" and he said that there were urgent business needs at that point. MA also made the point to RJ (page 899 A 17.0) that there was no one in the organisation for the claimant to learn from.

164. We accept that the interviewers based conclusion on whether the claimant was appointable entirely on the interview. One matter which was raised in argument before us concerned questions about timekeeping. Although there was concern because of the time the claimant taken to produce the Save the Date flyer, what the panel sought was not to mark the claimant down because there had been a delay with that particular project but was evidence from her about how she would approach time management – they marked her on her response in interview to a question raised because of knowledge of her timekeeping. This is not, contrary to the claimant's belief, an example of inconsistency compared with asking her to give examples in her answers other than from the work she did for the Trust. The respondent expected her to have had greater marketing experience from previous roles than was evidenced in the interview.

165. This was raised when the claimant received feedback from the interview orally on 8 March 2018 (page 632 are the notes and page 637a the full transcript of the claimant's covert recording of this meeting) and then in writing (page 690.b(xi)). We can well understand that a response when asked how she would manage timekeeping of "if I miss deadlines, it's for a good reason" would cause concern.

166. There was then an invitation to a formal redundancy consultation meeting (page 690) on 15 March 2018. It is alleged that MC adopted an unfair procedure at this regarding the minute of the meeting, by telling the Claimant not to tell anyone about the redundancy process and by putting pressure on the Claimant to accept a settlement.

167. The claimant covertly recorded the meeting and her version of the minutes is at page 650a. As with all the covert recordings the claimant accepted in her evidence that by omitting to tell MC that he was being recorded she had been dishonest by omission. It was clear to us, in relation to all the meetings she recorded – even the earliest – first, that she believed that the respondent's managers were being dishonest and secondly that she thought that she would capture something incriminating.

168. The claimant complains that MC told JG (who was taking notes) not to minute a passage about the claimant asking whether help was needed with Tweets. We note that in the full transcript of this part (page 650m - removing the non-verbal affirmative comments of C and MC) MC says "The things about emails and Tweet, we probably don't need minute. (RO: It's cool). I mean that's just work. That's not this." She says cool again.

169. This suggests to us that MC said at the time said not to minute that because it was work related and not redundancy consultation related and that, at the time, the claimant assented to that.

170. It appears to be the case that MC tried persuade the claimant to agree to enter into a settlement agreement by the offer of an extra months' salary. He says that, otherwise, she wouldn't get "anything near what I'm proposing" and that a settlement agreement could be confidential and that the message put out to the wider community could be chosen. He suggests that this would give her the best opportunities going forward. Although we are of the view that to describe an extra months' salary as not "anything near" what she would receive as hyperbole, in our view there is nothing in the words which suggests aggression or undue pressure. MC contacted the claimant about the proposal a couple of times by mail and once by text over a few days. We don't see anything particularly unusual in this level of contact given that they wanted to resolve the situation and to have certainty regarding such an important post at a critical time.

171. The claimant started a period of sickness absence on 3 April 2018 and did not return to work thereafter. She was paid SSP after June 2018. She raised a grievance on 29 March 2018 (page 1215 and 651). The redundancy process was put on hold during the investigation of that grievance which we consider in detail below. To conclude the chronology of the management of the claimant's sickness absence and her redundancy process, she was referred to OH on 18 October 2018 (page 969a) when she reported that her GP had diagnosed extreme stress and reported a number of current symptoms which the specialist practitioner opined was impacting her ability to be involved in the redundancy processes. The claimant felt that a face to face meeting would be difficult and the practitioner made some recommendations for proceeding with a redundancy meeting in those circumstances.

172. MC wrote to tell her of the vacancy of Facilities Coordinator in October 2018 and the claimant stated that it was not suitable for her on 24 October 2018.

173. Her employment was terminated on 9 November 2018 when she was given one month's notice which she was not required to work out (page 967e). She was given the right to appeal but did not exercise that right. Her employment therefore terminated on 7 December 2018.

The Grievance process

174. The claimant's grievance was sent to the respondent on 29 March 2018 (see page 1215). She describes it as containing "a number of issues and concerns I have about my impending redundancy and the Trust" and sent it to the governors directly but expressly excluded RD and explain "I have not included [RD] in this email as the grievance includes her. I trust that the Trust's grievance policy will be followed and [RD] and the other staff members mentioned, will not be sent this document, nor will they be informed of its content outside of the grievance process."

One of her complaints is that part of her grievance was allocated to RD despite that request.

175. The grievance itself is at page 651: there are 38 pages and 7 separate sections. The SKT board took the decision that sections 5, 6 and 7 were concerned with governance and that they should be investigated as such and a governance report produced. This was because the claimant made allegations in those sections about the treatment of others than herself and mismanagement and a discriminatory culture within the Trust. This part of the investigation was allocated to RD as she says in her para.19.

176. The individual grievances about the claimant's own treatment was allocated to PB, a trustee. He met with her on 12 June 2018 and explains the delay before that first meeting which we consider was unfortunate but adequately explained (see page 754). The claimant covertly recorded her grievance meeting with PB on 12 June 2018 (page 708 with the fuller version of the transcript is at page736a). The respondent's notes are at page 737.

177. PB then met with MA, MC and RD (pages 746, 749 and 751) on 15 and 18 June (MC and RD by telephone) and gave the claimant an outcome, dismissing her grievance on 21 June 2018. The redundancy process was paused during the grievance and on 22 June 2018 PB told her that it would be restarted (page 1251a). The claimant appealed on 10 July 2018 (page 761). The appeal was allocated to RJ who wrote to C on 24 July 2018 (page 1275) saying that he would be hearing it. RJ received the relevant paperwork between 25 July and 20 August 2018 and attempted to arrange a meeting sooner than 24 August but the claimant's union rep (AC) was unavailable. The meeting of 24 August 2018 was recorded by the respondent and minutes produced by the notetaker who had been present at the meeting with reference to that recording although SKT did not produce a verbatim transcript and did not seek to say that the minutes were verbatim. The other steps taken by RJ to investigate the appeal are itemised in pages 865 to 866 and include checking further details with relevant witnesses by email and the claimant and interviewing JG.

178. Sections 1 to 5 of the grievance refer to bullying, harassment and "one rule for one and another rule for others". But the first express reference to racial discrimination and sex discrimination is in section 6 where the claimant says "I believe that the way that I have been treated is because of my race". She then goes on to analyse the ethnicity of staff and contractors whom she alleges have recently been ejected from SKT. At pages 676 d., e., f., g., and h., she makes allegations about comments and behaviour by MA that she has raised within these proceedings as individual acts of discrimination targeted to her because of race.

179. We haven't heard from PB despite him still being a serving Trustee. His outcome letter is at page 753. He identified (see page 755 point1) that the issues the claimant raised included "a culture of mistreatment towards staff from senior staff and leadership staff, and that this alleged mistreatment adversely affect relations between you and your line manager and your treatment as an employee." The bullet point at top of the page records the decision that "A set of wider issues

that you raised relating to other employees' treatment and organisational issues would be taken forwards by a Board-led process. The Board is reviewing the outcome of this review at its meeting in July."

180. What we infer from this is that PB limited his investigation to sections 1 to 5 (which do not expressly use the word discrimination), leaving the discrimination allegations for the governance review although it is improbable that, as a board member, he was unaware of the terms used by the claimant in section 6. Indeed, RD's evidence was that she understood that that PB had been sent the whole grievance.

181. In limiting his investigation in this way he did not address the claimant's complaint that she, as an individual, had been less favourably treated because of her race. There is no sense in the interview by PB of the claimant or in his outcome that PB expressly addressed what we consider to be the claimant's clear complaint that she had been treated less favourably because of her race. Neither do the minutes of the meetings with MA (page 746), MC (page 749) or RD (page 751) suggest any enquiry into whether the claimant had personally suffered racial discrimination. We have no explanation from SKT for his failure to ask these questions in his investigation other than his own words in the outcome letter. These amount to an explanation that he thought that the board were dealing with that aspect. The consequence of that division was at the first stage, the claimant's individual complaints were not considered as allegations of harassment and discrimination. The turnaround by PB is remarkably quick considering the breadth of the allegations and his answers are brief.

182. RD, on the other hand, did not interview the claimant or the other individuals named by her in section 6 of the grievance when compiling her governance report. She wrote on 13 July 2018 (p.1261) saying that her review covered sections 5 to 7 apart from passages redacted "where they are being considered separately under out grievance procedures". The claimant responded expressing concern about whether RD was able to lead a review of her complaint without sight of all of it and pointed out that she, herself, had not made any redactions.

183. It was suggested to RD that SKT had allocated the governance aspects to her because they wanted to keep hold of the narrative of how the Trust responded to race discrimination allegations and that she should have allocated the governance report to someone else. Her response was that there was no procedure for how such a report should be done and she kept hold of it as the most cost effective way to carry it out. We accept her oral evidence about the length of time the review took her and why it took her less time than it would have taken a third party engaged at a direct cost to SKT

"Doing the governance review took [me] 30 working days. Add that up and see what [it would cost] at a legal rate whereas the independent oversight and scrutiny [by the legal adviser] took 2 [days]. Moreover, part of the point of me doing the governance review is that I have the sort of knowledge of the Trust [it would] take so long for someone else to acquire – [that would have taken] more than 30 days' [work]."

184. It is very clear to us that the reason why Trust allocated the governance report to RD was the cost and efficiency of using her rather than a paid investigator who would not have had background knowledge that enabled quick access to the relevant information. Furthermore, the process might well then have been delayed.

