EMPLOYMENT TRIBUNALS

Claimant: Ms O Ba

Respondent: Royal National Orthopaedic Hospital NHS Trust

Heard at: Watford

On: 18 to 22 July 2022

Before: Employment Judge Quill; Mr D Bean; Mr T Maclean

Appearances:
For the Claimant: In Person
For the Respondent: Mr L Harris, counsel

JUDGMENT having been sent to the parties on 2 August 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was a five day hearing. The evidence and submissions took place in person over the first three days. Day 4 was for deliberations and day 5 took place fully remotely for the giving out of our decision and the reasons for it. We had a bundle of 755 pages with one additional page added by agreement.

2. For the claimant, we had written witness statements from the claimant, from Ernest Anyadioha, from Joy King. Joy King did not attend and we have been asked to take into account her statement and give it such weight as we see fit. Mr Anyadioha attended by video and he was cross-examined and answered the panel's questions. The claimant was present in person and was cross-examined and answered the panels questions.

3. We also had three written statements from the respondent. These were from Stephen Dingley, Tracey Ward, Manjit Mahal. Each of them attended in person and gave evidence answering the claimant's questions and the panel's questions.

4. We had an agreed list of issues dated 30 May 2022. We were told that this largely replicated the January version which had previously been discussed at the last preliminary hearing save for being tidied up in some respects. In any event it was an agreed document as we discussed with the parties. Both parties confirmed that the list of issues was agreed and that they both understood that the contents were the only complaints that the panel was going to deal with.

5. There have been several previous preliminary hearings in this matter. We do not propose to discuss those in any detail save to confirm that the effects of paragraph 3 of Employment Judge Alliott's judgment of 16 August 2021 were to strike out certain allegations as having no reasonable prospects of success. That decision does not mean that we are unable to take into account evidence of Mr Anyadioha's agency assignment and the termination of it as background information.

6. The respondent is an NHS Hospital Trust. The claimant is an experienced and highly competent medical resourcing manager and she worked for the respondent as an employee in that capacity between 1 October 2018 and 1 March 2020. Her employment ended following a resignation with notice which was emailed to the respondent on 6 December 2019. As mentioned in paragraph 3 of her witness statement, the claimant is an ambitious black female spouse, mother of four children, Muslim, African and British. As per paragraph 2 of the list of issues the claimant describes her race for the purposes of these complaints against the respondent as black African.

7. When the claimant applied to the respondent she was responding to an advert, which we do not have. However, part of that advert contained a link to the job description which appears at pages 154 through to 158 of the hearing bundle and to the person specification at page 159. In that document it states that the post of medical resourcing manager is "responsible to" the deputy director of workforce and organisational development. At all relevant times, the relevant deputy director has been Ms Manjit Mahal. Ms Mahal's responsibilities at the time included managing the transactional part of the HR department including recruitment and selection, temporary staffing and payroll. She also had line management of the HR business partners.

8. Ms Mahal was the line manager of, amongst other people, Tracey Ward who was a senior HR business partner for recruitment. Ms Ward had held this role since approximately September or October 2016, in other words approximately two years before the claimant became an employee of the respondent. Ms Ward had, however, worked for the respondent since 1991 initially as a nurse and then performing human resource duties for about the last 20 or so years. As part of that she transferred in due course from the Nursing Directorate to the Human Resources Department as part of a restructuring and a transferring of budgets.

9. It is common ground between the parties that the line in the respondent's job descriptions for "responsible to" is supposed to give the description of the post of the employee's line manager. It is also common ground that on a day-to-day basis from the start of the claimant's employment, Ms Mahal did not carry out the functions of the claimant's line manager but rather that was done by Tracey Ward. However, the parties differ about the significance of that. On the respondent's case it means that according to the respondent there was an error in the written job description. It should have had Ms Ward's job title instead of Ms Mahal's on the "responsible to" line. On the claimant's case, however, the written job description is correct and her actual line manager was Ms Mahal (or was supposed to be Ms Mahal) and that Ms Mahal had delegated these functions to Ms Ward.

10. On the balance of probabilities, we do not think it likely that there was an oversight and that neither Ms Mahal nor Ms Ward had ever noticed that the job description said that the post was responsible to the deputy director. As discussed more fully below, towards the end of the claimant's employment each of Ms Mahal and Ms Ward looked over the job description as part of a trail of correspondence with the claimant. They are each HR professionals; if they had thought that the job description contained an error then they had every opportunity to arrange for that error to be corrected. So our finding is that neither of them thought at the time that the "responsible to" line was an error.

11. The claimant's predecessor in the post of medical resourcing manager was called Alesha Waterman. We are satisfied that the line management arrangements for Ms Waterman were the same as those for the claimant. In other words, the line management function was actually performed by Tracey Ward for both the claimant and her predecessor.

12. The "job purpose" section of the medical resourcing manager job description, included that the post holder will use specialist knowledge and experience of medical staffing terms and conditions etc and will recommend best practice in certain areas. Key areas of focus included clinical excellence awards amongst other things.

13. Clinical excellence awards are a scheme available to NHS employers and they operate both locally and nationally. They take place on approximately a cycle of one year and can lead to higher pay for the clinicians who are awarded the clinical excellence award. The cycles include: at the start of each year, writing to the doctors inviting them to apply for the award; shortlisting of applications which are received; vetting and verification of the applications; dealing with the applications fairly; making decisions and publicising decisions. Individuals from many different disciplines have a role to play in the overall exercise. Ms Mahal was ultimately responsible within HR for this task. As mentioned, the job description for the claimant meant

that clinical excellence awards also fell within her remit. They fell within the remit of her predecessor as well because her predecessor had the same job description. There is a difference of opinion between the parties as to whether the claimant's predecessor actually carried out the function or not but that is not something that we need to decide in order to make the decisions we need to make to resolve these claims.

14. In any event we are not persuaded that Ms Mahal or other members of staff at the relevant time either unfairly or unreasonably sought to take credit for the claimant's efforts or to denigrate the claimant's efforts or to belittle what the claimant did. We are satisfied that Ms Mahal did play a role in the clinical excellence awards and that in the first year - in particular - she gave guidance and training to the claimant as to what the medical resourcing manager needed to do in relation to Clinical Excellence Awards.

15. The claimant's employment was subject to probation. She met with Tracey Ward around 4 January 2019 to carry out the mid-probation review. The form which was produced is at page 175 of the bundle. Ms Ward is described as the manager. Ms Ward made positive comments throughout the form about the claimant and the form included a personal development plan for the next three months.

16. On 4 March 2019 the claimant and Ms Ward met again for the final probationary review meeting. The claimant passed probation and the form included the setting of objectives for the year ahead and there was also a personal development plan for the year ahead. Ultimately both the mid-year report and the final report were agreed by both the claimant and Ms Ward and the claimant did not disagree with the description in the documents of Ms Ward as her line manager.

17. At least partly because of concerns that the claimant had raised about her workload on her team, and also because a member of her team in a co-ordinator role had left, in around May 2019 the respondent engaged Mr Anyadioha via an agency. His agency assignment came to an end in August 2019. At the time of his departure, the claimant was on annual leave and so was her counterpart in another department. Ms Ward was on sick leave. Because of those absences, Ms Mahal was directly managing the team. Alleged concerns were raised with Ms Mahal about Mr Anyadioha's behaviour towards colleagues and Ms Mahal decided that the appropriate course of action was to terminate his agency assignment. She did that by contacting the agency to inform them. After Mr Anyadioha's departure, there was no immediate attempt by the respondent to engage a replacement agency worker for the claimant's team. The claimant was not consulted or informed about Ms Mahal's decision. The reason Ms Mahal did not contact the claimant was that the claimant was on annual leave at the time and Ms Mahal decided that it was not appropriate to interrupt the claimant's leave in

order to discuss this work-related matter.

18. In around May 2019, or thereabouts, an external organisation called HPMA circulated details of an upcoming training course. It was called Aspire Business Partner Programme. The cost of this course was to be around £1,500. At the time that she received this circular, it is Ms Mahal's opinion that her medical resourcing manager, in other words the claimant, was on the HPMA mailing list and would receive the notification / advertisement about the course directly from HPMA. Furthermore, it is Ms Mahal's opinion that she is likely to have circulated details of the course within the department in case anybody was interested in it. We have no documentary evidence that that happened; the claimant does not accept it happened and Ms Mahal did not seem sure she did it, but rather seemed to be commenting on what her usual practice would be and what she assumed she did in this case. We are satisfied however that neither Ms Mahal nor Ms Ward made any decision to attempt to conceal the existence of this course from the claimant. In any event, the claimant found out about the course as she had been told about it by colleagues working at other Trusts.

19. In May 2019, the claimant expressed interest to Ms Ward, that she would like to do the course. The closing date was to be 10 June 2019 at 8am, this was a Monday. Ms Ward agreed to find out whether the respondent would provide funding for the course. Ms Ward had some annual leave and she returned to the office on Monday 3 June. No decision had come to her yet about funding. She chased this up with Ms Mahal and Ms Mahal referred her to a colleague. At 9:52am on Thursday 6 June Ms Ward emailed the claimant and four of the claimant's colleagues stating that the respondent had decided that if any of those five wished to apply for the course then they could do so and if any of them were successful in being accepted on to the course then the respondent would pay for it.

