EMPLOYMENT TRIBUNALS

Claimant: Miss V McLean

Respondent: Bromford Housing Group Limited

Heard at: Birmingham (hybrid) **On:** 21, 22, 23 & 24 August 2023

Before: Employment Judge Maxwell
Mr Spencer
Mr Kennedy

Appearances
For the claimant: in person (by CVP)
For the respondent: Mr Jagpal, Consultant

JUDGMENT

1. The Claimant's complaint of direct race discrimination is not well-founded and is dismissed.

2. The Claimant's claim for notice pay is not well-founded and is dismissed.

REASONS

Procedural Matters

1. On the first day of the hearing (a Monday) the Claimant was not in attendance. An email was discovered, sent by the Claimant on Friday evening the previous week, requesting a hearing by video because she was unable to attend due to "circumstance beyond [her] control". The email attached a GP fit note, declaring she was unfit for work for a short period in August 2022 (which is to say, the year before the hearing). Urgent arrangements were made to setup a CVP hearing room and login details sent to the Claimant. In due course, she joined by this means. On being asked questions by the Judge about the circumstances beyond her control, the Claimant said she was no longer living in the Tribunal region. She did not, however, say where she was living. On being pressed further, the Claimant disclosed that she was currently residing in Atalanta, Georgia, USA. Given there appeared little prospect of the Claimant being able to attend in person within the current listing and the USA having given permission for evidence to be given from its territory in the UK proceedings, we decided to

continue with the hearing of the Claimant's claim on a hybrid basis. Mr Jagpal did not object.

2. There had been a discussion of the Claimant's claim at a Case Management hearing in November 2022. It had not proven possible to arrive at a final list of issues on that occasion and an order was made for the Claimant to provide further particulars. Subsequently, the Claimant provided her "schedule of acts of discrimination". This comprised a numbered list of 12 paragraphs. The Respondent had prepared a draft list of issues, summarising each of the 12 complaints and reflecting these as allegations of direct discrimination. The Respondent's draft list and also included a section for victimisation, inviting the Claimant to identify the protected act relied upon. On discussing the claims with the Claimant at the start of the hearing, she agreed her 12 numbered complaints had been accurately summarised. Furthermore, it became apparent she had used the word victimisation in the common English sense of being got at or persecuted, rather than meaning a complaint under 27 of the Equality Act 2010.

3. A timetable for the hearing was agreed:

   3.1 Day 1 – morning reading and preliminary matters, afternoon Claimant's evidence;

   3.2 Day 2 – Respondent's evidence, followed by submissions;

   3.3 Day 3 – submissions if not heard on day 2, followed by deliberation;

   3.4 Day 4 – judgment and remedy if appropriate.

   The timetable was adhered to and we were grateful for the parties cooperation in this.

4. An agreed bundle of documents was prepared by the Respondent, running to 251 pages. A small number of additions were made to this during hearing. We directed the Respondent to prepare a typed transcript of the handwritten appeal notes, which was done. We also added a second version of the Respondent's document, which was said to record the IT faults which had been reported by new recruits during the period of the Claimant's employment.

5. We were provided with witness statements and heard oral evidence from:

   5.1 Venessa McLean, the Claimant;

   5.2 Josh Smith, Customer Service Team Leader;

   5.3 Donna Chillingworth, Customer Service Team Leader;

   5.4 Claire Havenhand , Customer Services Manager.

6. One of the Respondent's proposed witnesses was Selina Verdi. She is a Customer Service Advisor and was involved in the Claimant's training. On the day she was due to give evidence, Mr Jagpal told us she would not be attending because of recent eye treatment. He said that given a postponement would likely mean going part-heard for several months, he would not pursue such an

application. The Judge emphasised that where a medical reason was advanced for a witness not attending, we would usually expect to see some documentary evidence in support. Absent Ms Verdi, the parties proceeded to make their closing submissions. On the following morning, as we commenced our deliberations, an email was received from the Respondent's representative saying that Ms Verdi was still experiencing pain and discomfort in recovery, attaching a photo of a letter said to have been received the day before, via Ms Verdi's mother, from Alex Day, Consultant Ophthalmic Surgeon at Moorfields Eye Hospital, stating:

> **Selina underwent eye surgery to both eyes on 15 August 2023 and as such is unfit for work for one week.**

7. This letter had been copied to the Claimant and we invited her to make and representations about it that she wished. The Claimant said she had no comment to make. In the absence of Ms Verdi attending and being cross-examined on her evidence, we attached less weight to her witness statement (which was also unsigned) than might otherwise have been the case. We did not, however, disregard it entirely.