185. The claimant had requested that the grievance should not be sent to the subjects of it (page 1215). Apparently the Trust's policy is not to send the actual grievance to the individuals about whom complaint is made. The combination of separating the grievance into two, allocating the governance part to RD, the need to keep the grievance confidential from her, and PB's apparent failure to consider those parts of section 6 which raise race as a reason for different treatment meant that the claimant's complaints had not been properly investigated by the time RJ became seized of the appeal, in our view.

186. The problem with the approach taken in dividing the grievance into two sections is that the claimant is alleging that there is a culture of discrimination against the backdrop of which she has suffered individual acts of harassment and less favourable treatment on grounds of race and sex. If the person seized of her individual grievance considers it without knowledge of the evidence on the issue of whether there is a culture of racism/sexism then they do not have available to them the evidence upon which she relies for her individual complaint.

187. However, it is clear from RJ's outcome letter of 18 September 2018 (page 861 @865) that by the time he concluded his appeal the SK Governance Review (page 912) was complete and he had seen it. Indeed he included it with his outcome as an appendix. This may have been happenstance but it does mean that, had the governance report revealed matters of concern about a culture of racism and/or sexism RJ would have been able to and we are confident would have taken it into account. The claimant was sent the whole governance report with all appendices.

188. The outcome covering letter (page 861) sets out those documents which are copied to the claimant. In the grievance appeal outcome itself, RJ shows that he engaged with the relevant factors of the complaint by the claimant. He made clear findings about what had happened when in relation to the redundancy, that the role had genuinely changed, that the redundancy process had not been a ruse to exit the claimant, that the process was fair and that the judgment that she "did not display the senior level experience that is required by the [SKT]" was "nothing to do with your race and sex" (page 874). In Issue 4 (page 876) RJ investigated and reached conclusions on the allegations of "bullying, harassment and unfair treatment and race and sexual discrimination **as it relates to you**" which should have been covered by PB. Having read this outcome, our view is that it bears out his oral evidence about the amount of time he spent on this appeal and that it is comprehensive and thorough.

189. There is a specific complaint that RD blind copied MA into an email dated 13 July 2018 requesting further information from the Claimant regarding her grievance. The email in question is at page 1270 as received originally by the claimant and at page 1270a as disclosed to the claimant in response to her

DSAR. The latter shows that RD blind copied MA into the email. The request made is of a comment in the claimant's "Next Steps" section where she says that she has further information in the form of "a catalogue of instances of poor conduct and failure to follow Trust policies and guidelines". This is said to show a lack of impartiality at SKT.

190. In our view, there is a difference between an individual having a vestigial administrative role in processing a grievance or in arranging the logistics for it and them having an involvement in the outcome or an improper influence. We think that in the case of a small organisation where MA is the CEO blind copying him into this request this is not something from which adverse inferences can be drawn. We see from page 1279 that he was communicating the timetable for the outcome so that it could be presented to the Board. Furthermore, as RD said,

> "without his involvement I would have had no data to carry out the review on staff numbers and ethnicity and so on. All that data had to be got from the Trust and his job to provide the data. He was involved in that sense. Didn't see what I wrote until the end."

We are satisfied that he did not have any involvement in the decision.

191. There was then an exchange of correspondence between RD and the claimant (pages 1263 to 1269) the upshot of which was that RD advised the claimant to provide any additional information concerning allegations her personally to RJ. RD asked the claimant to send to her any information then in her possession which did not involve allegations against RD personally but which was relevant to the governance review. This led to emails from the claimant to each of RD and RJ at page 1263.

192. RD did not speak to the individuals named by the claimant in her grievance as being those who had also been subjected to less favourable or suspect treatment.

193. Her explanation for that was that the governance review

> "Was designed to look at the evidence that if that [the allegation that SKT was predominantly ejecting female black employees] was were true, what would the statistics show about the pattern of arrivals and departures. What sort of indicators to look for in organisation if bullying and harassment."

194. RD explained that she had done training in equality and diversity and had been told not to look for the most obvious thing but to look for the indicators that might indicate discrimination. She was also uncomfortable that she would go and talk to people who had made no complaints and then might have no basis on which to decide whether any complaints they then made were valid or true. She therefore concluded that evidence gathered in that way would not be safe to rely upon. She decided that looking at the data of who had resigned, left for other reasons, joined, been recruited would tell a more reliable story as well as looking at sickness absence which she considered to have the potential

indirectly to reveal if there was a problem. She emphasised that there was no precedent for how to carry out such an investigation.

195. We note that the claimant did not put the individuals forward as having specific evidence to corroborate allegations the claimant makes about her individual treatment but as having their own experiences – which they had not previously complained about. We have come to the view that, from the perspective of SKT investigating the claimant's allegations it was a sensible approach to see whether a culture existed by analysing the objective data in the way that RD did. We are of the view that she was entitled to rely upon the fact that no contemporaneous complaints of racism, other than the claimant's had been made. Our view is that the governance report is sufficiently thorough in terms of what it purports to be.

196. The former staff in question are those people relied upon by the claimant in the hearing before us as indicating a pattern of exiting black female staff from the business. These are our findings about the circumstances in which they left the Trust:

a. LB (black ethnicity): We made detailed findings about her in paragraphs 46 to 48 above. It is clear that she left SKT voluntarily because terms for her consultancy could not be agreed and Trust's business requirements did not align with her personal interests for her career. Indeed that was LB's own evidence. We accept that MA encouraged her to apply for The Granville Hub Manager role (the one to which DI was appointed) but she did not want to do so. She moved from employee to consultant because she did not want to be involved in line management and we accept that MA had wanted her to stay.

b. RR (described to us as being of mixed race): She was formerly the Community Projects Manager and was made redundant in November 2017. We find that the strand of work she was doing was no longer going to be funded from Trust's reserves. The future role which is indicated on page 690b was not one which was created in the end, according to MA. There was no evidence presented to us from which we could infer that this was not a genuine decision.

c. WH (described to us as black): she was formerly the Employment Assistant. See the claimant's grievance at page 671 and MA's statement at paragraph 87 which confirm that WH was on a fixed term contract. As MA went on to say, the SKT had decided to reduce their employment support work and a DWP-funded project was ending. We accept that the employment team was being wound down and that was the entire reason why WH's contract was not renewed.

d. BG (described to us as black): She was a former Employment Advisor who resigned. She raised a grievance and RJ conducted the appeal BG brought against the rejection of that grievance by RD (see the outcome letter at page 583). RD's outcome letter is at page 576. In the case of BG, we accept that RD already knew the reasons put forward for the

resignation and therefore had an additional reason why she did not need to speak to BG. The grievance was against MC and MA although her line manager had previously been LB, prior to her change to consultant status. She made allegations of bullying and harassment against MC and MA but those were not expressed to be on grounds of race. These were not upheld by the Trust and the investigations found that she was being managed for poor attendance and timekeeping which was impacting upon the service they provided to clients. There is nothing on the face of these documents to cause concern that BG's race or sex had anything to do with her resignation.

e. VD (described to us as of mixed race): She was formerly an Employment Advisor and was told that she would be made redundant, according to MA, because the SKT was winding down the employment support provision (as we have already explained para.47 above). MA's evidence, which we accept, was that JG resigned as Facilities and Office Manager and VD was promoted to that role. This does not, therefore, fit the narrative of a determination to exit black and female staff. The claimant suggested that VD's promotion was only because the claimant herself had made allegations that black female staff were being exited. This seems to us to be an attempt to explain away an action which does not fit her theory by means of an allegation which itself is not based on any evidence.

f. MO: The claimant's sister who was contracted on a consultancy basis as a Communications Officer. She doesn't complain of unlawful discrimination in her statement to the ET. She refers to "disorder and inefficient" (paragraph 4), a blame culture, and "unstable structure, a lack of clear direction and professionalism, and an unhealthy culture let the organisation down" (paragraph 23). She certainly doesn't cite racism or sexism as reasons why she did not continue as a consultant. She says in her paragraph 19 that MC said that they wanted to renew her contract in January 2018 but describes him never getting back to her with the details. She clearly regarded an email sent by MA as unprofessional (see her paragraphs 15 & 16). His explanation for that email was that he did not want her to trouble her sister with a particular issue during the claimant's bereavement leave – which we accept. However, there is no suggestion in her statement that the culture is different for people of different ethnicities. Inactivity in putting forward details in a proposed new contract cannot reasonably be said to be actions taken to exit MO from the business. MO's experience does not provide evidence from which it is reasonable to infer the culture of seeking to exit black females from the organisation relied upon by the claimant.

197. As we say, the evidence that SKT followed their redundancy policy and offered a vacant role to VD when she was under threat of redundancy – which, incidentally, is consistent with what they did with the claimant does not fit the claimant's alleged narrative. We do not think that this was a cynical act to mask underlying racism or sexism. This is, not least, because the attempt by MA to

keep LB within the organisation and adaptability to her preference is also something which does not fit that narrative. Furthermore, the appointment of DI as the Hub Manager (made prior to the claimant being warned of potential redundancy as well as prior to her grievance) cannot reasonably be inferred to have been because of the need to have a token black face as the claimant alleges.

198. RD analysed the leavers in one of her key statistics tables in pages 924 to 925. Table 6 shows leavers by reason, ethnic group and gender. Two made redundant (both female – one BAME and one white); 7 resigned – 4 BAME and 3 White. This table, prepared in 2018, covers all staff employed since 2013. The information is not segregated by time period. Over that period 2/3 staff were female (Table 1); 19/32 were non-white – or slightly over half overall.