20. The application for the course required a personal statement of around 250 words to be completed by the applicants and then details of career aspirations around about 500 words and then there was a competency self-assessment which had five items of about 300 words each. In other words, it was a fairly lengthy form. Ms Ward's email stated that she was happy for any of the recipients to take time out during that working day, the Thursday, for them to complete the form. This was because the following day, the Friday, Ms Ward was going to be in the office until about lunchtime and then she was leaving to commence a trip away. The significance of the fact that Ms Ward was going to be away was that the application had to be accompanied by a sponsor statement. Therefore, Ms Ward's email was making clear that she would need the application forms by first thing the following day, the Friday, in order to complete the sponsor statement before she went away.

21. The claimant replied by email 20 minutes later to say that she would aim to do it by 5pm but, if not, could she complete it and send it to Ms Ward that night; Ms Ward agreed to that.

22. In fact, it was Saturday 8 June when the claimant emailed the form to Ms Ward and also sent text messages to Ms Ward to make sure Ms Ward had received it. The claimant followed this up with voicemail and further text messages on the Sunday. Ms Ward was in an area on holiday without good internet access. On the Sunday, she made efforts to get to a location whereby she could complete the sponsor statement and she did that and she emailed it to the claimant at about 5.30pm on Sunday 9 June.

23. In the section of the form which the claimant completed (as per page 237 of the bundle), the claimant described Tracey Ward, her sponsor, as her line manager. In fact, we are satisfied that the claimant did not seek to challenge - during 2018 or 2019 - the fact that Tracey Ward's post was the post which was line manager for medical resourcing manager, or the fact that Tracey Ward was her, the Claimant's, line manager.

24. The sponsor's part of the application form was complimentary of the claimant and Ms Ward made changes to the sponsor statement where requested by the claimant. In due course the claimant successfully passed the interview stage and was accepted on to the course and the respondent paid for her to do it.

25. The respondent has a document called "Fair Recruitment Guidance". Paragraph 10 of that document is entitled "Appointment Scenario 8 Re-banding or Re-grading of posts" (page 134 of the bundle). It describes the scenario that if the duties of the job have changed and in particular if the skills and responsibilities applicable to the post have changed then there could potentially be a need to produce a revised job description.

26. That revision would be something to be agreed by the post holder and the manager. The document does not give any specific details about what level of manager should do this. The document is fairly brief and it seems to be relatively informal guidance and is not a full and detailed procedure. For example, the document uses the word "manager" without capitalisation sometimes and with capitalisation on other occasions. Furthermore, it also uses "Line Manager" with capitalisation sometimes and also uses "line manager" without capitalisation some other times. It is not clear to us whether it is seeking to draw a distinction between manager in general terms and line manager in particular. In any event, neither expression is specifically defined in the brief guidance.

27. In broad terms, the document says that volume of work would not be a reason to produce a new job description to be submitted for re-banding. The

guidance states that an employee has the opportunity to ask for re-banding and when doing so or if proposing to do so it is up to the post holder to submit evidence which shows which skills and responsibilities have changed.

28. The brief guidance does not go into detail about what the process is to be if the manager and the employee find themselves unable to agree on the wording of a revised job description. It does describe a right of appeal where the employee is dissatisfied with the evaluation that comes out after the agreed job description has been submitted for potential re-banding but not on how it gets to the evaluation stage if, as we say, there is a disagreement over the potential changes.

29. Following on from some earlier oral discussions, on 18 July 2019 the claimant wrote to Ms Ward attaching a document entitled Review of Current Job Banding which had three columns, one of which was Attributes and Competencies and Skills and which also included background information about changes which the claimant had said had occurred to her role since October 2018. Another document attached to the same 18 July email was an HR Business Partner job description from another NHS employer. The claimant stated that in due course she would provide examples of work which she had been doing outside of her current Band 7 role. She sent that later the same day, 18 July. That second 18 July email is at page 276 of the bundle and seems to have contained various attachments which are not themselves in the bundle.

30. The first of the two 18 July emails had the subject line “Review of Banding and Concerns in Medical”. Ms Ward responded to that email the same day at 12:07. She acknowledged that the claimant had used the word “concerns” and asked whether the claimant was happy for the matter to be dealt with informally or whether the claimant preferred it to be dealt with in accordance with the grievance procedure. She also asked for details of what duties the claimant believed she was doing that were outside of her job description and said that it might be necessary for the claimant and Ms Ward to be clear about situations where the claimant was entitled to insist that a particular task be carried out by somebody else (in particular, an HR Business Partner) rather than by the claimant.

31. Ms Ward also responded to the second 18 July email. She did that at 11:48am (in other words, she replied to the second email first). She said that it was not clear to her why the claimant believed that the examples attached to the email were matters which were outside of the Claimant’s existing job description. She asked for more clarity about that. She made clear in the email that if the claimant was being asked to carry out duties which should be done by HR Business Partners then she, Ms Ward, was willing to be involved to make sure that that ceased and that no such future requests were made to the claimant.

32. The email correspondence continued on 18 July. Ms Ward stated that she would put times in the diaries to go through it the following Tuesday. As we have already mentioned the claimant had three weeks' leave around August 2019 and also her agency worker left around that time. Between July and September 2019, the claimant and Ms Ward continued to correspond about a variety of matters. We do note that the claimant was clearly stating in that correspondence that she believed that her team was under-resourced and that she required additional assistance. We note, in particular, the email and attachment that she sent on 9 September. However, there is nothing in that correspondence that we particularly need to highlight that is relevant to the issues that we need to decide in this case.

33. On 22 October 2019, the claimant submitted a version of her original job description to Ms Ward to which the claimant had made some proposed changes, some of which were highlighted in yellow. She emailed that to Ms Ward at 9:38am. Ms Ward replied the same day, about an hour later, having considered the claimant's proposed amendments and decided that greater clarity was needed. She went through the Claimant document and made changes to the highlighting so that highlighted in yellow were all the proposed changes and in green were all the parts from the existing job description.

34. Ms Ward noted that this was a request for the job description and the person specification to be reviewed. She confirmed that she would raise the request with Ms Mahal, the deputy director, and with the director, Tom Nettel.

35. Ms Ward's evidence was that one reason she needed to raise it with them is that each of those individuals worked with the claimant on some areas of the claimant's work and that they were therefore well placed to comment on whether the proposed changes actually reflected the claimant's duties or not.

36. In any event the panel does not see anything wrong and or anything surprising or suspicious about the fact that more senior employees in the line management chain were also to be involved as part of the process. We do not think the fact that Ms Ward referred the request to the deputy director and the director of the department is inconsistent with the document on 134 of the bundle in. We have not been supplied with evidence that any different process was followed for any other employees or any other posts.

37. Ms Ward did forward the request to Ms Mahal and Mr Nettel the same day, 22 October. She asked them to review the attachment and to advise her, Ms Ward, on the next steps.

38. Ms Mahal replied within about 10 minutes to say that at first glance she did not agree with all of the proposed amendments. She mentioned some, in particular, with which she disagreed. She pointed out things that she thought fell within other people's job descriptions rather than that of the medical

resourcing manager. Ms Mahal offered to meet Ms Ward to discuss further.

39. On 7 November 2019 Ms Mahal sent the job description back to Ms Ward with her comments (page 393 of the bundle). Ms Mahal's covering email states:

> I have reviewed the JD/PS as amended by Oumouly and attach my revision of the role description as required. Can you please review my comments and amends to ensure you are comfortable with my views and position. I would suggest you then feedback to Oumouly and share a final draft with her for comment after which I will request for banding. No changes to person specification.
>
> If you have any queries in the meantime then please let me know.

40. Our finding is that, although she used the word "final" she was not seeking to imply that Ms Ward should create a version which could not be further amended via discussion and consultation with the Claimant. On the contrary, she was envisaging that a draft should be produced and sent to the claimant for the claimant to comment on, and, after that on the assumption that a version was agreed, it was to be sent for evaluation. In the context of the email, what Ms Mahal meant – and what Ms Ward knew she meant – was that Ms Mahal was making comments and suggestions for Ms Ward's benefit, but it would be Ms Ward who would finalise the version which would be sent back to the Claimant at this stage, as the Respondent's response to the Claimant's first draft.

41. At 10:42 on 29 November, having made some further changes to the document, Ms Ward forwarded the draft document to the claimant (434-445 of the bundle). This was the job description only. It was the Respondent's decision (as noted by Ms Mahal) that no changes to the person specification were appropriate.

42. We are satisfied that it was Ms Ward's intention that the claimant would be able to open the attachment and that the Claimant would be able to see that tracked changes had been used. It was Ms Ward's opinion that it would be obvious to the claimant:

    a. which comments Ms Mahal had made, because those had the initials "MM" associated with them,

    b. which comments had been made by Ms Ward, because those had the initials "WT" associated with them.

43. For whatever reason, when the claimant opened the attachment, the claimant

was not able to realise that some of the comments had been made by Ms Mahal. Whether that is because the document did not open properly and did not show tracked changes and/or did not show the comments in the margin or whether it is because the claimant did not realise that "MM" referred to Ms Mahal's comments and that "WT" to Ms Ward's is unclear. We do not need to speculate about the precise reasons. It suffices to say we are satisfied that Ms Ward did send the item (bundle 434) and was intending to be transparent about what it was. She had, as mentioned above, already told the Claimant she was going to contact Ms Mahal (and Mr Nettel) about the request.

