EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Rowland Omamor	v	Peterborough Limited

Heard at: Cambridge **On:** 20, 21, 22 March 2023

Before: Employment Judge Tynan

Members: Ms L Davies and Ms K L Johnson

Appearances:
For the Claimant: Mr Lee Betchley, Counsel
For the Respondent: Mr Philip Page, Solicitor

JUDGMENT having been sent to the parties on 27 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant claims that he was discriminated against because of the protected characteristic of race. His claim was presented to the Tribunals on 23 December 2020 following ACAS Early Conciliation between 21 November 2020 and 21 December 2020.

2. The Claimant gave evidence to the Tribunal. He had filed and served a short written statement comprising 16 numbered paragraphs. In addition, three individuals gave evidence on behalf of the Claimant, namely:

    - Mr Chibuzor Okpala, the Respondent's former Finance Manager who was employed by the Respondent from 1 April 2019 until June 2021;
    - Ms Laura Cooper, who was employed by the Respondent as a New Product Manager from March 2019 until January 2021; and
    - Mr Peter Appleton, who was employed as the Chief Executive Offer of Vivacity (see below) from 9 June 2018 to 30 September 2020.

3. On behalf of the Respondent, we heard evidence from:

    - Ms Kitran Eastman, the Respondent's Managing Director – Ms Eastman had filed two written statements, the second a

supplemental statement which addressed certain issues raised in Mr Okpala's written statement; and

- Mr Mike Kealey, Managing Director of Vero HR Limited, a company that provides outsourced HR services to the Respondent.

4. There was a single agreed Hearing Bundle which extends to 212 numbered pages. Any page references in the course of this Judgment are to the corresponding numbered pages of that Hearing Bundle.

Findings of Fact

5. The Claimant was employed by the Respondent in the role of Commercial Director. His employment transferred to it from Vivacity on 1 October 2020 pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). By reason of TUPE, he enjoyed continuity of service and protected terms and conditions of employment His employment with Vivacity, and accordingly his continuous service with the Respondent, commenced on 25 March 2019.

6. The Claimant was dismissed from the Respondent's employment with immediate effect, with payment in lieu of notice, on 26 October 2020. He had insufficient continuous service at the date of his dismissal to qualify for protection against what might be termed 'ordinary' unfair dismissal.

7. The Claimant claims that he was discriminated against because of his race. He identifies as black African. The basic facts underlying the complaints are largely not in dispute. As recorded in the List of Issues (page 29) they inevitably provide a summary overview of events. The List of Issues was finalised at a Case Management Preliminary Hearing on 28 February 2022 before Employment Judge Alliott. The Claimant complains that the Respondent subjected him to the following treatment:

    a. it did not give him notice of redundancy;
    b. it did not consult him regarding redundancy;
    c. it selected him for redundancy; and
    d. it terminated his employment.

    Whilst the Respondent does not dispute that those things happened, it denies that its treatment of the Claimant was in any way related to race. The Claimant additionally complains about the manner in which his employment was terminated. The Respondent disputes, as he alleges, that he was forced to hand over his mobile telephone, escorted from the Respondent's premises, forced to return his laptop and not permitted to collect his personal belongings or say goodbye to colleagues.

8. There is a copy of the Claimant's Principal Statement of Main Terms and Conditions of Employment ("Contract") with Vivacity at pages 38 – 43 of the Hearing Bundle. In the course of the Hearing, the parties made extensive reference to Clause 26 of the Contract, at the foot of page 42 and over onto page 43 of the Hearing Bundle. Under the heading 'Collective Agreements' it provides as follows:

    "This employment is covered by the collective agreements as agreed with

the recognised Trade Unions and as amended from time to time."

The Contract was signed by the Claimant on 7 February 2019. There is no evidence that there were in fact any collective agreements in force at that date. The Hearing Bundle also contains a copy of a Trade Union Recognition Agreement from August 2019 (pages 47 – 52), signed on behalf of the organisation by Mr Apleton as Vivacity's CEO and Mr Kealey as HR Director, and on behalf of the GMB, UNISON and UNITE by their respective regional organiser, branch secretary and regional officer (the "Recognition Agreement").

