EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mrs. S Goodison	**v**	**High Speed Two Limited (HS2)**

Heard at: Central London Employment Tribunal

On: 18 - 21 October, 14, 15, 29 November 2022
30 November, 1, 2 December 2022 (In Chambers)

Before: Employment Judge Brown

Members: Ms S Aslett
Mr R Baber

Appearances:

For the Claimant: In person
For the Respondents: Mr S Liberadzki, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. **The Respondent unfairly constructively dismissed the Claimant.**
2. **The Respondent did not subject the Claimant to direct or indirect race discrimination, race harassment, or victimisation.**
3. **The issue of whether the Claimant would have resigned, in any event, and not in response to any fundamental breach of contract by the Respondent, will be addressed at a remedy hearing.**
4. **The remedy hearing will take place for 1 day on 28 April 2023.**

REASONS

Preliminary

1. By a claim form presented on 3 November 2021 the Claimant brought complaints of unfair (constructive) dismissal, direct race discrimination (s.13 EqA2010), indirect race discrimination (s.19 EqA2010),harassment related to race (s.26 EqA2010) and

victimisation (s.27 EqA2010) against the Respondent, her former employer. Early conciliation started on 15 August 2021 and ended on 16 August 2021.

Witness Order

2. At the start of the hearing the Respondent said that it had just received a witness statement from the Claimant's witness, Ms Wilson, who had been made the subject of a witness order. The Respondent said that the Claimant also intended to challenge Ms Wilson's evidence by asking her questions. The Claimant agreed that she wanted to ask Ms Wilson more questions – she said that Ms Wilson believed that she was prevented from giving more evidence in her witness statement by a non-disclosure agreement Ms Wilson had signed with the Respondent when she had left it.

3. The Tribunal explained that the Claimant could not cross examine her own witness. It explained that it would be fair to the Respondent to allow it to take instructions on Ms Wilson's evidence. The most efficient way to manage the proceedings and to be fair to both parties would be to order Ms Wilson to provide a full witness statement, setting all her evidence, by 11am on the second day of the hearing and then giving the Respondent until 2pm before it cross examined Ms Wilson. The Respondent would also be permitted to serve an additional witness statement, before Ms Wilson's oral evidence, in response to Ms Wilson' evidence. Ms Wilson gave evidence first, so that both the Claimant and the Respondent heard her evidence before they gave their evidence. The parties agreed with this approach.

Issues

4. The issues in the case had been agreed as follows: The Claimant withdrew victimisation allegation 5.2.1 during her cross examination of the Respondent's witness Carl Bird. The following day, she said that she had only intended to withdraw that allegation in relation to Mr Bird (the Freedom of Information element of 5.2.1), not the DSAR element. On reading its notes of the Claimant's withdrawal and applying *Rule 52 ET Rules of Procedure 2013*, the Tribunal permitted the Claimant to pursue her victimisation complaint 5.2.1 in relation to her DSAR request, but not her FOI request, in the interests of justice. It gave full reasons at the time.

1. Jurisdiction

1.1. When did the acts complained of take place?

1.2. Were the Claimant's claims presented within three months of the date(s) of the acts complained of (allowing for ACAS Early Conciliation under s18A Employment Tribunals Act 1996)?

1.3. If not, as regards claims brought under the Equality Act 2010, do the acts complained of form conduct extending over a period, pursuant to s123(3)(a) Equality Act 2010, and if so is the end of that period in time?

1.4. If those acts are out of time, would it be just and equitable for the Tribunal to extend time under s123(1)(b) Equality Act 2010?

1.5. As regards any Employment Rights Act claims, was it reasonably practicable for the complaints to have been presented in time? If not, have they been presented

within such further period as the Tribunal considers reasonable, pursuant to s111(2) ERA 1996?

2. Constructive Unfair Dismissal pursuant to section 95(1)(c) Employment Rights Act 1996 (ERA)

2.1. Was the reason for the Claimant's resignation on 13 August 2021, constructive (unfair) dismissal within the meaning of section 95(1)(c) ERA, specifically applying the following common law tests.

2.2. Are the following actions or inactions of the Respondent actual or anticipatory, repudiatory breach(s) of a contractual term, express or implied (including the implied term of trust and confidence), by the Respondent? The Claimant alleges that the grievance policy is contractual and that the Respondent failed to comply with it. In the alternative the Claimant relies on the implied term of trust and confidence.

2.2.1. Failing to provide a reasonable and satisfactory recommendations in the Grievance Investigation Outcome Report received by the Claimant on 11th August 2021 was the Last Straw. [ET1 2 (a) (v)]

2.2.2. Failure to investigate the Claimant's grievance in accordance with the grievance policy, including failure to interview Miriam Wolff as a witness and take into account evidence submitted, being a witness statement from Suzanne Crouch; emails highlighting continued discrimination, victimisation, bullying and harassment behaviours; emails to support the Claimant's request to be moved from the Strategic Partnerships team and/or change the Claimant's reporting lines. [GOC ¶2(a)(i)]

2.2.3. John Whitefoot informing the Claimant's union representative on 12 August 2021 that if the Claimant was going to appeal the grievance outcome, she would need to 'provide completely new evidence'. [GOC ¶1(b)(i)]

2.2.4. Failing to provide a safe environment in that the Respondent failed to respond to requests from the Claimant to provide an interim change to reporting lines in another part of the business until the grievance investigation was concluded [ET1 2(a)(i)]

2.2.5. Failing to provide a safe environment in that the Respondent failed to act upon the advice given in the 02/10/20 and 17/12/20 Occupational Health Reports negatively impacting on her disability and mental health. [ET12(a)(v)]

2.2.6. Appointing the Claimant to the Compliance Manager role without her permission, thereby removing her from the 'at risk' pool during the 'Evolve' restructure and putting her at a disadvantage in that she no longer had priority status when applying for other available roles, including the Senior Compliance Manager role. [GOC ¶2(a)(iv)]

2.2.7. Laura Day (on the advice of Donovan Bailey) making unreasonable requests of the Claimant to take on additional responsibilities on 05/01/21 [GOC ¶2(a)(vi)]

2.2.8. Unilaterally reducing the Claimant's salary by 20% on 04/01/21, Laura Day Claimant's Line Manager, on the advice of Shaf Aslam Claimant's HR Grievance Case Worker. [GOC ¶2(a)(vi)]

2.2.9. Unilaterally giving the Claimant additional responsibilities relating to Goods Receipting, which amounted to a change to the Claimant's contract of employment, without discussion or agreement. [GOC ¶4(b)(i)]

2.3. Did the Claimant resign in response to those breach(es)?

2.4. Did the Claimant do anything to waive those breach(s) or affirm the contract, for example:

a) expressly, in writing or otherwise informing the Respondent; or

b) impliedly, either by calling on the Respondent for the performance of the contract; or

c) acting in a way that showed they were treating the contract as ongoing?

3. Direct Race Discrimination (s.13 EqA 2010)

3.1. What are the alleged discriminatory acts and who are the comparators?:

3.1.1. The Claimant was told by Laura Day on 28/09/20 to take on Kelly Bardwell's U&A work tasks. The comparator is Kelly Bardwell, a white colleague who was afforded preferential treatment and management. [FBP ¶5.1]

3.1.2. The Claimant was told by Laura Day during a 1-2-1 meeting on 29/03/21 that she had been 'aggressive' and created a 'hostile environment' in the Compliance Team meeting. The comparator is Kelly Bardwell, a white colleague who was not told those things. [FBP ¶5.2]

3.1.3. The Claimant was told on 30/04/20 and 29/05/20 and 03/07/20 by Jennifer Wells – HR Evolve Consultant, that she could not reapply for the Senior Compliance Manager role, having already been unsuccessful in her application for that role.

The comparator is Laura Day, a white colleague, who was allowed to re-apply for the Senior Compliance Manager role despite having previously been unsuccessful. [FBP ¶16 and 23.6]

3.1.4. The Respondent failed to uphold the Claimant's grievances in its outcome report dated 11 August 2021. Caitlin Pickavance, white female. [GOC ¶1(a)(i)]

3.1.5. The Respondent failed to properly investigate the Claimant's grievances by not reviewing and/or including evidence the Claimant provided before the formal grievances were submitted on 03/08/20 and subsequent to this date. Latest evidence provided to the Respondent on 17/07/21. The Claimant relies upon a hypothetical comparator. [GOC ¶1(a)(ii)-(iii)]

3.2. Did the Respondent do the aforementioned acts?

3.3. If so, were those acts less favourable treatment?

3.4. If so, was the less favourable treatment because of the Claimant's protected characteristic? The Claimant identifies as Black.

4. Harassment on grounds of race (s.26 EqA 2010)

4.1. What are the alleged acts of harassment?

4.1.1. The Claimant was told by Laura Day on 28/09/20 and 15/10/20 and 19/01/21 and 22/03/21, to take on Kelly Bardwell's U&A work tasks. [FBP ¶5.1]

4.1.2. The Claimant was told by Laura Day during a 1-2-1 meeting on 29/03/21 that she had been 'aggressive' and created a 'hostile environment' in the Compliance Team meeting. [FBP ¶5.2]

4.1.3. The Claimant was told that she could not reapply for the Senior Compliance Manager role, having already been unsuccessful in her application for that role 30/04/20 and 29/05/20 and 03/07/20 by Jennifer Wells – HR Evolve Consultant. [FBP ¶16 and 23.6]

4.1.4. On 14 July 2021 Laura Day used the phrase 'HS2 aren't whiter than white here' in a meeting. [GOC ¶3(a)]

4.1.5. On 20 July 2021, in reference to her use of the phrase 'HS2 aren't whiter than white here' on 14 July 2021, Laura Day offered an apology to the Claimant 'for any offence this may have caused'. [GOC ¶3(b)]

4.1.6. Unreasonably requesting the Claimant to take on additional responsibilities 05/01 and 01/02 and 25/03/21 and 01/07/21 and 20/07/21 Laura Day. [GOC ¶2(a)(vi)]

4.1.7. Unilaterally reducing the Claimant's salary by 20% 04/01/21, Laura Day advised by Shaf Aslam Claimant's HR Grievance Case Worker. [GOC ¶2(a)(vi)]

4.1.8. The Claimant was criticised in her 2020/21 End of Year Performance Review in the following terms 'There are significant areas of development for Sharon and these are all focusing on behaviours and role modelling HS2's Values to others'. [GOC ¶1(a)(ii)]

4.1.9. The Claimant was asked on 28/09/20 to take on Kelly Bardwell's U&A work tasks while she was absent from work [FBP 5.1]

4.1.10. The Claimant was told by Laura Day during a 1-2-1 meeting on 29/03/21 that she had been 'aggressive' and created a 'hostile environment' in the Compliance Team meeting. The comparator is Kelly Bardwell, a white colleague who was not told those things. [FBP ¶5.2]

4.1.11. The Claimant was told on 30/04/20 and 29/05/20 and 03/07/20 by Jennifer Wells–HR Evolve Consultant that she could not reapply for the Senior Compliance Manager role, having already been unsuccessful in her application for that role. [FBP ¶16 and 23.6]

4.1.12. The Claimant was unreasonably requested by Laura Day to take on additional responsibilities (such responsibilities being to manage a potential non-compliant U&A on the Environment Baseline; manage all the TfL U&A; DfT Audit – deep dive; Good Receipting several Local Authority timesheets) on 01/02/21 and 05/01 and 25/03/21 and 01/07/21 and 20/07/21. [GOC ¶2(a)(vi)]

4.1.13. Unilaterally reducing the Claimant's salary by 20% 04/01/21. [GOC ¶2(a)(vi)]

4.2. If so, was that act unwanted conduct, related to the Claimant's protected characteristic?

4.3. If so, did the act above have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5. Victimisation (s.27 EqA 2010)

5.1. Did the Claimant do a protected act pursuant to s.27(2) EqA 2010?

5.1.1. On 29/06/20 when she made a Subject Access Request (SAR) for her Evolve interview scores and feedback, which included references to "Black". Miriam Wolff a white female submitted exactly the same SAR without any references to "Black" on 27/07/20 and received a formal and complete response on 11/09/20.

[Added by amendment on the first day of the liability hearing:]

5.1.2 the Claimant's two grievances dated 3rd August 2020, 17th November 2020.

5.2. Was the Claimant subjected to any of the following detriments?

5.2.1. The Respondent delayed its response to the Claimant's SAR and ~~Freedom of Information request (FOI)~~, causing delay to the grievance process. (The Claimant withdrew her victimisation complaint in relation to her Freedom of Information request during the Final Hearing)

5.2.2. The Claimant was told on 08/03/21 by Carl Bird, Briefings, Correspondence and FOI Manager, that there was "no reason to clog up everyone's email" about the same subject matter contained within her FOI.

5.2.3. The Claimant was criticised in the grievance outcome in the following terms

5.2.3.1. "it would appear that SG has adopted a somewhat 'scattergun' approach to her grievance."

5.2.3.2. "LD finds it difficult to challenge SG and has cited that the team also pick up on SG's "lack of interest and interaction", lack of "collaboration" which is "impacting the Compliance Team".

5.2.3.3. "….commented that SG made her feel uncomfortable by stating that "recruitment deserve what it's got in to because they need to feel the pain that others have experienced, and it is painful for everyone else and it's only fair that resourcing experiences this themselves".

5.2.3.4. "There is evidence that SG may have at times behaved in an unacceptable manner towards her Line Manager, Laura Day"

5.2.3.5. "I do however find evidence that SG's behaviour towards LD at times to have been inappropriate and unacceptable"

5.2.3.6. "SG often responded to emails from Jenny Wells in capitals and red type, which may be construed as confrontational in style and tone".

5.2.3.7. "SG challenged the appropriateness of Shaf Aslam, HR Advisor, asking questions during the fact-finding meeting."

5.2.3.8. "…and the way she conducted herself throughout this process, it appears to me that SG was not always slow to criticise the actions of others perhaps in the absence of reflecting on her own behaviours at times"

5.2.3.9. "….consider taking appropriate action with regard to personality clashes and/or irreconcilable differences, which is causing continued disruption to the team and the business".

5.2.4. The Claimant was told on 08/07/20 in a meeting with Donovan Bailey "…..However your behaviour "lack of engagement and contribution" ……"silence speaks volumes" during the various Strategic Partnership meetings is having a negative on the team". "You've expressed a lot of negativity here" [GOC ¶1(a)(ii)]

5.3. If so, was the Claimant subjected to any of the above detriments on the ground that she made a protected disclosure [done a protected act]?

6. Indirect Race Discrimination on grounds of race (s.19 EqA 2010)

6.1. Did the Respondent apply the following provision, criteria and/or practice (PCP)?

6.1.1. The Claimant alleges that the Respondent operated a policy that any employee currently above 120% of the maximum point of paygrade scale would not receive a pay increase, regardless of their performance outcome (as stated in the Respondent's Performance Related Pay Award Policy Matrix). [FBP ¶5.3]

6.2. Did the application of the PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not share the Claimant's protected characteristic?

6.2.1. The Claimant identifies as Black.

6.2.2. The Claimant alleges that the equal application of the PCP disadvantaged her in comparison to employees who were not Black because that in general it is white employees who are above the 120% maximum point of their paygrade scale and that there are a negligible number of Black employees above 120%. [FBP ¶5.3]

6.3. Was the application of the PCP a proportionate means of achieving a legitimate aim?

[Clarified at the outset of the liability hearing: the legitimate aim is a "need to ensure all employees are paid fairly across the organisation depending on their grade and performance."]

7. Remedy

7.1. Is the Claimant entitled to an award for unfair dismissal?

7.2. Is the Claimant entitled to an award for injury to feelings?

7.3. What compensation is it just and equitable to award?

7.4. Should any deduction be made for unreasonable non-compliance with the ACAS Code under s.207A TULCRA 1992 (as inserted by s.3 EA 2008) and/or for contributory fault under s49(5) ERA and/or for Polkey?

7.5. Should any uplift be made for unreasonable non-compliance with the ACAS Code under s.207A TULCRA 1992 (as inserted by s.3 EA 2008)?

Amendment

5. At the outset of the hearing the Tribunal raised with the parties that the protected act specified in the list of issues for the purposes of victimisation appeared to omit the Claimant's grievances. It said that, having read the witness statements and the documents, the Claimant contended, as a matter of fact, that she raised grievances in which complained of race discrimination against her. Her first grievance dated 3rd August 2020, p2285 -90, alleged that BAME and females had been discriminated against during the Respondent's "Evolve" restructuring process. Her second grievance dated 17th November 2020 complained of unconscious racial bias, indirect race discrimination and sex discrimination, amongst other things, p1227 – 1233. Her witness statements and list of issues alleged that she was subjected to substantial detriments during the subsequent grievance process.

6. The Tribunal asked whether it was prevented from considering whether the Respondent had done the alleged detriments in the victimisation claim because of the grievances. It said that it would be artificial for the Tribunal to put aside the contents of the grievances themselves when considering causation of the alleged detriments related to the grievances. The Claimant, who is a litigant in person, said that she did not understand what she had been asked to do in relation to specifying protected acts and that she had always complained about the way the Respondent had responded to her grievances. When the Respondent contended that the Claimant would need to amend her claim, she said that she wanted to add the grievances as protected acts.

7. The Respondent contended that no protected act was mentioned in claim form**,** so the List of Issues, which had been agreed, had specified the reason. It said that the Claimant had had the assistance of an Employment Judge at the Preliminary Hearing in putting her case forward; if the Claimant was to rely on the grievances as protected

acts. she would need to amend her claim and that it would be unfair to do so now. The Respondent said that it was not for the Tribunal to help the Claimant to put her case in the best way that she could. Witness evidence had been prepared on the case as set out in the List of Issues. The Respondent said that it would be prejudicial to the Respondent to change the way the victimisation claim was put, because the Respondent might have wished to put its case in a different way, or to call different witnesses, in particular Ms Elton.

8. The Tribunal allowed the Claimant to amend her claim to add her 2 grievances as protected acts in her victimisation claim. Adding those 2 protected acts added further factual details to the victimisation claims she had already brought. The additional facts did not add any further alleged detriments. Nor did they change the nature of the Tribunal's enquiry – the Tribunal still had to decide, as stated in the existing List of Issues, "*was the Claimant subjected to any of the above detriments on the ground that she made a protected disclosure?".*

9. The Tribunal considered that the balance of hardship and injustice favoured granting the amendment. The Tribunal considered that it would be very difficult for the Tribunal to make fair and appropriate findings on the evidence if it was required artificially to exclude the nature of the grievances from its considerations. The facts of the grievances and how they were dealt with were also already in issue in the constructive dismissal claim.

10. There would be more hardship and injustice to the Claimant if the amendment was not permitted, because she would not be able to advance her victimisation claim on the facts which were already centrally in issue before the Tribunal. The fact that the Claimant had identified another protected act at a hearing in front of an Employment Judge did not prevent there being injustice to the Claimant in refusing the amendment at this stage– the Employment Judge at that hearing did not have the documents and evidence in the case and could not have "assisted" the Claimant to formulate her case in the way that the Respondent contended.

11. While a List of Issues had been established and the parties had prepared for this hearing on that basis, any hardship or injustice to the Respondent could be removed by permitting the Respondent to call further evidence and witnesses. There was going to be a natural break in the hearing, in any event, and the Respondents witnesses would not be required to give evidence until mid November 2022. The Respondent's potential additional witness, Ms Elton, was available to give evidence on 14 and 15 November 2022. The Tribunal listed the hearing for those days, to accommodate her. The Respondent would have ample time to present witness statements and prepare its case. Moreover, there would be little hardship and injustice to the Respondent in responding to the amended victimisation claim because it had always been required to give evidence as to its non-discriminatory reasons for the alleged detriments in that claim.