44. The covering email stated:

> Further to your request to have the job description for the Medical Resourcing Manager reviewed please find attached the comments to the additions requested. Clauses have either been agreed for inclusion or not or changes tracked for clarification.
> No changes are deemed to be made to the person specification, therefore this will remain as it currently stands. Therefore areas highlighted in yellow are considered not required for the post, only those highlighted in green and in line with the existing person specification for the post are agreed.
> In accordance with section 10 of the Fair Recruitment Guidance, can you please review the comments made and if you are in agreement the revised job description will be put forward for matching with JME Partners.

45. We do not find that there is anything misleading about the email, or that it is inconsistent with the Respondent's stance that it had always been open about the fact that Ms Ward and Ms Mahal would both (and possibly Mr Nettel too) have some input into the Respondent's reply to the Claimant about the job description, and the evaluation process. Furthermore, the fact that the claimant was asked to review the revised draft document and to reply to say if she was in agreement with the job description (in which case it would be put forward for matching) does not mean that the Claimant was being presented with a choice between accepting the Respondent's version in full, or else having no evaluation at all. A fair interpretation of the email (in all the circumstances, including that this was between two HR colleagues) was that the Claimant had the option of coming back with a counter-counter-proposal. The reference to "review the comments made" confirms that, as far as Ms Ward was aware, the Claimant would be able to see the comments made in the margins which explained the Respondent's thinking as to why some proposed changes had been rejected.

46. The claimant replied to the email about 18 days later, on 17 December 2019. As well as writing to Ms Ward she copied in Ms Mahal. She asked Ms Ward to shed some light on the document and she asked Ms Mahal to confirm that Ms Mahal and Mr Nettel had reviewed the job description and person specification and she said she would be grateful if the job description could be fully reviewed.

47. On 18 December, Ms Mahal replied to say that the job description had been reviewed and she asserted that she had signed it off as the final job description. We have seen no supporting evidence that it had been signed off as "final". In the email, Ms Mahal gave an explanation for why she had refused to agree some of the proposed changes. She also said that if the claimant believed there were elements missing from that "final" job description (as she described it), then the claimant should set out in writing to her and Ms Ward what the missing issues were.

48. The claimant replied on 13:34 on 18 December and reiterated that from her point of view the proposed version of the job description which she had submitted on 22 October was correct and should be adopted in full. She requested a formal review of the job description.

49. Ms Mahal replied at 14:00 repeating essentially the points that she had made earlier that day, including making the invitation again to the claimant that if there was something specific missing in the revised job description (the one sent by Ms Ward to the Claimant on 29 November 2019) then the claimant could set it out in an email to her.

50. The claimant replied about an hour later implying effectively that she still regarded the 22 October document as correct and she wanted that particular document to be accepted in full and submitted for evaluation.

51. We accept Ms Mahal's evidence that the reason that she phrased her emails the way she did on 18 December is that she believed things had progressed further than they actually had. It had been her assumption that following her email of 7 November, Ms Ward and the claimant had together worked on a final job description.

52. Ms Mahal asked Ms Ward to send the "final" job description to her with the associated valuation report. This was because Ms Mahal was under the impression (that is, she had assumed) that the job description had already been submitted and that the valuation report was already available.

53. The following day at 9.35am Ms Ward sent the job description to JME, an external company which was going to do the evaluation. She had spoken to the company and they had agreed with her that they would turn it round quickly, hopefully by the following day. Ms Ward did not suggest to JME any particular desired outcome. Ms Ward believes that they may well have contacted her at some stage (and she said as much to the claimant nearer the time) but she did not reply to their questions when they asked her what the desired outcome was.

54. The document which Ms Ward submitted to JME was the same one that she had sent to the claimant on 29 November. In other words, it was the version

which contained the tracked changes and comments as shown in the version in the bundle. One consequence of that was that it was shown on the document that the existing pay band was Band 7. [The claimant was seeking an outcome which increased it to a higher band, Band 8.]

55. The same morning, a minute later, on 19 December, Ms Ward wrote to Ms Mahal to explain that the job description had not previously been sent to matching as it had not been agreed by all parties. Ms Ward confirmed that she had spoken to JME and that they had agreed to do it quickly.

56. The reason for Ms Ward sending these items to JME at this time, 19 December, was because Ms Mahal had said to Ms Ward in the email correspondence that she, Ms Mahal, wanted to meet the claimant to discuss both the job description and the CAJE report and it was therefore Ms Ward's understanding of that correspondence that it was important to get the CAJE report quickly.

57. Ms Ward was aware, as she said in her emails to Ms Mahal, that the claimant had not actually agreed that job description. In writing to Ms Ward, Ms Mahal said that the intended outcome was Band 7. Regardless of what Ms Mahal intended Ms Ward to do with that information, Ms Ward did not pass it on to JME and nor did Ms Mahal contact JME to say that the intended outcome was Band 7.

58. On 2 January 2020, Ms Ward sent to the claimant a copy of the JME report on the job description which had been submitted. The proposal made to the claimant was that Ms Ward and Ms Mahal and the Claimant would meet the following week, and that they would discuss both the JME report and the job description itself and analyse what - if anything - the claimant disagreed with as far as the job description was concerned.

59. That meeting eventually took place around 10 January and the claimant wrote on 15 January stating that she would like to have full details of the process, policies and procedures.

60. On 17 January, Ms Ward responded to state that she believed that she had acted correctly when sending the document to JME. She acknowledged that the tracked changes and the comments had been included. She said she thought that had been appropriate so that JME could see those comments what had been proposed by the claimant as well as what had been agreed by the Respondent.

61. Ms Ward reiterated that the process adopted was fair as far as she was concerned. She said that it was in accordance with the recruitment guidance on page 134 of the hearing bundle. She did offer, however, that if the claimant wished to do so then they could start the process again from scratch.

62. Mr Nettels' replacement as Director of HR was Laura Bevan who had started in or around January 2020. She met the claimant and Ms Ward on 24 February, Ms Mahal having agreed to escalate it to Ms Bevan. On 25 February Ms Bevan sent an email to the claimant to set out the respondent's position as the respondent saw it at that stage. Ms Bevan went through the correspondence up to that point, commented on it and noted the existence of different versions of the job description and noted that it was still the claimant's position that the one which the claimant had submitted on 22 October 2019 that was the version that should be agreed in full by the Respondent and submitted for job evaluation. Ms Bevan reiterated that as far as the respondent was concerned, that version was not an agreed document, and it would not be submitted for job evaluation. In the circumstances, the Respondent's position was that there was nothing to submit for evaluation since there was no agreement about a new job description.

63. The claimant subsequently raised a grievance which included complaints amongst other things about this issue, but the grievance was not upheld by the respondent. There was ultimately no change to the banding of the claimant's post.

64. One of the allegations the claimant has made is that during her employment, meetings were segregated, such that South Asian staff attended one set of meetings and white staff attended another set of meetings and the claimant was excluded from each of those sets of meetings. Our finding is that this is not the case. There was no policy or rule or decision or practice that selection for attendance at meetings would in any way be influenced by the race of the individual. We are satisfied that, when a meeting was due to take place, decisions about who would attend that meeting were based on the purpose of the meeting and the job roles of the attendees.

65. The claimant also suggested that she did not have one-to-one meetings during her employment. Ms Ward has produced documents which she says are handwritten notes (copied from her notebook) from meetings with the claimant on 1 November 2018, 15 November 2018, 6 December 2018, 31 January 2019, 27 February 2019, 24 April 2019, 3 June 2019. As part of the grievance investigation, Ms Ward also provided some typed notes which she said were typed notes of meetings on 31 January, 27 February, 13 March, 1 April, 3 June, 26 September, 18 November and 18 December 2019 and 24 February 2020. Ms Ward does not claim to have supplied these meeting notes to the claimant at the time; rather she claims to have made them for her own personal benefit. We accept that is true. The meetings did take place and the notes were made at the time of the meetings. The documents have not been produced simply to mislead either the internal grievance investigation or the Employment Tribunal.

66. Ms Ward has also produced calendar invites to the claimant scheduling a meeting every second Wednesday between January 2019 and May 2019 from 2pm to 2.30pm with the subject "Oumouly 1:1 catch up". ("Oumouly" being a reference to the Claimant). The claimant accepts that she received the meeting invites but says she did not think it was necessary to attend these meetings because she did not think they would be meaningful.

67. The respondent uses a system called TRAC. Ms Ward does not use that system directly. One of Ms Ward's direct reports is the in-house expert on that particular system. There are no regular meetings organised by the Trust in relation to that particular system. There is an annual away-day. In September 2019 Ms Ward asked her report to ensure that the claimant was invited to the annual away-day. He did that and the claimant was invited. There were no TRAC meetings from which the claimant was excluded during her employment.

68. The respondent uses a software system provided by a company called Allocate. The Respondent has two contracts with Allocate. Under one of the contracts, the respondent receives services in relation to e-job planning and other things. The claimant's work included making use of the services provided under that contract. For that particular contract the respondent had not purchased regular support and there was no relationship manager from Allocate appointed to deal with the respondent.

