EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"This has been a remote hearing not objected to by the parties. The form of remote hearing was via CVP. A face to face hearing was not held because it was not practicable and no-one requested the same."

Claimant		**Respondent**
Ms N Linton	**v**	**Search Education Trust**

Heard at: Watford (via CVP) **On**: 10-14 January 2022

Before: Employment Judge Andrew Clarke QC
Ms S Johnson
Mr I Middleton

Appearances

For the Claimant: In person
For the Respondent: Ms J Shepherd, Counsel

JUDGMENT

1. The name of the respondent is amended to Search Education Trust.

2. The claimant was fairly dismissed by reason of redundancy and, hence, the claim for unfair dismissal is dismissed.

3. The claims for direct race discrimination and harassment contrary to s.13 and 26 of the Equality Act 2010 are dismissed.

REASONS

Introduction and background

1. The claimant presented her claims on 15 January 2020 having been dismissed on 31 August 2019. At a preliminary hearing on 18 May 2021 her

claims for unfair dismissal and for discrimination, where the act relied upon was her dismissal, were ruled to have been presented within the primary limitation period. Whether her other claims, for direct race discrimination harassment were presented in time was adjourned to be heard at this full merits hearing.

2. This hearing was conducted via CVP. Although all participants experienced technical problems from time to time, it was possible for the hearing to be conducted fairly and efficiently. No participant suggested otherwise.

3. The respondent changed its name in mid-2021 to Search Education Trust.

4. At the start of the hearing the respondent made two applications. The first related to the redaction of the name of an employee from all documents and during the hearing and in any judgment and reasons which followed. The second related to the use of certain without prejudice documents which the claimant had referred to in her witness statement. This became an application on the part of the claimant to refer to those documents. The Tribunal granted the order sought by the respondent, but not that sought by the claimant and its reasons which were announced at the time are set out below.

5. We heard evidence from the following witnesses:

    5.1 Judith Pow, the respondent's HR director at the material times;
    5.2 Ciara Emmerson, a deputy head at one of the respondent's two schools ("Heartlands") at the material times. Heartlands was the school where the claimant worked;
    5.3 Simon Garrill, the chief executive officer of the respondent multi-academy trust at the material times;
    5.4 John Nagle, a deputy head at Heartlands at the material times and from time to time the claimant's line manager;
    5.5 Elen Roberts, variously the deputy head and then head teacher at Heartlands during the claimant's employment;
    5.6 Mari Williams, now and during the claimant's employment a deputy head at Heartlands and the claimant's line manager for periods of time;
    5.7 The claimant;
    5.8 Zoe Thomas, a learning support assistant (and later a higher learning teachers' assistant) at Heartlands during the claimant's employment.

6. We found each of the respondent's witnesses to be credible, careful and open witnesses. Each sought to engage with the questions asked of them, making clear when they did not recall matters. It was clear that each had valued the claimant's work as an employment welfare officer (EWO) and were puzzled by some of the complaints and criticisms which she now advances. Despite being repeatedly accused of racism when cross-examined each remained calm and appeared to us determined to stress the claimant's value as a colleague for much of her employment.

7. The claimant was in one regard an unsatisfactory witness. When taken through a sequence of events and then invited to agree that the answers that she had given showed that the events dealt with did not evidence racism she would say "I disagree" and assert that the respondent's behaviour did demonstrate racism. However, she could not explain why that was so.

8. One example will suffice to illustrate the difficulty that the Tribunal faced with this evidence. The claimant complained that Mr Nagle micro-managed her because of her being of black Caribbean ethnicity. Her evidence was that he had persistently required access to her electronic diary. In cross-examination she accepted that he had access to all of his reports' diaries and they to his. She accepted that he needed access to her diary. She said that she believed he had it, albeit that it was shown that because of the settings she had adopted he did not have it until those were reset. It was suggested that to ask for what he was entitled to, but had not got due to the settings error, could not amount to micro-management or demonstrate racism. The claimant simply said that she disagreed. She would not engage with questions aimed to establish why she disagreed, but simply repeated her disagreement and her assertion that she was so treated (by being asked for access to her diary) because of her ethnicity.

9. We concluded that the claimant had persuaded herself that all of the problems and difficulties which she had faced from time to time whilst employed could and should be explained on the basis that she was being discriminated against because of her ethnicity. Nothing would shake her from that view which we believe to have been formed around the time that she began to fear dismissal for redundancy. We do not think that the claimant was being untruthful and her inability to explain why she considered she was discriminated against does not necessarily make her view wrong. We have examined each of the matters she relies upon with care to see if we consider what she latterly felt, but could not explain, to be correct.

10. Ms Thomas added little to the case. She provided some background evidence relating to certain events. However, we were suspicious of her ready recall of precisely what was said some six years ago when she had no notes and no contemporaneous documents to refer to. We were also struck by her readiness to express firm disagreement with several matters put to her in cross-examination even before the substance of the question had been completed. We treated her evidence with caution.

11. We were referred to numerous contemporaneous documents in a bundle of over 500 pages. Those contemporaneous documents we found to be particularly helpful.

Rule 50(3) Application

12. One aspect of the claimant's race discrimination and harassment claims relates to events in 2016 when a colleague was alleged by others to have

made racist remarks in a conversation during which that colleague said that the claimant was present, amongst others. The claimant denied that she was present during such a conversation, but when interviewed she raised other allegations relating to that colleague which she says were ignored. She says that asking her to make a statement regarding her not witnessing the remarks in question and then failing to deal with her own allegations were acts of direct race discrimination and harassment.

13. The respondent's application was made pursuant to Rule 50(3) of the Rules of Procedure to redact the name of the colleague in this hearing and in any judgment and reasons produced by the Tribunal and to refer to that person as Employee A. The claimant objected, but could not identify any prejudice in the conduct of her case that she would suffer as a result.

14. We were referred to the guidance found in the case of TYU v ILA Spa Ltd [2021] 9 WLUK168. It is clear to us that the person's rights to respect for their private and family life are engaged in this case just as they were in the TYU case. Without the redaction of the name the allegations made against that person will be associated with their name in these proceedings. They were not called as a witness and any account of the allegations and of the disciplinary process which followed will necessarily be incomplete. It is no part of our function in this case to determine what happened as regards that person and their alleged misconduct.

15. Given the engagement of that persons' Article 8 rights and the lack of any prejudice to the claimant by referring to the person as Employee A we consider the overriding objective to be best served by referring to that person in that way in this case and in any document entered onto the register or forming part of the public record proceeding from this claim and we so ordered. Such a course could not prejudice the principle of open justice given that whether Employee A behaved as alleged in 2016 is not a matter that we can or should determine.