Case Management

12. The Tribunal also asked the Respondent what was the legitimate aim on which it relies in the indirect discrimination claim. The Respondent said that the legitimate aim was set out in its Amended Grounds of Resistance p74 para [36], " need to ensure all

employees are paid fairly across the organisation depending on their grade and performance."

13. The Respondent pointed out that the Claimant's harassment issues appeared to be repetitious: 4.1.9 repeats 4.1.1; 4.1.10 repeats 4.1.2 (with comparator); 4.1.11 repeats 4.1.3; 4.1.12 repeats 4.1.6 but with further information; 4.1.13 repeats 4.1.7. The Claimant did not disagree.

14. The Tribunal heard evidence from the Claimant and her witnesses: Ms Wilson, the Respondent's former Senior Employee Relations Manager; Sue Fursey, TSSA Union Representative; Carleen McDonald, former colleague of the Claimant and HS2 Interface Manager; Miriam Wolff, HS2 employee and the Claimant's fellow Compliance Manager. It heard evidence from the Respondent's witnesses: Osita Madu, the original grievance investigation manager for the Claimant's grievances; Carl Bird, Senior Manager in the Respondent's Briefings, Correspondence and Freedom of Information ("BCFOI") team; Andrew Goodfellow-Swaap, Data Protection Officer at the Respondent; Stephanie Elton, Senior Employee and Industrial Relations ("EIR") Manager at the Respondent; Jennifer Wells, Interim HR Manager at the Respondent; John Whitefoot, the Respondent's Head of Employee Relations, Industrial Relations and Employment Policy; and Laura Day, who was a Commitment Compliance Manager and the Claimant's line manager during most of the time relevant to this claim.

15. There was a bundle of documents. The Respondent had prepared a reading list, chronology and cast list.

Relevant Facts

16. The Claimant was employed from 10 April 2017 until 13 August 2021 by the Respondent, an organisation responsible for developing and promoting the UK's high speed rail network, HS2. She was employed in various roles, most recently as a Compliance Manager.

17. In January 2018 the Claimant was appointed to the role of Undertakings & Assurance (U&A) Manager. In this role she worked with Amanda Boikovs (Senior Interface Manager), Michelle Waterton (Head of Programme Interface), a contractor called Michael Summerfield, who was an Undertakings & Assurances Manager, and Nia Griffiths, a Programme Interface Manager. In her later grievance dated 3 August 2020, the Claimant said that she had complained to her manager in September 2018 of discrimination, harassment and victimisation by these employees.

18. Laura Day joined the Respondent in 2018 as an Undertakings & Assurances ("U&A") Manager, a Grade 16 role, for the Respondent's Area North. In her role as Area North U&A Manager, she worked alongside the Claimant, who was Area South U&A Manager. Ms Day's position changed in July 2019 to Commitments Compliance Manager, a Grade 17 role, as her role was jointly responsible for U&A compliance in the Area North business area and Service Level Agreement ("SLA") management. The Claimant told the Tribunal that she viewed Laura Day as Amanda Boicovs' "side kick" at this time.

19. In 2018 – 2019, the Claimant also worked with Miriam Woolf, who reported to her.

20. In late 2019 the Respondent commenced “Project Evolve”. The purpose of Project Evolve was to implement a new delivery model and to move HS2 from the planning phase of a high speed rail network between London and Manchester to the implementation/construction phase. The delivery model of the organisation needed to accommodate the next phase of work and the engagement of third party contractors. Under Project Evolve, it was intended that Integrated Project Teams (“IPTs”) would be established, with HS2 employees working alongside contractors and delivery partners.

21. The Evolve Process Guide contained guidance for the individuals affected and the managers who were managing the process, including HR, p286 - 316. Processes and procedures were agreed with HS2’s Workplace Forum and the TSSA Trade Union.

22. During collective consultation, the principle of ‘matching’ was agreed. Matching was outlined in the Evolve process guide. Matching would occur if an impacted employee’s role in the existing structure was no more than 20% different to a role in the proposed structure; and only where there was an equal number of roles to employees.

23. If there were more employees to roles available, this would be considered a ‘many-to-few’ situation (many individuals to fewer roles) and matching could not automatically take place. In a many-to-few situation, employees would be put at risk of redundancy and invited to a consultation meeting. Employees would be pooled along with other employees who performed similar roles and interviewed in a competitive selection process. Impacted employees would also be able to apply for internal vacances as advertised on Taleo, HS2’s internal careers portal. These employees would be treated as having ‘priority’ status, as they were potentially at risk of redundancy. Employees who had priority status would be shortlisted for interview, but only if they met the essential criteria for the role, p296.

24. Once all interviews for roles in the post-Evolve structure had taken place, employees at risk of redundancy would be invited to a second consultation meeting and, at that meeting, they would be informed if they had been successful in securing a role. Employees would have 7 days to accept or reject a role. If an employee was still displaced, they were advised that they would be invited to a third consultation meeting. In the interim, they would be encouraged to apply for roles still available and would retain priority status.

25. If an employee accepted a role, they would be entitled to a 4 week trial period. If the role was considered unsuitable, either by the employee, or HS2, at the end of the trial period, the employee would remain entitled to a redundancy payment. If an employee rejected a role they had been offered, they would continue to remain at risk of redundancy and would continue to have priority status for roles they applied for.

26. If they remained displaced, the employee would then attend a third consultation meeting at which they would be served notice of redundancy.

27. The Claimant was subject to the Evolve process. Her Evolve consultation meetings were managed and conducted by her manager, Kimberley Royer-Harris, the Evolve inbox team and the Head of HR for Community and Stakeholder Engagement (“C&SE”), Lynsey Rice.

28. Before Project Evolve commenced, the Claimant was employed as an Area South U&A Manager, a grade 16 role in the Respondent's Interface business area. The job description for the U&A Manager role was at Bundle p 420 – 422.

29. Under Project Evolve, the Respondent proposed that its Interface management accountabilities would integrate into Community and Stakeholder Engagement "C&SE" - Lynsey Rice's Directorate, p657.

30. By letter of 5 December 2019, the Respondent notified the Claimant that her role had been identified as being affected by the proposals under Project Evolve. The Claimant attended a first individual consultation meeting on 12 December 2019 with her line manager, Ms Royer-Harris, pp 561 - 563. At the meeting, the Claimant was informed that the Respondent had decided that the accountabilities of her U&A Manager role had changed by more than 20% and that, as a result, her role had been placed at risk of redundancy. She was encouraged to apply for new roles which had been created under the Evolve structure, as well as non-Evolve roles, p 537 – 538.

31. The Claimant told the Tribunal that she later considered that she should have been "matched" to a new Compliance Manager role, as she considered that it was less than 20% different to her existing U&A Manager role.

32. In early 2020, the Claimant applied for various roles in the new Evolve structure, including Senior Compliance Manager, Strategic Partnerships Manager and Project Manager (Euston Station), p715. Save for two grade 16 roles, for which the Claimant withdrew her applications, the roles for which she applied were at higher grades (17, 18 &19) than her U&A Manager role.

33. One aspect of the recruitment process for the Evolve roles, which was agreed with HS2's Workplace Forum and the TSSA, was that, due to the number of employees impacted by the proposals, it was impractical to interview each employee for every role for which they applied. To streamline the process, the recruitment team and relevant managers interviewed employees against "job families" and grade level. If an individual had applied for two roles in a particular job family, they would only attend one interview for those roles. It was considered that employees' knowledge, skills, behaviours and experience could be assessed for multiple roles in one job family during one interview.

34. The Claimant attended an interview for roles within the C&SE – Community and Stakeholder Engagement - job family on 3 March 2020, p 673 - 711.

35. The Claimant scored 11 at interview for the C&SE job family, p685.

36. The threshold for appointment to the position of Compliance Manager in C&SE, for which the Claimant had not applied, was lowered from 12 to 10 in the wash-up part of that job family appointment process.

37. Following the declaration of the covid pandemic in March 2020, the Claimant, who had been visiting Jamaica, was unable to return to the UK. She was therefore compelled to continue to engage in the Evolve process entirely remotely, attending meetings by video conference and emailing relevant individuals.

38. The Claimant attended a second (remote) consultation meeting on 24 April 2020. She was told that she had been appointed to a Compliance Manager role, pp733 -742. She was told that, "individuals who are successfully appointed to a role and accept this position but have applications outstanding – their applications will remain in the running but will no longer be treated as priority. If an individual should reject their appointment they are in effect rejecting a suitable offer of employment and will be placing themselves at risk and can be served notice of redundancy. Individuals are eligible during their notice period to apply for any other roles that come up." P733.

39. In the meeting, the Claimant said that she had been appointed to a role for which she had not applied, contrary to the Evolve process. She asked for a letter confirming she had not been successful in the roles for which she had applied. She also asked for her interview scores.

40. The letter confirming her appointment, dated 24 April 2020, said, "Further to the individual consultation meeting/s you attended, I write to confirm the outcome of these discussions. I … confirm that you have been successfully appointed to the role of Compliance Manager, based at The Podium, reporting to Senior Compliance Manager. Your appointment will be effective from 1st April 2020." P736 – 737.

41. The offer letter said, "Following receipt of your new contract of employment, should you wish to decline this appointment, you are required to do so in writing within seven days of receipt. You must clearly outline your reasons for decline to HR Evolve (HRevolve@hs2.org.uk) and your Consultation Manager. Please note that should this be deemed an unreasonable refusal, this may be treated as a resignation and as such you will forfeit any entitlement to a redundancy payment." P737.

42. On 27 April 2020, following the second consultation meeting, the Claimant's manager, Kimberley Royer-Harris, emailed the HR Evolve dedicated mailbox and Jennifer Wells, interim HR manager, p743. She said that the Claimant had asked for a second consultation meeting to confirm that she had been unsuccessful in the roles she had applied for. She also asked, on the Claimant's behalf, for information on the equality impact assessment undertaken on the Evolve roles and the number of those at risk who were appointed to roles for which they did not apply, and whether such appointment resulted in promotion, demotion or a lateral move.

43. Ms Wells obtained records of the results of all the Claimant's applications for Evolve roles, p744. She sent this to the Claimant's manager, on 30 April 2020 saying, "Unfortunately [the Claimant] did not secure any of the roles she applied for. Should she wish to not accept the role currently offered as an alternative to remaining "at risk" of redundancy, she would remain at risk... We would need this in writing from her... Next steps being - she would retain her "at risk" status for any other applications she may make for roles moving forward …".

44. Ms Wells also wrote to the Claimant on 7 May 2020, p776-777. Ms Wells confirmed that the Claimant was currently at the second consultation meeting part of the process and had been offered a role she had not applied for, as it had been identified as suitable alternative employment. Ms Wells advised the Claimant that she could either accept the role and no longer be at risk of redundancy, or reject the role and remain at risk, when she would be encouraged to apply for alternative roles, retaining priority status over applicants who were not at risk of redundancy. Ms Wells also answered

some of the Claimant's questions about the equality impact assessment on the Evolve process and the proportion of BAME applicants who had been successful in attaining promotion. Ms Wells said, "..should you not accept the offer currently available to you, this would not compromise your entitlement to any redundancy pay should the outcome be redundancy." Pp776.

45. On 12 May 2020 the Claimant emailed Donovan Bailey, saying that she had not applied for the Compliance Manager role because she felt the Senior Compliance Manager position mirrored her existing responsibilities and that she had been disappointed not to have been appointed to it, p788.

46. If the Claimant had been appointed to the Senior Compliance Manager role, she would have continued to work in the same team as before the Evolve process.

47. On 11 May 2020 the Claimant applied for role of Change and Transformation Manager, p791. She was not considered as a priority candidate for this role, as she had been offered the Compliance Manager post, p790. However, on 18 May 2020 Janice Marks, Resourcing Operations Delivery Manager, emailed Ms Wells saying, "My colleague in the Resourcing team was dealing with [the Claimant's] application for the Change & Transformation role which we submitted on her behalf as she has currently no access to the recruitment system. After careful consideration by both the Resourcing team and the hiring manager, we regret that the skills, knowledge and experience evidenced on Sharon's CV do not meet the minimum criteria to shortlist for further assessment so we are not in a position to take this application any further."p792. Ms Wells passed the email to the Claimant's manager, for her to inform the Claimant.

48. The Claimant attended a further second individual consultation meeting on 28 May 2020, p801-804. She asked for her interview scores and scoring matrices in her unsuccessful applications. The Claimant also asked whether she would be permitted to reapply for the Senior Compliance Manager role, when it was re advertised, as it had not been filled during the Evolve process. She noted that the Respondent's People Process Guide stated that candidates could not apply for roles for which they had already been unsuccessful, but the Claimant said that she was unclear about whether this applied to the Senior Compliance Manager role. Mrs Royer-Harris confirmed that the Claimant would have a 4 week trial period in the Compliance Manager role and told her that she should confirm by 3 June 2020 whether she wished to accept it. Ms Royer-Harris again said that the Claimant would be put back into the priority pool if she rejected the Compliance Manager role.

49. Ms Wollf was also appointed to the Compliance Manager role. Before the Evolve process, the Claimant had managed Ms Wolff. The Claimant viewed the fact that Ms Wolff was now at the same level in the organisation as an "effective demotion" of the Claimant.

50. In her 28 May 2020 meeting with Ms Royer-Harris, the Claimant raised this, saying that HR had not considered her mental health, "where she would be working along side her current direct report who she has been line managing for nearly 2 years." Ms Royer-Harris noted that, "She feels that this is effectively "Constructive Demotion", as a result of appointing her to a role now at the same grade and role as her current (if the role is accepted her previous direct report)".

51. Ms Royer-Harris passed on the Claimant's questions to Jennifer Wells, who made enquiries and then replied on 4 June 2020. Ms Wells said that individuals would not be considered for roles they had previously applied for and been unsuccessful under Project Evolve, but could apply for BAU roles which fell outside Project Evolve. She said that this was in line with HS2's Recruitment and Selection Policy, p89 and the Evolve process.

52. The Respondent's Recruitment and Selection Policy, p89, said, As a general rule, HS2 employees are expected to stay in post for at least 12 months before they apply for another internal post. The Evolve Process Guide said, "Following a period of significant change, it is important that the business is able to maintain the required level of stability to ensure it can deliver operationally. As a general rule, we would expect employees who have been successfully appointed into roles under Project Evolve to undertake their role for at least a period of 12 months prior to applying for an alternative role." P305.

53. Ms Wells told the Tribunal in evidence that employees could not keep reapplying for roles in the hope that they would eventually be successful; HS2 had to be fair to those already confirmed in a role and HS2 did not have the capacity, time or manpower to facilitate repeated applications for the same role due to the number of employees affected by Evolve.

54. In Ms Wells' email of 4 June 2020, she also confirmed an HS2 recruitment team decision that interview scores would only be provided at third consultation meetings to individuals who remained at risk of redundancy, p 853 - 854 and 875 - 876.

55. She told the Tribunal that the work involved in providing all individuals with their interview scores and feedback would have been extensive and HS2 did not have the capacity, at the time, to do this. She also gave evidence that the interviews conducted before the COVID-19 pandemic were held face-to-face, with handwritten notes taken and stored physically in the office, to which the recruitment team did not have access during lockdown.

56. Laura Day had also applied for both the Senior Compliance Manager and Compliance Manager roles. She was unsuccessful in her application for the Senior Compliance Manager role, but was offered the Compliance Manager role instead, which she accepted in May 2020.

57. The Claimant accepted the Compliance Manager role on 12 June 2020 p862-863. The relevant statement of terms was dated 15 April 2020, p 718, although it was only sent to the Claimant on 1 June 2020, p836. The contract provided, at clause 11.1, *"Your attention is drawn to the disciplinary and grievance procedures applicable to your employment, which are available on the Information Management System (IMS). These procedures are not a term of your contract of employment and may be subject to change by the Company at any time"*

58. The scope of the Compliance Manager role was described as *"being to manage a potential non-compliant U&A on the Environment Baseline; manage all the TfL U&A; DfT Audit – deep dive; Good Receipting several Local Authority timesheets".*

59. In the new Compliance Manager role, the Claimant worked alongside Ms Day, Kelly Bardwell, Miriam Wolff and Iftikhar Abutin, who were all newly appointed Compliance Managers. Pre-Evolve, the Respondent's business areas had been divided into Areas: South, Central and North. Post-Evolve this became Euston, Main Works, Early Works and Stations. Ms Day was allocated Main Works North, Ms Bardwell was allocated Stations, Ms Wolff was allocated Early Works and Utilities and Mr Abutin was allocated Main Works South. The Claimant was allocated Euston; she had expertise in the Euston area from her previous U&A Manager role and was happy with this allocation.

60. On 3 July 2020 the Claimant met with Donovan Bailey and Jennifer Wells, pp899-901. The Claimant drew the Tribunal's attention to her notes of this meeting. In her notes of the meeting, the Claimant asked whether she might be able to apply for the vacant Senior Compliance Manager role. She recorded that Mr Bailey said, "I think it's going to be advertised externally so there shouldn't be a problem with your application for the SCM role. Encourage you to apply for the new roles" p899. The Claimant's notes of the meeting also recorded that Ms Wells offered to provide the Claimant with her interview scores, but the Claimant said she had already made a freedom of information request, p900.

61. The Claimant's notes also recorded that she raised, "Historic issues with colleagues in the compliance team." This appeared to be a generalised comment.

62. Ms Wells was cross examined about this note.

63. Ms Wells said that Ms Wells had not been aware of any current or previous issues between the Claimant and her colleagues during the Claimant's Evolve process. Ms Wells said that the Claimant could have raised historic issues with interpersonal relationships through consultation, or though her manager. Ms Wells said that, if she had been made aware of any historic issues between the Claimant and her previous team, she would have looked into it, but she had not been aware.

64. On balance, the Tribunal considered that, during the Evolve process, Ms Wells had been conscientious in replying to issues raised by the Claimant before she accepted the Compliance Manager role. It considered that, if the Claimant had explained that she did not wish to accept the Compliance Manager role because of poor relationships with previous team members, Ms Wells would have looked into the matter during the Evolve process. She did not, which indicated that the Claimant did not raise the issue before the Claimant accepted the role. The Tribunal also noted that the Claimant did not say that she had interpersonal issues with her colleagues in any emails before she accepted the Compliance Manager role; nor was she recorded as having done so in the Respondent's notes of consultation meetings.

65. On balance, the Tribunal concluded that, before she accepted the Compliance Manager role, the Claimant did not say that she did not wish to accept that role because of poor relationships with colleagues in her team.

66. The Claimant had another meeting with Donovan Bailey on 8 July 2020. She emailed Mr Bailey afterwards, referring to the meetings on 3 and 8 July 2020, p910 -911.

67. She recorded that Mr Bailey asked her about her Compliance Manager role and the Claimant replied that she was "not really feeling it". Mr Bailey said, in response, It's clear that you are not feeling it for whatever reasons […….] from what I know of you, at meetings you are a big presence and usually contribute……. However your behaviour "lack of engagement and contribution" [……..] "silence speaks volumes" during the various Strategic Partnership meetings is having a negative on the team."