69. The other contract with Allocate was software in connection with, amongst other things, the health roster. The respondent's work under that contract was managed by the claimant's counterpart, Gill Fountain, another Band 7 who also reported directly to Ms Ward. For that second contract, from around 2019 onwards, the respondent did have a relationship manager provided by Allocate. The claimant attended one of the meetings with the relationship manager in around February 2019. She did not go to later such meetings. The claimant's evidence was that she was not specifically invited to them and we accept her evidence on that point. She has not provided us with evidence, however, that she was specifically excluded from those meetings. We have seen no evidence that she was making requests to Ms Ward or Ms Fountain or anyone else, seeking to be included in such meetings.

70. In November 2019, Ms Ward asked Ms Fountain to invite the claimant to such meetings in future. The claimant asked why she had not been invited to the most recent meeting. Ms Ward therefore acted by contacting Allocate directly supplying them with the claimant's email address and asking Allocate to include the claimant on notifications of future visits.

71. In relation to meetings about bank and agency staff, we accept that the situation is as described in paragraph 28 of Ms Ward's witness statement. Given that the claimant was responsible for bank and agency medical staff,

had there been regular meetings internally in relation to such staff then it may well have been appropriate for the claimant to attend. However, the claimant has not referred to or described any such regular meetings and Ms Ward is not aware that there were any. Therefore, our finding is that the claimant was not excluded from bank and agency meetings in relation to medical staff because it has not been proven that there were any such meetings. The reason that the claimant did not attend bank and agency meetings in relation to nursing staff is that nursing staff were not part of the claimant's remit.

72. In July 2019, one of the respondent's employees, Hannah Garvey, sent an email to her line manager, Gill Fountain, and used as the subject line: "Complaint". Ms Garvey made comments in that email which suggested that the claimant had been rude to her and she referred to some work issues.

73. It is not appropriate or necessary for us to decide whether or not what Ms Garvey wrote was accurate or fair. However, we do accept that Ms Garvey did write it. Ms Fountain forwarded the email to Ms Ward (Ms Ward being both Ms Fountain's line manager and the Claimant's).

74. It was Ms Ward's view that the correct way forward was to have an informal meeting which included both Ms Garvey and the claimant during which there would be a discussion about workplace issues. This meeting took place in September following holiday absences. The claimant was invited to the meeting without being told in advance what the subject matter was to be. During the course of the meeting, Ms Ward stated that this was to be an entirely informal meeting and no notes would be taken and it was not to be regarded as part of any disciplinary or grievance process. That was an accurate statement; Ms Ward did not intend the meeting to be a disciplinary or grievance meeting.

75. After the meeting, the claimant and Ms Garvey left together. They left on good terms. As they were walking down the corridor, Ms Garvey stated to the claimant that Ms Fountain and Ms Ward had made her do it. In the tribunal hearing, the respondent's representative put it to the claimant that Ms Garvey probably meant that she felt that she had been pressurised into having the meeting with the Claimant and it was not an indication that Ms Fountain or Ms Ward had pressurised Ms Garvey or encouraged Ms Garvey to make the initial written complaint. Regardless of whether the respondent's suggested interpretation of Ms Garvey's words is correct or not, we are satisfied, based on Ms Ward's evidence, and on the contents of the 25 July email itself, that neither Ms Ward nor any other employee of the respondent had encouraged Ms Garvey to make any false complaints or accusations against the claimant. Furthermore, Ms Ward's intention in arranging the meeting in September was intended to bring about an amicable resolution without the need to go through any formal process. Ms Ward was not trying to trump up false charges against the Claimant in order to justify disciplinary

action, and did not intend to take disciplinary action.

76. In the claimant's resignation email, there is a quote from Ms Garvey. We accept that the claimant did accurately take that from a written communication which the claimant received from Ms Garvey. We have taken those words into account, but that quote does not contradict or undermine the findings of fact just mentioned.

77. On Monday 11 November 2019, the claimant came to see Ms Ward and informed her that she had been offered a Band 8 position at another Trust. The claimant asked Ms Ward not to tell anybody else. The claimant said that she wished to inform the Medical Director, Lila Dinner, with whom she worked closely. Ms Ward replied that in principle she was happy with both of those suggestions but subject to the proviso that Ms Mahal should be informed too. Ms Ward did not wish to run the risk of Ms Mahal finding out from a third party (Ms Dinner or anybody else) that the claimant had decided to leave.

78. There is no dispute that the claimant agreed that Ms Mahal could be informed. However, what is hotly disputed between the parties is that:

    a. according to both Ms Mahal and Ms Ward, the claimant and Ms Ward went together to Ms Mahal's office and a conversation took place in which the claimant directly told Ms Mahal that she was to be leaving and Ms Mahal congratulated her and the claimant asked Ms Mahal to keep it quiet.

    b. According to the claimant, that alleged meeting did not happen and that she was not present when Ms Ward told Ms Mahal. Furthermore, the claimant blames either Ms Ward or Ms Mahal for a breach of confidentiality and states that other people found out either from Ms Ward or from Ms Mahal potentially because Ms Ward failed to ask Ms Mahal to keep it confidential.

79. Our impression of all three witnesses on this point is that each of them were being sincere in what they said to us and each of them were genuinely trying to give their honest recollection of what happened about two and a half years ago.

80. On the balance of probabilities, we think it is more likely that Ms Mahal and Ms Ward are remembering accurately. They are two people giving a similar account and - in our opinion - it is less likely that each of them would have a false memory of the claimant's being present in that particular meeting than it is that this meeting would have slipped from the Claimant's memory. In particular, we think it unlikely that Ms Mahal would have a false memory of hearing the news directly from the Claimant if the reality was that she heard it from Ms Ward in the Claimant's absence. The claimant was potentially

excited at this time about the new job opportunity and a meeting with Ms Mahal (following on almost immediately from first breaking the news to the Respondent by speaking to Ms Ward alone) might not have been particularly significant to her at the time. Furthermore, in any event, this particular dispute is not particularly important - as far as the panel is concerned - to the issues

81. We are satisfied from the evidence that neither Ms Ward nor Ms Mahal informed any of the claimant's other colleagues that the claimant was planning to leave. Therefore, if the claimant's colleagues did come to be in possession of that information without being told directly by the Claimant, since they did not hear it from Ms Ward or Ms Mahal, they must have heard it from other people with whom the claimant had shared the news. In any event we totally reject the suggestion that either Ms Ward or Ms Mahal deliberately told other people that the claimant was leaving as part of a plan to try to make sure that the claimant did leave.

82. The parties both agree that these oral discussions on 11 November and shortly afterwards did not amount to a formal resignation. No leaving date had been specified for one thing. The claimant was waiting on confirmation that the offer of the new job was unconditional before resigning from the Respondent.

83. Ms Ward was anxious to put arrangements in place to recruit a replacement for the claimant. To do this, she needed to know the claimant's leaving date. The claimant had indicated to Ms Ward that potentially she might wish to start the new job either at the beginning of February 2020 or else at the beginning of March 2020. Discussions between the claimant and Ms Ward continued. There is a lengthy email trail between pages 651 and 658 of the bundle which we have read carefully. It is not necessary for us to quote extensively from that trail, but our finding is that it is clear from all of the evidence, including what is stated and implied in that email trail, that Ms Ward was not trying to persuade the claimant to leave any earlier than at the end of three months' written notice.

84. As part of discussing possible options with the Claimant, Ms Ward looked into whether it might be possible for the Trust to offer payment in lieu of notice. Ultimately, she decided (and communicated to the Claimant) that payment in lieu of notice was not an option and nor was garden leave.

85. Ms Ward indicated that potentially the Respondent might agree to a request to accept less than three months' notice. However, she said that the procedure was for the claimant to first submit her written resignation giving the requisite three months' notice and, after she had done that that negotiations could take place about a potential earlier leaving date, if the Claimant wanted an earlier leaving date. We are satisfied that it was not Ms Ward's preference that the claimant would have an earlier leaving date. On

the contrary, when the claimant sought to persuade Ms Ward - in advance of submitting a formal resignation - to specifically confirm the two months' notice would be acceptable Ms Ward declined to provide such confirmation.

86. For the avoidance of doubt, we all are satisfied Ms Ward did not seek to misrepresent the situation in the email trail. She wrote in the emails that the claimant had said orally that her intention was to resign formally once the claimant had an unconditional offer from the other Trust. This was based on Ms Ward's genuine understanding of what the claimant had said to her orally.

87. The claimant knew the correct resignation procedure including knowing that resignation had to be in writing to be effective. Ms Ward's reasons for reiterating in writing that (three months) written notice was required was to make sure that there was no ambiguity or confusion about the status of the oral discussions, especially in light of the fact that the claimant had asked about alternatives to working as normal throughout the full (three month) notice period.

88. On 6 December, the claimant submitted her resignation and stated her last day of employment was to be Sunday 1 March 2020.

89. Stephen Dingley is an HR Business Partner. As such he reported directly to Ms Mahal.

90. In the course of his duties, Mr Dingley had some dealings with the claimant and with her team including, amongst other things, in relation to contractual changes for doctors who worked for the respondent.

91. One such doctor is named at Item 7(b)(iv) of the list of issues and in the documents and in the statements. We are going to refer to them as Dr S.