16. We have reconsidered that decision made at the beginning of the case in the light of the evidence that we have now heard. We remain of the view which led us to make the Order set out. The evidence we heard as to what Employee A might have done was incomplete and so far as the alleged second incident was concerned, particularly confused and inconclusive.

Without prejudice documents

17. The claimant sought permission to refer to two documents which form part of the Without Prejudice correspondence entered into in July 2019. This was a time when arrangements were being finalised for the claimant to leave the respondent's employment having been made redundant. The claimant had already raised allegations of discrimination and general poor treatment and ACAS was involved.

18. There is no suggestion that the conduct of the Without Prejudice negotiations amounted to, or contained, any act of unlawful discrimination.

Therefore, we considered that the normal rule must apply that Without Prejudice negotiations cannot be relied upon by either party in subsequent litigation. The fact that the claimant did not fully understand what "Without Prejudice" meant (as she told us) and the consequence of heading documents in that way does not appear to us material. The exchanges were plainly properly described as being without prejudice. We would also note that the fact that the respondent was prepared to try to resolve the potential claim at an early stage whilst asserting its lack of merit, did not and does not appear to us to have any evidential value.

Findings of fact

19. From September 2012 the claimant was employed by the respondent as an EWO. In that role she dealt with students who had attendance issues. This would often involve liaising with students' parents and carers as well as the student themselves. She would speak to students' parents and carers face to face, sometimes by way of a home visit or by telephone. She would help with regard to devising strategies to encourage attendance and, where necessary, develop and pursue a Court case regarding non-attendance. Aspects of her work overlapped with others in support roles in the school and with those responsible for attendance at the local authority.

<u>The Employee A Incidents</u>

20. In May 2016 another member of staff, Employee A, was reported as having used offensive racist language in a staff room used by heads of house. Ms Emmerson, who was that staff member's line manager, was appointed as investigating officer.

21. Ms Emmerson interviewed Employee A and was told that the claimant and others had been present when the conversation took place during which the alleged remarks were uttered. Hence Ms Emmerson asked the claimant and those others who had been identified as present to discuss the incident with her.

22. Before the claimant met with her, Ms Emmerson had interviewed another member of staff said to have been present. That member of staff had been present but told her that the claimant had not been. The claimant maintained this to be the case when she met with Ms Emmerson on 4 July. Hence, Ms Emmerson told her that she need not give a statement, which she was intended to have given by being interviewed and signing a note of the interview. However, the claimant wished the interview to continue as she had matters that she wished to tell Ms Emmerson about relating to the conduct of Employee A on another occasion.

23. Whilst we are satisfied that this was the sequence of events, we note that the contemporaneous note of the meeting omits the initial exchanges in which Ms Emmerson accepted that the claimant was not present and the claimant went on to say that she had something she wanted to say and hence the interview should continue. This omission was because Ms

Emmerson regarded these matters as an informal part of the meeting. It is important that such matters are noted so that it is clear why an interview intended to deal with one matter continues dealing with another, but we emphasise that we accept that despite the inaccuracy of the notes in this case we accept Ms Emmerson's account of what took place.

24. The claimant told Ms Emmerson that she had been told by an unnamed third party that Employee A had said of her and another employee that she would "take them to the cleaners" in the context of discussing with two colleagues the investigation that Ms Emmerson was conducting and what she (Employee A) regarded as the making of false allegations targeted against her. It is clear that by this time the original allegation had polarised those who used the office in question and/or had heard what was happening. Some thought that there was a campaign being waged against Employee A, others thought that Employee A was setting out to intimidate them.

25. Against that background Ms Emmerson was anxious to establish what, if anything, had been said about the claimant and the other employee by Employee A and extended the scope of her investigation to include this second alleged incident. Although the claimant and at least one other staff member said that they had been told what had been said by Employee A, none would say who had told them. The two persons who were said to have been present were identified. They were interviewed and both denied either having heard what was now alleged to have been said or having told anyone else that they had heard such a statement being made by Employee A. Each provided reasons why they would or could not have done so. Ms Emmerson made several attempts to persuade the claimant and others to say who had told them of these matters, but they consistently refused saying it was for their informants to choose whether to identify themselves.

26. In those circumstances Ms Emmerson decided that she could not recommend that there was sufficient evidence to take this second allegation forward to a disciplinary hearing. She recorded her views in a report which set out the detail of her investigation of this matter and the earlier alleged incident. She also noted the respondent's attitude towards racist language and other aspects of the conduct alleged by the claimant and others against Employee A. We consider that Ms Emmerson did all that she could both to establish the truth and to defuse a difficult situation. Her decision not to recommend disciplinary proceedings in respect of the second incident was based on her view of the impact of the lack of direct evidence. She did recommend that employee A should face a disciplinary process in respect of the original allegation and this then took place. We consider that Ms Emmerson's approach to her task was rigorous, careful and impartial.

27. The claimant alleged that Ms Emmerson and also Ms Pow, who had HR involvement in the matter, failed to investigate the second allegation. However, when cross examined she accepted that having now seen the contemporaneous documents they had investigated it.

28. The claimant was asked to attend the disciplinary hearing by Employee A's trade union representative. This request was relayed to the claimant by the respondent. She refused to attend. This was taken no further by the respondent.

Parental complaint

29. In 2017 a parent emailed the school making various comments on and criticisms of how she and her child had been treated. The child was one whose attendance was the subject of ongoing intervention by the claimant. One aspect of the email related to the parent's dealings with the claimant. We have not seen the email and although we use the term "complaint" it is not clear to us (nor need it be) precisely what the complaint amounted to, save that it suggested that she did not want the claimant to deal with her again and was expressed in reasonable language.

30. In accordance with the respondent's policy Mr Nagle first sought to deal with the various points made by the parent, including the complaint, in an informal meeting. This in fact resolved all of the points.

31. Mr Nagle did not inform the claimant about what had been said about her. It did not in his view amount in any way to a threat to the claimant's wellbeing and complaints were often made about the claimant and others who were dealing with parents in circumstances which required them to challenge that parent's behaviour and attitudes. In particular, parents in such circumstances often said that they did not want to deal with the particular member of staff again.

32. Given the low level of the complaint, it having been resolved together with other points and the lack of any threat towards the claimant, Mr Nagle thought that informing the claimant of what had been said would be counter-productive. He considered that it might damage the relations between the parent and the claimant if the parent had not already alerted the claimant to what was said.

33. In fact, the claimant became aware of the comments as she had seen the email on the school database to which she had access in respect of the student in question, hence she was fully aware of what had happened albeit after a delay of some three weeks.

