



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MORTON
Mrs C Wickersham
Mr N Shanks

BETWEEN:

Mr H Haughton

Claimant

AND

The Mayor & Burgesses of the London Borough
of Merton

Respondent

ON: 15-18 May 2023

Appearances:

For the Claimant: In person

For the Respondent: Mr J Davis, Counsel

Judgment

It is the unanimous judgment of the Tribunal that the Claimant's claims of:

1. Direct race and sex discrimination under ss 13 and 39 Equality Act ("Equality Act") 2010; and
2. Victimisation under ss 27 and 39 Equality Act;

are not well founded and are dismissed.

Written Reasons Provided at the Request of the Claimant

Introduction

1. By a claim form presented on 20 December 2020 the Claimant presented claims of direct race and sex discrimination and victimisation.
2. A case management hearing took place on 3 May 2022 and a list of issues was decided at that hearing. The agreed list of issues is set out in the Schedule to this judgment.
3. The panel spent the first part of the hearing reading the witness statements and the documents referred to in them. The Claimant gave evidence on his own behalf and the Respondent had three witnesses Michelle Waldron, Head of Service - MASH & Child Protection, Lisa Morris, Service Manager in the Children, Schools and families Directorate and Ruth Poulter, HR Contract Manager. The bundle of documents comprised 572 pages including some additional documents handed up at the start of the hearing. Any references to page numbers in these reasons are references to page numbers in that bundle.
4. An oral decision with reasons was given to the parties at the end of the hearing and the Claimant made a request for written reasons which are provided below.

Findings of fact

5. The Tribunal makes the following findings of fact on a balance of probabilities based on the oral and written evidence presented to it. We have not made findings on every matter of dispute between the parties, but only on those that are relevant to the issues we needed to decide.
6. The Respondent is a local authority in London. The Claimant started work as an agency worker on 13 June 2018 as a First Contact Officer in the Multi agency Safeguarding Hub (the "Mash"). The Mash, now known as the Hub, was at the time of the events in question under the management of Michelle Waldron. Lisa Morris managed the MASH Team with the assistance of two Assistant Team Managers, one of whom was Charlotte Allen to whom the Claimant reported.
7. The MASH Team is the first point of contact for partner agencies and members of the public to make contact with Children's Services, whether to make a referral, discuss a possible referral, or enquire regarding Early Help Services. The main purpose of a MASH First Contact Officer is to act as an initial point of contact for persons raising child protection concerns under section 47 of the Children Act 1989, requesting support under section 17 of the Children Act 1989 or requesting Early Help support for children and families in Merton. The role of First Contact Officer is to ensure that all enquiries and referrals are dealt with in an efficient, accurate and professional manner. First Contact Officers are able to deal with enquiries related to Early Help services in the Borough. It was the Respondent's case that in the case of child protection referrals or possible child protection

referrals, the First Contact Officer should direct enquiries to a Social Worker within the team. The Claimant appeared to take a slightly broader view of his role and considered that there were times when it was appropriate for him to take the initiative, for example in sharing information.