92. In around September 2019, a decision was made by the clinical department using Dr S's services that it would remove some duties from him. This decision was going to have the side effect of removing a significant portion of his pay. Mr Dingley and the employing department decided that what they wanted to try to keep his pay the same, even though he was no longer doing the duties that had led to that pay. They decided that the method that they would adopt to attempt to achieve this was to increase the doctor's position on the pay scale so as to keep his overall remuneration the same. The increase was a significant one. Had that course of action been adopted, then it would have had a knock-on effect if he changed employers within the NHS. It would have been perceived that the Respondent had made a decision that Dr S had the requisite skills and experience to be paid at that higher pay scale and that might affect the pay etc at any new employer.

93. It is not necessary for us to comment on whether this proposed course of action was appropriate or not. We note that in his witness statement Mr Dingley describes it as slightly unorthodox. In accordance with the relevant procedures, Mr Dingley submitted a "change form" to the claimant's team to be actioned. The claimant refused to action it. There was a conversation around 2 December in which the claimant said she was not willing to action the form and that she would need more information. She said she would need an explanation justification for it. It was Mr Dingley's opinion (both at the time and during the employment tribunal hearing) that it was not the claimant's role to offer advice about this situation and that she did not have the right, responsibility or obligation to refuse to action the form. As far as Mr Dingley was concerned, the Claimant (or her team) was simply obliged to process the form without questioning it.

94. In the list of issues though not appearing in the claimant's witness statement, there is an allegation that Mr Dingley said: "For god's sake just do it". Mr Dingley denies that he used these words in his written statement and he was not challenged about that in cross-examination. We accept Mr Dingley's denial that he used those specific words.

95. Later, on around 18 December 2019 (page 448 of the bundle), the claimant wrote to the Medical Director, Ms Dinner, and asked her to ensure that the proposed change was not implemented. She stated that the proposed change would result in the doctor receiving a salary of around £46,000 when it should have been around £31,000 or £32,000. The Medical Director sent a reply which the claimant seemingly interpreted as supporting her position because she forwarded that to Mr Dingley and asked him to amend and reverse the "change form" before the payment was actioned. In fact, a decision had already been made without informing the claimant that the proposed course of action was to be abandoned and that Dr S's pay band was to remain as it had been (so basic pay would the same, meaning that the average remuneration would go down because he was no longer carrying out particular duties). Mr Dingley's reply informed the claimant of that, and he said he had not been asking the claimant for advice about the situation.

96. Although in their witness statements neither the claimant nor Mr Dingley has given a very detailed description of the alleged conversation which took place around 2 December 2019. It seems likely to us that Mr Dingley did seek to insist on the claimant actioning the form and that the claimant did refuse. Mr Dingley makes clear both in his email of 18 December and in his witness statement for these proceedings that - as far as he was concerned - he did not think it was the claimant's role to express an opinion on the matter. Judging by the demeanour that each of them had in the Tribunal as they gave their evidence – and the interactions they had while the claimant was cross-examining Mr Dingley - it seems likely to us that the conversation around 2 December did become (at least) slightly heated. We also think it likely on the balance of probabilities that Mr Dingley was rude to the claimant. It is

probable that she was also rude to him. They were abrupt with each other. The conversation did not end with an agreed way forward.

97. There is also another doctor. She is referred to in items (i), (ii) and (iii) at 7(b) in the list of issues. We will call her Dr H. This doctor was leaving her role as a clinician. It was her intention and the respondent's intention that, after she had retired as a clinician, she would carry on working as an academic for the respondent. This new role was to start after a short gap in employment to ensure a break in continuity. Two issues arose which gave rise to disagreements between the claimant and Mr Dingley over this consultant.

98. The first was that had the doctor remained in employment then she was entitled to a Clinical Excellence Award. She was part way through receipt of a three-year award. She was leaving part way through a year. The Trust had to make a decision whether she would get none of the Clinical Excellence Award, some pro-rata portion of it or potentially all of it. Had she been moving to another Trust, as the claimant pointed out, then it would be for the new employer to pick up and pay the Clinical Excellence Award. However, as we have mentioned that is not what was going to happen.

99. In August 2019, there was an exchange of emails between the doctor and Ms Mahal and a payroll clerk in relation to the Clinical Excellence Award payment. The payroll clerk was aware that the doctor was likely to be leaving soon and noted that that had not been actioned as yet; the payroll clerk asked for clarification about whether or not the Clinical Excellence Award should be pro-rata and paid to the doctor up to her leaving date.

100. On 13 September, the claimant, who had been copied in, forwarded the correspondence to Mr Dingley. Without commenting specifically on what had been discussed up to that point, the Claimant said that the new employer would need to pay the remaining value of the Clinical Excellence Award. Mr Dingley replied querying what the claimant meant by that; he asked whether or not the doctor was indeed entitled to a pro-rata payment. He also queried whether the claimant had done the "change form" that the payroll clerk had requested. He said that, if not, he, Mr Dingley, would be willing to produce the form in order to meet the payroll cut off point. The claimant did not answer all of the questions asked. She replied by saying that she had not done the form. The payroll clerk wrote to Mr Dingley and said that in these circumstances Mr Dingley should produce the form.

101. Subsequently, Mr Dingley came to the view that rather than just paying pro-rata, the whole of the Clinical Excellence Awards payment should be paid by the respondent to the doctor, based on the fact that it was going to be both her old and her new employer. The claimant declined to process it. The reason that she did so was that the procedure made clear that the outgoing employer did not pay any part of the Clinical Excellence Award that had not

been paid prior to the termination date; she said that there was to be an entitlement at all then it was for the new employer to pay. However, the claimant's opinion was that, in any event, as the doctor was moving to a position which was not eligible for the Clinical Excellence Award, then she might lose any remaining entitlement.

102. On 17 , the doctor wrote to Mr Dingley and to the claimant, copying in some other people, with the subject line Clinical Excellence Award payments and asked for clarification of what was going on.

103. Mr Dingley sent a reply copying in the same individuals plus adding his colleague, Ruth Henderson. He accurately stated that he had submitted a change form to have the Clinical Excellence Award paid and that the claimant had declined to action it. He explained the basis as he saw it, of the claimant's rationale for the rejection including mentioning the phrase that the claimant was "technically correct". However, he went on to imply that there might still be the opportunity in the future to pay the doctor the Clinical Excellence Award. He suggested that further discussions with the claimant might lead to that outcome.

104. In due course, the respondent did accept that the claimant's understanding of the eligibility criteria was correct, and that the Clinical Excellence Award payment should not be made. It was not made.

105. Another issue about the same consultant, Dr H, was about the form of contract. The Medical Director's decision was that a fixed term one year contract should be issued to the doctor for the academic role following her retirement from the Clinician's role.

106. The claimant's opinion was that, while it was potentially legitimate to place the doctor on a bank staff contract it was not appropriate to issue a new fixed term contract unless the doctor went through competitive recruitment. Mr Dingley's opinion was that there was no requirement to have competitive recruitment in these circumstances. That was his opinion at the time, and it is what he still believes. It is not necessary for us to try to resolve that particular difference of opinion. We do accept that each of Mr Dingley and the claimant genuinely hold the beliefs on the matter which they professed to us.

107. On 24 December, Mr Dingley wrote to a member of staff asking them to produce the change form to create the fixed term one year contract making clear that there should be no pension, no on-call allowance and no Clinical Excellence Award included as part of this contract. He asked that member of staff to produce the "change form" and said that once it had been created he would approve it.

108. At the time that he sent that email, he thought that the recipient (still) worked on the claimant's team. The claimant does not agree. She suggests the the request should have been sent to her team, and it was not. Again, it is not necessary for us to resolve that particular dispute. In any event, on 3 January the email recipient forwarded Mr Dingley's request to the claimant. The claimant replied that day noting that it had now been agreed that the Clinical Excellence Award payment was not going to be made and mentioned that that was a saving for the Trust. However, she also maintained her view that the doctor should submit timesheets for payments and that a fixed term contract should not be issued. The claimant said that the instruction would not be actioned.

109. Twenty minutes later the Medical Director, who had been copied into the correspondence, replied to say that Mr Dingley was correct. The Medical Director apologised for any misunderstanding and said that - although unusual - it was perfectly proper to take the proposed course of action to issue a fixed term contract. She said that the instructions of Mr Dingley accurately reflected her decision and should be followed. It was done.

110. On the balance of probabilities, it is likely that Mr Dingley made a conscious decision to not copy in the claimant on 24 December request. His reason for doing that, in our opinion, was that he did not think that the claimant would produce the change form if he asked her to. He knew what her stance was on this matter. His reason for asking one of the claimant's colleagues to do it rather than her was not because he intended to disrespect or undermine the claimant but was only because he wanted to have this change form actioned and he did not think that the claimant would do it. As far as he was concerned, it was an appropriate course of action as it had been appropriately authorised by the Medical Director and it was a matter which had been going on for several weeks following the retirement of the clinician.

111. In their respective witness statements, each of Ms Ward, Ms Mahal and Mr Dingley described their career paths within the respondent including how they ended up in their current roles, or the roles thy had at the time of this dispute. They were also cross examined and they stood by what is in their statements. It is not necessary for us to itemise each step in each career path one by one. Suffice it to say we have no reason to doubt that appropriate processes were followed each time they were appointed to a new temporary or permanent position.

112. Furthermore, none of them has been through the exact scenario comparable to the claimant. None of them were in a role with an existing job description and existing evaluation, and seeking to have that job description changed to reflect alleged changes to the job and to have the newly agreed document submitted for re-evaluation.