199. When you unpick the underlying circumstances of the examples relied upon by the claimant they do not reveal a pattern of targeting black and female staff. We notice that the organisation has been through considerable change over the period. The job titles of the managers at the claimant's level show that the one managerial post that remains largely unchanged (having been assimilated into the Facilities and Office Manager) was managing the fabric of the building. There was clearly still a need for that role despite the change in business focus following the opening of The Granville. The post holder for the Facilities and Office Manager role is now a mixed race woman (VD).

200. The claimant complains of specific aspects of the handling of her grievance. So she complains of a refusal to provide her with the minutes of the grievance meetings at the time she requested them. She was provided with minutes of RJ's interviews with MA, MC, and RD. Our experience is that it is not uncommon not to provide copies of notes of the witness interviews to the person whose grievance it is. It is different to the situation which might be reasonable in a disciplinary investigation.

201. We accept that the claimant asked PB on 22 June 2018 for the terms of reference for the grievance (page 1251) and asked RD on 16 July 2018 for her terms of reference (page 1261). There is no need to provide her with those terms of reference; the policy for handling grievances does not require it. As RD said, there was no policy or precedent for conducting a governance review. She was given a full explanation of the actions of RD and the scope of her review within her report. We find it hard to see that the claimant was disadvantaged by not receiving that information at the time she would have preferred to receive it.

202. The complaint that the respondent had leaked the content of the claimant's grievance arises out of the email at page 1249 whereby PB sent MC, the Operations Director, a copy of the grievance outcome letter saying "Could I ask you to store/file as appropriate for this kind of personnel document". The email was copied to RD and MA. It was suggested to RJ that this action tainted the investigation he was reviewing because the "three main witnesses" were aware of the outcome and knew what to say to "toe the party line". RJ said that he would question that decision.

203. Our view, notwithstanding what RJ said, is that, for the most part the email was a purely administrative action because it is apparent from the face of the document that PB intended MC to ensure that there was a record of it. We see nothing sinister in communicating the fact that the grievance had not been upheld to MA and RD although better practice would have been not to forward the full outcome letter to them, in order to maintain confidentiality between them.

204. We have already commented upon the thoroughness of RJ's investigation of the claimant's grievance appeal. She alleges that he was guilty of intimidated behaviour in the meeting of 24 August 2018. In the first place, we are quite satisfied that AC would have intervened had he thought that by tone or wording RJ's questions had been intimidating. He accepted that in cross-examination and came across to us as an experienced representative who would have acted in his member's interests by intervening if necessary. The minutes disclose no such intervention.

205. In the second place, the examples put to RJ in cross-examination do not appear to us to be fairly described as intimidating. The claimant helpfully provided better copies of the annotated minutes which were easier to read than those in the bundle. These include annotations where the claimant corrected the minutes which the independent notekeeper had typed up from her contemporaneous notes with reference to the recording. It was suggested that by interjecting at A3.2.1 "You didn't think about it", RJ was being intimidating. He relied upon the notes at page 798 which showed the comment as being "I didn't think about it" and being said by the claimant. It was suggested that Q 3.25 and Q 3.26 show him being dismissive of the claimant's perception but those questions do not read that way to us; they read as neutral. It was suggested that the same was true of Q 4.3 on page 824 but we consider that to be RJ ensuring that he had given the claimant an opportunity to respond to a point which he took into account in evaluating her complaints about the fairness of the interview. Likewise we do not see that Q 4.6 (page 825) is inappropriate – RJ was asking what the claimant meant when she said her expectation had been that there would be an independent person at the meeting. It is noteworthy that not all of the matters put to RJ as being illustrations of intimidation from the claimant's version of the minutes were on the respondent's version of the minutes and, therefore, had not specifically been accepted to have been said. However, we have a good impression of the tone of the meeting from the minutes (both versions) and from AC's evidence and reject the allegation that RJ was intimidating.

206. The process by which minutes were prepared was completely transparent. The interview was recorded and it is highly improbable that RJ would have falsified minutes when any irregularity could be checked with reference to the recording. In any event, we accept his evidence that he, personally, had no input into the minutes. The claimant was given the opportunity to comment on the minutes and did so. The amendments she made provide further detail but, by and large, were not evidentially significant. In those circumstances, we are satisfied that any inaccuracies in the respondent's minutes were inadvertent and did not

markedly impact upon the significance of the information available to RJ in his decision making. It is, perhaps, surprising that the notetaker didn't simply transcribe the recording but, given the evidence we have accepted that the minutes are the work of the independent notetaker from Bridgehouse Company Secretaries alone, it is not sinister.

The claimant's subject access request

207. Complaints about the handling of the claimant's DSAR were made in Case No: 3318920/2019 (see paragraphs 84 to 86 at pages 193 to 194). Page 967c is the DSAR itself; page 1315b is the email of 29 October 2018 by which it was sent to MC; and page 1321 is the response to the DSAR which went out in MC's name and is dated 29 November 2018. On 8 February 2019, the claimant wrote to MC (pages 1323a to 1326) expressing concern that SKT had not provided her with all of the information that she had requested and that some of the information supplied invited the conclusion that disclosure had been partial. It is apparent from pages 1326a to c that SKT had engaged a Data Protection Consultancy for advice on how to respond to the DSAR. On 16 February 2019, MG of the consultancy provided a draft letter to be sent to the claimant (the draft is at page 1326f and the letter as sent is at page 1327) and it went out in MA's name. As MA put it "I was out of my depth and appointed a contract appointed by [the Trust's legal adviser's] and trusted that he would handle the process appropriately".

208. The division of labour between MA and MG was that MA searched for the claimant's name in the respondent's system and forwarded to MG everything generated. Then it was for MG to search through the emails for the information which he considered the respondent was required to disclose. We accept that MA did not review the documents and any initial limitation to emails to and from her rather than about her was based upon MG's advice. The exception to this was that MA looked through the photographs kept on file in order to find those which contained the claimant's image because MG did not know what the claimant looks like.

209. We see nothing remarkable in the response on page 1327 being from MA when the enquiry was directed towards MC. We have concluded that the responses sent by the SKT to the claimant's DSAR and further enquiries were made on the advice of the consultant. There was only one document which was provided following the claimant's complaint that the disclosure was incomplete; her 2016 appraisal document. We are satisfied that this was inadvertent and do not think that further documents were deliberately withheld because of a fear that the claimant was searching for a "smoking gun", as alleged. The correspondence between MG and MA suggests that their aims were to comply with the law and to achieve closure on any further communications on this matter. We are of the view that this provides a complete reason for the actions in relation to the DSAR which were solely to do with SKT following the advice of the consultant. The evidence that MG advised SKT to choose to send their reply in early March 2019 rather than as soon as it was available does not affect our conclusion on this.

Law relevant to the issues

210. The claimant also complains of a number of breaches of the EQA. Section 136 of the EQA sets out the statutory burden of proof and reads (so far as material):

> "(1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

211. This section applies to all claims brought before the Employment Tribunal under the EQA. By s.39(2) EQA, an employer must not discriminate against an employee by dismissing them or subjecting them to any other detriment. The form of unlawful discrimination alleged in the present case is direct discrimination.

212. Section 13 (1) of the EQA reads:

> "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

The claimant complains that she has suffered direct discrimination on grounds of race and also on grounds of sex both of which are protected characteristics under the EQA.

213. The statutory burden of proof has been explained in a number of cases, most notably in the guidelines annexed to the judgment of the CA in Igen Ltd v Wong [2005] ICR 931 CA. In that case, the Court was considering the previously applicable provisions of s.63A of the Sex Discrimination Act 1975 but the guidance is still applicable to the equivalent provision of the EQA.

214. When deciding whether or not the claimant has been the victim of direct discrimination, the employment tribunal must consider whether she has satisfied us, on the balance of probabilities, that the incidents occurred as alleged and, that there are facts from which we could decide, in the absence of any other explanation, that they amounted to less favourable treatment than an actual or hypothetical comparator did or would have received and that the reason for the treatment was race or, as the case may be, sex. If we are so satisfied, we must find that discrimination has occurred unless the respondent proves that the reason for their action was not that of race or sex.

215. We bear in mind that there is rarely evidence of overt or deliberate discrimination. We may need to look at the context to the events to see whether there are appropriate inferences that can be drawn from the primary facts. We also bear in mind that discrimination can be unconscious as well as conscious but that for us to be able to infer that the alleged discriminator's actions were subconsciously motivated by race or by sex we must have a sound evidential basis for that inference.

216. The provisions of s.136 were considered by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 UKSC. Where the employment tribunal is in a position to make positive findings on the evidence one way or the other, the burden of proof provisions are unlikely to have a bearing upon the outcome. Furthermore, although the statutory definition anticipates a two stage test, it is not necessary artificially to separate the evidence adduced by the two parties when making findings of fact (Madarassy v Nomura International plc [2007] ICR 867 CA). We should consider the whole of the evidence when making our findings of fact and if the reason for the treatment is unclear following those findings then we will need to apply the provisions of s.136 in order to reach a conclusion on that issue.

217. The structure of the EQA invites us to consider whether there was less favourable treatment of the claimant compared with another employee in materially identical circumstances, and also whether that treatment was because of the protected characteristic concerned. However, those two issues are often factually and evidentially linked (Shamoon v Chief Constable of the RUC [2003] IRLR 285 HL). This is particularly the case where the claimant relies upon a hypothetical comparator. If we find that the reason for the treatment complained of was not that of race or sex, but some other reason, then that is likely to be a strong indicator as to whether or not that treatment was less favourable than an appropriate comparator would have been subjected to.