8. It was not disputed that the Claimant was assaulted at work by a member of the public on 11 November 2019. It is the Claimant's case that in the handling of the incident the Respondent treated him less favourably than it would have treated a hypothetical female comparator in two respects: by failing to investigate the incident promptly and by not giving the Claimant its subsequent report without good reason.
9. The Tribunal finds as a fact that there was an immediate response to the assault incident on 12 November 2019 by various Council officers as shown by the emails at page 188-190. At page 198 Nigel Pemberton, Senior Facilities Manager wrote an email to colleagues confirming that he had investigated the incident. At page 196 Mr Pemberton writes another email dated 4 December 2019, which begins "This is just to update you pending my final report". The email sets out some key actions to be implemented following the incident. There was then an undated report by Mr Pemberton at pages 192-195. It is therefore not the case that the Respondent failed to investigate the incident promptly. However, Mr Pemberton's report was a general report about the lessons to be learned from the incident and was not addressed to the Claimant or his specific complaint. It is therefore unsurprising that that report was not shared with him.
10. Ms Waldron wrote separately to the Claimant on 15 November 2019 (page 209). It is clear from that email chain that there would be a separate investigation into his specific complaint and he was asked to make a report on the corporate accident/incident system. He was directed to the Employee Advice Service and Ms Waldron asked if there was anything else she could do to support him. The Claimant received highly sympathetic emails from both Ms Waldron and El Mayhew, Assistant Director and Ms Waldron's line manager on 15 November 2019 (page 335).
11. The Claimant submitted an insurance claim on 9 January 2020. On 28 January 2020 he wrote to Ms Waldron asking if there had been any developments with regards to the formal investigation into his assault and security's response on the day. Ms Waldron's evidence on this was that on 28 January 2020 El Mayhew, who was an Assistant Director and her line-manager, said she was not sure why the Respondent would share a document with someone who was making a claim against the Council as the report is the Council's property. She said that this was a reference to the personal injury claim which the Claimant had submitted to the Council's insurance section on 9 January 2020. Ms Mayhew left the matter for Ms Waldron to deal with and Ms Waldron decided to pass the matter to the insurance section as they were handling the claim. She asserted that she would have taken this action in the circumstances irrespective of any status or protected characteristic of the member of staff concerned.
12. The Claimant raised the incident at his supervision with Ms Allen on 5 March 2020 (page 219). The supervision notes record that he was assaulted "by a MOP in

December 2019, this has caused him pain and issues with his hip and his neck. He sees an osteopath regularly, as physio has had little impact. Howard said the incident left him upset, he was just left and not supported. He brought the issue to line manager's attention and told everyone about what had happened. He was not spoken to about this for two weeks after, by anyone, until the HOS Michelle contacted him to discuss. He said he came into work every day after, and was not asked about his injuries / wellbeing by anyone. He had since made a complaint about Merton being negligent and is waiting for outcome of this". There was no evidence that the Claimant raised the issue again until July 2020 when he wrote to El Mayhew (page 335) seeking an update on the report and his claim. Ms Waldron was copied into this email and informed Ms Mayhew that the Claimant's contract had been terminated. We saw no further evidence about this matter and no evidence that any further report was made to the Claimant.

13. At the time that the remainder of this dispute arose the Respondent was in the process of replacing its locum staff with permanent staff. There were four locum First Contact Officers, including the Claimant, and the recruitment of permanent staff had taken some time. Eventually candidates had been found to fill all four roles although even then locum staff continued to be needed for a period of time as new appointees would not be able to start until HR clearance had been completed. There was a dispute between the parties as to whether or not the Claimant's role had formed part of this recruitment exercise. It was the Respondent's case that it had, but the Claimant said that this was not his understanding. In his evidence he made it clear that he preferred to operate on a locum basis as the rate of pay was higher and that was one of the reasons that he had not applied for one of the permanent roles when these were advertised. He also said that he had not done so because he had not been approached to apply for the role and had expected to be specifically asked. However, he said that he had made the decision on the basis that he thought his own locum role would continue indefinitely and it came as a surprise to him when he discovered that that was not going to be the case. He learned this through a telephone call from Ms Morris on 8 July 2020.
14. The following morning, he had a supervision with Charlotte Allen. The relevant section of the notes of this supervision were at pages 268-9 and record as follows:

I spoke about the recent pressure in the team and on HH, as well as other members of the team. He has been helping [redacted name] learn the ropes, covered missing meeting and also had a higher than normal amount of ICs due to high work volumes and [redacted name] being on leave. HH does not feel rewarded for his efforts in the team and instead feels a complete opposite to rewarded. He feels devalued at work at the moment.

HH discussed that LM has told him that fortunately she has identified a replacement, and is advising him as a courtesy. HH has said he raised the length of time he has worked in the role and felt it was not acceptable that he was not contacted directly. He did not go for the role as no one approached him, he said he has pride and thinks there is a duty towards him to have that discussion. I advised my understanding is that all procedures were followed in relation to recruitment and I would be surprised if our duties toward HH have not been met – given that he was advised the recruitment was taking place and advised the job was there to apply for.