113. Following the end of employment, on 29 March 2020, the claimant commenced Acas early conciliation and the Acas certificate was issued on 13 May and the employment tribunal claim was presented on 28 May (so less than one month from the end of early conciliation).

114. The claimant did not give any evidence about her reasons for not commencing Acas early conciliation earlier than she did.

115. We do not treat her as an expert in employment tribunal procedure or in litigation generally. However, we treat her as an expert in the field of Human Resources and we are satisfied that she was aware of the existence of employment tribunals and aware of the existence of employment rights which employees could potentially enforce via the employment tribunal.

116. Our finding is that the claimant is a highly skilled professional person who had the ability, had she wanted to do so, to research the process for making employment tribunal claims and to find out the procedure to follow and the time limits associated with such claims.

117. We do note, and we take into account, the fact that there are some health issues referred to in the bundle. Likewise, we also note and take into account that English is not the claimant's first language. In fact, she described it as around about her fifth language, but we are satisfied that neither of these factors prevented a claim being made earlier or Acas early conciliation commencing earlier.

The law

118. Turning now to the law that we must consider.

Time limits

119. Time limits are dealt with under s.123 of the Equality Act.

> (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
>
> (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

120. In applying s.123 (3)(a) of the Equality Act the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period or else whether there was a succession of unconnected or isolated specific acts. If is the latter, time runs from the date when each specific act was committed.

121. In considering whether it is just and equitable to extend time the tribunal should have regard to the fact that time limits are relatively short. That being said, time limits are there for a reason and the default position is to enforce them unless there is a good reason to extend. That does not mean that a lack of a good reason for presenting the claim is fatal to an extension request. On the contrary, the lack of a god reason for presenting the claim in time is just one of the factors which a tribunal will take into account and potentially that might be outweighed by other factors. There is a broad discretion. There is not a checklist of factors to which the tribunal is obliged to have regard such as, for example, s.33 of the Limitation Act. The factors that may often be helpful to considering include, but are not limited to, the length of the delay, the reason for the delay, the extent to which because of the delay the evidence is likely to be less cogent, the conduct of the other parties and any contribution that the other parties have made to the delay. Ultimately it is a balancing exercise. We balance the prejudice to the claimant if the extension is refused against a prejudice to the respondent if the extension is granted.

122. The Equality Act contains a statutory provision dealing with burden of proof in s.136.

136 Burden of proof

(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.

123. It is a two-stage approach. At the first stage the tribunal considers whether it is found facts (having assessed the totality of the evidence from both sides and drawn any appropriate inferences) from which the tribunal could potentially conclude (in the absence of an adequate explanation) that a contravention had occurred. At this stage it is not sufficient for the claimant to simply prove that the alleged treatment did occur. There has to be some

evidential basis from which the tribunal could reasonably infer from the facts that there was a contravention of the Act. The tribunal can and should look at all the relevant facts and circumstances when considering this part of the burden of proof and make reasonable inferences where appropriate.

124. If the claimant succeeds at the first stage then that means that the burden of proof has shifted to the respondent and the claim is to be upheld unless the respondent proves that the contravention did not occur.

125. In Efobi v Royal Mail [2021] UKSC 33, the Supreme Court made clear that he changes to the wording of the burden of proof provisions in the Equality Act in comparison to the language of the predecessor legislation does not represent a change in the law. So, when assessing the evidence in the case and considering the burden of proof, the tribunal can have regard to the guidance given by the Court of Appeal in, for example, Igen v Wong [2005] EWCA Civ 142 and Madarassy v Nomura International plc [2007] EWCA Civ 33. The burden of proof does not shift simply because the claimant proves, for examples, a difference in race and/or that there was a difference in treatment and/or that there was unwanted conduct. Those things might indicate a possibility of discrimination or harassment but they are not sufficient by themselves. Something more is needed.

126. It does not necessarily have to be a great deal more as confirmed by Deman v The Commission for Equality and Human Rights [2010] EWCA Civ 1279. However, there does need to be something more.

127. The burden of proof should be considered separately for each allegation although doing so against a background of the totality of the evidence.

Direct discrimination

128. Direct discrimination is defined in s.13 of the Act. A person who discriminates against another if because of the protected characteristic, in this case race, they treat the other less favourably than they treat others. This has two elements, firstly whether the respondent has treated the claimant less favourably and, secondly whether the respondent has done so because of the protected characteristic.

129. For the less favourable treatment question the comparison between the treatment of the claimant and the treatment of others can potentially require decisions to be made about whether another person is an actual comparator and/or by the circumstances any attributes of a hypothetical comparator.

130. However, the less favourable treatment question and the reason why question are intertwined and sometimes an approach can be appropriate and can be taken whether the tribunal deals with the reason why question first. If

the tribunal decides the protected characteristic was not the reason even in part, for the treatment complained of then it will necessarily follow that a person whose circumstances were not materially different would have been treated the same.

131. When considering the reason for the claimant's treatment, we must consider whether it was because of the protected characteristic or not. That means we must analyse the conscious and the subconscious mental processes and motivations of the relevant decisionmakers which led to the acts, omissions and decisions in question.

Harassment

132. Harassment is defined in s.26 of the Equality Act.

> (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.

133. The facts need to establish on the balance of probabilities that the claimant has been subject to unwanted conduct which has the prohibited affect or else that it had that purpose. To succeed in a claim of harassment however it is not sufficient simply to prove that. The conduct also has to be related to the particular protected characteristic, in this case, race. Because of s.136 there needs to be sufficient facts found by the tribunal to shift the burden as to whether or not the tribunal should decide that the unwanted conduct was related to race.

134. In HMLR v Grant [2011] EWCA Civ 769, the Court of Appeal stated that when considering the effect of conduct and taking into account the words of s.26(4), it is important not to cheapen the words used in s.26(1).

135. When assessing the effects of any one incident of alleged harassment then it is no sufficient to simply consider each one incident by itself. It is important to consider each one by itself but it is not sufficient just to do that. It is also important to consider the cumulative impact of separate incidents when deciding whether or not the forbidden effect has occurred.

Analysis and conclusions

136. Turning now to our analysis and conclusions and we will do that by cross refencing with the list of issues. We will take them in the order in which they appear subject to the fact that paragraph 1, time limits, we will deal with last.

137. Paragraphs 2 to 6 of the list of issues deal with direct discrimination because of race. As per paragraph 3 of the list, the following things are said to be less favourable treatment because of race, amounting to discrimination within the definition in section 13 EQA.

> 3. Did the Respondent subject the Claimant to the following treatment:
>
> a. Allegation 1: On 2 January 2020, the Claimant's job description was sent to panel for matching without following due process, in that:
>
> i. Tracey Ward was in discussion with the panel regarding the required banding that Tracey wanted to request,
>
> ii. the final agreed job description was not sent to the Job Matching panel, and
>
> iii. Tracey Ward sent the job description unilaterally with comments from Manjit Mahal.
>
> 1. Alleged perpetrator(s): Tracey Ward and Manjit Mahal.
> 2. Comparator(s): Tracey Ward promotion process, Seema Ahmed rebanding, Manjit Mahal and Stephen Dingley appointment and promotion process.
>
> b. Allegation 3: Prior to 16 November 2019, the Claimant was regularly side-lined and not invited to key meetings that are part of the service delivery, namely: Allocate meetings, TRAC regular meetings, Trac user group visit meetings, bank and agency meetings.
>
> i. Alleged perpetrator(s): Tracey Ward.
> ii. Comparator(s): Gill Fountain, Nassir Ismail.
>
> c. Allegation 10: On an ongoing basis until the Claimant's last day of service, the Claimant was isolated and unable to attend team meetings because staff of South Asian heritage and white staff were meeting separately.
>
> i. Alleged perpetrator(s): Manjit Mahal and Tracey Ward.
> ii. Comparator(s): the Claimant relies on a hypothetical comparator
>
> d. Allegation 11: Throughout the Claimant's appointment, the Claimant experienced lack of support, inexistence of personal development, '1 to 1s', objectives, targets, continuous development plan.
>
> i. Alleged perpetrator(s): Manjit Mahal and Tracey Ward.
> ii. Comparator(s): Nasser Ismail, Tracey Ward, Gill Fountain and Seema Ahmed

138. In terms of Item 3(a)(i) that fails on the facts. It was our finding of fact that Tracey Ward had not been in a discussion with "the panel" (that is, external consultants JME) regarding the required banding that Ms Ward wanted the panel to provide. Ms Ward did have discussions with JME about turning the process around quickly on 19 December 2019 but nothing more than that.

Ms Mahal did tell Ms Ward what the intended outcome was but Ms Ward did not pass that on to JME. As we noted in the findings of fact the version of the job description which went to JME did still have Band 7 written on it. However, that was not intended as a communication to JME that JME should find a way of coming up with Band 7 as their recommendation. It showed no more than that the old job description (prior to the tracked changes) had been Band 7.

139. In terms of (3)(a)(iii), it is factually accurate that Ms Ward sent the job description on 19 December 2019 and that it included tracked changes with Ms Mahal's comments in the margin. It is factually accurate that the claimant had not agreed that version of the job description. It is factually accurate that she had not agreed to the version being sent with the comments. She had not agreed to a clean copy of that item being sent either (her position being that her own version, of 22 October 2019, should have been sent).