34. We are satisfied that Mr Nagle carefully addressed the issue of whether to tell the claimant, assessed the risk of not doing so as minimal and reached a rational conclusion, in reaching which the claimant's race, colour and ethnicity played no part.

Student death

35. In August 2017 a student who had been terminally ill sadly died. The claimant had had some dealings with the student in her EWO role and had visited the student's home.

36. Mrs Roberts was informed of the death and liaised with the parents. They gave her a list of the school personnel who they wished to be told of the child's death. The claimant was not on that list. Mrs Roberts knew that the claimant and several others who were not on the list had had some dealings with the child and the family, but decided not to seek to expand the list. Her intention was to tell everyone else at the start of the new term when the school returned from holiday.

37. As the information began to appear in social media, she decided she should inform all staff of the death of the student by email. She did so. The claimant was so informed along with everyone else who was not on that original list. She complains that she should have been informed at the same time as those on the parents' list of staff, or at least before everyone else was informed.

38. We have sympathy for the claimant learning of the death via email. However, we consider that the decision not to seek to add to the list was taken for the reasons set out above and was unrelated to the claimant's ethnicity. Several other members of staff could legitimately claim to have had significant dealings with the child and they were not told until the circular email for the same reason as the claimant, namely that they were not on the parents' list. Some on the parents' list were persons of colour and others who dealt with the child and were not on the list were white British. Presence on the list was the sole criteria for being told in advance of the circular email.

Workstation

39. When the claimant was originally employed, the school was operating with only three age groups and the claimant, together with many others, had their own office. By 2013 this had become impossible as the school grew in terms of student numbers and, as a consequence, in terms of numbers of staff. By 2017 space was at such a premium that almost all staff had to share offices. Of the two designated safeguarding leads (DSLs), Mr Nagle and Mrs Hockley, only one had an office of their own. Mr Nagle shared with an attendance officer. Even the head, Mrs Roberts, shared her office and habitually asked to use Mrs Hockley's office when she needed to conduct a private conversation.

40. Up to September 2017 the claimant shared the office of the heads of house. Mrs Roberts considered this unsatisfactory as the heads of house had to deal with students in their office from time to time. This made the holding of confidential conversations more difficult and the claimant did need to hold such conversations occasionally.

41. After discussion and from September 2017 the claimant was moved to a closed office which she shared with finance, HR and attendance staff. It was an open plan office, but there was no student access. The respondent was mindful of the need for those staff who used the office to hold

confidential conversations from time to time. This applied to all of those staff, not just to the claimant. Hence, they were offered and, save for the claimant took, school mobile phones. They were able to access one of a number of other rooms in the vicinity when they needed to hold such private conversations. This required a degree of professionalism and common sense on all of their parts. However, given the lack of rooms there was no practical alternative.

42. Mrs Hockley was given an office on her own. Her sole role was to deal with safeguarding issues, almost all aspects of which would be highly confidential. Mr Nagle, being the other DSL, shared an office but safeguarding was only one aspect, albeit a significant one, of his Deputy Head role. The claimant's role did involve safeguarding matters from time to time, but this was only ever about 5% of her role in terms of time taken considered over a lengthy period of time.

Complaints against Mr Nagle

43. In October 2017 the claimant raised a grievance concerning Mr Nagle, who was then her line manager. She considered that he was seeking to micromanage her. The one substantive point raised to justify her complaint was that he required access to her electronic work calendar.

44. Mr Nagle did require access to the calendar of all of his reports and they had access to his. This enabled him to see what the claimant and others were working on and where the claimant was at any particular time. He considered this important given that she would sometimes be out on visits and he needed to know where she was for her own safety. He also needed to know what she was scheduled to do in relation to particular cases in order to ensure that he was not speaking to parents whom she was about to see,, or had already seen without knowing what had been done, said or intended.

45. The claimant did not dispute that Mr Nagle needed access to her calendar, which was stored in the form of an electronic diary, but she considered that he already had this. In fact, whether inadvertently or not, she had given him only limited access so that entries relating to particular activities were not visible but instead she was simply described as being "busy". Why the claimant did not simply change the settings on her account when this point was raised with her was unclear to us. That this was what was needed was made clear when dealing with the grievance she raised in respect of the alleged micromanagement.

46. We are satisfied that Mr Nagle's desire to see her diary was entirely reasonable as was his continued pursuit of this objective when the claimant did not make it available to him.

47. The claimant also complained of lack of access to the school's safeguarding records. She was given access where necessary, but was not given unrestricted access to all records. Save for the head and the head of HR

no-one had access to all records relating to staff safeguarding issues. Save for the DSLs no-one had access to all student safeguarding records. For obvious reasons these records are highly confidential and we accept that the claimant, in common with most other staff, had access only on a need to know basis. This was a sensible and appropriate approach and one adopted in schools generally.

48. The claimant's grievance was rejected on 29 November 2017 after appropriate investigations and a grievance meeting. The claimant was offered mediation to help rebuild her relationship with Mr Nagle. She agreed to that. She did not appeal the outcome of the grievance. In the period of mediation her line manager was changed to Ms Williams. It is appropriate to note at this point in time that although Mr Nagle became her line manager again after the mediation period, Ms Williams took that role later in the day because Mr Nagle was about to leave and the claimant had raised further complaints about him.

Punctuality and management guidance letter

49. Mr Nagle considered the claimant a valuable member of staff and he admired and praised her work. He said so in various grievance meetings. In the 2017/18 academic year the claimant was periodically late for work but Mr Nagle chose not to do anything about this.

50. The claimant was late on the first day of the new term in September 2018 and as the Head and the CEO were on gate duty on that date, it was they who noted this and reported it to Mr Nagle. He raised it with the claimant at a line management meeting on 18 September. She admitted to that lateness and a further instance of lateness since that first one.

51. Mr Nagle discussed the need for her to attend promptly with her at that meeting, but did not indicate that he intended to take the matter any further. However, he reflected on this discussion in the following days and, given the relationship of her role to attendance, he felt that he needed to do more to impress on her the need to be a role model where punctuality was concerned. Hence, he issued her with a management guidance letter regarding her punctuality.

52. This was the lowest level of management response to concerns under the respondent's procedures. We accept that Mr Nagle issued it for the reasons he gave and that its issuance was justified in the circumstances. However, we consider that as he had not discussed this at their meeting, he should have explained his reflections to her face to face and handed her the letter. We consider that good management practice would require this.