HH did not apply as he has been in role for 2 years – he said this was due to TM's who recognise his work and felt if he was going to be supported to apply – the managers would have contacted him. He feels he is a strong team player and queried why another agency colleague was offered to go permanent but he was not. I raised this may have come up in their supervision, however neither HH or I had this conversation during supervision, which I apologised for, as I could have done this.

HH felt that it would have been more of a courtesy to have had a direct discussion and not send a group email, advising the role was offered. HH felt I or LM should have contacted him. He asked why during the interview / recruitment process no one has contacted him to discuss the role. I apologised for not having discussed this with him in our supervision myself and that I felt I could have initiated this conversation.

HH spoke about changes in the team over a short space of time and that the demographics have changed – less diversity.

In team meeting yesterday there was a discussion about management directions, HH suggested in team meeting that he always puts in his IC who the case has been discussed with and what has been agreed with the manager. HH said LM dismissed what he said completely and did not seek clarification, or acknowledge his point / suggestion.

During a team meeting he feels rushed and that the meeting is very focussed on the TM agenda and when the time comes for the team to talk then the team is not able to.

He feels the only time he has been acknowledged or listened to by the team is when he spoke about BLM.

15. The Claimant relies on the comments at his supervision about diversity as his protected act for the purposes of s27 Equality Act. He also alleges that they formed part of the reason for some of Ms Morris's subsequent treatment of him.
16. Ms Allen contacted Ms Morris to report the Claimant's dissatisfaction. On the same day 9 July 2020, Ms Morris raised the issues with HR in an email (page 260) sent at 13.26, copied to Ms Waldron which states:

We have had an agency First Contact Officer in MASH for roughly two years, Howard Haughton. I'm aware that he has a separate complaint against the council in relation to an injury that occurred last year outside of the building.

I understand that we have been trying to recruit for Howard's post for some time as he is a locum FCO and has been with us for two years. In May of this year we put an advert out for permanent FCOs in MASH, the team were advised of this and Howard was aware that we were recruiting. Howard has never indicated to me or to his line manager, Charlotte that he wished to apply for the permanent role. However, he had every opportunity to apply just as anyone else did. Howard did not apply.

We have now completed our interviews and offered to four successful candidates. I called Howard yesterday as a courtesy to advise him that we have offered to four candidates and although I'm not giving him his notice as yet, the HR process will take some time and they will have their notice periods, I wanted to let him know as a courtesy that I will likely be giving him notice in the coming months. Howard raised during this call that he was unhappy that he hadn't been approached by a MASH manager directly to ask him if he wanted to apply. I advised him that he along with the team had been made aware that we were recruiting, and he has been welcome to apply for the past two years. I had not had any indication from Howard that he wanted to apply to become permanent. While I can absolutely understand this on a personal level that it is nice to be asked, Howard had never given any indication that he wanted to apply to become permanent and it's my understanding we have been trying to fill that role permanently

for some time. He was made aware of the perm recruitment though.

Howard has raised this in supervision with his line manager this morning and confirmed that he was aware of the permanent recruitment but he made a decision not to apply because he hadn't been approached specifically. Now that we have recruited he has decided he would potentially like to raise a complaint with HR. He advised his line manager this morning that he did not want to discuss this with me but wanted to seek advice from HR himself.

This morning in supervision he also raised the issue of his injury with the council last year and advised that he did not feel anyone supported him at the time (I understand that he was offered support). He also raised a complaint that he was unwell in October of last year and no one sent him home. I can't comment on this as neither myself nor his current line manager were in the MASH at the time.

He also raised the issue in supervision this morning that the MASH team is not as diverse as it used to be. He didn't expand on this.

Howard will be approaching HR directly although I'm not sure who he will approach and he hasn't asked for guidance on this. I just thought I would flag it as a potential grievance and ask if there is anything I should do?