218. The claimant in the present case also complains of harassment. It is unlawful for an employer to harass an employee (see section 40(1) of the EQA). The definition of harassment is contained in section 26 of the Act and, so far as relevant, provides as follows:

> "(1) A person (A) harasses another (B) if—
>
> (a)A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b)the conduct has the purpose or effect of—
>
> (i)violating B's dignity, or
>
> (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> (2) …

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

(a)the perception of B;

(b)the other circumstances of the case;

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

219. What is and what is not harassment is extremely fact sensitive. So, in Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336 EAT at paragraph 22, Underhill P said:

> "We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (…), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

220. The importance of giving full weight to the words of the section when deciding whether the claimant's dignity was violated or whether a hostile, degrading, humiliating or offensive environment was created for him was reinforced in Grant v HM Land Registry & EHRC [2011] IRLR 748 CA. Elias LJ said, at paragraph 47:

> "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

221. Furthermore, in Weeks v Newham College of Further Education [2012] EqLR 788 EAT, Langstaff P said:

> "17....Thus, although we would entirely accept that a single act or a single passage of actions may be so significant that its effect is to create the proscribed environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding.
>
> ...
>
> 21. However, it must be remembered that the word is 'environment'. An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the office or staffroom concerned."

222. We were referred by Mr Gill to Pemberton v Inwood [2018] EWCA Civ 564; [2018] ICR 1291, and, in particular, to the following extract from para.88 of the

judgment of Underhill LJ in which the correct approach to applying s.26 was re-stated:

"In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider *both* (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) *and* (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

223. The test of whether unwanted conduct is "related to" race or sex, as the case may be, is different to whether less favourable treatment was "because of" the protected characteristic as the EAT explained in Bakkali v Greater Manchester Buses (South) Ltd [2018] ICR 1481 EAT paragraph 31

"Conduct can be "related to" a relevant characteristic even if it is not "because of" that characteristic. It is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant. However, "related to" such a characteristic includes a wider category of conduct. A decision on whether conduct is related to such a characteristic requires a broader inquiry. In my judgment the change in the statutory ingredients of harassment requires a more intense focus on the context of the offending words or behaviour. As [counsel] submitted, "the mental processes" of the alleged harasser will be relevant to the question of whether the conduct complained of was related to a protected characteristic of the claimant. It was said that without such evidence the tribunal should have found the complaint of harassment established. However such evidence from the alleged perpetrator is not essential to the determination of the issue. A tribunal will determine the complaint on the material before it including evidence of the context in which the conduct complained of took place."

224. Victimisation is unlawful within employment by reason of s.39(4) EQA and is defined by s.27 of the EQA which, so far as relevant, reads as follows:

"27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3)…"

225. It is accepted in the present case that the claimant did protected acts by raising her grievance and by her grievance appeal. The live question for the Tribunal in relation to the victimisation claim is whether the claimant was subjected to the detriments alleged and, if so, whether that was because she had raised a grievance or grievance appeal.

226. The then applicable provision of the Race Relations Act 1976 was considered by the House of Lords in The Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, HL. The wording of the applicable definition has changed somewhat between the RRA and the EQA. However, Khan is still of relevance in considering what is meant by the requirement that the act complained of be done "because of" a prohibited act. Lord Nicholls said this, at paragraph 29 of the report,

> "The phrases 'on racial grounds' and 'by reason that' denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact"

227. Ms Gyane reminded us of the cases of Qureshi v Victoria University of Manchester and anr. [2001] ICR 863; EAT and Driskel v Peninsular Business Services Ltd [2001] IRLRL 151, EAT. It was Mummery J, as he then was, in Qureshi who remarked on the difficulty for the claimant in a discrimination (or victimization claim) of discharging the initial burden of proof in the absence of direct evidence on the issue of whether the alleged discriminatory actions and decisions were on racial ground (as it was in that case). He warned against the fragmentary approach the Tribunal had taken to considering Dr Qureshi's claims and the

> "tendency, …, where many evidentiary incidents or items are introduced, to be carried away by them and to treat each of the allegations, incidents as if they were themselves the subject of a complaint. … The function of the tribunal is to find the primary facts from which they will be asked to draw inferences and then for the tribunal to look at the totality of those facts, including the respondent's explanations) in order to see whether it is legitimate to inter that the acts or decisions complaints of … were on "racial grounds"." (page 875 F to H)

228. Holland J made a similar point about the loss of impact of a fragmentary approach to decision making in the sex discrimination claim of Driskel and the risk of ignoring the totality of individual events which might, on their own appear trivial when considering whether or not the claimant has suffered a detriment. Notwithstanding that, the Tribunal has to start by finding the facts of what occurred. When considering the evidence from which discriminatory motive

might be inferred or from which it might be concluded that the claimant was put to a disadvantage by particular actions then the evidence must be considered in the round.

229. So far as the unfair dismissal claim is concerned, it is for the respondent to prove that the reason for dismissal was one of the potentially fair reasons set out in s. 98(1) and (2) of the ERA which include redundancy and "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held." A reorganization of the employer's business which does not involve a redundancy situation is, in principle, capable of being such a potentially fair reason and the respondent relies upon those two potentially fair reasons in the alternative.

230. An employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to a broad range of situations set out in s.139(1) of the ERA.

> "For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
>
> (a) the fact that his employer has ceased or intends to cease—
>
> (i) to carry on the business for the purposes of which the employee was employed by him, or
>
> (ii) to carry on that business in the place where the employee was so employed, or
>
> (b) the fact that the requirements of that business—
>
> (i) for employees to carry out work of a particular kind, or
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
>
> have ceased or diminished or are expected to cease or diminish."

231. In Safeway Stores plc v Burrell [1997] ICR 523 the EAT set out a three stage test based upon the statutory formulation:

a. Was the employee dismissed?
b. If so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
c. If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

232. In the present case, the fact of dismissal is admitted. The issues for the Tribunal, on the unfair dismissal claim, require us to determine whether one or more of the s.139(1) situations had arisen (or whether there was a business reorganisation which did not amount to a redundancy situation) and secondly whether the claimant's dismissal was wholly or mainly attributable to it.

233. If the redundancy situation exists, the employment tribunal has limited scope to investigate the business decision to make the claimant redundant. Kerry Foods Ltd v Lynch 2005] IRLR 680 EAT makes clear that the employer does not have to show that there was a particular improvement in efficiency to be derived from the reorganisation. The employer does not have to show an economic justification for the decision to make redundancies. However, that is qualified by the tribunal's jurisdiction to determine whether the redundancy situation or the reorganisation is, in fact, the reason for the claimant's dismissal and whether it was fair within the meaning of s.98(4) of the ERA.

234. If the respondent proves that the dismissal was because of the potentially fair reason then the tribunal must go on to consider whether the decision to dismiss was fair or unfair in all the circumstances. This can involve consideration of matters such as whether the respondent used objectively fair and justifiable selection criteria. Did they give sufficient warning and engage in meaningful consultation? Were alternatives to redundancy actively considered?

235. In Polkey v A E Dayton Services Ltd [1988] ICR 142, the House of Lords explained that a failure to follow correct procedures is likely to make the resulting dismissal unfair unless, in exceptional cases, the employer could reasonably have concluded that doing so would have been "utterly useless" or "futile". Normally an employer contemplating redundancy dismissals will not act reasonably unless he warns and consults any employees affected, adopts a fair basis on which to select for redundancy and takes reasonable steps to avoid or minimise redundancy by redeployment. However the employment tribunal should go on to consider whether compensation should be reduced to take account of the likelihood that a fair dismissal would have happened in any event.

Conclusions on the Issues

236. Here we set out our conclusions on the issues, applying the relevant law to the facts which we have found. We do not repeat all of the facts in order that this judgment should not be unnecessarily long but have them all in mind when reaching our conclusions.

237. We postpone consideration of the question of whether the claims of race discrimination, harassment and victimisation were made in time until we set out our conclusions on the individual allegations.

Race discrimination and race related harassment

238. We start by considering the claims of harassment related to race and direct discrimination on grounds of race which are based upon the same alleged acts. By reason of the s.212(1) EQA definition of detriment, if a particular act has been found to be unlawful harassment, it is precluded from being a detriment within s.39(2)(d) EQA.

239. Taking the order of allegations from the List of Issues on page 272 and following of the bundle, the first allegation is that the respondent transferred key elements of her job to MC. The claimant's overall allegation has been that she, and other black, female members of staff, have been the victims of a move to pursue a policy of seeking more affluent business tenants whom SKT presumed would be white. Our finding was that the evidence simply does not support the claimant's contention on this (see paragraphs 25 & 26 above, for example, and the analysis of the reasons for departure for the individuals relied upon by the claimant at paragraph 196 above). The document at page 690a provides evidence that the creation of the Operations Director role was to relieve capacity for MA to carry out a more strategic role (see paragraph 43 above). See our conclusion on this in paragraph 74 above. It is not likely that there was any appreciable transfer of the claimant's role to MC, who predominantly took on elements of MA's role. However, to the extent that there was, we are quite satisfied that there was no less favourable treatment that would have been given had the claimant not been black. We are also able to make a positive finding that the reason for MC's appointment was the genuine and reasonable judgment that the changes in the respondent's activities meant that there was a need for another level of senior management and nothing to do with race.

240. Similarly the structure of MC's job was not related to the race of the claimant and it was not reasonable for her to consider that the respondent's introduction of another line of management had the harassing effect.

241. The core facts underlying the allegation that MA gave the claimant "the cold shoulder" are not made out (see paragraph 75 above). MA was giving MC the space to become her line manager because their relationship within the organisational structure had changed.