8. Shortly after the Judge had begun to give oral reasons for the judgment dismissing the Claimant's claims, the Claimant turned off her CVP camera. The Judge enquired whether she was still connected and she said she could see and hear. A little later, the Claimant turned her camera back on and after a further short time she said she was not feeling well and could not continue to listen. The Judge had already advised the parties they could request written reasons and the Claimant asked for these. The Judge said the reasons would be sent, it was a matter for the Claimant whether she remained to hear the reasons but if she chose not to, then no offence would be caused by her absence. The Claimant then left the hearing.

Facts

Witnesses

9. We were satisfied that all witnesses were honest and doing their best to give an accurate account of events. Where necessary, however, in order to resolve a dispute, we preferred the evidence of the Respondent's witnesses, each of whom gave clear and direct answers to questions, which were consistent with the contemporaneous documentary evidence. The Claimant's evidence on the other hand, was unsatisfactory in a number of respects. Her answers were often lengthy, meandering and failed to address the question asked. Whilst her strength of feeling was clear and present, detail in her recollection was not. Pressed on what was said at particular meetings, including whether performance issues had been raised, the Claimant responded in vague and general terms, saying she could not recall. The Claimant was also prone to making very strong allegations purely on the basis of supposition and without any evidence in support. By way of an example of this tendency, in her closing submissions the Claimant said that with respect to her interview taking place by MS Teams on 2 rather than 1 December 2021, the original date had been deliberately cancelled by someone (unknown) who had looked at the candidates, decided that there were too many Black candidates "flooding into the company" and to cancel her

interview because not only was she Black, she was not British. There was no evidence to support any part of this theory and it involved rejecting a far more plausible explanation, to which we will return below.

Background

10. The Respondent is a housing association with a workforce of circa 1,800. The Claimant applied for employment as a Customer Service Advisor. This position involved fielding calls from the Respondent's customers, which might include complaints, requests for maintenance or reporting emergencies. Such work was to be carried out in part at a call centre and partly from home. In her written application, the Claimant represented herself as competent in using IT systems.

Interview

11. The Claimant was one of 7 candidates who were shortlisted for interview on 1 or 2 December 2021. The MS Teams (i.e. video) platform was used for this purpose. On 1 December 2021, the Claimant logged on in a timely fashion for her interview. Unfortunately, this did not happen. The Claimant waited patiently and no one attended on behalf of the Respondent. Eventually, the Claimant contacted the Respondent to chase this up. Shortly thereafter, she received a telephone call from Mr Burden on behalf of the Respondent who apologised, explaining this had been inadvertently cancelled. Her interview was immediately rearranged for the following day, 2 December 2021.

12. Quite obviously, a mistake had been made with respect to the Claimant's interview. Rather than this being cancelled deliberately by some unknown person who was concerned about the number of Black or Jamaican candidates being considered for employment, it is far more likely and we find this was an inadvertent occurrence. Indeed, it appears to us the Claimant was then able to see this herself. Her belief that it was done deliberately and with a racist intent is a position she arrived at only retrospectively, when her employment with the Respondent was brought to an end.

13. The Claimant was interviewed by Sue McLauchlan and Josh Smith. At the beginning of the meeting, the Claimant was asked to hold her passport up to the camera so it might be inspected. This was a visual check intended to confirm that the person attending the interview appeared to be the person whose identity documents had been or would shortly be provided. A similar check was carried out with each candidate. An interview template document was completed by Mr Smith and this is accurate reflection of the discussion which took place. Mr Smith and Ms McLauchlan were impressed by the Claimant. She gave a good account of herself and appeared to have the skillset they were looking for. The Claimant was assessed as against 5 criteria. Each criterion attracted a score of between 1 and 5 (being the highest) with the Claimant obtaining mostly 4s. They recommended she be offered employment.

Pre-Employment Checks

14. The Respondent has a detailed written on-boarding procedure. This has a section providing for evidence to be received and various checks made on the candidate's right to work in the UK. This reflects the statutory regime under

which employers are obliged to make such checks. Where these steps are not taken, an employer may face financial penalties.

15. On 7 December 2021, the Claimant provided various documents, including her passport, UK residence permit (she is a Jamaican national) and national insurance card.

16. By a letter of circa 9 December 2021, the Respondent offered the Claimant employment as a Customer Service Adviser. A contract of employment was enclosed.