140. In terms of (3)(a)(ii) as worded it states the final agreed job description was not sent to the matching panel. There was not a final agreed job description as was made clear, ultimately, by the discussions the claimant had with Ms Bevan in February 2020. It is factually accurate, as we have already said, that the version that was sent to the external consultant was not agreed. However, to the extent that (3)(a)(ii) seeks to imply that there was an agreed job description and that the respondent failed to send it to JME (or any other appropriate decision maker), then that allegation fails on the facts because there was no such agreed job description.

141. Ms Mahal and Ms Ward had, in our opinion, dealt with the claimant in good faith and had worked on the job description which the claimant had supplied to them on 22 October 2019. They turned that around in a reasonable length of time by - 29 November 2019 – sending their version to the Claimant and asking the claimant to comment on it.

142. Between 17 December and 19 December, there seems to have been a misunderstanding on the part of each of the three of them.

    a. Ms Mahal's view was that the process was further along than it actually was and she thought that documents had been submitted to JME when they had not been. Her responses to the Claimant's queries have to be read with that in mind.

    b. Ms Ward was aware that the claimant had not agreed to the job description being submitted to JME (that is not the version sent to her on 29 November by the Respondent; she was willing for her own 22 October version to be submitted). However, Ms Ward thought that Ms Mahal was instructing her to submit it regardless of the fact the claimant had not yet agreed it.

c. Meanwhile, the claimant, for her part, did not realise that the document which had been sent to her on 29 November already showed Ms Mahal's comments and was an invitation for her to comment on what both Ms Mahal and Ms Ward had counter-proposed.

143. The specific and direct reason for Ms Ward submitting the job description on 19 December was her belief that that was what Ms Mahal had instructed her to do. However, in any event, as Ms Mahal made very clear to the claimant in her emails to the claimant between 17 and 19 December, the respondent was not taking the position that the job description was now set in stone and it was unwilling to have further discussion about the contents.

144. In early January, Ms Ward reiterated that the Respondent was still willing to discuss the contents of the job description further. The respondent even went as far on 17 January as offering to start the whole process again from scratch.

145. Furthermore, the discussions continued into February and the claimant had a meeting with Ms Bevan. The claimant made clear that the only document which she would agree to being submitted to JME was the document which the claimant submitted on 22 October. Since the respondent did not agree to that particular document that was the reason there was no agreed job description to be submitted to JME. There was an impasse.

146. For Item 3a there are four alleged comparators; Ms Ward, Ms Ahmed, Ms Mahal and Mr Dingley. We do not agree that any of those were in sufficiently similar circumstances to the claimant to be an actual comparator. A hypothetical comparator will be somebody of a different race as the claimant who also worked in the HR Department and who also believed that their job description was not accurate and who therefore wanted the employer to agree to some specific changes to the job description.

147. In any event, we need to ask ourselves what was the reason why the respondent did not agree to adopt the claimant's 22 October version. We are satisfied that the burden of proof does not shift. There are no facts from which we might infer that he respondent was influenced either directly or indirectly, either consciously or unconsciously, by the claimant's race or anyone else's. On the contrary, we are satisfied that the reason why the respondent did not agree to all of the proposed changes is that Ms Mahal and Ms Ward did not believe that the proposed changes made by the claimant accurately reflected the duties which the respondent actually required of the Medical Resourcing Manager.

148. Repeatedly from July 2019 onwards, Ms Ward offered the claimant Ms Ward's assistance in ensuring that the claimant was not being asked to do duties which should be done by the HR Business Partners (or other employees) instead.

149. Rather than agreeing that the Respondent wanted her to stick to the duties which the Respondent had allocated to the post of Medical Resourcing Manager, the claimant sought to have her job description amended so that it would include the tasks that were supposed (as far as the Respondent was concerned) to be done by the HR Business Partners. The respondent's decision that the HR Business Partners and not the Medical Resourcing Manager should do these tasks was not influenced in any extent by the claimant's race.

150. Furthermore, Ms Mahal's opinion expressed internally that the post should remain at Band 7 was based on the combination of her own opinion that not all of the proposed additional duties should be added and her own opinion that the changes which she had agreed to were not so significant as to change the banding, That was the reason why she commented to Ms Ward that the intended outcome was Band 7. Her comment was not influenced by the claimant's race.

151. Therefore all of allegation 3(a) fails.

152. Turning to allegation 3(b) it is accurate that the claimant was not regularly invited to meetings between the Allocate Relationship Manager and Gill Fountain. However, there are no facts which could lead us to decide that the decision not to regularly invite the claimant to these meetings had anything to do with her race. The burden of proof does not shift.

153. On the contrary, we do accept that the reason why the respondent did not set up a regular meeting between Allocate's Relationship Manager and the Claimant is that the Relationship Manager was dealing with a different contract (the one for which Ms Fountain was responsible) and not the contract for related to the work which the claimant did.

154. There has been no evidence presented to us from which we could conclude that a Relationship Manager might have been appointed for the e-job planning contract had the race of the claimant been different. Furthermore, and in any event, there was no deliberate attempt to exclude the claimant from the meetings with Allocate. At Ms Ward's instigation the claimant had attended one of them in February 2019 and, again at Ms Ward's instigation, the claimant was invited to further meetings from November 2019 onwards.

155. In relation to TRAC meetings, the allegation fails on the facts. As we have said above, there were not regular meetings of TRAC so she was not excluded from regular meetings. In terms of the annual meeting she was invited to the annual meeting.

156. In relation to bank and agency meetings, the allegation fails on the facts. As we have said in the findings of fact, there were no regular meetings in relation

to bank and agency medical staff from which the claimant was excluded. There was no reason for her to be invited to attend bank and agency meetings for nursing staff.

157. Therefore all of Item 3(b) fails.

158. In relation to Item 3(c) this all fails on the facts. It is not factually accurate that the respondent segregated meetings so that staff of South Asian heritage or staff of white heritage attended separate meetings or that the claimant was excluded from meetings because of race.

159. In terms of Item 3(d) it was our finding that there were personal development plans. As set out in the probation meetings, objectives and targets were set for her. The respondent did not have a continuous development plan for any of its employees. The claimant was able to attend the Aspire course.

160. The phrase "lack of support" is somewhat vague. It seems from the documents and the evidence that we have seen, that the respondent had acknowledged in 2019 that there was a need for the claimant to have support staff on her team and that was part of the reason that they agreed to hire an agency worker around May 2019. As we have said in the findings of fact once that agency worker had been terminated in August the respondent did not replace him with a different agency worker.

161. We are not satisfied that any of the four proposed comparators were in sufficiently similar circumstances to the claimant to be deemed actual comparators. We have not been provided with evidence of any of them for example being in a situation where they had an agency member of staff terminated with or without that person being replaced.

162. We do take account of the fact that the respondent's witnesses were somewhat vague in relation to the respondent's reasons for not promptly hiring a replacement; they were not sure whether directly staff took over the role, or any part of it, and, if so, from which dates.

163. However, overall, we are not persuaded that there was a lack of support. As per our findings of fact, Ms Ward did regularly meet the claimant and the documents in the bundle make clear that she did regularly communicate with the claimant about various issues including the claimant's workload. She did seek to engage with the claimant, analysing the issues and coming up with proposed solutions including offering her assistance in ensuring that the claimant was not asked to do tasks which fell outside her job description and which should go to the Business Partners instead.

164. There are no facts from which we could infer that the claimant has been

treated less favourably because of her race in terms of the amount of support that was offered to her. There are no facts from which we could conclude that a Medical Resourcing Manager of a different race would have received a greater level of support from Ms Ward or from the respondent.

165. Therefore, allegation 3(d) fails.

166. That then is all of the direct discrimination allegations and they all fail.

167. Turning to the harassment allegations, these are set out in paragraphs 7 to 11 of the list of issues. The alleged unwanted conduct, said to meet the criteria to be harassment related to race, is set out in paragraph 7.

> 7. Did the Respondent engage in the following conduct:
>
> a. Allegation 4: From November 2019, the Claimant was asked verbally and in writing to leave early and not work her notice period, and then bullied and harassed to formally resign namely by sharing her job offer with the HRBPs which put more pressure on her to formalise her resignation.
>
> i. Alleged perpetrator(s): Tracey Ward and Manjit Mahal.
>
> b. Allegation 5: In December 2019 Stephen Dingley repeatedly undermined the Claimant in front of stakeholders and her staff by:
>
> i. wrongly awarding a consultant [Dr H] around £4000 that she was not entitled to,
>
> ii. overruling the Claimant's advice and reappointing a leaver [Dr H] without following the consultant appointment,
>
> iii. instructing the Claimant's ex team member to process the consultant [Dr H] appointment paperwork without the Claimant's knowledge or making the Claimant aware;
>
> iv. on 2 December 2019, asking the Claimant rudely to approve Dr S payroll after giving the wrong advice that breaches the Doctors Terms and Conditions. When the Claimant explained the reason of her reservation he used offensive language, asking the Claimant to just do it for God's Sake.
>
> 1. Alleged perpetrator(s): Stephen Dingley
>
> c. Allegation 7: In August / September 2019, Tracey Ward and Gill in temporary staffing asked Hannah Garvey to make a complaint against the Claimant.
>
> i. Alleged perpetrator(s): Tracey Ward and Gill Fountain.

168. Item 7(a) fails on the facts. The alleged unwanted conduct did not occur.

169. The respondent did not seek to persuade the claimant to leave earlier than

at the end of three months written notice or to leave without working for the full three months.