53. In fact, Mr Nagle left the letter on the claimant's desk. Although it was in an envelope marked 'private and confidential' we regard this as an inappropriate way of delivering such a letter. Hence, we agree with the outcome of the grievance which she then raised which reached the same conclusion. As we have said, Mr Nagle should have given the letter to her

in a meeting at which he explained why he had decided this course to be necessary. However, we accept that he had delivered such letters to others in the same manner in the past and that he thought it an appropriate way to behave. The mode of delivery was not chosen because this particular letter related to the claimant.

54. The second grievance also dealt with the claimant's concerns as to her workstation and lack of confidentiality in the environment in which she had to work. She also made generalised allegations of bullying and intimidation by Mr Nagle.

55. The grievance was raised on 31 October 2018, but not finally resolved until 25 March 2019. The delay is explained by the fact that the respondent decided that an independent person should investigate the grievance. The claimant objected to the first person nominated. A second was then found and that person was not able to conduct her investigation and finalise her report until March 2019. The delay is regrettable, but we accept that it was a product of the change in investigator coupled with unavailability problems relating to the claimant's trade union representative. Undoubtedly the grievance not being resolved speedily did nothing to improve relations between the claimant and the respondent generally and with Mr Nagle in particular and the claimant's feeling that she was being badly treated.

56. The investigator recommended that the grievance be partly upheld, as we have noted above, and the investigator made a series of sensible recommendations with regard to the respondent's processes. This outcome was adopted by Mrs Roberts. We note that the allegations of bullying and intimidation were rejected.

57. We have set out above our own findings with regard to the management letter and its delivery and the claimant's workstation and confidentiality. So far as bullying is concerned the only manifestations of this relied upon before us were the micromanaging allegations, the subject of the first grievance, the sending of the management letter and its mode of delivery, the issues concerning her workstation and the lack of access to all of the safeguarding records, again our findings are as set out above. We found no evidence of inappropriate management or of bullying on the part of Mr Nagle.

<u>Ms Williams, safeguarding, CPD courses and Ms Skuse</u>

58. While the second grievance was being considered Ms Williams once again line managed the claimant as she had whilst the mediation took place.

59. On 21 January 2019 the claimant asked to be funded to attend two conferences and a training course. One of the conferences was for those involved at a high level in safeguarding, such as DSLs. The other conference and course related to attendance issues. The combined cost was some £1,300. The respondent's training budget for all staff, that is teaching and support staff, for the year was a mere £7,000.

60. Ms Williams discussed this request with Mrs Roberts. They agreed that a safeguarding conference was not appropriate given the limited safeguarding aspects of the claimant's role. They were prepared to support attendance related training, but wished to investigate cheaper courses. Eventually the claimant was offered other courses, one being similar to that she had proposed but on a different date. That course she agreed to attend.

61. The decision not to support her request for the original three courses and conferences was driven by the inappropriateness of one conference and the cost of the other two elements. Given the size of the budget, training requests were frequently turned down if they involved significant cost. We accept that of courses approved for staff at the school one was for an Afro Caribbean middle leader to undertake a senior leadership course and another for a black African teaching assistant to undertake a course to qualify as a higher level teaching assistant. We consider that neither the identity of the claimant, nor her being black Caribbean, was relevant in the decisions made about her training.

62. The claimant asserts that Ms Williams told her that her job did not involve safeguarding. We reject that. Ms Williams did tell her that her job was very different from that of a DSL, like Ms Hockley, who did nothing but safeguarding. All roles in education involve safeguarding and the claimant received annual training in this regard along with all other members of staff.

63. Ms Lauren Skuse was the SENCo manager and in March 2019 she and the claimant exchanged a series of emails. On 25 March the claimant and Ms Williams met to discuss the exchange to date. The claimant was concerned about what Ms Skuse was saying. It was clear to Ms Williams that, given the claimant's attitude to the exchange thus far, there was a danger of this escalating and relations between Ms Skuse and her being damaged. She urged the claimant to take time to reflect and to seek to calm matters rather than escalate them further when dealing with Ms Skuse.

64. Unfortunately, the claimant failed to act on Ms Williams' sensible advice. Instead, on 27 March, she emailed Ms Skuse stating that the email to which she was replying had been "unprofessional, intimidating and inappropriate." She accused Ms Skuse of making changes to policy unilaterally and of undermining her position as EWO, as well as seeking to circumvent her (the claimant's) delegated statutory duty to ensure punctual attendance of students. She copied the email to other senior members of staff including Ms Williams.

65. Ms Williams discussed this email with the claimant on 3 April. She was very concerned that the claimant had done exactly what she counselled her not to do. She felt that the tone of the claimant's email, its language and allegations and the fact that it had been copied to other senior staff, breached the staff code of conduct. This requires staff to behave respectfully to one another. It was her belief that the claimant had behaved inappropriately despite her advice. As she explained to the claimant, it was

this which led Ms Williams to assert that the claimant was in breach of the code.

66. Having seen the email exchanges, we consider Ms Williams' views to have a reasonable basis. Further, the language used by Ms Skuse in her emails, which had not been copied to others, was not disrespectful of the claimant. Ms Skuse explained what she believed should be the case for SEN students who were late and that this had been agreed with the SLT. Those students were to be treated the same as other students and given a detention, if appropriate, subject to the SEN team determining that this should not be so on the facts of any particular case, having regard to their particular special needs.

67. The claimant raised a grievance about Ms Skuse's behaviour towards her in the email exchange. Again, an external person was brought in to investigate and, following their recommendation, the grievance was rejected. Having looked at the emails from Ms Skuse we consider the rejection of the grievance to have been inevitable. Ms Skuse's emails were business like and represented a sensible attempt to clarify a point with a colleague. The claimant failed to respond to two of those emails, but Ms Skuse continued to behave sensibly and respectfully towards the claimant.

Reorganisation and dismissal

68. In spring 2019 the respondent began to consider a reorganisation of its staffing structure. The aim was to avoid duplication of responsibilities whilst creating a central MAT administration structure with a view to saving money. The MAT was struggling financially as its funding was down some 15% year on year, an annual reduction of about £450,000 in income.

69. One aspect of the review which led to the reorganisation was a consideration of administration and support roles, which included the claimant's role as EWO. The eventual proposal, which was put to and approved by Trustees, was to remove the EWO role as well as the roles of SLT support, library assistant and student services officer and to reduce the number of engagement officers from 5 to 2. The work of the EWO post was to be split between the pastoral manager, an attendance officer and the behaviour administrator. Also, some aspects of the role were duplicatory of work done by the local authority to which that work was now left. The behaviour administrator post was a new post and 75% of the duties of the old student services officer were moved to that post.