17. At that point in time, it was the Respondent's intention that the Claimant would remain in his post until 30 September 2020, when the permanent recruit would replace him. This had been confirmed to by the Respondent to its managing agency, Comensura on 8 June 2020 (page 247).
18. On the afternoon of 9 July another of the assistant team managers, Cathy Gardner seemingly following up the Claimant's complaint at his supervision about his workload, emailed him (page 263) to see whether he needed any work to be reallocated. He replied (page 262) confirming that none of his cases were currently outside their time limits and enquiring why Ms Gardner thought that they were. Ms Gardner apologised to the Claimant but then forwarded his response to Ms Morris and said that she had found that "his tone is fairly belligerent". Ms Morris responded sympathetically to Ms Gardner (she explained to the Tribunal that Ms Gardner was having a difficult time at that point) and added "I am so sorry you are receiving emails like this". The Claimant considered that he was being stereotyped in that email exchange. In their evidence to the Tribunal both Ms Morris and Ms Waldron said that they did not think that the Claimant's tone was in fact belligerent.
19. On 10 July at 11.36 Colleen Hopkins, Referrals Manager at Brookways School, wrote to Ms Morris following some contact she had had with the Claimant about the situation of a child at the school (page 273). It is not clear when the conversation with the Claimant had taken place. Ms Hopkins now had further reason to have concerns about the child and she set these out in the email. At 13.12 the Claimant wrote to Ms Morris apparently in answer to a question she had raised (although it is not clear how or when) saying that whilst a police report (Merlin) had been sent to the MASH, the school did not have access to it and that he had been told not to forward Merlins to schools. Ms Morris responded that that was a correct statement of policy, but noted that the school seemed to have "a lot of detail" and she would make enquiries. The Claimant then replied at 13.26, "Just to be clear, I did inform the school that police reported mother and child to be "under a significant amount of stress". This is all I reported." Ms Morris concluded from

that response that the Claimant had been dishonest with her about his actions, having not been transparent about what he had disclosed until he became aware that she was going to investigate further.

20. Ms Hopkins wrote again to Ms Morris at 14.41 saying "Police Report.. We didn't receive this as promised but the contents were shared with us verbally via MASH and reference was made to both mother and child "*showing signs of significant stress*". MASH were also going to request from the police that the report was sent to us. I therefore am confused by your view that the police did not note any immediate concerns and also that you feel you cannot share the detail of the report with us".
21. Ms Morris had a supervision with Ms Waldron on 13 July at which the Claimant was discussed. We find as a fact that a decision was made at that meeting to dispense with his services before his contract expired in September. In her witness statement Ms Morris says "On 13th July 2020 I brought my concerns about the Claimant's attitude to me, the disclosure of information from the police report to Brookways School, and his malingering, to the attention of my Head of Service and my line manager Michelle Waldron. We discussed giving the Claimant a week's notice." The Tribunal was unclear what she meant by his "attitude to her" or what evidence there was that he was "malingering" and when questioned by the Tribunal she referred to previous supervision meetings. At page 250 a record of a supervision between Ms Allen and Ms Morris record difficulties with the Claimant's performance and attitude. At page 380-381 is a record of Ms Morris's supervision with Ms Waldron on 16 June 2020 at which issues with the Claimant were set out in some detail and indicate that there were concerns about his performance and attitude predating his supervision with Ms Allen on 9 July. We find however that the decision to dispense with his services early had post-dated the 9 July supervision and therefore gave careful consideration to the content of that meeting. We find nevertheless that what operated on Ms Morris's mind were her concerns about the apparent disclosure of the police report and the Claimant being, as she perceived it, less than straight with her about that, in conjunction with a history of issues that had not been serious enough to act upon previously but were now contributing to a different approach. On a balance of probabilities, we do not find that the Claimant's allusion to the team being less diverse than it had been had contributed to Ms Morris's decision.
22. A further incident occurred on 15 July 2020 when Ms Morris learned from Halima Mian (the First Response Team Manager) that she had had a conversation with a Maria Keenan about contact with MASH on 12 June 2020. Ms Mian told Ms Morris that a strategy meeting had been held to consider a child protection referral, and during the strategy meeting a question was raised about why the concern had come to Ms Keenan's attention in June 2020 but had not been referred to Children's Services until July. Ms Keenan had said during the strategy meeting that she had in fact referred the matter to MASH in June 2020 but had been advised at that time that no further action would be taken. Ms Morris decided to investigate and called Ms Keenan, who said that she had spoken with the Claimant about reporting a sexual assault allegation that had been made by one her pupils. Ms Keenan said that the Claimant had said he was a Senior Social Worker and that having discussed the case with his manager, that no referral to the MASH was