242. We reject the allegation that the respondent refused the claimant sight of the bid for GLA funding (see paragraph 76 above). She was consulted as much as it was reasonable for her to expect and there is no evidence that she suffered less favourable treatment because our finding is that the bid was not circulated in its entirety to any of the management team at the same level as the claimant. This aspect of the race discrimination claim fails for this reason. The actions of MA were not related to race and it was not reasonable for the claimant to consider that his actions in this respect had the harassing effect so her race related harassment claim in relation to this allegation also fails.

243. So far as the request to produce a work log is concerned, we refer to our findings in paragraph 77 above. In all those circumstances, we do not consider that it was a detriment to the claimant to be asked to produce one: no reasonable employee would think they were disadvantaged in their employment by being asked to do so. There is also no evidence from which we could infer that the reason she was asked to produce a work log was that of race and the request was not related to race. The race discrimination and race related harassment claims based upon this incident fail.

244. We turn to List of Issues number (3)(ix)(e) and remind ourselves of our finding accepting the explanation given by MA in his paragraph 41. The comment that

was made was not less favourable treatment as it was not directed towards the claimant in particular, or anyone else, but was directed towards all of the staff. Anything said was not on grounds of race nor was it related to race. The race discrimination and race related harassment claims based upon this incident fail.

245. The claimant has not shown that she was set up to fail or that support was taken away from her. We refer to paragraphs 88 to 91 above. This allegation is not made out on the facts and the race discrimination and race related harassment claims based upon this incident fail for that reason.

246. The allegation against MC that he micromanaged the claimant is said to date from 30 January 2018. Relevant findings are set out in paragraphs 95 to 97. We reject the claimant's allegations that by his emails at pages 1149 and 1153 MC was micromanaging the claimant. The race discrimination and race related harassment claims based upon this incident fail because the core facts underpinning the allegation are not made out.

247. As we have recorded in paragraph 93 above, the allegation at issue 3(xi)(h) that MA (or as it was pursued in the hearing, MC) had dismissed her ideas and preferred those of white agency staff was, in fact, pursued as an allegation that she had been "shut down" in conversation on 5 January 2018. The claimant has not shown facts from which we can conclude that the incident happened in a way which could be regarded as a detriment or as harassing behaviour. In any event, there is nothing from which to infer that race had anything to do with MC's conduct which we cannot infer to have been on grounds of race or related to race. The race discrimination and race related harassment claims based upon this incident fail.

248. The Issue 3(xi)(i) in fact relates to a slightly earlier period, approximately from November 2017 (see paragraphs 85 to 86). The additional marketing resource was needed. There was OH advice to the effect that the claimant "may feel vulnerable to perceived work-related pressures or adverse circumstances in the short term". MA did not, at that time, know that the claimant's job description, which MC was redrafting, would be changed to such an extent that independent advice recommended making the claimant's post redundant. Even if, which we doubt, this could reasonably be regarded as putting the claimant to a disadvantage, it is absolutely clear that the reasons for the action was nothing to do with race and the action was not related to race. The race discrimination and race related harassment claims based upon this incident fail.

249. As pursued in cross-examination, issue 3(xi)(j) was said to be an act of MA rather than MC. We have accepted that the decision to recruit a contractor for the launch event was that they should be in addition to and not instead of the claimant (see paragraph 100 above). In the end, CO was selected and had worked with SKT previously. There is insufficient evidence of any previous errors by CO for us to infer that, as the claimant alleged, the respondent was strangely forgiving of her mistakes. In the first place, the allegation that CO was selected to run an event that the claimant was meant to be running is not made out. In the second place, the claimant has not proved facts from which it could be inferred that CO was treated more favourably or that the claimant was

treated less favourably – let alone that the reason for choosing CO was in any way related to race.

250. We accept that, by an email dated 1 March 2018, MA told the claimant that an image proposed by her for the “Save the Date” flyer for The Granville launch was wrong for that purpose (see paragraphs 103 to 105 above). However, even were we to presume that the claimant had satisfied the burden upon her of proving fact from which it might in the absence of any other explanation be inferred that the reason was related to race, we have been persuaded by MA that his reason was simply that he wanted a picture of the building which was to be opened, and not a nearby block of flats. It was nothing to do with the ethnicity of the drummers. The race discrimination and race related harassment claims based upon this incident fail.

251. In relation to issue 3(ix)(l), we refer to paragraphs 81 to 83 above for our findings about what happened on this occasion. We think it extremely unlikely that the claimant believed at the time that her illness at the meeting on 5 June 2017 that this refers to was due to MA’s comment to the effect that she did not often travel or visit outside Brent. Having said that, we can accept that the comment was unwanted by the claimant. It does not, however reach the heights of meeting the statutory definition of harassment and we have found that the comment was related to the claimant’s lateness and not in any way to her race or to the ethnicity of the majority of the population of Brent. There is no evidence from which we could infer that MA would have reacted any differently had he had to explain away the lateness of a colleague who was not black. The race discrimination and race related harassment claims based upon this incident fail.

252. We have not been satisfied that JG made any comments about visiting Jamaica or that comments were made in May 2017. Our findings about the comments made by MA in December 2016 are at paragraphs 62 to 64 above. Whatever MA said was entirely due to him being a gay man who would not wish to holiday in a country about which he had read reports about the treatment of gay men which caused him not to feel safe. We accepted his evidence that this was the reason for his comments which precludes race being part of the reason and we are of the view that this was not less favourable treatment of the claimant. In our view, the fact that Jamaica is a majority black country was only part of the context but was not an influence upon MA in making the comment. Similarly, we have concluded that the comments were not unlawful harassment because they were not related to race. His comments were entirely due to the laws of that country and MA’s reasonable perception that he would not be safe as a gay man in open gay marriage visiting with his husband. The race discrimination and race related harassment claims based upon this incident fail.

253. Our findings in relation to issue 3(ix)(n) are that the claimant has not proved that MA at any time stated that she was “high maintenance”. The race discrimination and race related harassment claims based upon this incident fail as do the sex discrimination and sex related harassment claims based upon the same alleged comment.

254. In relation to the similar allegation made against JG, our conclusion is that what JG said was that the claimant wanted unicorn water when she asked for spring water with her lunch. Indeed the claimant said in oral evidence that it had never been her case that JG had said that she was “high maintenance” (see paragraph 112 above). The allegation in the list of issues has therefore not been made out. In any event, we do not think that the claimant has proved facts from which it could be inferred that in what he said, JG was targeting the claimant or that he was applying a racial or gender-based stereotype such that we need to look to the respondent for an explanation. The race discrimination and race related harassment claims based upon this incident fail as does the sex discrimination and sex related harassment claims based upon the same alleged comment.

255. The incident relied upon in issue 3(ix)(p) was accepted by the claimant not, itself, to be race or sex discrimination or harassment related to race (see paragraphs 78 to 79 above). She did not appear to allege that when, on her case, JG did not investigate the incident which she had herself reported not to JG but to MA, that failure by JG was less favourable treatment of her by JG. That would be contrary to her position which is that this was an illustration of poor general management by JG. Overall, we do not consider that any less favourable treatment of the claimant was shown by this historic incident and, given that the incident itself was – on the claimant’s account – not related to race, conclude that the actions of MA, in speaking to the individual responsible, or JG, if he was in employment at the relevant time, were not themselves motivated by or related to race. The race discrimination and race related harassment claims based upon this incident fail.

256. The claimant’s allegation that she was told by MA in the interview on 8 March 2018 that training was not available for the claimant to obtain the Chartered Institute of Marketing certificate and that there was no budget for training as previously agreed is not made out on the facts (see paragraphs 114 to 116 above). The training which it had been agreed the claimant would have was not arranged because the claimant did not pursue it. The race discrimination and race related harassment claims based upon this incident fail.

257. The claimant was not subjected to race discrimination or race related harassment by MA’s decision that there should not be a Secret Santa in Christmas 2017. We have found that this was not less favourable treatment of the claimant – there is no suggestion that she had made a specific request for the practice to be adopted in 2017 and everyone was affected equally. His decision was related to what he knew or presumed about the likelihood that paying for a work Secret Santa would not be within everyone’s budget at Christmas and he was particularly thinking of part-time staff (see paragraph 117 above). The decision was not on grounds of or related to race and it was not reasonable for the claimant to consider this decision to have the harassing effect. The race discrimination and race related harassment claims based upon this incident fail.

258. The claimant alleges that she was denied a pay rise in comparison to JG (issue 3(ix)(s)). The claimant has not proved the core facts to substantiate this

allegation (see paragraphs 138 to 140 above). The claimant had been given inflationary pay rises. When her job description was revised to become that of the substantially altered Marketing and Communications Manager role, MC decided to benchmark the salaries of both that role and the role then held by JG which had already been revised. SKT agreed that the salary of the new postholder as Marketing and Communications Manager and the salary of the Facilities and Office Manager (then JG) would be the same. The claimant was not denied a pay rise and, in some ways, the postholder (which was expected to be her) would have received more favourable treatment than JG because their salary would have been at the top of the benchmarked range.

259. We accept that the entire and genuine reason why the claimant was placed at risk of redundancy was that the job description for the post that she held had changed in order to accommodate the changing business needs of SKT. This follows from paragraphs 147 to 150 above and, in particular, from our findings in paragraph 150 above that the changes to the role were very significant. See also paragraph 55 above where we record some of the key accountabilities of the new role which show how it differed from the old role (see paragraph 32 above). The new role was genuinely needed (see paragraph 30 above). This finding precludes the reason why the claimant was placed at risk of redundancy being that of race. Similarly, the action was not in any way related to race. The race discrimination and race related harassment claims based upon this incident fail.