70. Some new posts were created in the exercise and where 75% or more of the duties of a previous post now rested in such a new post the postholder was automatically assimilated to that new role. This was not so in the case of the claimant. No post took 75% of the work that she had previously done. One of the posts in question was not a new post. Another, that of the behaviour administrator was new, but took more than 75% of the tasks of an existing post. The pastoral manager post was a new post and is considered further below. Persons not assimilated to a new role were considered for

vacant roles, but there was no vacant role for which the claimant was considered suitably qualified and experienced.

71. The claimant suggested to Mr Garrill in cross-examination that she should have been assimilated to the role of pastoral manager. Alternatively, that she should have been given that post either permanently or on a trial basis.

72. We are satisfied that far less than 75% of her EWO duties moved to that post. It was a new post with a range of duties as set out in the job description created for it. The core of that post was its responsibility for behaviour management. This involved managing the MAT's discipline officers and behaviour administrator, analysing reports on behaviour, deciding on future strategies, including alternative provision (for example at a college), and dealing with exclusions and managed moves both to and from the MAT. It was a significantly more senior post to that of the EWO and needed someone with experience both of managing behaviour and of managing a team. The claimant lacked the relevant experience and skillset.

73. On 29 April 2019 the claimant and all other staff were invited to a special staff meeting. All relevant trade unions had been invited. The claimant was a GMB member. The GMB had been invited and supplied with relevant documents via the email address usually used by the respondent to communicate with the GMB. Unfortunately, the email was missed and the claimant's trade union did not attend that meeting. However, the GMB was brought up to speed very shortly thereafter and never complained that a fair procedure had not been followed.

74. The meeting took place at a time when the proposals were in a sufficiently detailed state to be able sensibly to be debated. The details of what was proposed was set out in the meeting and in the papers given to everyone who attended. These also contained detailed rationale for the various proposals and the cost implications, together with the proposal that where 75% of the tasks of a particular post to be deleted was given to another post, the otherwise redundant post holder would be assimilated to the other post if vacant.

75. Where it appeared from the proposals that their post was at risk of redundancy, staff were then offered one-to-one meetings with the CEO accompanied by a trade union representative. The claimant declined a one-to-one meeting but raised a number of questions in writing. These were answered in writing. She then raised further questions which were again answered in writing.

76. The claimant was informed of her provisional selection for redundancy in writing on 14 June 2019. There followed a meeting with her to discuss her likely redundancy on 2 July 2019. This gave the claimant the opportunity to challenge her provisional selection for redundancy. In fact, the claimant did not challenge the proposals or her selection at that meeting, nor did she suggest any alternative post which she should or could be offered. She asked about her outstanding grievance, which was the one relating to Ms

Skuse, and requested early release. The claimant was accompanied by her trade union representative at that meeting.

77. On 10 July 2019 the claimant was informed of the outcome of her consultation process and the final meeting, namely that she was to be made redundant. She was advised of her right to appeal against the decision, but she chose not to do so.

78. At no time did the claimant apply for the pastoral manager post or suggest at the time that she should have been assimilated to it or given the post on a permanent or trial basis. We conclude that at the time the claimant did not think that she should have been given the post, most probably because it was so far removed from her skillset and experience.

79. The documents to which we have been taken show that the reorganisation was the subject of careful detailed planning. The written proposals presented to the trustees and, later, to the staff explained the impact on each post and the rationale for such changes as were proposed. It is not for us to evaluate such proposals to see if we would have acted in the same way or if they can be said to have been objectively justified. It is for the respondent to run its own business. We are satisfied that these were proposals which a reasonable employer could make in the operation of its business. We did not detect any evidence to suggest that either generally, or as regards the deletion of the EWO role, the proposals betrayed any motive other than the motives set out above.

80. The respondent gave the claimant and her trade union appropriate opportunities to comment on the proposals and make suggestions. Indeed, it is clear from the documentation that various comments were made by trade unions, including comments regarding the appropriate selection pools and were the subject of detailed responses.

<u>Handover</u>

81. Once it had been confirmed that the claimant's post of EWO was to be deleted and she was to be made redundant, the respondent considered the need for a handover and what work needed to be completed before the claimant left.

82. She was asked to meet with an attendance officer to hand over certain live cases. The claimant refused to do this. In cross-examination she maintained that no handover was necessary as all her files were up to date and on the appropriate database. However, she later accepted that if she had resigned to go to another school, she would have expected to undertake a handover and would have done so.

83. Mrs Roberts repeated the request for a handover twice in emails, even offering the claimant the choice of a handover meeting or of providing detailed handover notes. The claimant refused and was not pressed

further. Any EWO of whatever ethnicity would have been the subject of the same requests.

84. One of the claimant's cases was proceeding to court. Mr Nagle asked her to produce a witness statement before she left. It was envisaged that if the case was heard during her employment, it could be used but that if this was after she left it might be that another member of staff would have to familiarise themselves with the case and make a similar statement. The request was sensible and reasonable and would have been made whoever occupied the EWO post at the time. The claimant refused and persisted in her refusal but the respondent took the matter no further.

The law and Submissions

85. There was no dispute between the parties as to the applicable law, which we summarise below. The claimant's submissions dealt exclusively with issues of fact. What the claimant contended for (and our conclusions in respect of those contentions) appear sufficiently from our application of the facts to the law.

86. Unfair dismissal

86.1 S.94 of the Employment Rights Act 1996 ("ERA") gives to all employees with qualifying service (which the claimant had) the right not to be unfairly dismissed. In order for a dismissal to be fair it must be for one of the statutorily permissible reasons. One of those reasons is redundancy.

86.2 A redundancy is defined in s.139(1) of the 1996 Act which provides:

> **"139 Redundancy.**
>
> (1) 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."

86.3 Where a respondent asserts that the dismissal was for a particular statutory permissible reason, the burden lies on that respondent to satisfy the Tribunal that this was indeed the reason, or if there was more than one reason, the principal reason, for the dismissal.

86.4 If a respondent satisfies the Tribunal of the reason for dismissal being a statutory permissible reason, then the Tribunal must consider whether the dismissal was fair in all the circumstances including the size and administrative resources of that particular respondent's undertaking (see s.98(4) of the 1996 Act).

86.5 It is not for a Tribunal when considering overall fairness to ask itself what it would have done in the circumstances, rather it has to ask whether what this respondent did fell within the band of responses available to respondents generally if they are behaving reasonably. That "band of reasonable responses" test has to be applied both to the substantive fairness of the dismissal and the procedure adopted by the respondent.