17. On 21 December 2021, the Respondent wrote to the Claimant explaining that it needed to confirm her status code and referring her to a UK government website where she might obtain this. Separately, the email explained the writer had been attempting to contact the Claimant on the numbers she had provided without success. This was followed up on 24 December 2021, with a request to the Claimant for the Respondent to be able to use the information she had provided to carry out this step itself. On 4 January 2022, the Claimant replied giving her consent.

Start of Employment

18. The Claimant commenced employment with the Respondent on 10 January 2022. This was expressly subject to her satisfactory completion of an induction period. She was one of a number of candidates who had been successful during the recent round of interviews. The information we have about the ethnicity of the other new recruits, which we accept, comes from the Claimant. She describes them as Black and of "African descent" although whereas they are British she is Jamaican.

Laptop

19. The Claimant was issued with a laptop by the Respondent's IT department. The process by which this was done involved the raising of a ticket and then hardware being sent out to the employee. The process did not involve and nor was there any evidence the member or members of staff in the IT department who were involved in fulfilling this request, had knowledge of the Claimant's race or nationality.

20. The Claimant has told us that her laptop was faulty and had to be returned. She went on to say the replacement device was unsatisfactory, describing this as "bugged up", sticking (i.e. freezing intermittently) and being prone to sudden shutdown. The difficulty we have with her evidence on this is that it appears inconsistent with the contemporaneous documents we have seen and the results of a search made of IT enquiries. An Excel spreadsheet was produced by the Respondent, comprising a list of all those employed at about the same time as the Claimant in any role, whether they had raised IT issues and if so what they were. The number of employees in the schedule is greater than 100. Many are noted as raising issues. Many had none. The Claimant's name appears toward the end of the list (on the last page, which was omitted from the version we were first provided with) which appears to be in alphabetical order by first name. The entry for the Claimant reads "none". Furthermore, we were provided with notes

of the 1-1 meetings conducted by Mr Smith when he became the Claimant's team leader. Whilst the Claimant in evidence at the Tribunal put great weight upon the difficulties she faced in performing satisfactorily because of faulty IT, that explanation is notable by its absence from the meeting notes, which the Claimant did not challenge. The first time the Claimant complained of faulty IT was in her appeal against dismissal.

21. Whilst we accept the Claimant may have experienced some difficulties with her laptop, we do not find that she reported this to the IT department (she said she had done so continuously) or that any such issues represented a significant impediment to her carrying out her duties. Had that been the case, it would have bee reflected in the Excel spreadsheet and she would have told Mr Smith about it when he was discussing performance issues with her

22. We have no hesitation in rejecting the Claimant's suggestion that someone decided to issue her with a faulty laptop deliberately, whether because of race or for any other reason. This would be wholly self-defeating. The Claimant would be prevented from doing the work she had been employed by the Respondent to do and members of the IT department would have to spend time trying to diagnose and remedy the faults. From the Excel spreadsheet provided, it is apparent the department already had plenty on its plate, given the number of reports being made to it. IT problems are something that most employees will encounter from time to time. Indeed, were that not the case, large employers would need, or could much reduce the size of their IT departments.

Training

23. The Claimant and other new recruits received detailed training in the Respondent's systems and processes. This included 1-1 support from experienced members of the team, including Ms Verdi.

Asian Colleague

24. The Claimant's schedule of complaints includes an allegation that an Asian colleague was sent to give a final verdict / observation on her. She addressed this in her witness statement in the following way:

> **(14) One day I was sitting at my desk I saw an Asian man observing me I turned to him and asked him why he was sitting there for a good length of time observing me. When he recognized that I saw him he said to me that he was there to give me one and one. I felt so depressed at that point as now I was sure I was being made an example of and I felt victimized. However, I did not say that to the Asian colleague I tried to make the most of the situation and learn all that I could. At first, I noticed he was repeating things I already knew. Then he changed his mode of teaching and started showing me advanced short cuts to do my job quicker. I remember his disposition being very tensed to start with then he seemed relax after he saw that I knew most of what he was showing me. I did find it uncomfortable that he was observing me without my knowledge and without it being explained to me who he was and what he would be doing with me. I don't know his name and I have never met him before.**

25. The Claimant's witness statement does not support the proposition this colleague was sent to make a "final verdict / observation". On the contrary, her written account suggests he was one of those tasked with providing 1-1 support as part of training, which would necessarily involve some observation of what she was doing. There is no evidence of any report or assessment being generated as a result of their interaction. Whilst the Claimant sets out being unsettled by him beginning to watch what she was doing without an introduction, she goes on to describe him making a number of helpful suggestions. In her oral evidence, however, the Claimant said that because the colleague and Ms Verdi were both Asian, he would do her bidding and act to the Claimant's detriment. We did not find this remotely persuasive. There was no evidence of Ms Verdi giving the colleague any instructions, whether adverse to the Claimant or at all, and her description of what he actually did is predominantly positive.