260. The allegation in issue 3(ix)(u) is that MA had taken over part of the claimant's work prior to the arrival of MC in July 2017. See also paragraphs 107 to 108 of the claimant's statement. At this period, prior to July 2017, the claimant in fact seems to have considered herself to be properly supported by MA (see paragraphs 70 to 72 above). To the extent that MA took over work which could have come to the claimant, that related to marketing of the Granville which could not reasonably be said to be part of the claimant's work at that time because SKT had only recently been part of the successful bid workload of the claimant, an analysis of the claimant's job description shows limited responsibility for marketing and the anecdotal evidence does not support a conclusion that the claimant was carrying out significant amounts of marketing, as that term was understood by MA and MC in early 2017. It is also relevant that the respondent was supporting the claimant later in the year by appointing MO.

261. In short, MA did not take over roles which were properly part of the claimant's job. He was supporting her with her workload in the later part of 2017. We do not see anything suspicious in this. The claimant has not made out the core facts underlying her claim in relation to this point. Alternatively, she has not proved facts from which it could be inferred in the absence of any other explanation that, in acting as he did, MA treated her less favourably than he would have treated another because of race nor that any actions were related to race. The race discrimination and race related harassment claims based upon this incident fail.

262. The allegation in issue 3(ix)(v) is that the claimant was "tricked" into redundancy by MC. This allegation has not been proven to have happened (see paragraph 134 to 141 above). Neither MC nor MA tricked the claimant into anything. They took advice upon the changes to her job description which had been made because a Marketing and Communications Manager with a key focus on marketing would be needed in the future. The role carried out by the claimant had not, either in its job description or in its day to day tasks, involved significant amounts of marketing in the sense of achieving income-generating sales (see paragraph 34 and 35 above for our findings on what MA understood by marketing). The advice they received was that the changes were too significant for the claimant to be assimilated into the new role and that was consistent with the redundancy policy (see paragraphs 147 and 148 above). The race discrimination and race related harassment claims based upon this incident fail because the claimant has not proved that the act happened as alleged.

263. The claimant was unsuccessful in her application for the role of Marketing and Communications Manager. Our findings are that this was because she did not perform well enough in a non-competitive interview to score sufficiently highly to be appointable. Our findings on the conduct of the interview are in paragraphs 154 to 165 above. We find that the interview was an open and fair process which asked questions designed to elicit evidence from the claimant that she had the skills and experience needed for the role. We find that the interviewers had expected the claimant to be successful and were fair in their marking. She had been given time off work to prepare for the interview. There was a genuine and reasonable requirement for the successful candidate, as MA put it, to have more knowledge and experience of marketing than the CEO and the claimant did not demonstrate that she had that knowledge. The purpose of taking the lease of The Granville was to establish an income-generating asset which would create a long-term future for SKT. Since SKT had been established, it had provided services to the community by drawing upon its reserves and the Trustees wished to change that focus and to create a physical legacy for the community and the Trust (see paragraphs 10 to 12 above).

264. Underpinning many of the claimant's allegations of race discrimination was her allegation that SKT was pursuing a policy of moving from majority black owned business in order to seek to attract more affluent business who, she alleged, would be from outside South Kilburn and majority white owned. We rejected this allegation for reasons which we set out, in particular but not exclusively, in paragraphs 23 to 29 above. We have also considered carefully the claimant's allegations about the pattern she claims to have been disclosed by departures from employment of other black, female employees (see paragraph 196 above). The underlying circumstances of these departures and the matters we refer to in paragraph 197 to 199 above, in particular, do not give rise to grounds for suspicion that the respondent was targeting black and female employees.

265. The respondent has provided satisfactory explanations for those employees leaving their employment. The respondent has persuaded us that they do not have the objective alleged by the claimant. Whether one considers the non-selective interview undertaken by the claimant on its own or in the context of

the matters relied upon by the claimant, we are quite satisfied that the reason why the claimant did not score sufficiently highly to be appointable was not, in any way, connected with her race or sex. The race discrimination and race related harassment claims based upon this incident fail. Furthermore, to the extent that the allegation that her dismissal was sex discrimination or sex related harassment is based upon the conduct of the interview, that allegation is dismissed.

266. As to issue 3(ix)(x), we do not think that MC adopted an unfair procedure at the redundancy consultation meeting on 15 March 2018 (see paragraphs 166 to 170 above. We do think that one might reasonably say MC was overstating the position when he said, when proposing an extra months' salary in exchange for confidential settlement agreement, that the claimant she would not get "anything near what I'm proposing" (see page 648). However we would not categorise this as unusual nor would be describe it as unfair. In present times reaching for apparent security of settlement agreement is frowned on but we note that the claimant had made no allegations of discrimination by this point.

267. The full transcript of the claimant's covert recording of this meeting suggests that MC gave an explanation for his statement to the notekeeper not to minute a particular comment which the claimant agreed to at the time, which is consistent with his explanation to us and which we do not think to have been an attempt to minimise evidence of marketing activities by the claimant. There is nothing from which we could conclude in the absence of any other explanation that MC would have handled the meeting of 15 March 2018 differently for anyone else who did not share the claimant's race or sex. We are quite satisfied that MC's actions were not related to race or sex. The race discrimination and race related harassment claims based upon this incident fail.

268. As to issue 3(ix)(y), part only of the claimant's grievance was allocated to RD to investigate, that which raised matters which were not individual to the claimant's circumstances but which alleged institutional attitudes towards black and female employees which the SKT identified as being matters of governance rather than an individual grievance. The reason the claimant had asked for the grievance not to be sent to RD was that she was one of the interviewers and, therefore, someone against whom part of the claimant's individual grievance was raised. The respondent has persuade us that the entire reason why sections 6 and 7 were allocated to RD were because they were not part of the individual grievance and for reasons of cost and efficiency (see paragraphs 182 to 184 above). We also find that some sections were redacted in the parts sent to RD. We are quite satisfied that the decision to allocate these sections to RD had nothing to do with the claimant's race. The race discrimination and race related harassment claims based upon this incident fail.

269. The complaint that the claimant's grievance was dismissed is raised as allegations of race discrimination, race-related harassment, sex discrimination and sex related harassment. We refer to but do not repeat our findings on the conduct of the grievance at paragraphs 174 to 206. We find that PB did not carry out an adequate investigation. We refer, in particular, to paragraphs 181 and 185 above. He limited his investigation to those sections which do not

expressly use the word discrimination but did not read across the claimant's allegation in section 6 that she had been treated as she alleged because of her race. The probable explanation for this was that he thought the governance report was dealing with sections 6 and 7 but the consequence was that he did not investigate the claimant's complaint as a complaint of discrimination. The consequence of the division of the investigation between RD and PB and PB's failure to investigate the allegations as individual allegations of discrimination was that the individual grievance was not thoroughly investigated by PB.

270. However, on appeal, RJ engaged with the entirety of the claimant's complaint and had available to him the collective context within which her individual complaints were made (see paragraph 188 above in particular). Given the way that the respondent dealt with the grievance otherwise, we do not think it right to draw inferences that PB or the respondent as a whole would have treated another employee more favourably who brought a grievance which included an allegation of discrimination phrased in the same way (i.e. where the allegation was within a collective complaint and not front and centre within the individual complaint) but who was not black or who was male. Upholding the grievance was a desired outcome for the claimant but, in the circumstances, dismissing it was not related to race or sex. The race discrimination and race related harassment claims based upon this incident fail. The sex discrimination and sex related harassment claims based upon this incident fail.

271. Allegation 3(ix)(aa) is a particular aspect of the above allegation, namely that PB discriminated and/or harassed the claimant by failing to investigate the race and sex discrimination issues raised by her. We have been persuaded that the reason he did so was that he thought the board were handling those aspects of the claimant's grievance and that it was not in any way that of race or related to race. The race discrimination and race related harassment claims based upon this incident fail.

272. The claimant has failed to prove that MA told her on 1 February 2018 that her grievance would "go nowhere" and that allegation fails because she has not proved the core facts underlying it.

273. We refer to our findings about RD blind copying MA into an email dated 13 July 2018 (paragraph 189 and 190 above). Our view on this is that no adverse inferences can be drawn from this action. MA was the CEO, he was providing data for the governance review and specific allegations that there had been "poor conduct and failure to follow Trust policies and guidelines" – had the claimant provided any - would have had to be investigated by asking him about the allegations. We accept that MA was not involved in RD's conclusions. We do not think that there is anything from which we can infer that this amounted to less favourable treatment of the claimant than would have been given to a comparable person who was not black who had made a grievance which made similarly wide ranging allegations. The claimant found out about this through the response to her DSAR and not contemporaneously. We do not think that one could reasonably consider this action to have the harassing effect and there is nothing from which to infer that it was related to race.

274. By issue 3(ix)dd the claimant alleges that she suffered race discrimination and race related harassment by RD refusing to speak to the individuals mentioned in her grievance. We refer to our findings in paragraphs 193 to 195 above. Our findings is that RD's reasons for not doing so were first that she was carrying out a governance review and wanted to examine the available data about arrivals, departures, reasons for leave and grievances, for example, to see whether there was a pattern which might suggest unconscious bias. We accept that she approached the task with an open mind looking to see whether the limited data (limited because there are relatively few employees) showed a pattern of concern. She was concerned that if she interviewed people who had not previously complained she might find herself with no basis on which to decide whether any complaints which were then made were true or not.