9. There is an apparent conflict between Clause 26 of the Contract and the terms of the Recognition Agreement, specifically at page 47 of the Hearing Bundle. Under the heading 'Recognised Trade Unions', the Recognition Agreement states that the recognition rights under the Agreement relate to "the roles evaluated under the current NJC collective arrangements only". Whilst it is common ground between the parties that the Claimant's role as Commercial Director was not one of those roles, the terminology and lines have become somewhat blurred as regards the status of the Recognition Agreement, in particular whether it was itself a collective agreement i.e, whether in addition to recognising the three unions for collective bargaining purposes and setting out the ambit and structures of any collective consultation, it also conferred specific employment related rights or benefits on employees. Ms Eastman thought it was a collective agreement, but having read it we conclude otherwise. In our judgement, it simply provided the structures and process by which collective agreements might thereafter be concluded for the benefit of employees.

10. The author of the Recognition Agreement was Mr Kealey. His evidence, which was not challenged in cross examination, was that he believed and advised Ms Eastman that the Claimant was not covered by the Recognition Agreement. Mr Appleton, who was also a signatory to the Agreement but did not draft it, accepted that the Recognition Agreement did not confer pay recognition rights in respect of those employees, including the Claimant, who were on 'spot' salaries, but otherwise he believed it conferred recognition rights in respect of all Vivacity employees, including the Claimant. However, that is at odds with the wording just referred to, which does not obviously limit the ambit of the exclusion in respect of the identified roles to issues of pay. Ultimately, nothing turns on the point or indeed any argument that might be made that Clause 26 of the Contract conferred collectively negotiated rights and benefits independently of the Recognition Agreement. Instead, what is relevant in our judgement, is Mr Kealey's and Ms Eastman's unchallenged evidence as to what the former believed and advised the latter regarding the status of the Recognition Agreement in relation to the Claimant, namely that he was not covered by it and outside the scope of collective consultation.

11. The Claimant and his colleagues at Vivacity transferred to the Respondent's employment on Thursday 1 October 2020. Prior to that, Vivacity had been responsible for Peterborough City's public leisure facilities and what has been referred to in the course of this Hearing as the City's heritage facilities including its museums, libraries and theatres. Vivacity operated as a non-profit making trust. Its sources of income were

decimated as a result of the national lockdown during the initial months of the Covid-19 pandemic and it was obliged to hand its contract back to Peterborough City Council as it could no longer operate the services on a financially viable basis. The services were effectively brought back in-house by Peterborough City Council, within its subsidiary, Peterborough Limited. As with many other Local Authorities, Peterborough City Council was grappling at this time with an unprecedented public health crisis and operating in an extremely challenging financial environment.

12. Ms Eastman had a relatively small Senior Management Team which included the Claimant. Whilst we are less clear whether Mr Okpala was part of that senior leadership group in his capacity as Finance Manager, the evidence is that Ms Eastman had weekly one-to-ones with each of them following the TUPE transfer. Neither of them have suggested any issues of concern during their interactions with her or given evidence of any other matters arising out of these discussions or their interactions more generally from which a discriminatory mindset or subconscious biases might be inferred. The Claimant stressed that he did not know Ms Eastman personally and that he had no reason to believe that she was racist. What is relevant, we think, is that there was nothing in their relatively limited interactions following the TUPE transfer that had raised concerns or questions in the Claimant's mind regarding Ms Eastman's thinking, attitude or approach in relation to him.

13. We refer to the email from Ms Eastman to Mr Marsden, Mr Okpala and the Claimant at page 134 of the Hearing Bundle, into which two other employees, Mr Wilson and Mr Hornett, were copied, regarding costings in relation to re-opening various of the Respondent's sites and services. There is nothing in that email, sent on 7 October 2020, to indicate that Ms Eastman had in mind redundancies or any form of organisation restructure. It evidences that the Claimant's input, amongst others', was being actively sought by Ms Eastman to assist in an assessment of the viability of reopening sites and services over the following six months.

14. The situation evolved swiftly after 7 October 2020. By 15 October 2020, just a week later, Ms Eastman was in discussion with Mr Kealey regarding a structural review of the Vivacity part of the business. Covid-19 national infection rates had begun to increase markedly going into the Autumn and there was vocal debate at a national level as to the need, or otherwise, for a further lockdown and / or a further tightening of restrictions. We accept the Respondent's evidence that Peterborough was seeing rapidly escalating infection rates, higher than in other parts of the country and that this added to the general sense of uncertainty. We accept that the rapidly evolving and uncertain public health landscape, caused Ms Eastman to undertake a review of Vivacity's structure, particularly given the emerging significant risk that Peterborough's leisure and heritage facilities might have to close again or, as a minimum, operate under tighter restrictions. A further complicating factor was that there were active proposals by the Government to introduce new, less generous, furlough arrangements to replace the scheme that had been in operation since March 2020, which would put the Respondent's finances under further pressure.