68. The Claimant's email recorded that the Claimant herself then said that she had been noted by colleagues as being unusually silent in meetings. The email recorded that Mr Bailey continued, "we're talking about you [……..] "present but absent" and I'm having these conversations across the team where appropriate. [……..] this is a difficult time for everyone as the Head of Strategic Partnership it's my expectation of every member of my team to be cooperative and positive at all times."

69. The Claimant's email indicated that she was very unhappy and disaffected in her Compliance Manager role. She said that it was like moving "with an abusive boyfriend, who has bullied, disrespected, racially discriminated, disrespected, bullied and disempowered me …".

70. In her email, amongst many other things, she referred to a recent example of a Teams chat message from Laura Day which the Claimant said "demonstrated the continuation of historic 'plagiaristic' behaviours". It was not clear that this was a reference to alleged discrimination or bullying.

71. The Tribunal considered that the email expressed, in very trenchant terms, the Claimant's unhappiness about her team. It bore no resemblance to any of the queries and challenges the Claimant had raised about her appointment to the Compliance Manager role, before she accepted it. It was quite unlike any of the emails the Claimant had sent during the Evolve process.

72. The Tribunal noted that the Claimant was clearly disappointed about not being appointed to any promoted role in the Evolve process. She had expressed her disappointment to Mr Bailey in her email of May 2020.

73. On 29 June 2020 the Claimant sent a Data Subject Access Request ("DSAR") Form, headed "EDI FOI" to the HS2 Data Protection e-mail address , p2336 -7. This included, the following requests "14, "The total number of Black applicants impacted (in scope) by the Evolve reorganisation. 15. Request for The total number of White applicants impacted by the Evolve reorganisation.16. Request for The total number of Black employees in each "as was" Directorate / function that were Unsuccessful after interview for roles they apply."

74. On 14 July 2020, the Claimant sent a further DSAR form, requesting similar information, p 320. She asked that the data protection team confirm that it would be processing the form.

75. Andrew Goodfellow-Swaap, HS2's Data Protection Officer, responded to the Claimant the same day, confirming receipt of the Claimant's SARs and saying that he was the correct recipient of the request. He also said, "Apologies for the delay in getting back to you, there is a bit of a delay on Subject Access Requests at the moment." p328.

76. Ms Wolff, the Claimant's white colleague, completed a DSAR form, which she titled "FOI request" on 10 July 2020, p915. She asked for her own interview scores and the matrices and benchmarks for appointment to the roles for which she had unsuccessfully applied. She did not ask questions about black and white candidates.

77. Mr Goodfellow-Swaap confirmed receipt of Ms Wolff's request on 17 July 2020 and informed her that some of her requests for information did not constitute requests for personal information relating to her. He said that, as they fell outside his remit as Data Protection Officer, they would need to be forwarded to the Freedom of Information team, p2333. Ms Wolff responded on 21 July 2020, asking that her request be forwarded to the FOI team, p2333. Mr Goodfellow-Swaap forwarded Ms Wolff's SAR to Carl Bird in the FOI team on 11 August 2020, highlighting the information which he considered to be a Freedom of Information "FOI" request, p 2332- 2334.

78. The Respondent's FOI team provided the information requested by Ms Wolff on 11 September 2020, p 1037 to 1039.

79. Ms Woolf had chased a response to her DSAR on 10 August 2020, p1225.

80. The Claimant also chased a response to her Data Subject Access Request "EDI FOI" form on 13 August and 29 September 2020, p327.

81. On 27 October 2020 Mr Goodfellow-Swaap sent the Claimant a spreadsheet containing her Evolve interview scores and apologised for the delay in providing this information to her p330. The following day, the Claimant replied, asking when she would receive the other information she had requested relating to Project Evolve, p329.

82. Mr Goodfellow-Swaap did not forward the Claimant's DSAR to the Respondent's FOI team as he had done for Ms Wolff. It was not in dispute, at the Tribunal hearing, that the Claimant made a request for, both, personal information under Data Protection legislation and generic information, which should have been dealt with as a FOI request. It was not in dispute that Mr Goodfellow-Swaap should have split the two requests up and forwarded her FOI request to the FOI team, just as he had done with Ms Wolff's.

83. Mr Goodfellow-Swaap later acknowledged this in an email he sent to the Respondent's FOI team on 8 February 2021, p 2577 - 2586.

84. Mr Goodfellow-Swaap also acknowledged in evidence that he should have sent the Claimant's FOI requests to the FOI team. He said that he had made an error and that it was "not a good look" for him.

85. The Claimant's request contained a number of questions about the comparative numbers of black and white applicants in the Evolve process. Ms Wollf's did not. The Claimant told the Tribunal that she considered that the difference in treatment between her DSAR/FOI request and Ms Woolf's was the fact that Mr Goodfellow-Swaap realised that she was asking about race discrimination in the Evolve process.

86. The Claimant cross examined Mr Goodfellow-Swaap about the reason for the difference in his treatment of the Claimant's DSAR/FOI request and Ms Wolff's

DSAR/FOI request. In evidence he said, "I am team of one. My workload varies from high to extremely high. Some requests are dealt with quickly and some slowly. I have been working in data protection for 15 years – I have received requests from entire gamut of requestors – the nature of question and reason behind the request has never been reason for answer. The reason for my answer is: "does legislation require an answer? - that is the sole reason for me answering as I do. There is one action I could have done I didn't do here. Why someone is making a request is of little or no interest to me. It has no bearing on the answer and I am too busy to take into account someone's motive for making requests. I am very conscious that, if something is disclosable, it is disclosable, whatever the motives behind it. I have learnt a long time ago to disregard motive because it has no material effect on outcome and would be unprofessional for me to take into account."

87. The Tribunal found Mr Goodfellow-Swaap to be a thoroughly honest and believable witness. He made an error and candidly admitted it and explained his thought processes. The Tribunal accepted that he was very busy and did not deal with the Claimant's request as he should have done. However, it found that the fact that the Claimant's had requested statistics relevant to race was nothing to do with Mr Goodfellow-Swaap's failure to pass the request on.

88. The Senior Compliance Manager post remained vacant in the post-Evolve organisation chart. Donovan Bailey considered that the Compliance team was struggling without a Senior Compliance Manager in post and asked HR if he could recruit for a Senior Compliance Manager. HR agreed, p893.

89. On 25 June 2020 Donovan Bailey told all the Compliance Managers, including the Claimant and Ms Day, that he had put the role on the Respondent's external job site, p878.

90. On 4 August 2020 Mr Bailey sent all Compliance Managers an email, attaching a copy of the Senior Compliance Manager job description, and asking them to confirm if they would like to be considered for the role. Ms Day said that she would, pp 983.

91. The Claimant contended that Mr Bailey told Ms Day, before he told the Claimant, that Ms Day could reapply for the Senior Compliance Manager role. The Claimant relied on Ms Day's oral evidence.

92. In cross examination, Ms Day did not address the issue of *when* she was told she could reapply for the senior role. She confirmed that she hadn't been told that she could not reapply. She said, "I applied and wasn't successful. I applied for the compliance manager role at grade 16 and got it. The higher role was readvertised and I reapplied." In her witness statement, Ms Day said, "On 4 August 2020 Mr Bailey sent all Compliance Managers an e-mail with a copy of the job description asking if we would like to be considered for the Senior Compliance Manager role, to which I said yes (pages 983 and 988). I understand that no one else expressed an interest in the role and as I was the only applicant, I was appointed to the role on a trial period..".

93. The Tribunal concluded, from the evidence, that Ms Day was not told before the Claimant (or any other compliance managers) that Ms Day could reapply for the Senior role. The Tribunal also noted, from the Claimant's own notes of her meeting with Donovan Bailey on 1 July 2020, that he had told her, then, that the Senior Compliance

Manager role was going to be advertised externally, and, specifically, that she would be able to apply for it, p899. Accordingly, the Claimant appears to have been told earlier than other Compliance Managers, who were told in August 2020, that she would be able to reapply for the Senior role.

94. Only Ms Day expressed an interest in the Senior Compliance Manager role. Kelly Bardwell and Iftikhar Abutin said that they did not want to be considered. Neither the Claimant nor Miriam Wolff replied to Mr Bailey's email, p988. The Claimant later confirmed to Mr Bailey that she had not wanted to be reconsidered for the role, p997.

95. Being the only applicant, Ms Day was appointed to the Senior role on a trial period from 21 September 2020 for six months. It was envisaged that, if she was successful, she would be formally moved into the position, p999. As a result, she became the Claimant's, and the other Compliance Managers', line manager.

96. On 3 August 2020 the Claimant submitted two formal grievances, pp971-976; 977-981. In them, she complained about that the Respondent had not followed its procedures and core values in the Evolve process. She said, "HS2's consistent failures to operate within their prescribed Policies and Procedures have resulted in the Evolve process being inequitable, non-transparent, subjective and discriminatory, and has facilitated the opportunity for HS2 and employees of HS2 to perpetuate existing systemic racial unconscious bias, behaviours of bullying and harassment and victimisation, and a total disregard for my well-being."

97. The Claimant said, in her grievances, that she had been appointed to the Compliance Manager role in breach of process and that HR and HR Evolve had not questioned her reluctance to accept the role. She said that accepting the job would mean going back to the "same hostile environment, doing the same job, at the same Grade 16, to work with colleagues that have previously demonstrated bullying behaviours." She said that she had been subjected to "victimisation and harassment I experienced from HS2 colleagues Amanda Boikovs – Senior Interface Manager, RWS & Michelle Waterton – Head of Programme Interface (HOPI) RWS and Contractor Staff Michael Summerfield – SCS Undertakings & Assurances Manager and Nia Griffiths – Programme Interface Manager SCS." She said that she had complained to her previous line manager, Kimberley Royer-Harris and to Suzanne Crouch, about this, p972.

98. The Claimant said that the Respondent had failed to provide a "diverse panel" in the Evolve process. She said that there was not a single person from the black community on the interview panels and said that this was an example of institutional racism.

99. The Claimant was cross-examined about this aspect of her grievance.

100. It was put to her that Kate Wilson, who drafted much of the grievance conclusion, looked at information about panel members for the Claimant's interview on 3 March 2020 for the C&SE family and had established that Sonia Zahid, an employee from Resourcing, who identified as Muslim, BAME and female, was on the panel. The Claimant responded in cross examination "She is pale skinned. I didn't realise she was from a BAME background. She looked white." The Claimant said that her complaint was that the interview panel was not visibly diverse.

101. In her grievances, the Claimant said that her desired outcomes included: interview panels having a visibly diverse panel member; all managers who have a direct report to have mandatory formal training; and for the Claimant to be matched or appointed to a Grade 18 role, preferably outside the Community Stakeholder Engagement Directorate, p976. She also asked to see the assessment of the 20% material change from U&A Manager to Compliance Manager and the business case paper for regrading the U&A Manager to the Commitment Compliance Manager.

102. The Claimant asked that a suitably trained black manager be appointed to investigate her grievance. On 26 August 2020, Osita Madu was appointed to investigate the Claimant's grievances, p1007.

103. Laura Day, who had been appointed Senior Compliance Manager, became the Claimant's line manager in September 2020, p999.

104. The Claimant went on a period of sick leave from 3 September 2020 due to work related stress and anxiety, p1008 and 1040. When she returned to work on 28 September 2020, Ms Day held a one to one meeting with her, p1674. During the meeting, the Claimant said that Ms Day had been unkind to her in the past, saying that Ms Day had taken sides with former colleagues, Amanda Boikovs and Michelle Waterton, against the Claimant. The Claimant said that Ms Day had been manipulated in to doing so and that Ms Day was easily influenced to take sides with senior managers. Ms Day acknowledged how the Claimant felt and the two agreed to "move on".

105. From 27 August 2020 to 26 October 2020, Kelly Bardwell was also off work, sick. Ms Bardwell had become a Compliance Manager in March 2020. Between March and August 2020, the Claimant had been handing over a contractor called BBVS to Ms Bardwell, for her to manage. Pre-Evolve, the Claimant had managed the Area South contractors for U&A compliance, including BBVS. Post-Evolve, BBVS came within the Stations business area and was allocated to Ms Bardwell. While Ms Bardwell was off sick, Ms Day asked the Claimant to continue to manage BBVS.

106. Ms Day told the Tribunal that she had asked the Claimant to do so because the Claimant had managed BBVS pre-Evolve and, therefore, had an existing relationship with BBVS, had an understanding of their performance and, at that time, the workload was relatively low. Ms Day told the Tribunal that Ms Day, herself, had taken responsibility for Ms Bardwell's SLA workload, because the other Compliance Managers were not familiar with the stakeholders or the requirements of SLA management.

107. The Claimant told the Tribunal that there was one more BBVS meeting to do and Ms Day could have gone to it, instead of the Claimant. She also said that Miriam Wollf could have attended the meeting, instead of her, although she acknowledged that Miriam Woolf was also handling data for the whole team. The Claimant told the Tribunal that the BBVS work added to her workload and caused her stress when she was had returned on reduced hours. She said that the BBVS work was handed over to Kelly Bardwell on 10 November 2020, although the Claimant continued to support her. The Claimant compared her treatment to Ms Bardwell's treatment and pointed out that the Claimant had also been on sick leave but was asked to take on even more work when she returned.

108. On the Claimant's return to work, she was referred to Occupational Health ("OH"). An OH report was provided on 2 October 2020, p 1093. The report advised," [The Claimant reports she has been absent since the 03/09/20 due to the onset of symptoms associated with stress and anxiety, which she can attribute solely to work-related. [The Claimant] reports there are ongoing grievance cases which she has raised. [The Claimant] reports high levels of anxiety, weight loss and trouble sleeping as a result… she feels well prepared, and is keen for the grievances to be resolved. She reports she has returned to work."

109. The report also advised, "… it is my clinical opinion, that [the Claimant] is fit for work within her substantive post. Taking into consideration the ongoing grievances and impact this is having on her mental health, a reduction in working hours is advised whilst the situation remains unresolved. A reduction of 20% of her working hours per week would be suitable." P1093.

110. The Claimant attended a first grievance meeting with Mr Madu, on 9 October 2020, p1109-1124. A second grievance meeting was held on 13 October 2020, pp1132-1145.

111. Shaf Aslam was the Human Resources caseworker allocated to the grievance. She attended the Claimant's grievance meetings and asked questions.

112. On 12 October 2020, the Claimant emailed the senior members of the Strategic Partnership team to inform them that she would be working reduced hours of 10am to 4pm on Monday to Friday, taking one hour for lunch at 1pm to 2pm, p1129.

113. The Claimant attended a meeting with Ms Day on 15 October 2020, p1150. Ms Day informed the Claimant that her reduction in hours could last up to 13 weeks, pursuant to HS2's Attendance Management Policy, if her grievance was not resolved before then, p1147.

114. Ms Day also told the Claimant that her absence could trigger Stage One under HS2's Absence Management Policy. However, Ms Day said that, as the Claimant had an ongoing grievance, and Ms Day had a discretion regarding absence management, she had decided not to take the Claimant to a formal stage one absence management meeting. Ms Day recorded that decision in a discretion form and sent it to HR, p 1149.

115. During this meeting the Claimant said that she was struggling to manage the additional workload of managing BBVS in Ms Bardwell's absence. Ms Day said that, when Ms Bardwell returned work, she would organise a handover to Ms Bardwell. The Claimant complained about this meeting in her revised grievance.

116. On 15 October 2020, Ms Day was notified by a member of the Respondent's TPA team that the Northamptonshire Council's SLA annual rate changes had not completed HS2 governance because outstanding issues had not been responded to, p1188-9. As a result, the Respondent had not paid the local authority's invoices and the local authority was making threats of debt recovery. Ms Day investigated and established that, in the past, Richard Nuttall (former Senior Interface Manager in Area Central) had managed this contract, but had not fully resolved the outstanding issues. On 22 October 2020, Ms Day asked the Claimant to take responsibility for progressing the matter. Ms Day told the Tribunal that the Claimant's role as Compliance Manager

included SLA management for Northamptonshire Council SLA (p1187) and that Mr Nuttall was, by that time, in a new role which did not include responsibility for SLA management.

117. The Claimant disagreed, at the time, and said that Mr Nuttall should close out the matter, with the Claimant managing the contract for the future. Ms Day told her that it was no longer Mr Nuttall's role because of Evolve changes in responsibilities, p1187.

118. Ms Day made some suggestions to the Claimant regarding how she might complete the Northamptonshire council task, p1188.

119. On 9 November 2020 Ms Day had a one to one meeting with the Claimant, p1217. The Claimant said that she was suffering stress and Ms Day asked her about the cause. The Claimant replied that she kept a tracker of her workload and reviewing that was causing her stress. Ms Day suggested completing Stress Risk Assessment form to pinpoint triggers for work place stress, but the Claimant declined. In evidence the Claimant agreed that she did not want to complete a stress risk assessment. She said that "on paper" Ms Day was doing everything right, but that the Claimant believed that Ms Day was trying to trap the Claimant on capability grounds.

120. The Claimant presented a revised, second formal grievance on 17 November 2020 pp 1227-1233; 1234-1241. In it, as well as repeating her complaints about the Evolve process, she added new complaints about Laura Day, saying, "28 September 2020 in my return to work 1:2:1 with Laura Day I congratulated her on her promotion on 21/09/20 to the role Senior Compliance Manager and at the same time I reminded her of her prior bad behaviours, including unconscious bias, bullying and harassment she had displayed along with Amanda Boikovs, Michelle Waterton and how they had made me feel signs of this behaviour had been creeping in her emails and recent TEAMs messages, which I felt were harassing. (see 10.08.20 LD Teams Chat, 22.10.20 Northants email). In this same meeting LD displayed unconscious bias behaviours in relation to me continuing to manage Kelly Bardwell's workload whilst she was off sick (with work-related stress)… 15 October 2020 in a 1:2:1 LD to go through my OH report, LD advised me that KB was still of sick and she was putting a plan in place to support KB's return to work so if I could continue to manage KB's workload. I pointed out to LD that KB and I were effectively both in the same position so why was she prioritising KB's well-being above mine." P1231.

121. On 22 October 2020 Ms Day sent an email to compliance managers about Ms Bardwell's return to work, p2601. She said, "Kelly will be returning to work.. with a 5 week phased return programme." Ms Day said that she would arrange handover to Ms Bardwell of tasks and relationships including BBVS. She also said that she would be, "in touch with you all individually to let you know what input/support is requested of you to support Kelly's return to work."

122. The Claimant asked Ms Day in cross examination why Ms Day had not sent a similar email for the Claimant when she returned to work. Ms Day said, "Because you returned on reduced hours, but not a phased return. You came back on 5 days straight away with reduced hours and OH did not suggest a phased return." The Claimant also put to Ms Day that she had made adjustments for Kelly Bardwell when she came back on a phased return. Ms Day said in evidence, "Kelly completed a stress risk

assessment which captured 13 stress triggers which I then had to manage." Ms Day said she had offered the Claimant a stress risk assessment, but the Claimant had turned that down.

123. Mr Madu interviewed Kimberley Royer-Harris on 17 November 2020, pp1242-1251; Donovan Bailey on 20 November 2020, pp1260-1268 and Elena Argirova on 26 November 2020, pp 1272-1279. He interviewed Lynsey Rice on 30 November 2020, pp1323-1327; and Neil Simmonds on 15 December 2020, p1402-1407.