275. We found RD to be an honest witness and accept that this was genuinely her reasoning. We do not think that this amounts to the reason being the grounds of race. It was a concern that individual's subjective accounts might be affected by the enquiry itself and would therefore be likely to be less reliable than data from which she sought to judge, in effect, whether the number of departures relied upon by the claimant was a large number, in context. Where there had been contemporaneous complaints, RD went to the records of those complaints to see what had been said at the time. One can see from our findings in paragraph 194X above that every situation was different but our view is that the contemporaneous written complaints of those who went through a formal process at the time are a reasonable guide to what their experience was. There is nothing from which we can infer that, had the claimant not been a black woman, RD would have done anything different. The race discrimination and race related harassment claims based upon this incident fail.

276. The allegation in issue 3(ix)(ee) that the respondent had refused to provide the claimant with minutes of the grievance investigation meetings with MA, MC and RD is not made out on the facts. The claimant was provided with these minutes, although later than she would have liked them to be provided. In our experience the practice of providing statements or minutes of meetings with witnesses interviewed in a grievance is not universally followed: the situation would be different in a disciplinary investigation where the employee subject to the process would need the opportunity to comment on any relevant information that an employer took into account in deciding whether or not to dismiss. We do not think that it follows that the points raised were not properly investigated. There is nothing from which we can infer that the claimant received less favourable treatment in relation to this and nothing from which we can infer that the action was on grounds of or related to race. The race discrimination and race related harassment claims based upon this incident fail.

277. Similarly, where the claimant complains that she was subjected to less favourable treatment on grounds of race by PB and RD not providing her with their terms of reference when she asked for them (see paragraph 201 above) that is not substantiated by our findings. The policy for handling grievances does not require the terms of reference to be provided. There was a full explanation of the scope of the governance review within the report itself. It is true that the claimant wished to have this information earlier but, in our view, it

was not less favourable treatment on grounds of race that she did not receiving it immediately that she asked for it. Similarly, we doubt that it would be reasonable for an employee to consider that the delay in providing the terms of reference created an environment in relation to employment which meets the test of harassment set out in s.26 EQA. In any event, we are satisfied that the delay in providing the terms of reference were not in any way related to race.

278. PB's outcome letter was copied to MA and MC but there is no evidence that it was sent to JG (see issue 3(ix)(gg)). There was no credible evidence before us that the contents of the grievance document was sent to those three individuals other than that and save insofar as was necessary to investigate the allegations against them. For the most part, this was a purely administrative action because PB intended MC, the Operations Director, to ensure that the record of the outcome was kept in an appropriate location. We see nothing from which we think it right to infer that this was less favourable treatment on grounds of race or that it was related to race in any way. The race discrimination and race related harassment claims based upon this incident fail.

279. The allegation recorded at issue 3(ix)(hh) was not pursued and we do not need to make a finding about it.

280. As to issue 3(ix)(ii) and (jj), we have concluded that RJ's investigation was thorough (see paragraph 204 above), independent and was able to consider all of the evidence about the individual allegations and the governance report. This meant that RJ was able to see the individual allegations, which he rightly identified as including allegations of discrimination, in the context of the allegation that there was a discriminatory ethos in the Trust. We reject the allegation that RJ behaved in an intimidating way in the grievance appeal meeting (see paragraphs 204 and 205 above). The core facts underpinning these allegations have not been proven by the claimant and, therefore, the race discrimination and race related harassment claims based upon this incident fail

281. It is also alleged by the claimant that RJ falsified the minutes of the grievance appeal meeting and edited the responses of the claimant and of AC (issues 3(ix)(kk) and (ll)). Our finding is that the process by which the minutes were prepared was completely transparent (paragraph 206 above). RJ himself did not have input into the preparation of the minutes which were produced by the independent notetaker from Bridgehouse Company Secretaries. The meeting was recorded and the recording provided to the claimant. In those circumstances we are satisfied that any inaccuracies were inadvertent. The claimant has not proved the facts underpinning these particular allegations and, therefore, the race discrimination and race related harassment claims based upon this incident fail.

282. The claimant was dismissed by reason of redundancy or, more probably, a business reorganisation which did not meet the statutory definition of redundancy with effect on 7 December 2018. As we explain in paragraphs 262 to 266 above, we do not think that the claimant was tricked into redundancy, nor do we think that the failure to appoint the claimant to the role of Communications and Marketing Manager was an act of race discrimination or

harassment. We conclude that the conduct of the interview was not sex discrimination or sex related harassment. The decision having been taken that the claimant should undergo a non-competitive selection process for the ring-fenced post but Ms Ogole then having been unsuccessful, it followed that a redundancy consultation process had to be followed. That process was put on hold during the grievance investigation, because the allegations included that she had been discriminated against in respect of the interview. It was restarted on the conclusion of the grievance process and the claimant was informed of a vacancy which arose prior to the termination of employment.

283. None of the elements of the process which have been individually attacked were discriminatory on grounds of race or sex, nor did they amount to race or sex related harassment for reasons already explained. When we step back and consider the decision to dismiss at the end of that process, our conclusion is that the claimant's dismissal was because the respondent's need for someone to do the mixture of work carried out by the Engagement and Communications Manager had diminished and their need for marketing had increased. An alternative way of looking at it would be that the need for marketing activity and experience (as that was explained by MA) had increased and a decision was taken by SKT to meet this need by making changes to the job content of the Engagement and Communications Manager. It may be that the need for employees to carry out the duties allocated to the Engagement and Communications Manager had not appreciably diminished such that the statutory definition of redundancy was met, but the restricting corresponded to a genuine and legitimate need of the business. Considerations of race or sex played no part in the process, neither was it related to either race or sex. The race and/or sex discrimination and race and/or sex related harassment claims based upon dismissal fail.

284. In relation to issue 3(ix)(nn), we have reference to paragraphs 118 to 121 above. The claimant had told MC that there was a possibility that she could arranged for a celebrated, black writer to attend The Granville opening and, we find, described him in terms which caused MC to think that the writer, who was not known to him by name, was affiliated with a political movement. He reasonably thought that an avowedly political movement was something which SKT did not want to be associated with and, for that reason, rejected the claimant's idea.

285. She was upset by this. However we do not think that such an action could reasonably be described as violating the claimant's dignity or as creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We do not think that this incident reaches those heights. Nor was the rejection of her idea related to race but, rather, to the perceived risk of politicisation of SKT's event.

286. Furthermore, given our conclusions on MC's reasoning, we are satisfied that, had the same suggestion been made by someone who was not black, MC's response would have been the same. Finally, the reason for MC's actions was the perceived risk of politicisation of SKT's event and not that of race. The race discrimination and race related harassment claims based upon this incident fail.

287. As to issue 3(ix)(oo), our findings in paragraph 122 above are that the incident to which this relates is one and the same as is referred to in issue 3(ix)(qq). MA asked JG to read through and comment on the impact report which he and the claimant had been working on because it was his common practice when writing a document to ask someone not directly involved in drafting it to read it through and give and objective assessment of it. The last word in how the document should be worded was given to the claimant. MA acknowledged that there could be two equally valid styles of writing. His purpose was not in order to invite criticism of the claimant or, in particular, of her written English. We are persuaded by the respondent that MA's actions in this respect had nothing to do with race. The race discrimination and race related harassment claims based upon this incident fail.

288. The allegation that MA ignored concerns raised by the claimant on 1 February 2018 about MC's competence and conduct is not made out on the facts we have found (see paragraph 123 to 128 above). We preferred MA's account and the wording of the covert recording to that of the claimant's account that relevant comments were made after the recording ended. The claimant did not, by that conversation, make a complaint about MC. As we record in paragraph 128 above, the claimant reported an incident concerning MC and that she had spoken to him, he had apologised and she had accepted the apology. We do not consider that MA ignored the claimant's concerns and the reason for any action or lack of action on his part was that the claimant had not raised a formal grievance. The race discrimination and race related harassment claims based upon this incident fail.

289. The incident referred to in issue 3(ix)(rr) was that about which the claimant spoke in the conversation on 20 February 2017 which she covertly recorded (see paragraphs 65 to 68 above). Our conclusion on this is that the allegation that MA had behaved in an aggressive or angry manner, in particular to one or more female or ethnic minority members of staff is not made out (see paragraph 67, in particular). Whatever happened, happened in front of the whole office and was directed in general. The email which was sent was a general reminder to the heads of all the teams about office etiquette. There was no reason for the claimant to feel singled out. Even as made, the allegation is not that the claimant was subjected to less favourable treatment on grounds of race although, of course, had the allegation been made out that the claimant had witnessed such treatment towards other staff and that the treatment was related to race, then that would lead to different considerations in the race related harassment claim.

290. Furthermore, it is quite clear that the claimant dealt with such upset as she then felt by discussing the situation with MA after which she said she felt much better. This causes us to conclude that MA's actions did not have the proscribed effect set out in s.26 EQA or, alternatively, that it was not reasonable in all the circumstances for them to be regarded as having that effect. There is no evidence from which it could be concluded that MA's actions in relation to this incident were related to race.

291. As a result of the above conclusions, the race discrimination and race related harassment claims all fail.

Sex discrimination and sex related harassment

292. Some of the sex discrimination and sex related harassment claims have been considered at the same time as the race discrimination claims based upon the same alleged facts (see paragraph 253 which sets out our conclusions on issue 3(xii)(c) and paragraph 254, which sets out our conclusions on issue 3(xii)(d)). There are also some allegations of sex related harassment which need to be considered separately.

293. It is alleged by the claimant that the respondent applied lower standards of performance and conduct to male staff than to female staff and overlooked errors made by male staff but not comparable errors by female staff.