15. Following their initial discussion on Thursday 15 October 2020, Ms

Eastman sent Mr Kealey a spreadsheet containing a list of what has been described as the corporate roles within Vivacity, detailing in each case which roles were and were not to be retained. Some roles were marked as 'TBC' to indicate that no decision had been reached in relation to them. Ms Eastman had evidently moved at pace in the matter, producing the spreadsheet by the afternoon of Sunday 18 October 2020; her covering email of 18 October 2020 is at page 98 of the Hearing Bundle and the spreadsheet itself is at pages 93 – 96 of the Hearing Bundle. Although Ms Eastman referred in her email to "proposed changes", her comments in the 'Rationale' column of the spreadsheet were expressed in terms that indicated her settled thinking in the matter, rather than proposals that remained subject to further consultation. If so, the Claimant would seem to have been treated no differently or less favourably at that point in time than those other individuals whose roles were likewise identified by Ms Eastman as no longer required (even if her views subsequently altered following consultations with the potentially affected individuals).

16. Mr Kealey and Ms Eastman met again on 22 October 2020. Mr Kealey's evidence as to his own thinking in the matter and advice to Ms Eastman is set out in some detail in paragraphs 10 to 19 of his witness statement. His evidence in that regard was unchallenged at Tribunal. Although Ms Eastman was the relevant decision maker and is the only person whom the Claimant alleges discriminated against him, given Mr Kealey's involvement and advice in the matter, we have regard to what was in his mind when he was advising Ms Eastman and strategising with her. In this regard, there is no suggestion whatever by, or on behalf of, the Claimant that Mr Kealey's thinking, advice or identified strategy was tainted by considerations of the Claimant's race. Indeed, there is no basis for us to infer otherwise. We accept that Mr Kealey's advice to Ms Eastman was that the Claimant was someone who could be let go immediately if she concluded that his role was no longer required. Furthermore, Mr Kealey advised her that the termination could be communicated at a scheduled one-to-one on 26 October 2020 and that the Claimant should not be forewarned of the purpose of the meeting. Again, this was Mr Kealey's unchallenged evidence in the matter.

17. It came as a considerable and unwelcome shock to the Claimant to be terminated without any prior warning on 26 October 2020. Understandably, he experienced it as a somewhat brutal end to 19 months' loyal service. The fact that his former colleagues, namely Vivacity's former CEO and its former Finance Manager, gave evidence on his behalf evidences to us the high esteem in which he was and is held by them notwithstanding his relatively short period of employment. The Respondent recognises that the Claimant's termination was not handled in accordance with best practice. In our judgement, it fell some way short of even basic good practice. The Claimant has every reason to feel aggrieved about the way he was treated by the Respondent, particularly at such an uncertain time in the world.

18. One of the dispiriting aspects of this case has been the Respondent's expressed sense of indignation at having to face a claim of discrimination. At Tribunal, Ms Eastman described as "abhorrent" the suggestion that even subconsciously, the Claimant's race may have been a factor in her

treatment of him. At paragraph 41 of her witness statement, she states,

> *"I personally was shocked to be accused of something as abhorrent as racism"*

Her sense of shock or affront is misconceived, since she has not been accused of racism. Throughout this matter, the Claimant has expressed his concerns in more nuanced and balanced terms, wanting to understand why others were not treated as he was and why he was not involved in conversations regarding the organisation's future structure. It seems to us that should the Respondent continue to treat employees with protected characteristics in the somewhat disrespectful and undignified way that the Claimant's exit was handled, it may face further discrimination complaints in the future.

19. We were struck by the thoughtful and measured terms in which the Claimant gave his evidence at Tribunal. Notwithstanding that we have not ultimately upheld his complaints, we found him to be a credible and reliable witness. It is 'the mark of the man' that he volunteered to conduct an orderly handover and to reassure his colleagues, notwithstanding his own poor treatment. His immediate concern was for others. We accept his evidence that he was still reading and digesting the letter that had been handed to him on 26 October 2020 confirming the immediate termination of his employment when Mr Kealey asked for his mobile telephone back and said they should go and retrieve his laptop and / or the laptop charger from his car. He was not even able to retrieve his lunch pack or to speak to any colleagues then on site to let them know that he would be leaving and, having collected the company's items from his car he was himself denied the opportunity to go back into the building to secure his own personal items. He felt utterly humiliated in the matter and his feelings of humiliation were compounded when he received a telephone call from a colleague, Laura Cooper, congratulating him on his new role. He was at a loss to understand what she was referring to. It transpired that an email had been issued by Ms Eastman almost as soon as he left the building, announcing his departure,