124. The Claimant had a third grievance meeting on 27 November 2020, pp1280-1299; 1300-1320.

125. The Claimant had a fourth grievance meeting on 17 December 2020, pp1411-1421; 1422-1433.

126. The Claimant was asked about her allegations regarding Laura Day in her fourth grievance interview on 17 December 2020 p1780-1781. She stated that the most recent incident involving Ms Day was in September 2020.

127. The Claimant did not name Miriam Wolff as a witness in her grievance submission or interviews. She used Ms Wollf as a comparator example, saying that Ms Wolff was previously her direct report, but was now her Grade 16 peer, and that Ms Wolff had received a more prompt response to her own SAR/FOI request.

128. On 30 November 2020 Ms Day and the Claimant met again in a one to one meeting. Ms Day had sent the Claimant a stress risk assessment, but the Claimant had not completed it. Ms Day's notes of the meeting recorded that the Claimant had said that, "she isn't stressed because of workload, lack of control, lack of support- Its all because of Evolve and the new organisation not being ready, and all of this is detailed in her grievance which is being investigated. SG advised her issue isn't that there's too much work, its because of lack of processes … and my "micro-aggressions" and SG advises that HS2 are acting illegally as we are asking people to do a job without necessary tools to do the job correctly. SG advised this form would have been useful before the grievance and therefore SG won't be completing this form..." p2343.

129. On 7 December 2020, in an email to Ms Day, the Claimant agreed to a follow up OH assessment, saying that she had been told that the maximum period allowed for return to work adjusted hours was 13 weeks, but that the original OH report had advised that she should be on adjusted hours until the grievance was concluded, p1357.

130. HS2 Attendance Management Policy – Line Manager and Employee Guidelines provided, "Return to work plans should not normally exceed 4 weeks and if they do then line managers should refer to our own Occupational Health provider. Reduced hours or amended duties will be paid at 100% of the employee's full pay providing that they do not last beyond 13 weeks. Beyond this period the organisation will need to consider the possibility along with the employee, that this could constitute a permanent change in the employee's terms and conditions of employment." P1518.

131. OH produced a further report on 16 December 2020, p1408. The report said that the Claimant remained fit for work with the adjustment of a reduction in working

hours by 20% per week. It also said, “Early resolution of the workplace issues will aid recovery and prevent any further deterioration of health.” It said that there had been a deterioration in the Claimant’s health while the grievance procedure remained ongoing, p1409.

132. The Respondent set up a programme to increase the diversity of its interview panels in late 2020. The Claimant sought to join this programme but Ms Day said that she should defer doing so while on reduced hours.

133. On 4 January 2021 the Claimant attended another one to one meeting with Ms Day. Ms Day told the Claimant that Ms Day had been advised that, because the reduced hours had continued for more than 13 weeks, the Claimant’s salary should be reduced by 20%. Ms Day said this would take effect in the Claimant’s January salary, p1463.

134. Also at that meeting, Ms Day proposed that the Claimant act as the main point of contact, from a compliance perspective, to support the Respondent’s relationship with Tfl, p1474. In an email following that meeting, Ms Day explained the proposal, saying “Our reasoning behind this is that 80% of TfL "business" is in relation to Euston, so as Euston Compliance Manager it seems the most sensible allocation. We recognise there is OOC, SCS and CSJV involvement in TfL, however, it would be expected that you would work across the other Compliance Managers or bring them into the conversation as required.” P1475.

135. The Claimant did not cross examine Ms Day about this in her oral evidence. Ms Day’s unchallenged written evidence was that TfL had 104 Undertakings & Assurances (“U&As”) registered with the Respondent, of which 90 were in the Claimant’s geographical area of Euston and the other 14 were in areas managed by two other Compliance Managers. Ms Day’s evidence was that the proposal was discussed with the Claimant and her views were considered, but even after the decision was made to implement it, the Claimant continued to voice her objections.

136. On 25 January 2021, Ms Day wrote to the Claimant again, saying that the 20% reduction in salary would not be implemented and that the Respondent would continue to pay the Claimant 100% of her salary until the end of her grievance, p1518.

137. The Claimant’s pay was not, in fact, ever reduced.

138. In the Claimant’s Q3 review on 18 January 2021, the Claimant said that she had performed the best she could, despite the lack of procedures and processes. She complained about the lack of proper contracts and a database, but not the amount of work she was required to do. Ms Day commented, “I appreciate the consistency that Sharon has given to BBVS for U&A management over the last quarter and the continued support Sharon has give to other Compliance Managers when handing over Sharon’s old responsibilities.” P2597.

139. On 19 January 2021 the Claimant and Ms Day had another one to one meeting, p1509. Following this meeting, the Claimant replied to an email from Ms Day, agreeing that their one to ones could feel confrontational and saying, “I am reacting to what and the way you communicate things to me in your emails and 1:1 e.g. Kelly Bardwell & BBVs, Richard Nuttall & Northhants CC, Shilpa Amin & TfL etc. said that as I have

told you on many occasions how I thought you could/should do to improve the relationship." P1510.

140. On 17 January 2021 the Claimant emailed Osita Madu saying, "I am almost at breaking point and it is unfair that I should have to .. be continual exposed almost daily to Laura Day's poor behaviours, which continues to have a detrimental impact on my mental and physical well-being.. me being in this role is fast becoming untenable. I would really appreciate it if you, as my Grievance Manager, could treat this as high priority and do all in your powers …to bring this grievance process to an end as soon as possible." P1506.

141. Mr Madu told the Tribunal that he believed that the Claimant was asking for the grievance to be expedited as a solution to her expressed concerns, rather than for her to be moved during the grievance process. The Tribunal considered that that was the natural reading of that email – the Claimant's proposed solution was a speedy outcome to her grievance.

142. On 22 January 2021 the Claimant emailed Stephanie Elton, who had recently become Shaf Aslam's manager, and others saying, "Going forward, please can you let me know what measures HS2 intends to put in place, until the conclusion of these grievances in order to avoid any further deterioration to my mental and physical wellbeing" p1513.

143. Sue Fursey, who was a Union representative, also wrote to Ms Elton and John Whitefoot, Head of Employee & Industrial Relations, on 25 January 2021 saying, "I am very concerned about Sharon's health –The current situation she is trying to navigate with Shaf and Laura regarding her salary, whether or not she is under attendance management (she has not been advised that she is), the issue she is having with Laura regarding additional workload while on reduced hours, and the ongoing grievance are having an extremely detrimental affect on her. Any guidance or assistance at this point in time would be very much appreciated."

144. On 29 January 2021 Ms Elton replied to the Claimant's email of 22 January, P1567. She informed her that Osita Madu had sadly suffered a family bereavement and there could be a delay in the grievance. She said, "..both myself, John Whitefoot and your representative Sue are working with the business to find a resolution to keep your case moving. .. In the meantime, should you need any further support, please do utilise the Health and Wellbeing support services that HS2 have to offer."

145. Mr Whitefoot told the Tribunal that he would not become involved in the management of grievances. He said that his role was to have a high level view of the work his team were undertaking.

146. The Claimant and Ms Day had a one to one on 1 February 2021, p1589 – 1590. Following that meeting, the Claimant complained in an email that, "the issue was about me effectively managing compliance for ALL U&A which impact the Euston programme which have been allocated to the other CMs. And it's not fair that as this is effectively in addition to my allocated U&A workload."

147. Pamela McInroy was appointed grievance manager, in place of Osita Madu, on 8 February 2021, p1646.

148. On 12 February 2021 Ms McInroy interviewed Amanda Boikovs, p1660-1670; Kimberley Royer-Harris, pp 1693-1702 and Laura Day, pp1677-1692. She interviewed Natalie Penrose on 1 March 2021, p1717-1726.

149. On 8 March 2021 Mr Bird emailed the Claimant, saying that he had found her email of 14 July 2021. He said that it had been overlooked because the Claimant had used a Subject Access Request form. He apologised but asked that, in future, the Claimant would send any Freedom of Information request to the Respondent's designated Freedom of Information email address, so that they would not go astray. Mr Bird said, "We will now process this as a Freedom of Information request and get a response to you as soon as we are able. As we are now dealing with this under FOI, please refrain from cc'ing anyone else. Similarly we do not need to be included on any correspondence that you send regarding a subject access request." p1734.

150. The Claimant replied, copying in many of the recipients of Mr Bird's email, including Andrew Goodfellow-Swaap, a Data Protection Officer, and HS2's Data Protection email address and HS2's internal FOI address, p1733.

151. Mr Bird replied further, to the Claimant alone, on 8 March 2021, answering some of her queries and saying, amongst other things, "As I said, there is no reason to clog up everyone's email, so you only need to send correspondence regarding FOIs to this email address." P1733.

152. Mr Bird told the Tribunal that he had already asked the Claimant not to reply to all – which she appeared to have ignored – and, in his 8 March 2020 email, he was reiterating that request.

153. The Tribunal noted the contents of the relevant exchange and concluded that, in his 8 March 2021 Mr Bird was, indeed, reinforcing his earlier message to the Claimant that she should not copy irrelevant people into her emails .

154. The Claimant attended an End of Year Performance Review meeting with Laura Day on 22 March 2021, pp1789-1791; 1800-1808. Ms Day summarised the Claimant's performance as follows: "Sharon has been working with new stakeholders in the new SLA element of her role, working to resolve historic outstanding issues and also to "reset" relationships and expectations to support compliance with these agreements. Sharon has been a reviewer of SLA how to guides which have supported development of team processes, her understanding of the new element of Sharon's role and ultimately assisting a consistent and standard way of working as a Compliance Team. Sharon produced some U&A how to guides, drawing on areas of previous role working practices which were recognised as best practice and therefore implementing as the way to work for the Compliance Team (baseline management cycle specifically). Sharon's set herself rudimentary level objectives for 2020/2021 and has therefore achieved these.. There are significant areas of development for Sharon and these are all focusing on behaviours and role modelling HS2's Values to others'.

155. Ms Day continued, "Sharon seems to be not accepting the new business model despite being a year into the new model, and while I and others recognise there are challenges in our area of the business, we must do all we can to portray to the rest of the business and our team that we're all working as one and to the same business goals. Its recently been confirmed by Sharon that she hasn't been listening, taking on

board or referring to instructions/processes/multiple resource documents which have been developed to support Sharon (and other Compliance Managers) perform her role to a higher level than is currently being delivered. This has led to Sharon misunderstanding two parts of the process and delaying certain deliverables (CM Responsible column and discharge process). I would like to work with Sharon to improve our relationship and hope that Sharon can recognise the need for improvement and take steps in the right direction…".

156. Ms Day told the Tribunal that her comments were based on her interactions with the Claimant.

157. The Claimant showed the Tribunal an apparent grading for her 2020 – 2021 being "Needs Improvement", p1774. She said that this was the grade Ms Day intended to give her, and Ms Day had accidentally shown her this on a screenshot, but that Ms Day must have changed that proposed grading on advice.

158. The Tribunal noted that Kate Wilson gave some general advice on the Claimant's grievance on 11 May 2021, p1881. She said, "I would counsel meets expectations and some words in the commentary outcome to make clear of the issues that we are facing, and that she's received this rating as a default value."

159. Ms Day denied that she had provisionally given the Claimant a "needs improvement" grade.

160. However, the Tribunal found, on all the evidence, that she did propose a "needs improvement" grade for the Claimant' End of Year Performance Review 2021, even if the final grade was "meets expectations".

161. The Claimant complained that she had also been asked to take on additional responsibilities on 22 March 2021.

162. On 29 March 2021 the Claimant attended a one to one meeting with Laura Day, p1795-1799. During that meeting, they discussed what the Claimant had said during a recent team meeting on 25 March. On the same day, Ms Day sent the Claimant an email summary of their discussion, saying, "I explained in the team meeting that the "CM Responsible" column is purely for baseline management, not being responsible for each individual U&A. As MD have the concern, as their Compliance Manager its for you to work with them on this to mitigate. You then went on to question this, tell me why I was incorrect and how you feel the situation should work and why does everything land with you as Euston Compliance Manager and that it's been like this for 12 months. I welcome discussion and challenges to processes, however, I feel the way you conveyed this was in an inappropriate manner in a team meeting environment and I felt your tone was hostile towards me. This impacted me emotionally and strayed into my personal life. I asked you not to behave in this way towards me in the future and consider others in group meetings as a couple of team members felt this part of the meeting was inappropriate and uncomfortable and one team member contacted me to check on my welfare."

163. The Claimant replied to that email saying that Ms Day's notes were not balanced and accurate. She said, "Whilst you were careful not to use the word Aggressive for my alleged bad behaviour, this is exactly what you are saying, but

instead using the word hostile which is a synonym for the word. I told you in our 1:-2-1 that this is effectively what were are saying is that I am an "Aggressive black woman". I also told you that from experience I have ALWAYS had to be aware of my behaviour and it is ALWAYs measured, especially when I am challenging. I was not rude, disrespectful or unprofessional and Laura please be absolutely clear I was challenging the process, not you." P1796.

164. During the team meeting when the Claimant had disagreed with Ms Day, the Claimant had said that she would hand over a U&A compliance query to Ms Bardwell. She said that she would not deal with it, whatever Ms Day said. The Claimant and Ms Day disagreed in evidence about whether the Claimant had responsibility for handling the relevant compliance query. Ms Day told the Tribunal that she asked the Claimant to remain in charge of the issue because the agreed procedure was that each Compliance Manager was responsible for dealing with concerns raised by their own contractors, even if it related to a "baseline" (in this case, Environment) which was overseen by another colleague. The complaint had been raised by the Claimant's contractor and not by an Environment specialist. The Claimant explained, in her evidence, that Ms Day had not understood the matter correctly.

165. On 31 March 2021 Ms Day forwarded the Claimant's email on to Shaf Aslam and Donovan Bailey, p1810, saying "As you're both aware, over the last couple of weeks Sharon has increasingly brought race into conversations with me and while I've not entered into any direct conversations on the subject of race with Sharon (following advice from you both), can't keep receiving insinuations that my decisions or approach to managing Sharon is any way led by race, which I can categorically advise it is not."

166. The Claimant cross examined Ms Day about the fact that Ms Day had later assured Ms Elton that Ms Day specifically hadn't said the Claimant was "aggressive" p2802. Ms Day answered, "As soon as I said I found your tone hostile, you said, "I have heard this before: aggressive black woman". I said, "I didn't say that" – I was careful not to be led by you into language which was inappropriate, so I consciously stuck to the word hostile."

167. The Claimant was also cross examined about the exchange. It was put to her that Ms Day didn't say aggressive. The Claimant said, "When she used the word hostile, it was a micro aggression; in interviews – she said, "I stuck to the word hostile… it was a micro aggression, she meant aggressive."

168. Kate Wilson took over from Pamela McInroy as grievance manager on 30 March 2021, p1955.

169. On 20 April 2021 John Whitefoot emailed Osita Madu, Pamela McInroy, Kate Wilson and Shaf Aslam, amongst others, saying, "URGENT The Sharon Goodison grievance is now entering its nine month. This is entirely unacceptable. Accordingly, I have asked Kate [Wilson] to support Pamela [McInroy] in expediting a resolution." p1873.

170. On 10 May 2021 Kate Wilson emailed John Whitefoot, Stephanie Elton and Shaf Aslam, amongst others, about the Claimant's grievance, saying, "I have completed a full SG file review over the weekend, I have to say I am entirely underwhelmed. No wonder that Pam/Osita have struggled with the case (see below).

In addition, to the issues below, there's evidence missing that's relevant to the case. The "file" is more of a bin of hundreds of irrelevant docs. I will try to sort it out over the next week." P1873.

171. Ms Wilson instructed Shaf Aslam to get the case file into a tidy and useable shape, p1873

172. Later, on 11 May 2021, Ms Wilson said, of her review of the grievance, "There appears to have been no real terms of reference and due to a lack of ownership of the situation, we have allowed the employee to constantly add to her allegations and supply more and more sources of evidence." P1881.

173. By 11 May 2021 Ms Wilson had reviewed all the correspondence and meeting notes to date, p1883. She sought further information about the Evolve restructure from Elena Argirova on 17 May and 27 July 2020, p1890, 1970. Ms Wilson also contacted Carl Bird and the Respondent's Freedom of Information team about the Claimant's outstanding FOI requests.

174. It was not in dispute that Compliance Managers oversaw Service Level Agreements ("SLAs") and Third Party Agreements ("TPAs") with local authorities, pursuant to which the Respondent would reimburse the local authorities for officers' time spent on processing consent applications. It was already Compliance Managers' responsibility to verify the contents of incoming timesheets. Ms Day told the Tribunal that, before Project Evolve, goods receipting invoices for payment to local authorities was the responsibility of the Respondent's Commercial and Finance Division, but post-Evolve, this goods receipting was not allocated to any role. She told the Tribunal that senior managers told her that the task needed to be picked up, but that she had argued that her team should not be doing it because it was a financial responsibility, for which the team was not trained. Invoices started to build up and local authorities were threatening to stop work for HS2. In about May 2021, Ms Day was told by the Head of Financial Governance & Treasury and Head of Third Party Agreement that this invoicing would become a responsibility of the Compliance team and that there was no reason why, according to the procurement policy, the team could not do it. Ms Day gave evidence that, as a result, the whole team, including Ms Day, was given training on the process and told to undertake the work.

175. Ms Day's evidence was that the processing of a goods receipting notification in Oracle was the quickest and slickest part of the invoicing process and, therefore, the time burden on the whole team was minimal in comparison with its existing timesheet assurance task.

176. The Claimant told the Tribunal that this receipting task constituted a conflict of interest, as she was being asked to check her own invoices. She said that it was not in her job description, so that it changed her contract. She said, "I stuck to my contract. I stay in my lane."

177. The Tribunal did not accept that this task involved a conflict of interest – the Claimant was not personally benefitting from any invoices she sent out on behalf of the Respondent.

178. The Claimant's terms and conditions of employment referred to her job title as *"Evolve – Compliance Manager"*. They did not set out any details of her duties, p719. By clause 2.6, the terms and conditions provided," You may be required to undertake other duties from time to time as we may reasonably require." p720. The Claimant's job description included as a key accountability *"To be responsible for the management of the governance and process for third party agreements from initiation to sign off and compliance, including issue of payment where required"*, p599.

179. During a meeting on 6 July 2021, the Claimant suggested her reporting line should be changed, from Ms Day and Mr Bailey, to reporting directly into The Euston Partnership, with a dotted line into Compliance. Ms Day subsequently raised this with Mr Bailey, p1957, but he disagreed, p1946. Ms Day did not herself have power to change the Claimant's reporting line. Ms Day told the Tribunal that the Claimant did not put in a formal request.

180. On 13 July 2021 Carl Bird emailed the Claimant with attachments FOI-21-4230 Annex A and a letter from the Respondent to the Claimant, responding to her FOI request, p371-377.

181. On 14 July 2021 the Claimant, Donovan Bailey and Ms Day, amongst others, attended an internal meeting which discussing the London Borough of Camden SLA and how to reduce the number of times LB Camden escalated complaints about HS2's failures. The Claimant had been managing the LB Camden SLA. Ms Day commented that HS2 was "not whiter than white here", as it had not delivered on particular contractual obligations.

182. Ms Day told the Tribunal that the point she was making was that, "We couldn't say the local authority was not abiding by the contract when at the same time, neither was HS2."

183. In a one to one meeting with Ms Day on 20 July 2021, the Claimant said that, while she understood the point Ms Day was making, the "not whiter than white" phrase had racial connotations and had impacted her. The Claimant told Ms Day that a police officer had been disciplined for using the phrase. Ms Day apologised for any offence caused.