needed and no further action would be taken.

23. Ms Morris was greatly concerned as the incorrect advice had been given, a child protection referral had been missed and the Claimant should not have been describing himself as a social worker (it is in fact a criminal offence to do so). She telephoned the Claimant that day and both she and the Claimant described the conversation as “difficult”. Ms Morris said that the Claimant raised his voice and was confrontational, agitated and rude. The Claimant denied at the time and during the hearing that he had represented himself as a social worker or given the incorrect advice as alleged. He felt that Ms Morris was not listening to his point of view and that he was again being stereotyped as “incompetent and dangerous”. He was adamant that he would not have misrepresented himself as a senior social worker and knew the implications of doing so.
24. There was a note at page 247 that Ms Keenan had made of the phone call to MASH on 12 June 2020. The note did describe the Claimant as a Senior Social Worker but also noted that whoever she had spoken to had spoken to his manager and that she had been told that the case did not reach the thresholds and that no further action would be taken. The Tribunal was unable to test the veracity of this note and was disinclined to place much weight on it except that we note that by mentioning the fact that the Claimant had spoken to his manager it points both ways as regards the Claimant’s culpability. We were also unable to draw any conclusions from the call logs at page 283. The Claimant complained that Ms Morris formed a view without adequate investigation. Ms Morris was clear in cross examination that Ms Keenan had confirmed that the Claimant had described himself as a senior social worker when Ms Morris had asked if she was sure. She had looked for an internal record of the conversation before calling Ms Keenan but had not found one. None of these aspects of the evidence could be put to the test by the Tribunal.
25. Hence the Tribunal was in no position to draw conclusions about what actually happened on 12 June 2020. We were not convinced that the Claimant would have represented himself as a social worker given the implications of doing so. However, given the limited investigation carried out by Ms Morris, her seeming unwillingness to listen to his point of view on the call on 15 July and the lack of clear evidence corroborating the conclusion she had reached we consider that it was with some justification that the Claimant felt that she was jumping to conclusions about him. The Claimant asked for a written statement of the allegations against him the same day, which he said that he categorically denied (page 299) and Ms Morris replied the following day, 16 July 2020.
26. Also on 16 July Ms Poulter wrote to Luke Phillips at Comensura (page 301) saying that the Respondent wished to terminate the Claimant’s contract on one week’s notice and attaching an email chain that ended with an email from Ms Morris giving detailed reasons for the decision. These were: his general attitude and responsiveness, the disclosure of elements of the police report to Brookways School and the incident regarding the call with Ms Keenan of Pelham School. It also complained about his conduct towards Ms Morris during the phone call and expressed a concern that he might not handle calls with the public appropriately. It said that there had been similar instances of inappropriate information handling and sharing by the Claimant. The Claimant has received no further work from

Comensura since that date.