> *"…to explore other opportunities"*

That statement was inaccurate and was not discussed or agreed with the Claimant. The Claimant says he was made to feel he had done something grossly wrong. Whether or not there was, as the Claimant asserts, a lack of compassion, his departure was certainly handled insensitively. We find that the Respondent acted with unseemly haste to get him off the premises and on his way. The timing and wording of the email was crass, to say the least. Ms Eastman and Mr Kealey may want to reflect as to whether this is how they might want to be treated in the event their own employment or relationship with the Respondent was coming to an end.

20. The termination letter is at pages 99 and 100 of the Hearing Bundle. The Claimant was not offered a right of appeal, though it was subsequently agreed that he should be afforded appeal rights. The decision on his appeal is at pages 113 – 116 of the Hearing Bundle. Whilst he may not agree the appeal outcome, the Claimant has not pursued any legal

complaint in respect of the appeal itself.

Law and Conclusions

21. Section 13 of the Equality Act 2010 provides,

> 13. Direct Discrimination
>
> (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.

22. In cases of alleged direct discrimination the Tribunal is focused upon the 'reasons why' the Respondent acted (or failed to act) as it did. That is because, other than in cases of obvious discrimination (this is not such a case), the Tribunals will want to consider the mental processes of the alleged discriminator(s): Nagarajan v London Regional Transport [1999] ICR 877.

23. In order to succeed in any of his complaints the Claimant must do more than simply establish that he has a protected characteristic and was treated unfavourably: Madarassy v Nomura International plc [2007] IRLR 246. There must be facts from which we could conclude, in the absence of an adequate explanation, that the Claimant was discriminated against. This reflects the statutory burden of proof in section 136 of the Equality Act 2010, but also long established legal guidance, including by the Court of Appeal in Igen v Wong [2005] ICR 931. It has been said that a Claimant must establish something "more", even if that something more need not be a great deal more: Sedley LJ in Deman v Commission for Equality and Human Rights [2010] EWCA Civ 1279. A Claimant is not required to adduce positive evidence that a difference in treatment was on the protected ground in order to establish a *prima facie* case.

24. The grounds of any treatment often have to be deduced, or inferred, from the surrounding circumstances and in order to justify an inference one must first make findings of primary fact identifying 'something more' from which the inference could properly be drawn. This is generally done by a Claimant placing before the Tribunal evidential material from which an inference can be drawn that they were treated less favourably than they would have been treated if they had not had the relevant protected characteristic: Shamoon v RUC [2003] ICR337. 'Comparators', provide evidential material. But ultimately they are no more than tools which may or may not justify an inference of discrimination on the relevant protected ground, in this case race. The usefulness of any comparator will, in any particular case, depend upon the extent to which the comparator's circumstances are the same as the Claimant's. The more significant the difference or differences the less cogent will be the case for drawing an inference.

25. In the absence of an actual comparator whose treatment can be contrasted with the Claimant's, the Tribunal can have regard to how the employer would have treated a hypothetical comparator. Otherwise some other material must be identified that is capable of supporting the requisite

inference of discrimination. This may include a relevant statutory code of practice. Discriminatory comments made by the alleged discriminator about the Claimant might, in some cases, suffice. We have found that there were no such comments in this case.

26. Unconvincing denials of a discriminatory intent given by the alleged discriminator, coupled with unconvincing assertions of other reasons for the allegedly discriminatory decision, might in some case suffice. Discrimination may be inferred if there is no explanation for unreasonable treatment. This is not an inference from unreasonable treatment itself but from the absence of any explanation for it.

27. It is only once a *prima facie* case is established that the burden of proof moves to the Respondent to prove that it has not committed any act of unlawful discrimination, so that the absence of an adequate explanation of the differential treatment becomes relevant: Madarassy v Nomura [2007] EWCA Civ 33.

28. In our discussions regarding the Claimant's direct discrimination complaints, we have held in mind that we are ultimately concerned with the reasons why Ms Eastman acted as she did in relation to the Claimant.