184. Ms Day told the Tribunal that she researched the history of the phrase and discovered that it was Shakespearean.

185. In evidence, the Claimant said that she did not believe that Ms Day intended there to be any racial connotation in using the phrase "whiter than white". The Claimant said in evidence, however, her degree was in semiotics. "White is good , black is bad." She said, "It has racial connotations for me throughout my life… I said she had to be very careful. The police officer was brought up on misconduct charges."

186. The Claimant challenged Ms Day in evidence about her use of the phrase and said there was a possibility that Ms Day was unconsciously biased. Ms Day said, "I don't know. I was talking about HS2 not complying with a contract. It had nothing to do with race."

187. On 22 July 2021 Mr Whitefoot emailed Kate Wilson saying that Aileen Thompson, Director, Communications and Stakeholder Management (a senior manager), had spoken to him about the Claimant's grievance. He said, "Aileen is extremely worried she will lose Laura and gave me the heads up that Laura is regarded as a key player and this would not go down well with her or the business… I gave her a firm promise that the grievance will be concluded by CoP on Monday. It has to be Kate. Please drop everything else and submit your apologies for all pre-scheduled calls and meetings for today and Monday." P1963.

188. On 26 July 2021, Aileen Thompson, emailed John Whitefoot, saying she was concerned about Ms Day's willingness to remain in her role " in the current circumstances". P1968. She asked for a swift resolution. Mr Whitefoot replied, saying that he expected the Claimant's grievance report to be available that day.

189. The Respondent's Grievance Policy, p76, provided, under the heading, Principles, "HS2 will make every effort to deal with grievances as quickly as possible." It also provided, "No decisions on the outcome of a formal grievance raised under this policy will be made before the case has been investigated" , p79.

190. Kate Wilson told the Tribunal that there were 3 versions of her report on the Claimant's grievances, dated: 26 July 2021, p2530-2562; 6 August 2021, p2436 - 2457; 11 August 2021, p2022 - 2043. She said that the 26 July draft of the report was solely drafted by her, having consulted with Mr Madu, Ms Aslam, and Ms McInroy. She told the Tribunal that sent a copy of the first draft of the report to Mr Madu, who responded with comments. Ms Wilson then sent the report to Mr Whitefoot on 28 July 2021. (It appeared that there was also a fourth report, by Ms Wilson herself, on 3 August 2020, p 1981 – 2011, after receiving Mr Whitefoot's written comments).

191. The 26 July report, p2530-2562, upheld the following allegations.

> Allegation 4 – the job descriptions, interview questions and selection, were biased towards in favour of the 'old model' Community Engagement (CE) function/roles and against the 'old model' Interface function/roles. P2540 – 2543
>
> Allegation 6 - HS2 did not provide her with her interview scores and feedback documentation, p2543.
>
> Allegation 8 - failure to question why SG did not choose to apply for the Compliance Manager Role or her reluctance to accept the role.
>
> This allegation was upheld regarding Amanda Boicovs and Michael Summerfield. The report said, "…based on KRHs account, clearly Amanda's behaviour's fell significantly short of the expectations that we hold in terms of "respect" and may constitute bullying in the workplace as it including putting down colleagues in meeting and on emails."
>
> However, the allegation was not upheld regarding Laura Day. The first draft of the report said, "I cannot find any evidence to substantiate this allegation against Laura. However, I find evidence to substantiate Sharon has behaved inappropriately to Laura Day."

Allegation 9 – Appointing her to the Compliance Manager role and scoring the same after interview as someone who has no experience of U&A Compliance Management, or Stakeholder Engagement Management. This allegation was partially upheld.

The report said, "Unfortunately, the job evaluation process takes into account the role that SG performs and was benchmarked at a grade 16 it cannot distinguish between other experiences; that would be on the basis of performance within the role and expected performance ratings. Regrettably due to the lack of experience of the interviewers in the former area of "interface" it may not have been possible for them to differentiate candidates; however, I cannot find any evidence of unconscious bias.

10. Allegation – HS2 did not resolve SG's queries concerning Evolve process promptly

Allegation 13. SG received conflicting information from Donovan Bailey and Jenny Wells about her eligibility to apply for the Senior Compliance Manager role.

Partially upheld. The report said, "Based on Sharon's response to Donovan, is it plausible that the issues raised as result of the recruitment process may have caused her to lose trust in the organisation. Furthermore, it is understandable why she would have been reluctant to attend the interview. However, it is clear that the business listened to the feedback, reviewed the questions and invited the compliance managers to a new interview. Donovan should afford SG more time to consider the opportunity and perhaps met her discuss concerns."

192. It made the following recommendations

I. All current members of the Communications and Stakeholder Management Directorate to attend 'Dignity at Work' training course delivered by the Clear Company.

II. II. Current hiring managers in the Communications and Stakeholder Management Directorate to attend 'unconscious bias' training delivered by external providers the Clear Company

III. III. Ensure all current members of the Communications and Stakeholder Management Directorate have completed current mandatory Equality Diversity & Inclusion ("EDI") training.

IV. IV. Recommend attendance at EDI lunch & learn sessions for hiring managers in the Communications and Stakeholder Management Directorate.

V. V. Sharon Goodison to be afforded priority opportunity to seek alternative employment within HS2, p2561 – 2562.

193. The Claimant told the Tribunal that, if the grievance report had been in the form of 26 July 2020 draft, that might have made a difference to her and might have satisfied her, but she believed the relationship was broken.

194. Mr Whitefoot replied to Ms Wilson's 26 July draft, by email, on 2 August 2021, p1975. He made detailed comments on the first draft, including its grammar and style. For example, he said,

> "**Allegation 4.** Again there is a lot of detail here but doesn't clearly articulate to me the exam question and answer? Also last sentence 'On reviewing the evidence, I concluded that while the interview questions were developed fairly without bias to any group or team.' There seems to be something missing here at the end of this sentence? It doesn't read well. And the grounds for partially upholding are not clear." P1977.

195. He also made comments on Ms Wilson's substantive conclusions and recommendations. For example,

> "Allegation 9.1
>
> 'Sharon said (27th November 2020) that Amanda Boikovs was the ringleader and that she found that Laura Day took AB's side.' Ringleader for what? Took Abs side on what? Lacking context.
>
> Overall I am struggling here with how we could constitute this as bullying? Admittedly there is a lack of evidence;
>
> *'It would have been helpful for Sharon to provide during the interview process or via correspondence specific example of any alleged incidents to enable me to determine if the behaviours exhibited could have been deemed as bullying. However, the both KRH and Suzanne Crouch recognised that the behaviours displayed by Amanda were unacceptable and made Sharon uncomfortable and therefore they put in place efforts to limit her interactions.'*
>
> So how have we arrived at this conclusion?
>
> *'Although KRH was not a direct witness she provided in her statements examples in relation AB being insensitive in emails and critical of Sharon's work.'* Doesn't read well
>
> Being insensitive and critical does not automatically constitute bullying. Based on what I have read in this section, I would not be comfortable upholding this allegation in the absence of clear evidence.
>
> Bullying is potentially gross misconduct, so we need to exercise caution here. The example cited 'AB - "*I can't understand why we would want to present for handover, what decision would be required if works were ending and compliance with a U&A was complete?"* would not on the face of it constitute bullying in my view'.
>
> **Page 22**
>
> …
>
> *'However, both Jenny Wells and Donovan should have taken more care and attention to adequately assess if Sharon could have worked within that team,*

and if necessary, instructed her to raise a formal grievance or instructed an informal or formal management investigation themselves.' Did SG actually make the company aware of these issues prior to raising them via the grievance process?

'*however, they should have either also put in place robust processes such as internal investigation or formal mediation to ensure that the environment was appropriate; and if there were no other suitable roles available then, if necessary, Sharon should have been made redundant'*. Why would we do this unless a formal allegation/grievance/complaint had been raised?

Ultimately it is for the individual to decide if an environment is right for them and decide based on that. A missing piece here is timing; at what stage during Evolve did SG put us on notice of these issues or were they only raised during the grievance process?

'*There is clearly a culture of poor behaviours within this area, both towards Sharon and from her*.' But there is lacking evidence, so how can we justify this statement, specifically 'towards' SG? Is it 'poor behaviours' or is it a tense/high pressured working environment which at times influences behaviours?

I am genuinely struggling to understand why we have upheld allegation 9?

….

Allegation 16

What are we upholding?

SG is claiming that the slower response was prima facie discrimination on the grounds of race. Is it this? Or is it process failings? I recall originally SGs request was sent to the DSAR team, however it was actually an FOI. Are we talking about the DSAR or the FOI? It is not clear and our response doesn't paint a clear picture of how the requests were handled and process failings as opposed to discrimination. This section needs to be revisited.

….

Recommendations.

I am not comfortable about these recommendations. If we have found no evidence of discrimination/bias/victimisation on the grounds of race, why are we suggesting corrective measures? Could this be viewed as a 'cover up'."

196. Ms Wilson told the Tribunal that, under pressure from Mr Whitefoot, she worked with Stephanie Elton, Senior Employee Relations Manager, on amending and

restructuring the first draft. The two worked through a second draft completed on 6 August 2021. In her witness statement, Ms Wilson said that, while she had always been open to obtaining feedback on reports from colleagues, on this occasion she felt ill at ease with the process, as she felt railroaded not to uphold the Claimant's bullying allegations and the report's tone changed.

197. Ms Elton told the Tribunal that she and Ms Wilson worked through all the changes on a call together. She said, "It was actually a collaborative call. The final version we agreed at the end of the call Ms Wilson was happy with. Ultimately it was Kate's report and ultimately they are Kate's words.

198. Ms Wilson told the Tribunal in oral evidence that, while she felt under pressure, ultimately the 6 August 2022 document was Ms Wilson's document and she had put her signature to it.

199. On the evening of 6 August 2021, Ms Wilson confirmed by email that she was happy with the content of the amended report, p2021 and was happy for it to be sent to the Claimant in her absence, whilst she was on annual leave.

200. None of Ms Wilson's conclusions changed from "upheld" to "not upheld" following her conversation with Ms Elton on 6 August 2021. The only change to any conclusion was to sub-allegation 9.1, bullying by Ms Boikovs, which changed from *"I find evidence to substantiate this allegation"* , p1998 to *"Whilst I cannot dismiss the allegation, there is some, but some limited evidence available to substantiate SG's claims",* p2448. Ms Wilson agreed, in cross-examination, that this more closely reflected the nuances that she had identified in the evidence.

201. The 6 August report made the following comments about the Claimant: "it would appear that SG has adopted a somewhat 'scattergun' approach to her grievance." "LD finds it difficult to challenge SG and has cited that the team also pick up on SG's "lack of interest and interaction", lack of "collaboration" which is "impacting the Compliance Team". "….commented that SG made her feel uncomfortable by stating that "recruitment deserve what it's got in to because they need to feel the pain that others have experienced, and it is painful for everyone else and it's only fair that resourcing experiences this themselves". "There is evidence that SG may have at times behaved in an unacceptable manner towards her Line Manager, Laura Day" "I do however find evidence that SG's behaviour towards LD at times to have been inappropriate and unacceptable" "SG often responded to emails from Jenny Wells in capitals and red type, which may be construed as confrontational in style and tone". "SG challenged the appropriateness of Shaf Aslam, HR Advisor, asking questions during the fact-finding meeting." "…and the way she conducted herself throughout this process, it appears to me that SG was not always slow to criticise the actions of others perhaps in the absence of reflecting on her own behaviours at times" "….consider taking appropriate action with regard to personality clashes and/or irreconcilable differences, which is causing continued disruption to the team and the business". P2449, 2456

202. The RECOMMENDATIONS in 6 August 2021 report were as follows:

> "The business may wish to consider taking appropriate action with regard to personality clashes and/or irreconcilable differences, which may cause disruption to the team and business.

The business may wish to consider whether consensual redeployment of SG could be considered and would be appropriate." P2457.

203. Ms Wilson was asked whether each of the criticisms of the Claimant in the 6 August report, relied on by the Claimant as victimisation, were made because the Claimant had alleged race discrimination. Ms Wilson denied that she had made those comments because the Claimant had made an allegation of race discrimination. She said in relation to the recommendation that the Company "….consider taking appropriate action with regard to personality clashes and/or irreconcilable differences, which is causing continued disruption to the team and the business", that she had included that, "because I felt it was a poorly managed team and there was a lack of leadership. There was personality clashes and infighting and I believe the organization should have stepped in to take action – mediation- felt that it was poor for everyone not just the Claimant. I didn't do it for nefarious reasons – I did it from duty of care point of view."

204. Regarding the comment that the Claimant had adopted a scattergun approach, Ms Wilson agreed that those were Ms Wilson's genuine views, having read all the evidence. She said, "she [the Claimant] was frustrated and that frustration came out in a poor way… I have done utmost to do balanced report and I had to point out the concerns I had."

205. Ms Wilson was also asked whether any of her conclusions were because the Claimant is black. She said, "No. Because I am white I was more cautious about investigating BAME outcomes... I have done my best and was very cognisant of not being held to have unconsciously discriminated myself... I was trying to steer fair outcome."

206. Ms Wilson told the Tribunal that Ms Elton told Ms Wilson, during this review process for 6 August report, "we do not uphold grievances, as it is for the Tribunal to ascertain any faults." Ms Wilson told the Tribunal that she had upheld grievances herself at the Respondent.

207. Ms Elton told the Tribunal," These are not words I would use and it is simply not correct – Ms Wilson had upheld several allegations and I respected her conclusions on those. I may have commented that the report needed to be balanced and accurately reflect the evidence but that is as much as I would have said. In addition, I have upheld grievances during my time at HS2 and would have no hesitation in doing so if the evidence was there." She denied that the Respondent was hesitant to uphold allegations of race discrimination. She said, "That's not correct. We have to ensure that allegations are supported by evidence. Anything upheld must be backed by evidence."

208. Ms Elton told the Tribunal that, regarding allegation 9, "Based on the content of the report, the narrative didn't make sense."

209. Mr Whitefoot was also asked about Ms Wilson's evidence that the Respondent did not uphold grievances. He was asked what was the Respondent's strategy for dealing with allegations of race discrimination, harassment and victimisation. He said, "We treat them all the same way according to our policies and process. It is

unrecognisable to me that we would adopt different approach to those grievances. We are consistent."

210. The Tribunal preferred Ms Elton's evidence to Ms Wilson's and found that the Ms Elton did not say that the Respondent did not uphold grievances. Ms Wilson's witness statement was expressed in trenchant terms that she had been railroaded into changing her grievance report. However, in oral evidence, she agreed that the 6 August report was, in fact, her report. She was inconsistent in this and the Tribunal doubted the veracity of her evidence regarding the discussion she had with Ms Elton about the report. Furthermore, Ms Elton and Mr Whitefoot's contemporaneous commentary on the original report appeared to be considered and reasonable, asking Ms Wilson to explain and clarify her conclusions. That was not consistent with Ms Elton simply having an attitude that the Respondent did not uphold grievances.

211. Ms Wilson confirmed in evidence that she did review a statement from Suzanne Crouch p1044, who had left the business and could not be interviewed. Her first draft report referred to Ms Crouch's views p2458.

212. The Claimant had supplied email evidence to support her allegation of bullying against Ms Boikovs and other former colleagues. Ms Royer-Harris, the Claimant's previous line manager, was interviewed during the grievance process, as were Ms Boikovs and Ms Day. The report gave a reasoned outcome on this allegation, p2033-2036. Ms Wollf was not interviewed. However, the Claimant did not identify what significant additional evidence Ms Wolff could have given to the grievance.

213. It appeared that Laura Day raised a grievance against the Claimant in early August 2021.

214. During the final hearing in this case, the Tribunal asked the Claimant to identify which complaint in her grievance forms, or relevant piece of evidence, was not investigated by Mr Madu or Ms McInroy, or not considered by Ms Wilson in her reports. The Claimant did not do so, save that she put to Mr Madu that he did not investigate the business case for regrading the U&A Manager role. Ms Wilson addressed this matter, giving reasons, in her report under allegation 1, p2024.

215. The Claimant was sent a grievance outcome report dated 11 August 2021, p2022-2045; 2048-2050.

216. The report upheld parts of the Claimant's grievance: Allegations 5, 7, 9.1, 9.2, 11, 14 9 (partially) and 16. It should be noted that the allegations had been renumbered since Ms Wilson's original 27 July 2021 report.

217. Mr Whitefoot had changed this version of the report from the 6 August 2021 report which Ms Wilson had approved. He changed the outcome on allegation 9:" failure to question why SG did not choose to apply for the Compliance Manager role or her reluctance to accept the role." P2036.

218. On allegation 9, Ms Wilson's 6 August report had said,

> "SG originally did not apply for the role as she had elected to apply for other roles which she had more of an interest in. This was SG's choice. As SG was

unfortunately unsuccessful in her application for other roles, she felt she had 'no choice' but to accept a role that she did not want. However, it is for the individual to decide if an environment is right for them professionally and personally and decide based on that.

Although Sharon was clear in consultation meetings that she could not work with these colleagues, ultimately it was SG's decision as to whether to accept or reject the offer of Compliance Manager and she was afforded an extended time period to consider this.

Whilst I acknowledge that the business could have made better attempts to explore SG's reservations in this regard, and if necessary, advised SG of the appropriate formal channels (i.e., the formal grievance procedure), it was up to SG to decide if the role was right for her. he suitability of a role is based on several factors, and I believe that HS2 Ltd acted reasonably in appointing SG to a role to mitigate redundancy. If SG had opted to decline the role, she would have remained 'at risk' of redundancy and if no other suitable alternative roles became available, this would have resulted in SG being made redundant from the organisation.

I uphold this allegation on the basis that relationships are clearly fractured, and this is not conducive to a harmonious working environment. " p2450

219. Mr Whitefoot's 11 August report said, on this allegation, p2036

"Originally SG did not apply for the role as she had elected to apply for other roles which she had more of an interest in. This was SG's choice. As SG was unfortunately unsuccessful in her application for other roles, she felt she had 'no choice' but to accept a role that she did not want. However, it is for the individual to decide if an environment is right for them professionally and personally and decide based on that.

Although Sharon contended that she could not work with these colleagues, ultimately it was SG's decision alone as to whether she accepted or rejected the offer of Compliance Manager.

Notwithstanding, SG was afforded an extended time period to make her decision. Whilst I acknowledge that the business could have perhaps endeavoured to explore SG's reservations in this regard better, and as appropriate, reminded SG of the options available to her (i.e., the formal grievance procedure), ultimately it was up to SG to decide if the role was right for her. The suitability of a role is based on various factors, and I believe that HS2 Ltd acted reasonably in appointing SG to a role by ways of avoiding compulsory redundancy. Had SG opted to decline the offer, she would have remained 'at risk' of compulsory redundancy should no suitable alternative roles be available.

On the balance of the evidence, I am unable to uphold this allegation. p2036.

220. Mr Whitefoot told the Tribunal that, having read Ms Wilson's narrative at the relevant section of the 6 August report, p 2450, and the interview summaries with the

relevant individuals in the report, he could not understand how Ms Wilson had concluded that the allegation should be upheld on the basis that it had been. He said that there seemed to be "a disjoint between the wording of this specific allegation, the evidential narrative and the conclusion reached." He said that, while it may have been factually correct that there had been a failure to question why the Claimant did not apply for the Compliance Manager role, it was ultimately the Claimant's decision not to apply and it was not for HS2 to question this. Further, he said that the Claimant had been given an extended period of time to decide whether she would accept the role. He said that he decided that HS2 had acted reasonably in appointing the Claimant to the role in the way that had been done, to avoid making her compulsorily redundant. He also said that any issues she had in respect of the make-up of the team she would be working with were a matter for her to raise with management/HR.