86.6 There are numerous cases in the higher courts dealing with the impact of s.98(4) on redundancy dismissals. We were referred to one of them, which is a case frequently referred to in this context, namely the decision of the EAT in Williams v Compair Maxam Ltd [1982] ICR 156. In that case the EAT noted a number of broad factors which the Tribunal should look at on the basis that a reasonable employer would be expected to consider them and act in respect of these matters reasonably in any particular case.

86.7 Those matters are:

86.7.1 Whether the selection criteria adopted were chosen objectively and if so whether they were applied fairly;

86.7.2 Whether employees were appropriately warned and following that warning appropriately consulted about the possibility of redundancy;

86.7.3 Whether appropriate trade unions were involved in the consultation process such that they were able to express their views and whether those views were taken into account;

86.7.4 Whether any alternative work was available for the person otherwise to be made redundant.

87. Discrimination

87.1 Direct race discrimination occurs in circumstances where (see s.13 of the Equality Act 2010) a person discriminates against another

because of a protected characteristic (in this case race) by treating that person less favourably than it would treat or did treat others.

87.2 This is an exercise of comparison. A comparator may be a named individual or may be a hypothetical comparator. In either case s.23(1) of the 2010 Act makes clear that "there must be no material difference" between the circumstances relating to "the comparator and the claimant."

87.3 The claimant in this case also alleges harassment on the grounds of race. That is dealt with in s.26 of the 2010 Act which 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"
>
> "(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."

87.4 S.136(2) of the 2010 Act provides that if there are facts from which a Court or Tribunal could decide in the absence of any other explanation that an employer has contravened a provision of the Equality Act then the Court must hold that such a contravention occurred unless the employer satisfies the Tribunal that it did not contravene the relevant provision.

87.5 That apparently simply proposition, which has been present for many years has caused some difficulties in its application. In 2021 the Supreme Court looked at the provision and gave some guidance on its application in Royal Mail Group v Efobi [2021] ICR 1263. The Supreme Court held that s.136 did not remove the requirement that a claimant in a discrimination case has to prove, on the balance of probabilities, facts from which in the absence of any other explanation an Employment Tribunal could infer that an unlawful act of discrimination had taken place. The claimant is required to establish a prima facie case of discrimination in order to satisfy the first stage of s.136(2).

87.6 Where a claimant fails to prove such facts, the claim must inevitably fail. Where there are facts from which inferences could be drawn

then the burden of proof shifts to the respondent. It is then for the respondent to prove that it did not commit the act in question. To do so a respondent has to show that the particular treatment of the claimant in respect of which the claimant has satisfied the burden in the first stage was in no sense whatsoever related to the protected ground, here race or ethnicity.

Time limits

88. There are issues in this case as to whether certain of the claims were made in time. S.123 of the 2010 Act deals with the primary limitation period and sets out a secondary limitation period in circumstances where the claim was not presented within that period. The test for extending time into the secondary limitation period is whether or not it would be just and equitable so to do. The section also deals (in sub-section 3) with conduct which extends over a period of time, that which is normally referred to as a continuing act. Where there is such a continuing act the doing of, or failure to do, something is regarded as having occurred at the end of the period.

The application of the facts to the law

89. We will first of all deal with the claim for unfair dismissal.

Unfair dismissal – Reason for Dismissal

89.1 We are satisfied that the reason for dismissal in this case was redundancy which is a statutory permissible reason. The need for an EWO had ceased because the decision had been made to delete that post from the claimant's structure and redistribute aspects of the work to three other posts. None received so much of the EWO role that it could be said that, in effect, this amounted to little more than a relabelling exercise. One of those posts was an existing post to which additional work was given, another received 75% of the tasks of an abolished post and the post-holder was assimilated to it. The pastoral manager was a new post the scope of which was far greater than that of the former EWO post and far greater than that part of the EWO post's work which passed to it.

Was the dismissal fair in all the circumstances?

89.2 We have looked at each of the matters noted by the EAT in the Compair Maxam case but with the particular facts of this case in mind:

89.2.1 There were no applicable selection criteria in this case. The claimant's post was unique and we consider it reasonable not to have sought to place it and the relevant post holder in a pool with others. There was a clearly articulated business case for the various aspects of the reorganisation and the

assimilation provision prevented an employee being selected for redundancy despite the fact that a high proportion of their duties was being moved to another post.

89.2.2 The claimant was warned about the possible redundancy and then consulted about it. The plans were revealed at an appropriate moment. A reasonable employer could choose not to do so until it had thought through what it proposed and prepared a reasoned case to present to employees and their trade unions. The consultation was genuine in the sense that the respondent was prepared to listen to alternative suggestions and to modify its proposals. It offered the claimant one-to-one meetings. She preferred to put her points in writing. She did so and these were answered. When the respondent had firmed up its proposals, such that her post was clearly identified as being deleted in the final plan, a further meeting took place to discuss this at which the claimant was given an opportunity to comment on the proposals and raise matters such as possible alternative employment. She had been provided with job descriptions for all new posts and alerted to any vacant posts. She applied for none and did not suggest that she could or should be offered the pastoral manager post.

89.2.3 The trade unions were involved from the start. They were invited to the initial meeting and provided with comprehensive paperwork. They then accompanied their members at individual meetings where those members sought that. The GMB failed to attend the initial meeting due to their failing to spot the email sent to them, but they were then supplied with all relevant materials and did not complain that their members, including the claimant, had been in any way disadvantaged.

89.2.4 The possibility of alternative employment was considered but none was available. Many tasks from the claimant's former role were divided up between an existing post and two new posts, including the new post of pastoral manager. Those tasks represented a minor element of each such post. Two of the posts had post holders in place and were in any event much more junior than the EWO post with a much lower rate of pay. It was reasonable not to put those post holders in a pool with the claimant. The pastoral manager post was significantly senior to the EWO post and its principal focus was on behaviour management, an area of which the claimant had no experience. A post holder with significant experience in that work was required. It is noteworthy that despite having been given the job description for that post the claimant did not suggest that she should be given that job or considered for it. She did

not apply for it. That she should have been given it was first raised in the context of these proceedings. The claimant maintained to us that not giving it to her at least on a trial basis was an act of discrimination. We reject this. She was not considered for the post as she lacked the appropriate skills and experience. Her race was irrelevant.

89.3 We consider that this was a fair dismissal in all the circumstances. That the claimant was dismissed had nothing whatsoever to do with her ethnicity. The decision to select her post as one to be deleted was uninfluenced by her ethnicity. It had nothing to do with the identity of the post holder. Rather it was the product of a desire to improve the respondent's administration and to save money. She was not offered another post as there was not one to which she was suited.