Mr Smith

26. On 9 February 2022, Mr Smith commenced a development opportunity as team leader. The Claimant was amongst a number of recent employees Mr Smith was tasked with managing.

27. We do not accept that Mr Smith was uncomfortable with Black people or that he distanced himself from the Claimant. In support of this broad (and for him, insulting) proposition, the Claimant put forward only one matter, namely an occasion on which he had responded to an enquiry of hers by email rather than in person. Mr Smith agreed there was one such occasion (he had emboldened and underlined the word "one" in his witness statement) and explained this related to an email chain the Claimant had received. He said he wished to read the chain fully before responding. This appears to us to be a perfectly sensible explanation and the Claimant did not challenge Mr Smith on it.

28. Mr Smith had a good relationship with the Claimant. The notes he made of their meetings reflect good-natured exchanges. He described her in his oral evidence as "lovely and approachable". He also told us about them discussing non-work-related matters, such as the Claimant participating in open mic singing events.

29. Furthermore, we noted Mr Smith was one of the two members of the panel who interviewed the Claimant, scored her highly and recommended an offer of employment. Invited to comment on how this sat with her allegation he was negative because of race and uncomfortable working with Black people, the Claimant offered the following explanation: the Respondent was pursuing a diversity drive, seeking to recruit employees of her ethnicity; Mr Smith was under scrutiny; whilst the Respondent's senior managers had decided to seek diversity, those lower down the chain sought to frustrate this; and for that purpose Mr Smith sought to dismiss her. The Claimant's argument was entirely a matter of supposition. There was no evidence of the Respondent engaging in a drive to recruit ethnic minority employees. There was no evidence of lower-level managers seeking to frustrate the recruitment of ethnic minority candidates or dismiss them once in place. If Mr Smith had been hostile to the Claimant because of race, it would have been a simple matter for him to score her less well at interview and not recommend taking her on in the first place. Recruiting her, only then to seek to engineer her dismissal by unfair criticism of her work would involve a remarkably circuitous and time-consuming exercise. It is difficult

to see how Mr Smith would be under more scrutiny when involved in a recruitment exercise than when managing an underperforming employee and reporting this to his seniors, indeed the opposite would seem likely. A far simpler and more plausible explanation, which we find to be the case, is that Mr Smith was impressed by the Claimant at interview, as reflected in his scores, only thereafter to be disappointed by her performance in practice.

1-1 Meetings

30. Following becoming team leader, Mr Smith had 1-1 meetings with the Claimant. He took over this activity from Jackie Ricketts, Senior Customer Services Advisor. The first such meeting took place on 8 February 2022. Mr Smith made a detailed note of this the following day, which we find accurately reflects their discussion. The relationship got off to good start. The Claimant said she was very happy at the Respondent and enjoying the challenge of learning its systems. She did, however, express some frustration at the time this was taking. Mr Smith reassured her and said she would be fully supported as the information (i.e. the training) bedded in, even if this took a little longer. The Claimant would spend the next couple of days shadowing colleagues, listening in, to better understand how the Respondent wished for these conversations with customers to be conducted. The Claimant would do some outbound calls and other tasks to build her confidence. Mr Smith raised with the Claimant reports he had received of her using her mobile phone at work. She explained this was necessary so that her son could contact her in the event of an emergency. Mr Smith said there was no objection to her having her mobile phone on the desk provided it was only used for this purpose. Notably, the Claimant did not say anything about having a faulty laptop or put forward faulty IT as a reason for her difficulty using the Respondent's systems.

31. Mr Smith had a further catch up with the Claimant on 16 February 2022. Again we find his notes made shortly after this are an accurate reflection. The Claimant said she was slowly becoming more confident and had learned to be more vigilant with respect to data protection matters. As with most businesses, the Respondent was acutely aware of its GDPR responsibilities and the risks of reputational damage or fines in the event of a data breach. Identification procedures had to be followed with customers before discussing their cases. This would include asking for the customer's date of birth and then checking that against the information already recorded. Mr Smith raised some issues with the Claimant. There was a concern she was not correctly setting her presence on the Respondent's systems, showing that she was available to take the next call. Her wrap-up time needed to be reduced. There had also been feedback from the planners that the Claimant was calling through with jobs they could not assist with (such as gas work). As a result, Mr Smith was unable to sign off her induction as complete. He intended to set objectives in this regard for her to meet over the week. Mr Smith proposed the Claimant spend more time shadowing her experienced colleagues to boost her knowledge. The Claimant declined. Mr Smith reiterated his belief this would be beneficial to her and the offer would "remain on the table". Mr Smith said he was glad the Claimant was feeling more confident but there were still some hurdles to overcome.