27. On 16 July 2020 Ms Morris also sent a team email confirming that the Claimant's last day would be 22 July 2020 (page 478).
28. We find as a fact that the Claimant did not have any conversation or communication with Ms Poulter in which he alleged that he had been discriminated against. The Claimant did however indicate to Ms Blindell in HR at the Respondent that he might wish to raise a grievance.
29. Ms Morris arranged that the Claimant would receive no further calls during his final week. Based on the email at page 316 from Ms Morris to Ms Waldron we find that the reason was her concern about his potential conduct and not a welfare or supportive measure as Ms Waldron suggested in her evidence.
30. The Claimant had sought disclosure in relation to complaints, including complaints of race discrimination, made against Ms Morris by other members of staff after his contract had come to an end and the Tribunal permitted him to put questions about these complaints because of the potential relevance of such evidence to the burden of proof. There were two matters. The first was a complaint raised by Taneeka Bennett, an agency worker, who resigned on 20 May 2021 complaining of the way in which she had been managed by Ms Morris and another. Her letter was at page 569.
31. The second was a grievance raised by Charlene Sergeant after Ms Morris became her line manager. Her complaint included the following: "I believe LM is discriminatory against me, LM stereotypes me which is based on misconceptions and portrayed on false generalisations and characteristics by way of language...I am concerned about the discriminatory nature of LM's approach towards me". The grievance was internally investigated and the report was at page 538-550. Three of the recommendations stand out – numbers 8, 9, and 13.
32. The Tribunal was cautious about the weight to be accorded to this evidence which we were unable to test in full. Nevertheless, it was clear that, as submitted by the Claimant, he was not the only member of the Respondent's staff to have concerns about Ms Morris's approach to black members of staff. After careful consideration we were unanimous in the view that the evidence of these further complaints was capable of amounting to the 'something more' required to shift the burden of proof if facts were proved by the Claimant from which it could be concluded that there has been a contravention of the Equality Act in the treatment of the Claimant. In the event however we did not consider that the Claimant had proved facts from which we could have concluded, in the absence of any other explanation that there had been a contravention of the Act as we will now set out in further detail in our conclusions.

The law

33. **Direct discrimination:** S 13 Equality Act prohibits direct discrimination. Under s 13(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. The

circumstances of the claimant and the chosen comparator must be the same or not materially different. S 4 Equality Act sets out the protected characteristics. These include sex and race.

34. Victimisation: S 27 Equality Act provides as follows:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

35. Burden of proof. It is also relevant to consider the law on the burden of proof which is set out in section 136 of the Equality Act. In summary, if there are facts from which the tribunal could decide in the absence of any other explanation that the Claimant has been discriminated against, then the tribunal must find that discrimination has occurred unless the Respondent shows the contrary. It is generally recognised that it is unusual for there to be clear evidence of discrimination and that the tribunal should expect to consider matters in accordance with the relevant provisions in respect of the burden of proof and the guidance in respect thereof set out in *Igen v Wong and others* [2005] IRLR 258 confirmed by the Court of Appeal in *Madarassy v Nomura International plc* [2007] IRLR 246. In the latter case it was also confirmed, albeit applying the pre-Equality Act wording, that a simple difference in status (related to a protected characteristic) and a difference in treatment is not enough in itself to shift the burden of proof to the Respondent; something more is needed.

Conclusions on the issues

36. It was accepted by the Respondent that the Claimant was a contract worker within the meaning of s41 Equality Act 2010 and that the Respondent was the principal as defined in that section. Paragraph 1 of the list of issues therefore falls away.

37. Turning to the first allegation of direct race discrimination, we have found as a fact that Ms Morris did allege that the Claimant had introduced himself as a social worker to a third party and that he had wrongfully disclosed some of the contents

of a police report to a school. We also found that she was critical of his response when she challenged him on these issues in a phone call. We find on the facts that Ms Morris was not influenced by the comments the Claimant made about diversity within the team in raising with him the issues of representing himself as a social worker and disclosing elements of a police report. These were issues that were objectively matters of serious concern in the context in which they arose. As we have already noted, we could understand why the Claimant would have felt concerned that his account of events was not being believed and we can also understand why the Claimant would have become upset during the phone call which caused Ms Morris to complain about his behaviour. But we did not think that any of these concerns were raised by Ms Morris because the Claimant had alluded to the reduced diversity within the team. This part of the claim is not well founded on the facts and therefore fails.