Acts of discrimination and harassment

90. We will now turn to consider each of the other alleged acts of direct discrimination and harassment as set out in the list of issues. However, before doing so we deal with s.136 of the Equality Act. We have not found it necessary to consider the impact of s.136 in this case. All of the matters relied upon by the claimant as acts of discrimination have been explained by the respondent which has demonstrated that they were unrelated to the claimant's race, or ethnicity. Hence, if any burden had been placed on the respondent, we consider that burden to have been discharged.

Up until a date in 2018 exposed the claimant to risk of attack by not informing her that a parent she had visited had lodged a complaint against her (hypothetical comparator)

90.1 We turn first to this as an alleged act of direct discrimination. The claimant was not informed that the parent had made an adverse comment about her in an email. The claimant was treated in the same way that any other person in her position would have been in similar circumstances. The treatment followed from an assessment of the risks and benefits of telling her carried out by Mr Nagle. His decision not to tell her was unrelated to her race, hence this complaint of direct discrimination fails.

90.2 The failure to tell the claimant could be described as unwanted conduct but it had nothing whatsoever to do with her race. In any event, the purpose in not telling her was not one of those purposes forbidden by s.26 of the 2010 Act. Furthermore, we do not consider that it had that effect. The claimant was concerned that she had not been told once she realised this some three weeks later when she saw the email from the parent, but her concern stemmed from her general perception, incorrect in our view, that Mr Nagle was not managing her appropriately and it would certainly have been unreasonable for such conduct to have had the effects described in

s.26. Hence for all of those reasons the claim of harassment in this regard fails.

Up until her dismissal denied the claimant's requests for a suitable private working environment (necessary to enable her to comply with the privacy requirements of data protection regulations) (hypothetical and actual comparator – Mrs Hockley)

90.3 The claimant was certainly denied her own office but we consider that she was provided with a "suitable private working environment" by way of the combination of the closed general office, the availability of a mobile phone and the ability to use other private offices. Hence the factual basis for the claim is not made out. Mrs Hockley's situation was, in any event, very different so that she is not an appropriate comparator. The claimant dealt with confidential matters in ways which would require her to be able to speak privately from time to time whereas Mrs Hockley's work consisted almost entirely of safeguarding instances which would require regular private conversations. We note that even the other DSL, Mr Nagle, and the head teacher, Mrs Roberts, shared offices and like the claimant had to move to a private space from time to time. All three, Mr Nagle, Mrs Roberts and Mrs Hockley, are white British.

90.4 As regards the harassment claim, the factual substratum for that claim is not made out, hence it cannot succeed.

Up until her dismissal denied the claimant training opportunities being a safeguarding level 3 course and educational welfare officers' courses (hypothetical comparator and actual comparators – Mrs Hockley and Ms Sungkura)

90.5 The claimant was denied access to three courses or conferences that she requested to attend. She did attend a very similar course or conference to one of the three. She was denied access to the other two for reasons unconnected with her race. The reasons for the respondent's decisions were the cost of the courses and conferences and, in one case, its unsuitability, being a conference (and we note not a level 3 course) for those like a DSL whose job was wholly or principally concerned with safeguarding. We heard little evidence about Ms Sungkura and none relating to her training. Although we heard evidence as to Ms Hockley's DSL role and in general terms about her needing high level safeguarding training, nothing was said about particular courses. From the evidence we did hear it was clear that the small budget constrained training opportunities for all staff but that those of black and African Caribbean ethnicity had been given access to substantial training courses. Hence the claim for direct discrimination must fail.

90.6 Refusing access to the three courses was certainly unwanted conduct but it did not relate in any way to her protected

characteristic. It neither had the forbidden purpose or the forbidden effect under s.26, nor would it have been reasonable for it to do so. The claimant was upset that her application had been refused against a background of her other concerns, but no more than that. Hence the harassment claim in this regard must fail.

Around January to March 2019 through Ms Williams telling the claimant that safeguarding was not part of her job role (hypothetical comparator)

90.7 Ms Williams did not so inform the claimant. Hence the factual sub-stratum for these claims of direct discrimination and harassment is not made out and they must fail.

In March to April 2019 through Ms Williams and Ms Roberts handling intimidating inappropriate and unprofessional (though not in themselves discriminatory) emails wrongly, by accusing the claimant of breaching the school's code of conduct was not so accusing Ms Skuse (hypothetical and actual comparator – Ms Skuse believed to be white British)

90.8 Ms Skuse's emails were not intimidating, unprofessional or inappropriate. Furthermore, the way that Ms Williams and later Mrs Roberts (when adopting the independent investigator's recommendations in rejecting the third grievance) dealt with these matters was appropriate. It was the claimant who had behaved, in their reasonable view, in an intimidating, unprofessional and inappropriate way towards Ms Skuse by sending her the final email. The claimant had, after clear and sensible advice from Ms Williams, broken the school's Code of Conduct by sending that final email and circulating it to other senior staff. The reaction of Ms Williams and later Mrs Roberts had nothing whatsoever to do with the claimant's ethnicity. Anyone who had behaved as the claimant did would have been treated in a similar way, hence the claim for direct discrimination in this regard must fail.

90.9 The respondent's conduct was certainly unwanted, but it had nothing whatsoever to do with her race. We do not consider that it had the forbidden purpose and although the claimant was upset by the respondent's reaction, we do not consider that it had the forbidden effect. It was certainly unreasonable for it to have had such an effect as the respondent reacted appropriately to what was unacceptable behaviour on the claimant's part which she had been warned about in advance. Hence, this claim for discrimination must also fail.

In or around June 2016 through Ms Emmerson and Ms Pow failed to take action when the claimant reported to them that Employee A had been heard to make racist comments and later threatened to take the

claimant and another black colleague "to the cleaners" (hypothetical comparator)

90.10 Ms Emmerson and Ms Pow did not fail to take action. On the contrary, they did all that they could to investigate the matter and Ms Emmerson added it to the matter she was investigating in relation to Employee A. However, she reached a point where she could take that investigation no further and Ms Pow could do no more. The employee A denied making the statement, neither of the two persons identified as being present supported the unidentified person's view as to what had been said. That person would not identify themselves, hence Ms Emmerson reasonably concluded that the allegation could be taken no further. When cross-examined the claimant accepted that Ms Emmerson had not failed to investigate the matter. In reaching the decisions that they did, neither Ms Emmerson nor Ms Pow was motivated by the claimant's race. They would have acted as they did whatever the claimant's race or ethnicity. In those circumstances this claim for discrimination must fail.