221. Mr Whitefoot did not change the recommendations from the 6 August 2021 report.

222. Of the outcomes the Claimant had sought in her original grievance, The 20% material change to her role was addressed as allegation 2 in the final report, p2025 and the regrading of her role was addressed as allegation 1 p2024.

223. The Claimant highlighted, during the Final Hearing, that the training recommendations in Ms Wilson's first draft p2561-2562, were removed in the outcome that she received. These recommendations did not appear in Ms Wilson's draft dated 3 August 2021 [2011]. They were therefore removed following John Whitefoot's feedback that there was no reason to suggest corrective measures if no evidence of race discrimination had been found, and that to do so could be viewed as a "cover up".p1980. Ms Wilson agreed, in oral evidence, that Mr Whitefoot's feedback on this issue was reasonable and logical.

224. The Claimant resigned without notice of 13 August 2021, p2054-2057. In her letter of resignation she said, "You should be aware that I am resigning in response to a repudiatory breach of contract by HS2 detailed in the informal and formal grievances I have raised. I therefore consider myself constructively dismissed." The Claimant set out her criticisms of the grievance report. She said that the grievance report had not upheld any part of her grievance where there had been clear evidence of bullying and systemic racism. The Claimant said that evidence had been ignored and that the report appeared to be retaliatory. She also said that the recommendations made did not provide any satisfactory or relevant remedies proportionate to the treatment she had endured.

225. The Claimant continued, "2. Fundamental breach of contract, Breach of Duty of Care: Relevant, Statutory, Common Law, Implied, Expressed HS2 Grievance Policy – Section 1 - "Ensure that individual grievances are dealt with fairly, consistently, and promptly" Grievance 1 – Failure to follow HS2 Processes before, during and after Evolve and Grievance 2 -Failure to follow HS2 Policies & Processes, in line with the Equality Act 2010, including s149 Public Sector Duties the Human Rights Act 2011 Article 14 submitted on 03/08/20 and 17/11/20." She said that she had attended 4 grievance hearings.

226. The Claimant said that she had raised concerns about "Breach of Duty of Care, Omission to Act", saying she had raised concerns on 9 occasions since her grievance

was submitted on 3 August 2020 about "the continuous bullying and hostile environment I was experiencing working the CSE – Strategic Partnerships Team and the impact it was having on my mental and physical well-being", "and nothing has been done."

227. She said, "I now consider that my position at HS2 is untenable and my working conditions intolerable, leaving me no option but to resign in response to your breach." P2057.

228. The Claimant told the Tribunal in evidence that she had resigned when she received the grievance. In submissions, she said that the grievance outcome was the final straw.

229. Mr Whitefoot wrote to the Claimant on 18 August 2021, saying, "I am writing to acknowledge your letter of resignation dated 13th August 2021 confirming your intention to resign from HS2 Ltd, effective immediately. Although I am sure you will have considered the matter carefully, as you have made this decision during an ongoing grievance process and shortly after the grievance outcome was delivered, we would like to offer you a period of reflection, to ensure you are certain over your intention to leave HS2 Ltd. Please could I ask that you respond by no later than Monday, 23rd August 2021, confirming your position. Should I not hear from you by this date, the company will assume that your intentions are as set out in your letter of 13th August 2021, that being to resign from your employment with HS2 Ltd and that your last day of employment will be 13th August 2021." P2062.

230. Ms Fursey told the Tribunal that she had discussed a possible grievance appeal with Mr Whitefoot. In her witness statement she said, "Focussing again on SG's grievance, JW stressed that KW had carried out a thorough review of the grievances and had found absolutely no evidence of racial discrimination. He stressed that he had instructed KW to actively look for evidence of racial discrimination in the grievances and could not find anything. He advised me that unless SG could produce new evidence that her experiences within HS2 were a result of her being a black woman, he would struggle to assume that SG would win an appeal against the GIRO, if she was planning to appeal. SE then mentioned that it was not just the evidence but also the inference that was investigated, and she advised me that KW had found no hard factual evidence, nor any inference, of racial discrimination."

231. Mr Whitefoot told the Tribunal in oral evidence that Ms Fursey's account of the conversation was incomplete. He said he had advised Ms Fursey, "I said ensure that you set out why wrong and look at new evidence. That is standard advice."

232. Ms Elton emailed Aileen Thompson and Mr Whitefoot, amongst others, on 18 August 2021, postponing an HR followup meeting about the Claimant. She said, "Due to the recent developments on this matter, and after speaking with John, we believe it would be better to postpone this meeting until next week. The reason for that being, we will be writing to SG today regarding her resignation and asking her to confirm her intentions by Monday 23rd August." P2063.

233. The Claimant conceded in her oral evidence that her indirect race discrimination claim made no sense in the way that it had been pleaded.

234. The Claimant presented her claim form on 3 November 2021 following Early Conciliation which started on 15 August 2021 and ended on 16 August 2021.

235. Mr Whitefoot gave evidence to the Tribunal about Caitlin Pickavance. The Claimant did not challenge his evidence about Ms Pickavance, despite the Tribunal inviting her to do so. The Tribunal accepted Mr Whitefoot's evidence that, before Evolve, Ms Pickavance was a Senior Interface Manager, a grade 18 role, within the Respondent's Route Wide Interface Management team. She was selected for redundancy under Project Evolve and appealed that outcome on the grounds that 1) HS2 did not follow a fair procedure when assessing individuals against their suitability for roles within the Community and Stakeholder Engagement ("C&SE") job family and 2) the roles in the Interface team were assessed as a greater than 20% change when they should have been assessed as a 'many-to-few' situation, with a competitive recruitment process for roles within their own grade and skills area, p841 - 843.

236. Ms Pickavance's Redundancy Appeal report, p2347 - 2355 partially upheld her appeal. It found that there was no evidence that HS2 did not follow a fair procedure when assessing individuals for their suitability against roles in the C&SE job family and that there was no evidence to support Ms Pickavance's allegation that the reason for redundancy was not genuine. However, it found that there may have been an incorrect assessment of the interface roles, which had been assessed as a greater than 20% change, and that they should have been assessed as a 'many-to-few' scenario against a potentially smaller cohort, with individuals competing for roles within their substantive pre-Evolve skill area. The appeal found that this may have led to a different set of role accountability interview competences/questions and potentially a higher likelihood of a successful outcome. As a result, this ground of Ms Pickavance's appeal was partially upheld..

Relevant Law

Direct Race Discrimination

237. By *s39(2) Equality Act 2010*, an employer must not discriminate against an employee by dismissing him.

238. Direct discrimination is defined in s13(1) EqA 2010:

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

239. Race is a protected characteristic, s4 EqA 2010.

240. In case of direct discrimination, on the comparison made between the employee and others, "there must be no material difference relating to each case," s23 Eq A 2010.

Victimisation

241. By *27 Eq A 2010,*

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

(2) Each of the following is a protected act—(a) bringing proceedings under this Act;(b) giving evidence or information in connection with proceedings under this A (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act."

242. There is no requirement for comparison in the same or nor materially different circumstances in the victimization provisions of the *EqA 2010*.

Causation

243. The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator's reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase "by reason that" requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?." Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

244. If the Tribunal is satisfied that the protected characteristic/act is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, per Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. "Significant" means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

245. In order for a disadvantage to qualify as a "detriment", it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to "detriment". However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Unreasonableness

246. Simply showing that conduct is unreasonable or unfair would not, by itself, be enough to trigger the transfer of the burden of proof—see *Bahl v Law Society* [2003] IRLR 640, EAT per Elias J at [100], approved by the Court of Appeal at [2004] IRLR 799.

247. The *Court of Appeal in Khan v Home Office* [2008] EWCA Civ 578 stated: "It does not follow that, because the respondent was guilty of unlawful discrimination in its woeful inattention to and handling of the appellants' historic grievances, it was also guilty in relation to … other matters [complained of]. It may well be that, especially

when acting in disregard of its own redundancy policy and procedure, the respondent acted unreasonably or unfairly but an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He has only to establish that the true reason was not discriminatory: *Griffiths-Henry v Network Rail Infrastructure Limited* [2006] IRLR 865, at paragraph 22, per Elias J."

Harassment

248. *s26 Eq A* provides,

"(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."

249. In *Richmond Pharmacology Ltd v Dhaliwal* [2009] IRLR 336 the EAT held that there are three elements of liability under the old provisions of s.3A RRA 1976: (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's race. Element (iii) involves an inquiry into perpetrator's grounds for acting as he did. It is logically distinct from any issue which may arise for the purpose of element (ii) about whether he intended to produce the proscribed consequences.

250. This guidance is instructive in respect of harassment claims under *s26 EqA*, albeit under the EqA, the conduct must be for a reason which relates to a relevant protected characteristic, rather than on the grounds of race. There is no requirement that harassment be "on the grounds of" the protected characteristic – *R(EOC) v Secretary of State for Trade and Industry* [2007] ICR 1234.

Burden of Proof

251. The shifting burden of proof applies to claims under *the Equality Act 2010, s136 EqA 2010*.

252. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

253. In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865, and confirmed that the burden of proof does not simply shift where M proves a difference in race and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para [56 – 58] Mummery LJ.

Unfair Dismissal

254. *S94 Employment Rights Act 1996* states that an employee has the right not to be unfairly dismissed by his employer. In order to bring a claim of unfair dismissal, the employee must have been dismissed.

255. By *s95(1)(c) ERA 1996*, an employee is dismissed by his employer if the employee terminates the contract under which he is employed, in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal is known as constructive dismissal.

256. In order to be entitled to terminate his contract and claim constructive dismissal, the employee must show the following:

a. The employer has committed a repudiatory breach of contract. Every breach of the implied term of trust and confidence is a repudiatory breach, *Morrow v Safeway Stores* [2002] IRLR 9;

b. The employee has left because of the breach, *Walker v Josiah Wedgewood & Sons* Ltd [1978] ICR 744;

c. The employee has not waived the breach- in other words; the employee must not delay his resignation too long, or indicate acceptance of the changed nature of the employment.

257. The evidential burden is on the Claimant. Guidance in the *Western Excavating (ECC Limited) v Sharp* [1978] ICR 221 case requires the Claimant to demonstrate that, first the Respondent has committed a repudiatory breach of his contract, second that he had left because of that breach and third, that he has not waived that breach.

258. In order to establish constructive dismissal based on a repudiatory breach of the implied term of trust and confidence, the employee must show that the employer has, without reasonable and proper cause, conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between them, *Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606, *Baldwin v Brighton and Hove City Council* [2007] ICR 680, and *Bournemouth University Higher Education Corporation v Buckland* [2009] IRLR 606.

259. The question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by the range of reasonable responses test. The test is an objective one, a breach occurs when the proscribed conduct takes place.

260. To reach a finding that the employer has breached the implied term of trust and confidence requires a significant breach of contract, demonstrating that the employer's intention is to abandon or refuse to perform the employment contract, Maurice Kay LJ in *Tullett Prebon v BGC* [2011] IRLR 420, CA, para 20.

261. In *W A Goold (Pearmak) Ltd v McConnell* [1995] IRLR 516 the EAT (Morison J presiding) accepted that there was an implied term in the contract of employment 'that the employers would reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have'.

262. In *Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859, [2004] IRLR 703 the Court of Appeal held that the employee must resign in response, at least in part, to the fundamental breach by the employer; per Keene LJ: "The proper approach, therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance of the repudiation. It follows that, in the present case, it was enough that the employee resigned in response, at least in part, to fundamental breaches of contract by the employer."

263. If the Claimant establishes that he has been dismissed, the ET goes on to consider whether the Respondent has shown a potentially fair reason for the dismissal and, if so, whether the dismissal was in fact fair under *s98(4) ERA.* In considering *s98(4),* the ET applies a neutral burden of proof. It is not for the Employment Tribunal to substitute its own decision for that of the employer.

Discussion and Decision

264. The Tribunal took into account all its findings of fact, and the relevant law, when reaching its decision. It considered the discrimination, harassment and victimisation complaints together, before coming to its conclusions. It also considered the allegations in the constructive dismissal claim together, in assessing whether there had been a fundamental breach of contract. For clarity, however, it has stated its conclusion on individual allegations separately.

265. *Direct Race Discrimination (s.13 EqA 2010) 3.1.1. The Claimant was told by Laura Day on 28/09/20 to take on Kelly Bardwell's U&A work tasks. The comparator is Kelly Bardwell, a white colleague who was afforded preferential treatment and management. [FBP ¶5.1]*

266. *Harassment on grounds of race (s.26 EqA 2010) 4.1.1. The Claimant was told by Laura Day on 28/09/20 and 15/10/20 and 19/01/21 and 22/03/21, to take on Kelly Bardwell's U&A work tasks. [FBP ¶5.1]*

267. *4.1.9. The Claimant was asked on 28/09/20 to take on Kelly Bardwell's U&A work tasks while she was absent from work [FBP 5.1]*

268. *4.1.9. The Claimant was asked on 28/09/20 to take on Kelly Bardwell's U&A work tasks while she was absent from work [FBP 5.1]*

269. Ms Barwell was white and had been off work, sick. The Claimant compared herself with Ms Bardwell. The Claimant had also been off work sick, and was on reduced hours, but was asked to take on additional work, including some of Ms Bardwell's work. Ms Day sent an email to Ms Bardwell's colleagues on 22 October 2020 Ms Day, p2601, saying that Ms Bardwell would be returning to work on a phased return and that Ms Day would tell colleagues what input and support would be requested of them to support Ms Bardwell's return to work. Ms Day did not send such an email in respect of the Claimant.

270. The Tribunal was satisfied that the Respondent had shown that Ms Day asking the Claimant to take on Kelly Bardwell's U&A tasks was not related to race in any way.

271. The Claimant did not dispute that Ms Bardwell's work needed to be done when Ms Bardwell was off work. Regarding the BBVS contractor work, the Claimant had managed BBVS before the Evolve restructure and, therefore, had an existing relationship with BBVS and an understanding of their performance. She was the obvious person to take on that responsibility, because she had the relevant knowledge to do the work. The Claimant was not singled out to take on Ms Bardwell's work; Ms Day took on responsibility for Ms Bardwell's SLA workload, because the other Compliance Managers were not familiar with the stakeholders or the requirements of SLA management. That indicated that Ms Day's allocation of work was based on knowledge of the work to do done, not on race.

272. Around 15 October 2020, Ms Day asked the Claimant to take responsibility for the outstanding rate changes on Nottinghamshire Council's contract because her existing Compliance Manager responsibilities included SLA management for Northamptonshire Council SLA, p1187. The employee who previously had responsibility for Nottinghamshire Council's contract, Mr Nuttall, had been moved from that role. The Tribunal was satisfied that the allocation of that work was, again, because the Claimant had existing responsibility for, and knowledge of, the relevant contractual relationship, so that she was the most appropriate person on the team to undertake the work. That was nothing to do with race.

273. In January 2021, Ms Day proposed that the Claimant act as the main point of contact to support the Respondent's relationship with Tfl, p1474. The Tribunal accepted Ms Day's unchallenged written evidence that TfL had 104 Undertakings & Assurances ("U&As") registered with the Respondent, of which 90 were in the Claimant's Euston area. Again, the Tribunal accepted that the Claimant was allocated this work because it fell most closely within her area of knowledge and responsibility. It was nothing to do with race.

274. Regarding Ms Day's decision, discussed at a team meeting on about 22 March, that the Claimant should remain responsible for an environment U&A compliance query, the Tribunal found that Ms Day genuinely believed that the agreed procedure was that each Compliance Manager was responsible for dealing with concerns raised by their own contractors, even if it related to a "baseline" overseen by another colleague. It found that Ms Day believed that, because the complaint had been raised by the Claimant's contractor, she was responsible for addressing it. The Claimant also genuinely believed that Ms Day was wrong in her analysis of the responsibilities. However, the Tribunal accepted that Ms Day decided that the Claimant should keep responsibility for handling the query because it had come from one of the Claimant's contractors. Ms Day's decision, even if it was wrong, was not related to race in any way.

275. More broadly, the Claimant did not fill out a stress risk assessment, while Ms Bardwell did. The Tribunal accepted Ms Day's evidence that Ms Day needed to take action to mitigate the 13 stressors identified by Ms Bardwell, but the Claimant had not identified the stressors in her work, so Ms Day was unable to do the same for the Claimant. This difference in treatment was nothing to do with race.

276. The Tribunal was satisfied that Ms Day's allocation of work to the Claimant was not race discrimination or race harassment.

277. *Race Harassment 4.1.6. Unreasonably requesting the Claimant to take on additional responsibilities 05/01 and 01/02 and 25/03/21 and 01/07/21 and 20/07/21 Laura Day. [GOC ¶2(a)(vi)]*

278. *4.1.12. The Claimant was unreasonably requested by Laura Day to take on additional responsibilities (such responsibilities being to manage a potential non-compliant U&A on the Environment Baseline; manage all the TfL U&A; DfT Audit – deep dive; Good Receipting several Local Authority timesheets) on 01/02/21 and 05/01 and 25/03/21 and 01/07/21 and 20/07/21. [GOC ¶2(a)(vi)]*

279. The Claimant also contended that being asked to take on additional tasks – whether or not they were Ms Bardwell's tasks - amounted to race harassment. She pointed out that she was working reduced hours and that she was complaining about work related stress in the relevant period.

280. The Tribunal noted that the Occupational Health reports said that the Claimant was suffering from stress because of her ongoing grievance, not because of her work tasks. There was no stress risk assessment to indicate that certain tasks might cause the Claimant stress.

281. In any event, the Tribunal was satisfied that the Claimant being asked to take on additional tasks was not related to race in any way. The Tribunal has already addressed most of the tasks the Claimant was asked to take on.

282. In about May 2021, Ms Day was told by the Head of Financial Governance & Treasury and Head of Third Party Agreement in May 2021 that local authority invoicing would become a responsibility of the Compliance team. The whole team, including Ms Day, was given training on the process and told to undertake the work.

283. The fact that this additional task was given to the whole team, and not just to the Claimant, indicated that the extra task was not related to the Claimant's race.

284. The responsibility, "*DfT Audit – deep dive"*, was not addressed in the Claimant's witness statement, nor put to Ms Day in her oral evidence.

285. Taking all the evidence together, and all the tasks together, there was nothing to link the allocation of the tasks to race. The Tribunal accepted the Respondent's non-discriminatory reasons for its task allocation.

286. *Direct Race Discrimination 3.1.2. The Claimant was told by Laura Day during a 1-2-1 meeting on 29/03/21 that she had been 'aggressive' and created a 'hostile environment' in the Compliance Team meeting. The comparator is Kelly Bardwell, a white colleague who was not told those things. [FBP ¶5.2]*

287. *Race Harassment 4.1.2. The Claimant was told by Laura Day during a 1-2-1 meeting on 29/03/21 that she had been 'aggressive' and created a 'hostile environment' in the Compliance Team meeting. [FBP ¶5.2]*

288. *4.1.10. The Claimant was told by Laura Day during a 1-2-1 meeting on 29/03/21 that she had been 'aggressive' and created a 'hostile environment' in the Compliance Team meeting. The comparator is Kelly Bardwell, a white colleague who was not told those things. [FBP ¶5.2]*

289. There was no evidence that Ms Bardwell had had a public disagreement with Ms Day during a team meeting. There was no comparison between the Claimant and Ms Bardwell in the same circumstances and Ms Bardwell was not an appropriate comparator.