38. As regards the allegation that Ms Morris was dismissive of the Claimant as a black man again, we can understand why the Claimant might have drawn that conclusion given the way in which Ms Morris was interacting with him. The Claimant did not give specific examples in support of this part of the claim, but he said in his statement "Again, I feel very strongly that my treatment and the assumption of my guilt was rooted in their perspective of me as a Black male. I am aware of Ms Morris saying 'I don't see why the school would lie' in respect of them claiming that I referred to myself as a social worker, but gave no credit to the fact that it is not clear why I would lie. She clearly assumed that I would lie. In my view, the most likely explanation as per point 23 is that the school misheard, mis-recorded or misunderstood what I said." The Tribunal considered this allegation carefully given that there was evidence before us that was capable of shifting the burden of proof. But on the question of whether the Claimant established facts from which we could conclude that Ms Morris was dismissive of him because he was black, we concluded that he did not. It was clear to us that she was making assumptions and believing the other party to the discussion in preference to the Claimant. But there was no evidence linking that assumption to the Claimant's race and the background evidence of others having brought claims asserting that Ms Morris had been influenced by race in their treatment of them, was not sufficient to substantiate the Claimant's basic assertion. Accordingly, the burden of proof did not shift. Put another way, the Claimant has not established that the reason why Ms Morris did not believe him on the telephone call was because he was black.
39. As for the allegation that she did not like the fact that he was the only man in the team, we did not understand that to be an allegation of race discrimination. Furthermore, the Claimant did not put forward any evidence to support the allegation.
40. The allegation against Ms Poulter that she failed to respond to his allegation of discrimination, fails on the facts. The Claimant appears to have accepted during the course of the hearing that he had named Ms Poulter in error and he had been unable to recall the name of the person in HR against whom he wished to make this allegation.
41. As regards Ms Poulter having forwarded details of the Respondent's concerns about the Claimant to his agency, we considered that to have been a genuine error

on the part of Ms Poulter and there was no evidence that the Claimant's race had played any part in her actions.

42. As regards the Claimant's assertion that when allegations were made against his predecessor (a white employee) he was suspended on full pay and those allegations were fully investigated rather than, as here, the Claimant being dismissed, we found that the circumstances of the Claimant's predecessor were not materially the same as those of the Claimant. The Claimant's evidence was that he had been told that his predecessor had had a dispute within the team and had been sent home for two weeks on full pay whilst a bullying claim was investigated. He was then allowed back to the team but permitted to work in a separate, private room when he wanted to. In our judgment the circumstances of the alleged comparator were therefore, on the Claimant's own evidence, materially different from those of the Claimant and the Claimant would not therefore have been able to demonstrate less favourable treatment by reference to an appropriate comparator. There was no evidence that a hypothetical comparator would have been treated more favourably in the way the Claimant suggests.
43. Accordingly, the claim of direct race discrimination is not well founded.
44. The Claimant did not prove facts that showed that the reason there was a delay in reporting to him after the assault in November 2019 was because he was a man. We consider that that was supposition on his part with no evidence put forward in support of the assertion. We do not find that he was provided with no support as he alleged, but we do find that the Respondent was remiss in the way that it communicated with him after the personal injury claim was initiated and seemed to assume that because the matter was in the hands of its insurers he was not entitled to any updates. It was understandable that the Claimant found that to have been dismissive. However, there is no evidence that a woman was or would have been treated any differently.
45. Accordingly, the sex discrimination claim is not well founded.
46. Turning to the Claimant's victimisation claim, we do not consider that the Claimant did a protected act by referring to the diminished diversity within the team at his supervision on 9 July 2020. A general statement about diversity does not amount to any of the actions described in s27. The most general of the section's provisions refers to "doing any other thing for the purposes of or in connection with the Act". Merely stating that a team is less diverse than it used to be is not an action taken in connection with the Equality Act 2010 or one taken for the Act's purposes. The Act itself does not mandate the promotion of diversity (the public sector equality duty arises under the Equality Act 2006). Even if we are wrong in that conclusion however, the comments the Claimant made about diversity formed no part of the reason the Respondent reported its concerns with the Claimant's conduct to his agency, which were set out at page 289. Nor was there any evidence that the information was sent in this form because the Respondent believed that the Claimant had done or might do a protected act. Although the extent of the detail provided went over and above what the Respondent would usually have provided, according to Ms Poulter's evidence, there was no evidence that the Claimant's comments at his supervision on 9 July were any part of the reason for that.