90.11 The failure to progress this matter further was certainly unwanted conduct, but it was conduct unrelated to the claimant's race. It did not have either the forbidden purpose or the forbidden effect. In fact, the claimant was upset but not about the conduct of Ms Emmerson or Ms Pow but about what she understood to be the conduct of Employee A. She took the matter no further and did not complain at the failure, as she says she then saw it, of Ms Emmerson and Ms Pow to act. Further, as we have noted, in cross-examination she accepted that she was mistaken as to their lack of activity. Hence it appears to us that she now accepts that the failure to progress the matter was for good reason and it would not be reasonable for any such conduct to have the forbidden effect in those circumstances. Hence this claim for harassment must fail.

In connection with the same incident, in or around June 2016, through Ms Emmerson and Ms Pow persisted in requiring the claimant to evidence that she had not been present when Employee A had been heard to make a racist remark (hypothetical comparator)

90.12 The respondent did not require the claimant to evidence that she was not present when Employee A made the original racist remarks alleged. The claimant was asked to make a statement because Employee A had said that she was present during the conversation when the remarks were alleged to have been made. The claimant said that she was not and others supported this. She was only asked to make a witness statement, in the sense of being interviewed and the interview being recorded in writing, because she raised the further allegation, the subject of the previous instance of alleged race discrimination. She was asked to attend Employee A's disciplinary hearing at the request of A's trade union

representative. She declined to attend and was not pressed to do so by the respondent. The ways in which she was treated were unrelated to her race. Anyone in similar circumstances would have been treated the same, hence this claim for discrimination must fail.

90.13 The request to attend the disciplinary hearing was unwanted conduct, but it was unrelated to her race, being a consequence of Employee A's union representative making a request. That conduct did not have either the forbidden purpose or the forbidden effect. The claimant was annoyed at being asked to attend given her clear statement that she was not present, but no more than that. The request to give a witness statement by signing the notes of the investigatory meeting was not unwanted conduct. It was the claimant who wished the matter that she had raised in that meeting to be investigated further as it in fact was. Hence, these various ways of putting her claim in respect of harassment can in neither instance succeed and the claim must fail.

In the period October 2017 to August 2019 through Mr Nagle bullying and micromanaging the claimant and issuing her with a letter of instruction regarding her lateness (hypothetical comparator)

90.14 Mr Nagle neither micromanaged nor bullied the claimant. His request to have access to her electronic diary was reasonable as she accepted in cross-examination. She was denied access to the entire safeguarding data base, but given access only to such parts as she needed access to in relation to the students she was working with. That conduct was because of the sensitive and confidential nature of the material involved. Almost all staff, or whatever ethnicity, were treated the same. The treatment of the claimant was unrelated to her race. The same is true of the failure to provide a private office (or otherwise appropriate work station). She was provided with an appropriate workstation and the failure to give her an office on her own had nothing to do with her race. The issuing of the management letter was justified but we consider it showed poor judgment on Mr Nagle's part to place it on her desk given that he was issuing it some time after their meeting as a result of his reflecting on the situation as we have noted good management practice would have required that he explained his thinking face to face before handing over the letter. However, we are satisfied that in acting as he did Mr Nagle was not motivated by the claimant's race. He would have treated any person in her position in precisely the same way. In those circumstances this claim for discrimination must also fail.

90.15 The giving of the management letter amounted to unwanted conduct as did the failure to give her an office of her own and the failure to allow her unrestricted access to safeguarding records. The request for full access to her electronic diary did not. No other instances of alleged micromanagement or bullying were raised in

evidence. That unwanted conduct was unrelated to her race. We do not consider that the conduct had the forbidden purpose yet we do consider that the delivering of the management letter in that way briefly gave rise to an intimidating work environment. It is clear that Mr Nagle valued the claimant's work and periodically praised it. We consider that the duration of the effect of receiving an unexpected management letter on her desk would have been very short lived. However, we emphasise that for the reasons that we gave at the beginning of this paragraph, this claim for harassment cannot succeed and will be dismissed.

In July 2019 through Ms Roberts and Mr Nagle requiring a job handover including the provision of witness statements for use at court (hypothetical comparator)

90.16 A handover of aspects of the claimant's role was asked for and she was asked to draft a statement in relation to a particular case proceeding to court. The claimant accepted in cross-examination that it would have been reasonable to request the handover had she resigned and could not explain why a handover was inappropriate when she was being made redundant. It was obviously sensible to ask for one and we note that Mrs Roberts wrote to her saying that she could do this by way of detailed notes if that was preferable. Asking her to produce the witness statement whilst she was still employed was similarly, we consider, normal and sensible. Neither request was influenced in any way by her race, any EWO made redundant by the respondent would have received the same requests, hence this claim of race discrimination cannot succeed.

90.17 The conduct in question was unwanted in the sense that the claimant resented being asked to act in the ways described. The requests were however unrelated to her race and, in any event, did not have the forbidden purpose or the forbidden effect. The claimant was annoyed that, as someone being made redundant, she was being asked to do these things, no more than that.

91. In those circumstances it follows that each of the claimant's claims for direct discrimination and for harassment on the grounds of race fails and must be dismissed.

Claim in time

92. The claimant periodically asserted to us in evidence that there was a continuing campaign of discrimination against her beginning in 2016. She also asserted that the respondent was "institutionally racist". On that basis she suggested that all the acts she relied upon were part of a pattern of continuing acts. Such that all aspects of her claim were presented in time.

93. We found no evidence of any such campaign and as we have made clear we reject the submission that any of the individual acts which the claimant

relies upon as acts of discrimination were in any way related to her ethnicity. We do not consider that the evidence we heard suggests that the senior leaders of the respondent instigated, supported or were in any way tolerant of racism. On the contrary, those we heard from impressed us as individuals committed to the principles of equality which are given expression in the Equality Act 2010 and in the respondent's own procedures.

94. In addition to the claim in respect of the allegations of discrimination by dismissal, we consider that the allegations relating to the failure to provide an appropriate working environment and that relating to the way in which Mr Nagle dealt with her were presented within the primary limitation period. This is because the allegations related to an alleged continuing state of affairs up to the time of her dismissal. Of course, we have found that all of those claims failed for the reasons set out above.

95. So far as the remaining discrimination claims are concerned, we consider that they were presented outside the primary limitation period. We need say no more about the engagement of the secondary limitation period than we consider that it would not be just and equitable to extend time to permit a claim devoid of merit to proceed.

Conclusion

96. For those reasons each of the claimant's claims fails and is dismissed.

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Employment Judge Clarke QC

Date: 21/1/2022

Sent to the parties on: 11/2/2022

N Gotecha

For the Tribunal Office