290. Ms Day did not tell the Claimant that she had been aggressive, but that Ms Day had felt the Claimant's tone was hostile to Ms Day. The Tribunal found that Ms Day's words were her honest reflection of how she felt that the Claimant had behaved towards Ms Day in a meeting. The Tribunal did not find that Ms Day applied a racial stereotype to the Claimant. She did not describe her as an aggressive black woman. Ms Day described how the Claimant had behaved during a particular discussion. The Tribunal was satisfied that Ms Day's words had nothing to do with race,

291. More broadly, on all the evidence in the case, the Tribunal considered that there was evidence that the Claimant behaved in an overly critical and negative manner towards Ms Day. The Claimant rejected Ms Day's attempts to help her through a risk assessment, said that Ms Day displayed "micro aggressions" when Ms Day was simply allocating relevant tasks to her, and complained at length during one to one meetings with Ms Day. The Claimant was unhappy not to have been promoted during the Evolve process and appears to have been uncooperative in her new Compliance Role from the outset. In her own correspondence, she acknowledged that colleagues had noticed that she had withdrawn from her previously engaged approach to work. Overall, the Tribunal concluded that the Claimant had been predisposed to find fault in Ms Day's management and to express dissatisfaction in her own role. The Tribunal decided that Ms Day's description of the Claimant's behaviour on this occasion was a neutral and professional description. The Tribunal did not consider that Ms Day was unfairly disparaging of the Claimant. She did not use the word "aggressive" and she did not mean "aggressive". On the contrary, the Tribunal found that the Claimant imputing this intention to Ms Day reflected the Claimant's overly critical attitude to Ms Day.

292. *Direct Race Discrimination: 3.1.3. The Claimant was told on 30/04/20 and 29/05/20 and 03/07/20 by Jennifer Wells – HR Evolve Consultant, that she could not reapply for the Senior Compliance Manager role, having already been unsuccessful in her application for that role.*

293. *The comparator is Laura Day, a white colleague, who was allowed to re-apply for the Senior Compliance Manager role despite having previously been unsuccessful. [FBP ¶16 and 23.6]*

294. *Race Harassment. 4.1.11. The Claimant was told on 30/04/20 and 29/05/20 and 03/07/20 by Jennifer Wells–HR Evolve Consultant that she could not reapply for the Senior Compliance Manager role, having already been unsuccessful in her application for that role. [FBP ¶16 and 23.6]*

295. Ms Wells gave the Claimant advice in accordance with the Respondent's policy at the relevant times.

296. Both the Respondent's Recruitment and Selection Policy and the Evolve Process Guide said that employees who had been appointed to roles would be expected to undertake their role for at least 12 months before applying for another role.

297. Ms Day did not enquire about whether she could re-apply for the Senior Compliance manager role, so she was not told anything about re-applying. She was not a comparator for these purposes.

298. There was no evidence that a white person, who made the same enquiries as the Claimant, before the Senior Compliance Manager vacancy was re-advertised, would have been told anything different.

299. When the post was readvertised, the whole Compliance Team, including the Claimant, was told by email, at the same time, pp983, 988, 991-992. The whole team was asked to indicate whether they would be interested in applying for the post. Ms Day was not told before the Claimant. Indeed, there was evidence that the Claimant was told, on 3 July 2020, that the role would be advertised externally and she could apply for it, p899. The Claimant was therefore told before anyone else.

300. The Claimant was not treated less favourably than Ms Day. Ms Wells' treatment of the Claimant had nothing to do with race. It was not race discrimination or race harassment.

301. *Direct Race Discrimination 3.1.4. The Respondent failed to uphold the Claimant's grievances in its outcome report dated 11 August 2021. Caitlin Pickavance, white female. [GOC ¶1(a)(i)]*

302. Caitlin Pickavance submitted a different appeal with regard to a different job, at a different level in the organisation compared to the Claimant. The Tribunal was satisfied that there was no comparison between Ms Pickavance and the Claimant in the same circumstances.

303. In any event, the Tribunal accepted the Respondent's evidence that the findings in the Claimant's grievance outcome were not because of race in any way. Ms Wilson was the Claimant's witness. She said that she considered that the 6 August report was a true reflection of her findings. She denied that she had discriminated against the Claimant because of race. She said that she had been careful in her investigation of the Claimant's grievance, had done her best and had tried to reach a fair outcome.

304. None of the report's conclusions changed from "upheld" to "not upheld" following Ms Wilson's conversation with Ms Elton on 6 August 2021. The only change to a conclusion was on sub-allegation 9.1, bullying by Ms Boikovs, which changed from *"I find evidence to substantiate this allegation"* to *"Whilst I cannot dismiss the allegation, there is some, but some limited evidence available to substantiate SG's claims"*. Ms Wilson agreed in cross-examination that this more closely reflected the nuances that she had identified in the evidence. The Tribunal considered that this change was, therefore, not because of race.

305. The Tribunal was satisfied that Mr Whitefoot's changes to the 6 August report were not because of the Claimant's race. It was satisfied that Mr Whitefoot's changed

outcome on allegation 9 represented what Mr Whitefoot considered was an accurate reflection of the evidence gathered on allegation 9. Mr Whitefoot had set out, in his 2 August email, logical grounds for saying that Ms Wilson's outcome for allegation 9 was not justified on the evidence. The Tribunal considered that his criticisms of Ms Wilson's analysis were valid. Her conclusion did not necessarily follow from the evidence gathered.

306. Mr Whitefoot's 11 August outcome on allegation 9 was reasonable, based on the evidence set out in the grievance report. The Tribunal accepted that Mr Whitefoot genuinely and reasonably considered that it was not for HS2 to question the Claimant's original failure to apply for the Compliance Manager role, and that HS2 had acted reasonably in giving the Claimant extended time to decide whether to accept the role, and in appointing the Claimant to the role, to avoid making her compulsorily redundant.

307. The Tribunal was satisfied that Mr Whitefoot would have changed the outcome of allegation 9, whatever the race of the person bringing the same grievance.

308. The Tribunal has found that Ms Elton did not say to Ms Wilson that the Respondent did not uphold grievances. It was satisfied that the Respondent did not, as a policy, reject grievances brought by black employees. There was no such policy and such an approach was not applied to the Claimant's grievance.

309. *Direct Race Discrimination 3.1.5. The Respondent failed to properly investigate the Claimant's grievances by not reviewing and/or including evidence the Claimant provided before the formal grievances were submitted on 03/08/20 and subsequent to this date. Latest evidence provided to the Respondent on 17/07/21. The Claimant relies upon a hypothetical comparator. [GOC ¶1(a)(ii)-(iii)]*

310. The Tribunal found that the Respondent did interview relevant witnesses. On the facts, Ms Wilson did consider Suzanne Crouch's statement. The Claimant did not name Ms Wolff as a witness but as a comparator. During the hearing in this case, the Claimant did not identify what evidence the Respondent failed to review.

311. The Tribunal was satisfied that the Respondent would have investigated the same grievance by a non black comparator in the same way as it investigated the Claimant's grievance.

312. *Race Harassment 4.1.4. On 14 July 2021 Laura Day used the phrase 'HS2 aren't whiter than white here' in a meeting. [GOC ¶3(a)]*

313. *4.1.5. On 20 July 2021, in reference to her use of the phrase 'HS2 aren't whiter than white here' on 14 July 2021, Laura Day offered an apology to the Claimant 'for any offence this may have caused'. [GOC ¶3(b)]*

314. Ms Day used the phrase "white than white" when describing was the Respondent's performance of its contract . The phrase did not relate to the Claimant, nor to anyone's race, but the Respondent's failure to fulfil its contractual obligations.

315. While the Claimant contended that the phrase reflected "white is good and black is bad", the Tribunal considered that "black" was not mentioned, nor implied, by Ms Day. The Tribunal decided that Ms Day's phrase was apposite to describe the

Respondent's contractual performance, in that she was saying that the Respondent was not, itself, without blemish or fault.

316. The Claimant accepted, at the time, that Ms Day had not intended to refer to race.

317. The Tribunal decided that Ms Day's use of the phrase "whiter than white" was not related to race in any way.

318. The Tribunal considered that the Claimant's conduct in relation to Ms Day's use of the phrase demonstrated the Claimant's own attitude to Ms Day. The Claimant took the opportunity to criticise Ms Day and to make implicit threats to Ms Day's job security, by telling her that a police officer had been disciplined for using the same phrase. The Claimant's conduct in this regard was hostile towards Ms Day.

319. The Tribunal found that Ms Day's apology *'for any offence this may have caused'* was not related to race. The Claimant did not, in fact, put this allegation to Ms Day in evidence. Objectively, the Claimant's complaint was unwarranted and did not merit a more fulsome apology. There was no evidence that Ms Day would have used different words of apology towards another complaint which happened not to be a race-related complaint.

320. Neither of these actions was race harassment.

321. *Race Harassment 4.1.7. Unilaterally reducing the Claimant's salary by 20% 04/01/21, Laura Day advised by Shaf Aslam Claimant's HR Grievance Case Worker. [GOC ¶2(a)(vi)] 4.1.13. Unilaterally reducing the Claimant's salary by 20% 04/01/21. [GOC ¶2(a)(vi)]*

322. The Respondent did not, in fact, reduce the Claimant's salary.

323. Insofar as Ms Day said that the Claimant's salary would be reduced, this was in accordance with the Respondent's Attendance Management Policy – Line Manager and Employee Guidelines, "Return to work plans should not normally exceed 4 weeks and if they do then line managers should refer to our own Occupational Health provider. Reduced hours or amended duties will be paid at 100% of the employee's full pay providing that they do not last beyond 13 weeks. Beyond this period the organisation will need to consider the possibility along with the employee, that this could constitute a permanent change in the employee's terms and conditions of employment." P1518. The proposal was therefore not related to race.

324. The Tribunal considered that the Respondent was correct to withdraw the reduction, when the Claimant's grievance was ongoing, in the circumstances the reduction in working hours had been recommended by Occupational Health for the duration of the grievance. It would have been unreasonable to reduce the Claimant's salary, given that the Respondent itself had not concluded her grievance.

325. However, showing that conduct is unreasonable or unfair is not, by itself, enough to trigger the transfer of the burden of proof— *Bahl v Law Society* [2003] IRLR 640, EAT per Elias J at [100], approved by the Court of Appeal at [2004] IRLR 799.

326. There was nothing else to suggest that the Respondent's actions were related to race in any way. The burden of proof did not shift to the Respondent to show that the proposed reduction was not related to race. The Respondent did withdraw the reduction appropriately, before it was implemented.

327. This was not race harassment.

328. *Race Harassment 4.1.8. The Claimant was criticised in her 2020/21 End of Year Performance Review in the following terms 'There are significant areas of development for Sharon and these are all focusing on behaviours and role modelling HS2's Values to others'. [GOC ¶1(a)(ii)]*

329. The Tribunal concluded that Ms Day had made this comment about the Claimant based on the Claimant's conduct. Ms Day explained, in the end of year appraisal, how the Claimant's behaviour in the workplace had been obstructive and had hindered the work which had to be done. Her assessment was therefore based on how the Claimant had conducted herself. It was nothing to do with the Claimant's race. It was not race harassment

330. *Victimisation (s.27 EqA 2010)*

331. The Respondent accepted that the Claimant's SAR request and her grievances were protected acts.

332. *5.2.1. The Respondent delayed its response to the Claimant's SAR causing delay to the grievance process.*

333. The Tribunal accepted Mr Goodfellow-Swaap's evidence that he made a mistake when he did not separate the Claimant's Freedom of Information request from the DSAR elements and failed to forward it to the Respondent's FOI team. The Tribunal considered that he was a thoroughly reliable witness. He readily admitted his error. He explained how he approaches all requests sent to him, purely with a view to establishing whether they come within his data protection statutory duties. The Tribunal accepted his evidence and found that his failure to treat the Claimant's request in the same way as Ms Wolff's was an oversight by Mr Goodfellow-Swaap and was not because she had asked for information regarding potential race discrimination.

334. *5.2.2. The Claimant was told on 08/03/21 by Carl Bird, Briefings, Correspondence and FOI Manager, that there was "no reason to clog up everyone's email" about the same subject matter contained within her FOI.*

335. Mr Bird's email was not related to the Claimant's protected act. The Tribunal accepted Mr Bird's evidence that he was repeating his request to the Claimant not to copy other people into correspondence unnecessarily. The email chain supported his evidence – he had already asked the Claimant in plain terms not to copy her emails to other irrelevant people.

336. *5.2.3. The Claimant was criticised in the grievance outcome in the following terms*

5.2.3.1. "it would appear that SG has adopted a somewhat 'scattergun' approach to her grievance."

5.2.3.2. "LD finds it difficult to challenge SG and has cited that the team also pick up on SG's "lack of interest and interaction", lack of "collaboration" which is "impacting the Compliance Team".

5.2.3.3. "….commented that SG made her feel uncomfortable by stating that "recruitment deserve what it's got in to because they need to feel the pain that others have experienced, and it is painful for everyone else and it's only fair that resourcing experiences this themselves".

5.2.3.4. "There is evidence that SG may have at times behaved in an unacceptable manner towards her Line Manager, Laura Day"

5.2.3.5. "I do however find evidence that SG's behaviour towards LD at times to have been inappropriate and unacceptable"

5.2.3.6. "SG often responded to emails from Jenny Wells in capitals and red type, which may be construed as confrontational in style and tone".

5.2.3.7. "SG challenged the appropriateness of Shaf Aslam, HR Advisor, asking questions during the fact-finding meeting."

5.2.3.8. "…and the way she conducted herself throughout this process, it appears to me that SG was not always slow to criticise the actions of others perhaps in the absence of reflecting on her own behaviours at times"

5.2.3.9. "….consider taking appropriate action with regard to personality clashes and/or irreconcilable differences, which is causing continued disruption to the team and the business".

337. All these criticisms of the Claimant were contained in Ms Wilson's 6 August 2021 grievance report. Ms Wilson was asked in evidence about each criticism she made of the Claimant. Ms Wilson was the Claimant's witness. She denied that she had made any of the criticisms because the Claimant had complained of race discrimination.

338. The Tribunal accepted Ms Wilson's evidence about this. It accepted her evidence that, in relation to the Claimant's own conduct, "I have done utmost to do balanced report and I had to point out the concerns I had."

339. The criticisms in the grievance report were not because the Claimant had done a protected act.

340. *5.2.4. The Claimant was told on 08/07/20 in a meeting with Donovan Bailey "…..However your behaviour "lack of engagement and contribution" ……"silence speaks volumes" during the various Strategic Partnership meetings is having a negative on the team". "You've expressed a lot of negativity here" [GOC ¶1(a)(ii)]*

341. The Tribunal found, on the Claimant's own account of the exchange, set out in her email at p910 -911, that Mr Bailey was talking about her the Claimant's behaviour

in the workplace. On the Claimant's own account, she accepted that she had not been engaging – and said that other colleagues had remarked on this too.

342. On the Claimant's account, Mr Bailey said that he was "having these conversations across the team where appropriate. [……..] this is a difficult time for everyone as the Head of Strategic Partnership it's my expectation of every member of my team to be cooperative and positive at all times."

343. She therefore recorded that Mr Bailey was talking to other employees in the same terms as he was talking to the Claimant.

344. Chronologically, Mr Bailey's comments pre-dated the Claimant's grievances. They were also made only a few days after the Claimant had submitted her request for data about Evolve to Mr Goodfellow-Swaap. The Claimant did not provide any evidence to suggest that Mr Bailey was aware that she had made a request for data about Evolve, or that it sought comparisons based on ethnicity.

345. The Tribunal concluded that there was no evidence whatsoever upon which it could conclude that Mr Bailey's words were because she had done protected acts. This was not victimisation.

Indirect Race Discrimination on grounds of race (s.19 EqA 2010)

346. *6.1. Did the Respondent apply the following provision, criteria and/or practice (PCP)?*

347. *6.1.1. The Claimant alleges that the Respondent operated a policy that any employee currently above 120% of the maximum point of paygrade scale would not receive a pay increase, regardless of their performance outcome (as stated in the Respondent's Performance Related Pay Award Policy Matrix). [FBP ¶5.3]*

348. *6.2. Did the application of the PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not share the Claimant's protected characteristic?*

349. The Claimant identifies as Black. The Claimant alleges that the equal application of the PCP disadvantaged her in comparison to employees who were not Black because that, in general, it is white employees who are above the 120% maximum point of their paygrade scale and that there are a negligible number of Black employees above 120%. [FBP ¶5.3]

350. The Claimant's claim did not make sense, as she conceded. Her allegation of group disadvantage was that more white employees are above the 120% point compared to black employees. If that is the case, it does not show group disadvantage for people of the Claimant's race. If black employees are less likely to reach the 120% point, they are also less likely to put at the disadvantage of being unable to increase their pay further. The claim of indirect race discrimination fails.

Constructive Unfair Dismissal

351. *Are the following actions or inactions of the Respondent actual or anticipatory, repudiatory breach(s) of a contractual term, express or implied (including the implied*

term of trust and confidence), by the Respondent? The Claimant alleges that the grievance policy is contractual and that the Respondent failed to comply with it. In the alternative the Claimant relies on the implied term of trust and confidence.

352. *2.2.2. Failure to investigate the Claimant's grievance in accordance with the grievance policy, including failure to interview Miriam Wolff as a witness and take into account evidence submitted, being a witness statement from Suzanne Crouch; emails highlighting continued discrimination, victimisation, bullying and harassment behaviours; emails to support the Claimant's request to be moved from the Strategic Partnerships team and/or change the Claimant's reporting lines. [GOC ¶2(a)(i)]*

353. *2.2.4. Failing to provide a safe environment in that the Respondent failed to respond to requests from the Claimant to provide an interim change to reporting lines in another part of the business until the grievance investigation was concluded [ET1 2(a)(i)]*

354. *2.2.5. Failing to provide a safe environment in that the Respondent failed to act upon the advice given in the 02/10/20 and 17/12/20 Occupational Health Reports negatively impacting on her disability and mental health. [ET12(a)(v)]*

355. The Claimant relied on three particular requests to move: her email to Osita Madu of 17 January 2021, p1506, which the Tribunal considered was properly understood as a request to expedite the grievance process, not to move her as an interim measure; her email to Stephanie Elton of 22 January 2021, p1513, which did not contain an express request to be moved, but asked, "what measures HS2 intends to put in place, until the conclusion of these grievances in order to avoid any further deterioration to my mental and physical wellbeing." Ms Elton responded on 29 January with an update on the progress of the grievance, p1567; Her suggestion in July 2021 to move her reporting line to the Euston Partnership. Mr Bailey considered this at Ms Day's request but declined it p1946.

356. The Tribunal decided that, in respect of the particular matter of whether the Claimant's reporting line was safe (issue 2.2.4), the Claimant did have a safe environment, so that the Respondent did not breach its duty of trust and confidence.

357. The Tribunal noted that, when the Claimant submitted her first grievance on 3 August 2020, she named Ms Boikovs and others as alleged perpetrators of historic bullying, but did not name Ms Day, p972.