47. As the Claimant's claims have not succeeded on their merits, we do not need to address the question of whether or not they were out of time.

48. We wish to end with an observation about what appeared to the Tribunal to be a somewhat cavalier approach by the Respondent to the question of the rights of agency staff. The evidence suggested that at the time the prevailing view was that agency staff were entirely the responsibility of their agencies and that the Respondent had few if any obligations to them. The Respondent will now be aware that agency workers are entitled to the same protections under the Equality Act as employees and other members of staff in the way that they are managed and dealt with day to day and it is to be hoped that it has adjusted its policies and processes accordingly.

Employment Judge Morton
Date: 16 June 2023

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Schedule

The Issues

1. Status

1.1 Was the claimant a contract worker within the meaning of section 41 of the Equality Act 2010?

1.2 Was the respondent the principal as defined by section 41 of the Equality Act 2010

2. Time limits

2.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? It is contended by the respondent that any act or omission prior to 18 July 2020 is out of time. The tribunal will decide:

2.1.1 Was the claim made to the tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

2.1.2 If not, was there conduct extending over a period?

2.1.3 If so, was the claim made to the tribunal within three months (plus early conciliation extension) of the end of that period?

2.1.4 If not, were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide:

2.1.4.1 Why were the complaints not made to the tribunal in time?

2.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 Did the Respondent do the following things:

3.1.1 On or about 17 July 2020 did Miss Lisa Morris MASH team manager allege the claimant had introduced himself to at least one third party as a social worker, wrongfully disclosed safeguarding information to a school and criticised the claimant for his manner and demeanour when she challenged him on the above matters? The claimant would contend that Ms Morris was motivated, at least in part, in respect of comments the claimant had made to his line manager Ms Charlotte Allen in supervision alleging that Ms Morris failed to promote diversity resulting in a less diversity in the team, was dismissive of him as a black man and that she did not like the fact that the claimant was the only man in the team.

3.1.2 On or about 17 July 2020 did the claimant report his concerns as regards Ms Morris to the respondent's HR manager Ms Ruth Poulter and the fact he considered he was being discriminated against and did she then fail to ask any questions, and fail to investigate his concerns, and instead repeated the concerns of Ms Morris to his agency, impacting upon his future employability.

3.2 Was that less favourable treatment?

3.3 The claimant relies upon an actual comparator namely his predecessor whom he alleges when allegations were made against him, he was suspended on full pay and those allegations were fully investigated rather than, as here, the claimant being dismissed. In the alternative the claimant relies upon a hypothetical comparator.

3.4 If so, was above alleged unfavourable treatment because of his race?

4. Direct sex discrimination (Equality act 2010 section 13)

4.1 The claimant contends he was assaulted by a member of the public on or about a date in October/November 2019 whilst leaving work and reported the matter to the police and the respondent. The respondent failed to investigate the incident promptly and failed without good reason to show the claimant a copy of its subsequent report.

4.2 Was that less favourable treatment?

4.3 The claimant relies upon a hypothetical female comparator.

4.4 Were the acts or omissions because of the claimant's sex?

5. Victimisation (Equality Act 2010 section 27)

5.1 Was the information the claimant gave his line manager in supervision on or about 17 July 2020 a protected act?

5.2 Thereafter was their email communication between Lisa Morris, Ruth Poulter and Cathy Gardener in which criticism was made of the claimant's attitude and was it agreed there would be a report made to the service manager.

5.3 By doing so, did the respondent subject the claimant to a detriment? The claimant contends that a report to the service manager damaged his reputation both with the respondent and also with the employment agency.

5.4 If so, was it because the Claimant did a protected act?

5.5 Was it because the respondent believed the claimant had done, or might do, a protected act?