294. Our conclusion is that this allegation is not made out as a matter of fact. In essence the claimant alleges that JG was treated too sympathetically. In the absence of information about the treatment of those in a comparable situation, sympathetic treatment towards JG in the very limited circumstances of which we have heard does not mean that it is right to infer that females would have been treated worse. The claimant did not have a standard of performance applied to her that was critical of her. She performance managed a male member of staff. He brought a grievance against her and she was supported in that by the senior leadership team and in the grievance appeal by RD. There was another direct report to the claimant who did not pass their probationary period. LB had a direct report who was performance managed who was a woman, she brought grievance against MC and MA after LB became a consultant.

295. Our conclusion on this is that it was not an allegation about the treatment of the claimant personally; she did not given evidence that she had been less favourably treated by being performance managed when some males were not being performance managed. The allegation was not supported by the data analysed in the governance report. The evidence in fact suggests an even handed approach to performance management. The respondent's actions were not less favourable treatment of the claimant or anything which could amount to harassment of her. The sex discrimination and sex related harassment claims based upon this incident fail.

296. We have found that the claimant's allegation that MA frequently commented upon her work attire stating "you're always wearing black" is not proved to have happened to the extent and in the way she alleged (see our findings at paragraphs 106 to 108 above). The comment was made once in the circumstances described by MA in his paragraph 84, in the context of a conversation about what a number of people were wearing and, as such, was a normal conversation about work attire.

297. These findings do not provide evidence from which it could, in the absence of any other explanation, be inferred that the comment was less favourable treatment that MA would have given to someone who was male or was said on grounds of sex. Furthermore, in the context, our conclusion is that it would not be reasonable to regard the comment as having the proscribed harassing effect defined in s.26 EQA nor is there a basis from which to conclude that the comment was related to sex. The sex discrimination and sex related harassment claims based upon this incident fail.

298. In relation to issue 3(xii)(e), that the respondent had refused to give the claimant a pay rise and that that was direct sex discrimination and/or sex related harassment, we refer to our conclusions in paragraph 258 above. The factual allegation that she was denied a pay rise has not been proved.

299. In relation to issue 3(xii)(f), that the respondent did not uphold her grievance or grievance appeal and that was an act of sex discrimination and/or sex related harassment, we refer to our conclusions set out in paragraphs 269 and 270 above. There were failings in the initial grievance process but RJ's thoroughness meant that, overall, the claimant had a fair grievance hearing. In those circumstances we do not conclude that the failure to uphold her grievance at the first stage or on appeal were less favourable treatment on grounds of sex for reasons already explained.

300. In relation to issue 3(xii)(g), that dismissing the claimant was an allegation of sex discrimination and/or sex related harassment, we refer to our conclusions in paragraph 269 and 270 above but also to paragraphs 263 to 265 above. The underlying circumstances of the departures of those employees relied upon by the claimant as showing a pattern of deliberately targeting black, female employees do not substantiate that allegation (see paragraph 196 above). The reasons why the claimant did not score sufficiently highly to be appointable were not connected with her sex. As we explain in paragraph 283 above, our conclusion is that the claimant was dismissed by reason of redundancy or a business reorganisation which did not involve a redundancy situation within the statutory definition. It was not influenced by considerations of sex.

Victimisation

301. We turn to the victimisation claims. It is accepted that the claimant did protected acts by raising her grievance and by appealing against the dismissal of that grievance. The specific complaints in Case No: 3318920/2019 are set out in the claim form which starts at page 166 with the particulars of claim starting at page 179. Those particulars set out the full history with passages concerning the DSAR starting at paragraph 84 on page 193. She complains that the Trust failed to supply a majority of the information she requested but sent photographs of her and told her that some of the information she was requesting was not available. She complains in paragraph 85 and 86 (page 194) about MA telling her that other matters requested by her did not need to be provided and that his communication was aggressive and threatening.

302. The determinative issues in relation to the victimisation claim based upon the correspondence which we set out in more detail in paragraphs 207 to 209 above are whether the answers provided by SKT were given because the claimant had brought complaints of discrimination through her grievance and grievance appeal. Our conclusions on the reasons why MA (adopting the draft letter from MG of the external consultancy) responded as he did are set out in paragraph 209 above. His aim was to comply with the law in this area and to achieve closure on any further communications in relation to the SAR. In this, he was following the advice of the consultant. We have concluded that the reasons of SKT did not include the fact that the claimant's grievance included allegations of discrimination. The victimisation claim is dismissed.

303. In the light of our conclusions on the EQA claims, we do not need to consider whether or not those claims were brought in time.

Unfair Dismissal

304. In paragraph 72 of the CSA is argued that the alleged failure adequately to investigate the allegations in the grievance against MC, RD, MA should be regarded as failures to investigate the allegations that impugned the selection process which caused the disciplinary process to be unfair. The claimant did not appeal against her dismissal.

305. We accept that the way that PB conducted his investigation meant that the individual allegations of the claimant were not fully explored by him because he did not consider them to be allegations of discrimination. However, RJ covered all of the points that PB didn't. We consider that RJ was very thorough in his investigation (see paragraphs 187 and 188 above). Taken as a whole, the claimant's allegations of race and sex discrimination directed towards her were sufficiently investigated, in our view.

306. Dealing with the specific matters relied upon in paragraph 72 of the CSA, it is first argued that the failure of any of the grievance investigators to hear from LB directly meant that they did not consider direct evidence of racially discriminatory conduct by MA towards black people which would have affected their conclusions on his scoring of the claimant in interview. We consider that the decision not to speak to the individuals was, in effect, within the range of reasonable responses (see paragraph 195 above). In particular, taken as a whole LB's evidence would not have provided evidence of racial bias on the part of MA when it was admitted that he had tried to keep her services for SKT (see paragraph 49 above, in particular).

307. We place weight upon our findings that there is nothing to criticise in the interview itself (see our findings at paragraphs 154 to 159 above). We reject the allegation that there was deliberate underscoring or unreasonably hard questions were asked or that the questions were unfairly limited to part only of job description.

308. The claimant is effectively arguing that the grievance raised matters which would have been part of an appeal had there been one. However, our view of

the dismissal process was that there was no procedural flaw which would have needed rectifying on appeal. To the extent that RD, who was on the three person panel for the interview, was involved in investigating the governance aspect of the appeal, in the circumstances of needing to minimise cost to the Trust, and the fact that the complaints about RD's conduct of the interview were separately investigated by PB and also by RJ, this was a course open to the reasonable employer acting reasonably (see paragraphs 183 to 184 above).

309. There is no evidence that the notes of RD, MC and MA taken during the interview were edited. Both manuscript and typed versions have been made available. We do not consider that the grievance appeal investigation was undermined by the provision by PB to RD, MC and MA of his grievance outcome in circumstances where RJ carried out his own investigation.

310. We have considered whether SKT looked at alternatives to dismissal. One possibility would have been to give the claimant a trial period. The judgement at the time of the selection for the role was that The Granville opening was around the corner and SKT needed someone who brought greater experience in marketing to the role immediately. This was a judgment which it was open to the reasonable employer acting reasonably to make. It is true that the claimant missed the score necessary to be appointable by a small amount and it is argued that she could have been appointable with retraining. Our conclusion is that, while this may be so and it was not said by the respondent that the claimant lacked capability, the judgment as to what amounted to being appointable and whether retraining would lead to the claimant achieving competency for the new role within a reasonable period was one open to them on the information available to them, in particular faced with the lack of evidence that the claimant had secured business opportunities through marketing campaigns in the past. It was consistent with the policy referred to at paragraph 130 above.

311. Our conclusion is that there was a delay in drafting the new job description compared with the timescale originally planned in the document setting out organisational change (page 690a). This meant that the point at which the respondent realised, on advice, that the changes were sufficiently substantial that consistent application of their redundancy policy meant that the Engagement and Communications Manager role was redundant was not until approximately January or February 2018 (see paragraph 147 above). Given that, there was no unreasonable delay in giving the claimant notice that her role at risk of redundancy. We have rejected the claimant's allegation that she was tricked into redundancy (see paragraph 148 above). The decision that her post was redundant was, no doubt, most unwelcome to her but we are satisfied that it within the range of responses, was done for genuine reasons and was not done in order to target the claimant personally.

312. The procedure followed was within the range of reasonable responses and we have made specific findings (see paragraph 152 and 166 to 170 above) about meetings between the claimant and MC on 6 February 2018 and 15 March 2018 which are contrary to the claimant's allegations that might otherwise have meant that the process was not fair in all the circumstances.

313. The redundancy process was put on hold during the grievance investigation, which was the correct approach. A vacancy which arose during her notice period was offered to the claimant and she did not think that it was suitable for her. We consider that there was a reasonable effect made by the respondent to keep the claimant in employment with them.

314. We remind ourselves of the statutory definition of redundancy (see paragraph 230 above). As we say in paragraph 282 above, although the role of Engagement and Communications Manager was made redundant, it is more accurate to say that the need for specialist marketing skills and experience increased than it is to say that the respondent's need for employees to carry out work of the kind carried out by the Engagement and Communications Manager decreased. Therefore, our conclusion is that the reason for the claimant's dismissal, although described as redundancy, for the purposes of the ERA ought more properly be described as being due to a business reorganisation or some other substantial reason within s.98(1) ERA. Either way, we are satisfied that the dismissal was for a potentially fair reason and was fair in all the circumstances.

I confirm that this is our Reserved Judgment with reasons in case numbers 3332192/2018, 3313465/2019 and 3318920/2019 and that I have approved the Judgment for promulgation.

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Employment Judge George

Date: …26 October 2021 ……………..

Sent to the parties on: 1 November 2021

For the Tribunal Office