29. We firstly address the question whether the Claimant's identified comparators, Fiona Syme, Laura Cooper and Louise Porter are appropriate comparators for Shamoon purposes. We have concluded that they are not. Mr Kealey was genuinely of the view, and had advised Ms Eastman, that the Claimant was not covered by the Recognition Agreement and accordingly that he would not need to be considered or included as part of any collective consultation exercise. By contrast, all of the comparators were believed to be covered by the Recognition Agreement such that the Respondent believed it could not proceed to put them at risk or make their roles redundant without first consulting the Unions and the affected individuals themselves. That, rather than the Claimant's race, was the differentiating factor in terms of the decision to remove the Claimant with immediate effect and to do so without any consultation. The Respondent handled the Claimant's redundancy as it did because it believed it could lawfully proceed in that way. However unattractive that may seem, Employment Laws and the Recognition Agreement were understood by Mr Kealey and Ms Eastman to be on the Respondent's side in the matter.

30. In terms of selection, on the evidence available to us, Ms Syme, Ms Cooper and Ms Porter were not pooled with others for redundancy selection purposes. Whilst Ms Syme and Ms Porter's redundancies were avoided (albeit Ms Porter subsequently left the Respondent during her redeployment trial period), the spreadsheet at pages 93 – 96 evidences that as with the Claimant's role, the three comparators' roles were considered and selected for redundancy in isolation. Accordingly, even were they to be regarded as comparators for Shamoon purposes, the Claimant would still fail to establish that he was treated less favourably than they were treated in terms of the selection or identification of their roles as redundant.

31. We turn then to Mr Marsden, Operations Director. He is the fourth named comparator relied upon by the Claimant. His role and name were not included on the spreadsheet. We accept the Respondent's explanation that Mr Marsden's role was not impacted because it was focused on the Respondent's core operations and that although the swimming pools, leisure and heritage facilities had closed or were operating under restrictions, they still needed to be maintained in the short to medium term, and that this was within Mr Marsden's remit as Operations Director. Whilst there is no evidence in the Bundle to enable a direct comparison of the Claimant's and Mr Marsden's roles and responsibilities, we accept the Respondent's evidence that the Claimant's role of Commercial Director was created precisely because Mr Marsden lacked the requisite commercial skills to drive new business opportunities and develop the Respondent's existing offer, and accordingly that the two men were performing discrete roles that did not lend themselves to being pooled in a redundancy situation. That was nothing whatever to do with the Claimant's race.

32. On the issue of pooling and selection for redundancy, the Claimant focused at Tribunal on James Hornett, a Business Manager who reported to Mr Marsden, rather than Mr Marsden himself. The Claimant's evidence was that he and Mr Hornett had significantly overlapping key deliverables. Having read the notes of the appeal hearing, we cannot identify that Mr Hornett was identified by the Claimant as someone with whom he should have been pooled for redundancy selection purposes. He was not identified in the List of Issues as a relevant comparator. If Mr Hornett reported to the Operations Director, then his role was at a more junior level to Mr Marsden and the Claimant, and it is understandable therefore that it would not have been an obvious role to pool with the Claimant's. The Claimant has failed to establish that Mr Hornett is an appropriate comparator for Shamoon purposes. In any event, Mr Hornett was covered by the Recognition Agreement, a further differentiating factor between them in terms of how they were treated.

33. As regards the redundancy of the Claimant's role, Ms Cooper was also dismissed by the Respondent so that the Claimant cannot establish that he was treated less favourably than she was in terms of the redundancy of their roles. Likewise, Ms Syme and Ms Porter were treated no differently to the Claimant in so far as their substantive roles were identified as redundant, even if their redundancies were avoided through re-deployment. Their redundancies were avoided because the Respondent consulted with them, a process that came about because they were understood and advised to be covered by the Recognition Agreement. If little or no consideration was given to the potential for re-deployment in the Claimant's case, this was not a matter of his race, rather it reflected Mr Kealey's advice to Ms Eastman that the Claimant could be terminated with immediate effect without the need for a consultation process.

34. We have gone on to consider whether there is any other material from which we might draw an adverse inference that the Claimant's race was a factor in the Respondent's, or more specifically Ms Eastman's, treatment of him, including material that might enable us to come to a view as to how a hypothetical comparator, namely a non-black African Commercial

Director would have been treated in the same or not materially different circumstances.