170. The respondent did not "share the job offer" (or share the news that the Claimant was intending to leave) with the HR Business Partners or any other staff (either with a view to forcing her to resign or at all). We found that the respondent did not share the job offer with the HR business partners.

171. One of the options which the claimant wished to explore with the respondent was the possibility of starting with her new employer at the start of February. Ms Ward appropriately dealt with the request. Ms Ward accurately stated the position, as the respondent saw, it to the claimant in writing; the Claimant was required (i) to put her resignation in writing and (ii) give thee months' notice. The Claimant was not pressured to submit the resignation earlier than she would have otherwise wanted to do; however, it was a simple matter of arithmetic, that she would have had to submit the resignation promptly for three months' notice to expire by February.

172. We do not actually think that the claimant disagrees that the position was accurately described when Ms Ward said that the requirement was for three months written notice. On the contrary, the claimant agreed that she knew that that was the case. Both parties did understand that potentially the respondent could agree to waive part of the notice and potentially could allow the claimant to leave after less than three months' notice. However, the respondent put no pressure on the claimant to make such a request (for short notice) and merely said that if she made such a request after handing in formal notice then it would be considered.

173. To the extent that Ms Ward sent emails to the claimant and sought to arrange appointment's with the claimant in relation to the claimant handing in her notice formally, we accept the claimant's evidence that she regarded those requests as unwanted conduct. Ms Ward's purpose in sending those emails was to ensure there was no confusion or misunderstanding and she wanted to be able to make arrangements to recruit a replacement.

174. We are not satisfied on the facts that the effect on the claimant was such that she perceived that the effect, as defined in section 26(1)(b) EQA had occurred.

175. There was a back and forth exchange in which the claimant's main concern at the time was not the fact that she was being asked to formally put her resignation in writing but that she, the claimant, was seeking to persuade the employer to confirm that a shorter period of notice would be acceptable. Furthermore, and in any event, had the emails had the forbidden effect on the claimant then, in our judgment, it would not have been reasonable for the claimant to have perceived the emails in that way. The claimant is an HR

professional and she is used to dealing with recruitment, and the issues arise on the termination of one job and the start of another. We think it is likely that the claimant (was and) ought to have been fully aware that seeking clarity over a leaving date and formality over a resignation were perfectly normal part of doing business as an employer, and she should not have perceived this as violating her dignity or creating a hostile, etc, environment.

176. Furthermore, and in any event, in terms of whether this unwanted conduct was related to race, the burden of proof has not shifted. There are no facts that could lead us to decide that the conduct in reminding the claimant that she would have to put her resignation formally in writing giving three months' notice was related to race. It was not related to race to emphasise that the leaving date could not be formally agreed until such written notice had been received.

177. Therefore, allegation 7(a) fails.

178. For item 7(b):

    a. In terms of Item 7(b)(i), the consultant did not actually receive the £4,000. There was however a proposal from Mr Dingley which, had it been actioned (by the claimant or her team) would have resulted in an incorrect award of the remaining part of the CEA entitlement.

    b. In terms of 7(b)(ii), it was ultimately the Medical Director, Lila Dinner, who made the decision about the doctor's reappointment on a fixed term contract. It was Mr Dingley's opinion (shared by the Medical Director) that no competitive recruitment process was necessary in the circumstances.

    c. In terms of 7(b)(iii), it is factually accurate that Mr Dingley did not copy the claimant into the email in which he instructed a change form to be produced.

179. We will treat all of the three as unwanted conduct on the basis that it is the claimant's opinion that the respondent should not have done any of these three things.

180. We are satisfied that it was not the respondent's purpose to have the forbidden effect (as per section 26(1)(b) EQA). It was not seeking to violate the claimant's dignity etc. Rather it was Mr Dingley's and Ms Dinner's opinion, and it was the respondent's purpose, to retain the relevant consultant as an academic for a short period of time and to ensure that she received whatever payments she was entitled to.

181. We also do not accept that the effect of these decision on the claimant was

that she perceived that her dignity had been violated etc. That was not her perception at the time. She disagreed with the decisions and she made clear that she disagreed with them, including by writing directly to the Medical Director.

182. In any event, even had we decided that the claimant had perceived at the time that he dignity had been violated, or that an intimidating, hostile, degrading, humiliating or offensive environment had been created for her, then it would not have been reasonable for an employee to have such a perception. These were differences of opinion about the correct interpretation of the NHS's requirements in situations such as this one. Mr Dingley still believes that his interpretation of the recruitment requirements is correct and the claimant still believes hers is correct. [It seems that the Respondent does accept that Mr Dingley was wrong about the Clinical Excellence Award and the claimant was right.]

183. However, we do not think it is reasonable for any employee in HR to have the perception that if their advice is not accepted in relation to a contractual offer to a third party then that has the forbidden effect as per s.26(1)(b) of the Equality Act. To make such a finding will be cheapening the words of the section.

184. Furthermore, and in any event, there are no facts from which we could conclude that any of this unwanted conduct was related to race. The burden of proof does not shift.

185. The harassment allegation fails in relation to 7(b)(i), (ii) and (iii).

186. In relation to 7(b)(iv), we thought it likely on the balance of probabilities, that there was some rudeness on or around 2 December. We did not find that Mr Dingley used the specific words ("just do it for God's Sake") alleged in the list of issues.

187. We regard the rudeness as unwanted conduct. We are not persuaded that it did have the forbidden effect on the claimant. Although it is not decisive, we do take account of the fact the claimant did not raise a complaint at the time about his alleged tone or his rudeness when speaking to her. Rather, slightly more than two weeks later, she wrote to Ms Dinner and asked for the proposal to be withdrawn, but not making a complaint about the tone he had used when communicating the decision to her.

188. Furthermore, there are no facts from which we could conclude that the conversation on 2 December, or the rudeness, was related to race. It is likely that the two of them spoke abruptly and rudely to each other. Mr Dingley's desired outcome was to have the pay rise actioned. He thought that it should be actioned by the Claimant (or at least he thought that on 2 December). The

2 December conversation was a discussion between two HR colleagues who disagreed about whether a pay rise should be actioned. The decision itself to approve the pay rise in itself was simply a discussion between HR and the employing department. The race of the Medical Resourcing Manager (or anybody else) had nothing to do with the proposed pay rise or the fact that the Claimant was asked, by Mr Dingley, to action it.

189. Therefore, Item 7(b)(iv) also fails.

190. In terms of Item 7(c), that fails on the facts because we have not been persuaded that Tracey Ward or Gill Fountain asked Hannah Garvey to make a complaint against the claimant.

191. Therefore, the harassment allegations all fail.

Time Limits

192. Because of the date of presentation of the form and the times for early conciliation, any complaint relating to an act or omission from 30 December 2019 onwards would be in time. That includes any alleged act or omission which started before then but continued until that date.

193. In terms of the harassment allegations, all of those are out of time. They all occurred prior to 30 December.

194. For direct discrimination Items 3(c) and 3(d) as drafted, they are in time because the claimant's allegation is that they continued up to the end of her employment.

195. Item 3(b), as drafted, would not necessarily be in time. However, during submissions the claimant made clear that the allegation was that she was suggesting that this continued until the end of her employment. We accept that we should consider it on that basis and therefore 3(b) is also in time.

196. Items 3(a)(i) and 3(a)(iii), refer to alleged discussions and actions around 19 December 2019 and they are out of time on that basis.

197. To the extent that 3(a)(ii) is also referring to the fact that, on 19 December, a non-agreed job description was sent to JME, then that is out of time. To the extent that there is an alleged omission that, up to the end of her employment, the Respondent never sent a job description, which she had agreed, to JME, that particular allegation would be in time.

198. In relation to all the matters that are out of time, it is for the claimant to

demonstrate there is a good enough reason for us to exercise our just and equitable discretion. Exercising the discretion is the exception rather than the rule. As per our findings of fact we do not consider that there was a good reason for the claims not to have been presented in time. However, that is simply one factor and not in itself conclusive.

199. The prejudice to the claimant if we declined to extend time is comparatively slight, as we have found against her on all these claims on the merits in any event, so she is not losing anything of value if we decline to extend time.

200. The respondent has not put forward particular arguments about prejudice that it would suffer if time was to be extended . Its main witnesses of Ms Ward, Ms Mahal and Mr Dingley were available to it and we were not told about any documents for witnesses that were unavailable as a result of the time delay.

201. We have taken into account also that the delay for many of the matters is not particularly large. For example, what happened in December 2019 in relation to the job description and the interactions with Mr Dingley is only slightly out of time.

202. We have also taken into account that as far as what happened in December about the job description is concerned, those discussion did indeed continue until at least 25 February with Ms Bevan's outcome email. The end of those discussions, and the final confirmation that the Respondent was not going to submit the Claimant's version of the job description was after 30 December.

203. As we stated in the findings of fact it is appropriate for us to take into account the fact that English is not the claimant's first language. However, it is not something that has caused any delay or any difficulty in the claimant complying with the time limits is in our finding.

204. Overall, time limits exist for a reason and this is not a case in which we exercise our discretion to grant an extension of time. There is not a good enough reason for us to do so.

Employment Judge Quill

Date: 3 October 2022

Reasons sent to the parties on

3 October 2022

For the Tribunal office