358. After Ms Day was appointed as Senior Compliance Manager, the Claimant alleged, during their first one to one meeting, that Ms Day had been "unkind" to her in the past. The Claimant and Ms Day agreed to draw a line under the past to move forward. However, the Tribunal has found that the Claimant did not abide by that agreement and was obstructive and confrontational towards Ms Day.

359. Ms Day offered the Claimant support through carrying out a risk assessment, but the Claimant declined that. Having rejected a risk assessment, which could have identified stressors, the Claimant repeatedly challenged Ms Day's allocation of work to her, even when the Claimant was the obvious team member to undertake that work. Ms Day described the Claimant's uncooperative attitude in the Claimants 2020/2021 End of Year appraisal.

360. Only in her later grievance, in November 2022, did the Claimant allege that Ms Day had previously supported Ms Boikovs' and others' behaviours. The Claimant would have known of this alleged behaviour by Ms Day when she submitted her first grievance. The Tribunal considered that it was notable that she did not mention it then.

361. Occupational Health never suggested that the Claimant's line management chain should be changed.

362. The grievance outcome did not uphold the Claimant's allegations against Ms Day. As explained below, the Tribunal has decided that that outcome was reasonable and based on the evidence gathered. The Respondent acted with reasonable and proper cause in that regard.

363. The Tribunal agreed with the Respondent's characterisation of this allegation: the Claimant was not placed in an "unsafe environment" as a result of Ms Day's line management; their relationship became difficult because of the Claimant's own attitude and behaviour.

364. Further, the Respondent was investigating (amended) allegations that Ms Day had bullied the Claimant. It could not properly make a decision to move either of them unless and until it had reached a finding of fact on those allegations, as required by its grievance policy, "No decisions on the outcome of a formal grievance raised under this policy will be made before the case has been investigated", p79. It had reasonable and proper cause not to accede to any interim request.

365. However, even though the Respondent acted reasonably in not moving the Claimant's reporting line from Ms Day during the grievance process, the Tribunal concluded that the Respondent did breach its fundamental duty of trust and confidence to the Claimant by its wholly unreasonable delay in providing a grievance outcome to her. The delay was over a year in length, between 3 August 2020, when she first submitted her grievance, and 11 August 2021, when the grievance outcome was provided to her.

366. The Tribunal noted that parts of the Claimant's grievance were eventually upheld: Allegations 5, 7, 9.1, 9.2, 11, 14 9 (partially) and 16.

367. The Respondent's Grievance Policy, p76, provided, under the heading, Principles, "HS2 will make every effort to deal with grievances as quickly as possible."

368. The Tribunal considered that it failed to do deal with the Claimant's grievance as quickly as possible. This failure was all the more serious in light of Occupational Health advice that the Respondent should provide, "Early resolution of the workplace issues" to "aid recovery and prevent any further deterioration of health." The December OH report advised that there had already been a deterioration in the Claimant's health while the grievance procedure remained ongoing, p1409. (allegations 2.2.2 and 2.2.5).

369. The Tribunal considered that the Respondent's delay in providing a grievance outcome was not explained or justified. There were long gaps in the chronology of the grievance. There were serious delays under each of the grievance mangers, Mr Madu, Ms McInroy and M Wilson.

370. Ms Wilson identified, in her review of the file, serious errors in the way the investigation had been managed: On 10 May 2021 she said, "there's evidence missing that's relevant to the case. The "file" is more of a bin of hundreds of irrelevant docs." P1873; On 11 May 2021, "There appears to have been no real terms of reference and due to a lack of ownership of the situation, we have allowed the employee to constantly add to her allegations and supply more and more sources of evidence." P1881. She suggested that this lack of competent management was the reason for the failure to conclude the grievance. This incompetence was not a reasonable or proper cause for the delay.

371. On 20 April 2021 John Whitefoot said in an email, "URGENT The Sharon Goodison grievance is now entering its nine month. This is entirely unacceptable. Accordingly, I have asked Kate [Wilson] to support Pamela [McInroy] in expediting a resolution." However, Ms Wilson herself failed to produce a report for more than 3 months, even though she did not interview any further witnesses.

372. Indeed, it appeared to the Tribunal that, only when Aileen Thompson intervened, expressing concerns about the impact of the grievance on Ms Day – and not the Claimant – did the Respondent finally make the necessary effort to produce a grievance report.

373. The Claimant and her Union representative reminded Mr Madu and others in January 2021 that the grievance was having a negative effect on her health. The Tribunal acknowledged that the Claimant complained about other matters in that correspondence, which matters the Tribunal has not found to be breaches of the Respondent's duties. Nevertheless, the correspondence also made clear that the continuing unresolved grievance was damaging to the Claimant's well being: "I would really appreciate it if you, as my Grievance Manager, could treat this as high priority and do all in your powers …to bring this grievance process to an end as soon as possible." P1506. On 22 January 2021, "Going forward, please can you let me know what measures HS2 intends to put in place, until the conclusion of these grievances in order to avoid any further deterioration to my mental and physical wellbeing" p1513. Sue Fursey also wrote , "I am very concerned about Sharon's health –The current situation she is trying to navigate with Shaf and Laura regarding her salary … and the ongoing grievance are having an extremely detrimental affect on her. Any guidance or assistance at this point in time would be very much appreciated."

374. Given that the Respondent had been also told by Occupational Health in December that the Claimant's health had deteriorated during the grievance, it was wholly unreasonable and unsafe for the Respondent to fail to provide an outcome to the grievance for a further 8 months.

375. For completeness, the Tribunal did not find that the Respondent had, otherwise, failed to investigate the Claimant's grievance in accordance with its policy. On the Claimant's specific criticisms, the Tribunal found that the Respondent acted with reasonable and proper cause:

    a. The Claimant did not name Miriam Wolff as a witness in her grievance submission or interviews. In her evidence, the Claimant stated that Ms Wolff was a witness to her allegations of bullying by Ms Boikovs. The Respondent had evidence about this from interviewing Ms Royer-Harris

and the Claimant did not identify what significant additional evidence Ms Wolff would have given.

b. Ms Wilson confirmed in evidence that she did review the statement of Suzanne Crouch p1044.

c. It was unclear, even at the end of the Final Hearing in the case, which "*emails highlighting continued discrimination, victimisation, bullying and harassment behaviours"* the Claimant said the Respondent had ignored.

376. *2.2.1. Failing to provide a reasonable and satisfactory recommendations in the Grievance Investigation Outcome Report received by the Claimant on 11th August 2021 was the Last Straw. [ET1 2 (a) (v)]*

377. The Tribunal concluded that the 11 August 2021 report contained reasonable findings and recommendations based on the evidence available. The Respondent did not breach its duty of trust and confidence in this regard.

378. Ms Wilson removed training recommendations from her drafts of the grievance report, following John Whitefoot's feedback that corrective measures should not be suggested if no evidence of race discrimination had been found, because to do so could be viewed as a "cover up" p1980. The Tribunal considered that this was a reasonable and proper cause for removal of the training recommendations. It might indeed look suspicious if the grievance did not uphold complaints of race discrimination, but nevertheless required managers to undergo training to prevent them discriminating in future.

379. Regarding the other outcomes the Claimant had sought: The 20% material change to her role was addressed as allegation 2, p2025; The alleged regrading of her role was addressed as allegation 1, p2024. The report provided a reasonable response to these matters.

380. The Respondent had set up a programme to increase the diversity of its interview panels in late 2020, which the Claimant knew about and had sought to join. The Respondent acted reasonably in not recommending any additional remedial action in this regard.

381. Further, the Tribunal considered that the Respondent acted reasonably in concluding that there was no need to require managers to undergo sensitivity training if the Respondent had found that the Claimant's manager, Ms Day, had not bullied her.

382. On the whole of the report, including its findings that the Claimant had displayed inappropriate conduct towards Ms Day, the Respondent had reasonable and proper cause for its recommended action to deal with personality clashes and irreconcilable differences between them.

383. The final outcome also recommended considering consensual redeployment of the Claimant into a different role or team, which would have avoided the need for her to engage in a competitive selection process. The Tribunal considered that the Respondent had reasonable and proper cause for not giving the Claimant a grade 18

role. She was employed in a grade 16 role and a consensual move to a non-promoted role was appropriate. None of the report's findings indicated that the Claimant should have been appointed to grade 18 role during the Evolve reorganisation.

384. *2.2.3. John Whitefoot informing the Claimant's union representative on 12 August 2021 that if the Claimant was going to appeal the grievance outcome, she would need to 'provide completely new evidence'. [GOC ¶1(b)(i)]*

385. The Claimant was clear in her evidence that receipt of the grievance outcome, not Mr Whitefoot's words on 12 August 2021, prompted her resignation.

386. The Tribunal noted Ms Fursey's full account of Mr Whitefoot's words, "JW stressed that KW had carried out a thorough review of the grievances and had found absolutely no evidence of racial discrimination. He stressed that he had instructed KW to actively look for evidence of racial discrimination in the grievances and could not find anything. He advised me that unless SG could produce new evidence that her experiences within HS2 were a result of her being a black woman, he would struggle to assume that SG would win an appeal against the GIRO, if she was planning to appeal."

387. The Tribunal concluded that, even if Mr Whitefoot did say these words, he had reasonable and proper cause for doing so, on the basis of Ms Fursey's account. It was logical to say that new evidence of discrimination was likely to be needed for a successful appeal, if, on a thorough review of all the existing evidence, there had been no finding of discrimination. It was rational to consider that a different conclusion would be unlikely on exactly the same evidence.

388. *2.2.6. Appointing the Claimant to the Compliance Manager role without her permission, thereby removing her from the 'at risk' pool during the 'Evolve' restructure and putting her at a disadvantage in that she no longer had priority status when applying for other available roles, including the Senior Compliance Manager role. [GOC ¶2(a)(iv)]*

389. The Respondent acted with reasonable and proper cause in appointing the Claimant to the Compliance Manager role.

390. On the facts, the Claimant was not "appointed to the role without her permission", in the sense of a unilateral contractual change. She had the choice to reject the role and proceed to a third consultation meeting. It was made clear to the Claimant that she would not forfeit her entitlement to a redundancy payment if she rejected the offer, p782. Ms Wells also made clear to her that, if the Claimant rejected that role, she would once again have priority status.

391. The standard consideration period of 7 days was extended to 8 weeks for her, from 24 April to 12 June 2020 p862, during which time she could and did apply for other vacancies. Other at-risk staff did not have the benefit of keeping an exclusive offer open for such a long period while applying for alternatives.

392. It was appropriate to provisionally appoint her, to avoid putting her at risk of redundancy. She had been unsuccessful in all 8 of the vacancies for which she had applied.

393. The job was potentially suitable for the Claimant because she had scored 11 at interview for the relevant job family (C&SE – Community and Stakeholder Engagement) and the threshold for the position had been lowered from 12 to 10 in the wash-up.

394. The alternative would have been to require the Claimant to apply for any remaining vacancies and progress to a third consultation meeting, at which there would have been a real prospect of dismissal for redundancy. It would have been potentially unfair in law for the Respondent not to offer the Claimant the Compliance Manager role as suitable alternative employment.

395. It was not reasonable to expect the Respondent to ask the Claimant about her personal reasons for not applying for the job, or her reluctance to accept it when offered. The Claimant had an opportunity, during her consultation meetings, to raise concerns about who she might be working with, but she never did. On the contrary, she told Mr Bailey that she had not applied because she felt the Senior Compliance Manager position mirrored her existing responsibilities p788. If she had been appointed to that role, she would have continued to work in the same team as she did in her Compliance Manager role.

396. The Claimant complained that the offer had the effect of removing her at-risk and priority status, which disadvantaged her in applying for other roles. However, priority status meant that an applicant would be shortlisted for interview if they met the essential criteria for the role. The Claimant's only application, for the Change & Transformation Manager position, was unsuccessful because she did not meet the minimum criteria for shortlisting p792. Her potential lack of priority status therefore made no difference.

397. *2.2.7. Laura Day (on the advice of Donovan Bailey) making unreasonable requests of the Claimant to take on additional responsibilities on 05/01/21 [GOC ¶2(a)(vi)]*

398. As the Tribunal has found, Ms Day proposed that the Claimant act as the main point of contact to support the Respondent's relationship with Tfl, p1474. TfL had 104 Undertakings & Assurances ("U&As") registered with the Respondent, of which 90 were in the Claimant's geographical area of Euston. The Claimant was allocated this work because it fell most closely within her area of knowledge and responsibility.

399. Furthermore, the Respondent implemented the OH advice to reduce the Claimant's hours. It had made the adjustments advised for her. Seeing that the Claimant had not completed a stress risk assessment, there was no reliable indication to the Respondent that allocating her any particular tasks, such as the Tfl responsibility, would be inappropriate.

400. There was reasonable and proper cause for this allocation of work to the Claimant.

401. *2.2.8. Unilaterally reducing the Claimant's salary by 20% on 04/01/21, Laura Day Claimant's Line Manager, on the advice of Shaf Aslam Claimant's HR Grievance Case Worker. [GOC ¶2(a)(vi)]*

402. The Tribunal considered that the Respondent would have breached its duty of trust and confidence to the Claimant if it had unilaterally reduced the Claimant's salary by 20%. The 2 October 2020 OH report had advised, "*Taking into consideration the ongoing grievances and impact this is having on her mental health, a reduction in working hours is advised whilst the situation remains unresolved. A reduction of 20% of her working hours per week would be suitable." P1093.*

403. The Tribunal concluded that it would have been wholly unreasonable for the Respondent to reduce the Claimant's salary by 20% when it had failed to conclude her grievance. It had caused the continuing need for a 20% reduction in hours. However, Ms Day withdrew the proposed reduction, p1518, and remedied any potential breach before it occurred. The Claimant's salary was not, in fact, reduced.

404. *2.2.9. Unilaterally giving the Claimant additional responsibilities relating to Goods Receipting, which amounted to a change to the Claimant's contract of employment, without discussion or agreement. [GOC ¶4(b)(i)]*

405. The Respondent acted with reasonable and proper cause in requiring the Claimant, along with the other Compliance Managers, to take on responsibility for local authority invoicing in May-June 2021. Compliance Managers already oversaw Service Level Agreements ("SLAs") and Third Party Agreements ("TPAs") with local authorities, pursuant to which the Respondent would reimburse them for officers' time spent on processing consent applications. It was already the Compliance Managers' responsibility to verify the contents of incoming timesheets.

406. The Tribunal accepted Ms Day's evidence that the proposed "Goods Receipting" responsibility involved authorising the fee payment on Oracle; an extra step which required some training, but would involve little additional work. The Tribunal decided that this was a minor and reasonable change to the Compliance Managers' duties.

407. Although Compliance Managers had not previously done this work, it did not amount to a change in the Claimant's contractual terms. Her terms and conditions of employment simply referred to her job title as "Evolve – Compliance Manager" and did not set out any details of her duties p719. There was a flexibility clause in her contract which enabled the Respondent to require her to undertake other duties from time to time as it may reasonably require p720. Her job description included, as a key accountability, "To be responsible for the management of the governance and process for third party agreements from initiation to sign off and compliance, including issue of payment where required" p599. Authorising payments to local authorities would fall under this.

408. *2.3. Did the Claimant resign in response to those breach(es)?*

409. The Tribunal concluded that the Claimant did, partly, resign in response to the Respondent's fundamental breaches of contract; its failure to provide a reasonably prompt response to her grievance, which it partly upheld; its failure conclude the grievance in contravention of Occupational Health report advice to provide "Early resolution of the workplace issues" to "aid recovery and prevent any further deterioration of health, p1409.

410. In her letter of resignation, the Claimant included in her reasons for resignation, "2. Fundamental breach of contract, Breach of Duty of Care: Relevant, Statutory, Common Law, Implied, Expressed • HS2 Grievance Policy – Section 1 - "Ensure that individual grievances are dealt with fairly, consistently, and promptly".

411. She specifically mentioned the Respondent's Grievance Policy undertaking to deal with grievances promptly.

412. She referred to her previous correspondence, saying she had raised concerns on 9 occasions since her grievance was submitted on 3 August 2020 about "the continuous bullying and hostile environment I was experiencing working the CSE – Strategic Partnerships Team and the impact it was having on my mental and physical well-being", "and nothing has been done."

413. This previous correspondence had asked, "I would really appreciate it if you, as my Grievance Manager, could treat this as high priority and do all in your powers …to bring this grievance process to an end as soon as possible." P1506; "Going forward, please can you let me know what measures HS2 intends to put in place, until the conclusion of these grievances in order to avoid any further deterioration to my mental and physical wellbeing" p1513

414. While the Claimant said, in her resignation letter, that she had been subjected to bullying, which was not correct, the Claimant was also referring to her previous assertions that her mental health was deteriorating while the grievance was unresolved.

415. She said, "I now consider that my position at HS2 is untenable and my working conditions intolerable, leaving me no option but to resign in response to your breach." P2057.

416. The Tribunal concluded that the Claimant did have, in her mind when she resigned, the Respondent's failure to deal with her grievance promptly. She had, in her mind, the Respondent's failure to act in response to her reported mental and physical deterioration during the grievance.

417. However, on the Claimant's evidence to the Tribunal, and from the contents of her letter of resignation, she also resigned in response to many other matters which were not fundamental breaches of contract by the Respondent.

418. Applying *Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859, [2004] IRLR 703 the Claimant did resign in response to the repudiation. The fact that the Claimant also objected to the other actions or inactions of the employer, not amounting to a breach of contract, did not vitiate her acceptance of the repudiation. It was enough that the employee resigned in response, at least in part, to fundamental breaches of contract by the employer.

419. The likelihood that the Claimant would have resigned in any event, in response to other matters which were not fundamental breaches of contract, can be addressed at a remedy hearing. The Tribunal has not heard submissions from the parties on this issue and cannot properly make any finding on it at this stage.

420. *2.4. Did the Claimant do anything to waive those breach(s) or affirm the contract, for example: a) expressly, in writing or otherwise informing the Respondent; or b) impliedly, either by calling on the Respondent for the performance of the contract; or c) acting in a way that showed they were treating the contract as ongoing?*

421. The Claimant did not waive the breaches. Indeed, she and her union representative reminded the Respondent, following the Occupational Health report, that the continuation of the grievance, without action to address her work situation, was damaging her mental wellbeing.

422. The Claimant waited for the outcome of her grievance. The Tribunal considered that submitting in a grievance and waiting for outcome was not affirmation of the breaches. The Claimant resigned very promptly after receiving the grievance outcome.

Unfair Dismissal

423. The Claimant was therefore entitled to resign in response to the Respondent's fundamental breaches of contract. She did so and she did not affirm the contract. She was therefore constructively dismissed.

424. The Respondent has not shown a potentially fair reason for the constructive dismissal. On the evidence, the Respondent acted unreasonably in failing to provide a grievance outcome within any reasonable time.

425. The Claimant was unfairly dismissed.

426. There will be a remedy hearing for 1 day on 28 April 2023 at 10:00am..

427. The Respondent shall send proposed directions for preparation for the remedy hearing to the Claimant by 4 weeks from the promulgation of this decision. The parties shall send their agreed proposed directions for the remedy hearing to Employment Judge Brown by 6 weeks from promulgation, for her approval.

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Employment Judge **Brown**

Date: 6 December 2022

SENT to the PARTIES ON

07/12/2022

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FOR THE TRIBUNAL OFFICE