35. As we have noted already, the Claimant was understood and advised to be outside the ambit of the Recognition Agreement and to lack the requisite qualifying period of service to be protected against 'ordinary' unfair dismissal. The only evidential material that might indicate how the Respondent would have treated a hypothetical comparator, concerns Mr Okpala and Ms Pamela Whitbread, a Resource Director employed at Vivacity until she was exited under an agreed settlement in or around October 2018. As regards Mr Okpala, he identifies as black African. Whilst he believes that the Respondent discriminated against him because of his race, he was selected for redundancy following a pooling and scoring exercise, consulted about his proposed redundancy and given notice of redundancy. He acknowledged that the manner in which he left the Respondent's employment was markedly different to the Claimant's experience. As regards the critical issues about which the Claimant therefore makes complaint, Mr Okpala was treated precisely as the Claimant asserts he should have been treated. In the circumstances, Mr Okpala's treatment does not provide relevant evidential material that might support an adverse inference. There has to be something more than that another black African employee was made redundant. In this case, the fact that Mr Okpala's redundancy was handled as the Claimant believes his redundancy should have been handled would indicate that the Claimant's race was not the relevant differentiating factor in terms of his treatment.

36. As regards Ms Whitbread, whilst her exit was not quite as swift or brutal as the Claimant's, nevertheless she was exited within a timeframe of approximately 10 days (being the period identified by ACAS as reasonably required for an employee to consider any settlement proposal as part of a pre-termination negotiation under s.111A of the Employment Rights Act 1996). The differentiating factor between Ms Whitbread and the Claimant was that she had statutory protection against 'ordinary' unfair dismissal. In our judgement, that was a significant differentiating factor which warranted a more careful approach in her case, even if there was a desire to remove her without delay from the organisation. What her treatment evidences to us is a consistent approach when it came to senior level exits, namely that such employees should be exited without delay and without adhering to best practice in terms of the process. That advice and approach was entirely independent of Ms Eastman, the alleged discriminator in this claim.

37. This is not a case where discriminatory comments were made or the Respondent was applying an inherently discriminatory policy, nor was there an inexplicable departure from a documented policy. There was seemingly no collective agreement regarding job security, restructure and redundancy. The only 'departure' we can identify is that the Claimant's termination letter stated that he should return all company property by 27 October 2020, whereas in fact this was dealt with by Mr Kealey on 26 October 2020, something we return to in a moment. It does not support an inference of discrimination.

38. Discrimination is not to be inferred from unreasonable treatment, though may be inferred if there is no explanation for unreasonable treatment. For the reasons already set out, there is an explanation for the Respondent's unfair treatment of the Claimant. Ms Eastman had been advised and believed that she could proceed in the manner that she did.

39. We have ultimately concluded that the Claimant has not discharged the primary burden upon him in this matter such that the burden shifts to the Respondent to provide a non-discriminatory explanation for his treatment. In any event, stepping back and looking at the situation objectively in the round, we are satisfied that the Claimant's dismissal, including its perfunctory execution, had nothing whatever to do with his race.

40. We are troubled by the manner in which the Claimant was dismissed on 26 October 2020. It was, as we have indicated already, disrespectful and undignified. The Claimant had every reason to feel affronted. Again, it is 'the mark of the man' that he kept his emotions and understandable anger in check and that his concern instead was for his colleagues and that there should be a professional and effective handover of his duties.

41. Mr Kealey was responsible for the matters about which the Claimant complains in terms of the manner of his dismissal. However, on the Claimant's case, only Ms Eastman discriminated against him. He makes no complaint about Mr Kealey. Ms Eastman, the alleged discriminator, was not responsible for Mr Kealey's actions on 26 October 2020 when he took the Claimant's telephone, asked for the immediate return of his laptop, disabled his access to the building and asked him to leave without being able to collect his personal belongings or say farewell to his colleagues. These various matters all sat within Mr Kealey's remit as HR Director. On the Claimant's own case therefore, his complaint identified as Issue 4.2.5 in the List of Issues cannot succeed.

42. Ms Eastman was the signatory to the email that announced the Claimant was leaving to explore other opportunities. The email itself does not form part of the Claimant's claim to the Tribunal. In any event, as we have already said, we regard it as a somewhat crass communication rather than indicative of a discriminatory mind set on the part of the sender, Ms Eastman.

43. For all these reasons, we have concluded that the Claimant's complaints are not well founded and should be dismissed.

_____
Employment Judge Tynan
Date: 23 June 2023
Judgment sent to the parties on
27 June 2023
For the Tribunal office:
GDJ