Customer Complaint

32. During her induction period, the Respondent had identified two instances of data breach, where the Claimant had failed to follow the correct procedure for checking a customer's date of birth. On 17 February 2022 a customer complaint about the Claimant was received. This appeared to raise another potential data breach and also a further problem, namely the Claimant had received an emergency call but failed to record it on the Respondent's systems as such. This was a particularly dangerous circumstance. Where matters such a gas leaks are reported, these must be recorded as emergencies on the Respondent's systems, so that immediate steps are taken to remedy the same. The Claimant had received a call or this kind and only booked it as an "appointable", which meant it would not be treated as an emergency. Separately, having listened to some of the Claimant's calls, she was found to be over speaking the customer. Whilst allowing more time for induction was something the Respondent might do in an appropriate case, Mr Smith was concerned about the accumulation of issues in the Claimant's case. He was especially anxious about the instances of data breach and the failure to correctly record an emergency call because of the risk to the business these created. Mr Smith was also mindful that the Claimant had rejected the additional shadowing he had proposed. In these circumstances he felt it may be necessary to terminate the Claimant's employment.

18 February 2022

33. On 18 February 2022, Mr Smith and Ms Chillingworth met the Claimant to discuss their concerns. We accept Ms Chillingworth's note as being an accurate reflection of the discussion. She began by summarising the previous discussions which had taken place between the Claimant and Ms Verdi or Mr Smith. She said that despite additional training, there were still errors and the most recent offer of support had been turned down. Ms Chillingworth explained the recent data breach point at length and observed that for an established colleague this would be treated as an act of gross misconduct. The Claimant's response was recorded as follows:

> **Vensessa said that she should have asked for more support when it was offered earlier this week but she didn't want to feel like a project for someone. She thought that she was getting better but said that she was going to ask for some more help to know when to send emails to planners and repairs support. She denied breaching data protection and was adamant that she would have checked the Date of Birth even though I had explained numerous times that there was no information on the system to check it against. She said that she had proof that some data did get cleansed and disappeared in some circumstances referring to a risk/special arrangement that she had experienced. She tried to recall the telephone conversation and spoke about the systems being really slow, so she was writing things down and checking them once the systems caught up. She said she was not used to the multiple systems and admitted the role may not be for her. She also said that her glasses were not very good so she has now bought some new glasses so she can see the systems properly.**

34. As can be seen, whilst the Claimant referred to the systems being slow (which would affect everyone) she did not offer the explanation relied upon before us,

namely that her laptop in particular was faulty. She also offered a surprising reason for her difficulty in navigating the Respondent's systems, namely that she could not see them properly because of her glasses. To the extent, if at all, her spectacles were unsatisfactory, that is something which must have been apparent to the Claimant from day-1.

35. The meeting concluded in the following way:

> **We talked about some more of the issues that had been highlighted when listening to the complaint call:- incorrect information being given to the customer, wrong job priority given to the customer. She said that she felt she probably did need some extra training on what is an emergency and what isn't but I reiterated that it was the fact that she had told the customer an emergency had been raised and she had not raised it as one, she had raised it as an appointable which had led to the customer chasing the repair.**
>
> **I said that we would leave it at this stage, I asked her to log off for the rest of the day and take the time to reflect on the role and to be really honest with herself and us in deciding if this role was where she wanted to be. I said that we would also reflect on the information that she had given us and we would meet with her again on Monday morning at 10.30 . She said she was sure there was a decision that had already been made about her but I assured her that there wasn't and that we had had to bring this to her attention today because of the complaint that had been made and the information that had since come to light.**

36. The Claimant's explanation for failing to correctly record an emergency (inability to recognise such and need for more training) was contradicted by the content of the call with the customer, in which she not only understood this to be an emergency, she told the customer she had raised it on the system as such, when she had not.

37. The Claimant was invited to consider whether this was the job for her. The purpose of an induction or probation period is for this to serve as a trial. For the employee to decide whether this is the job for them and / or the employer to decide whether the employee is suited to it. The Claimant had struggled to get to grips with the Respondent's systems and yet, somewhat inconsistently, turned down a recent offer of additional training. We note the Claimant has a law degree and masters and her previous employment was in a Public Defenders Office. The position of Customer Service Adviser with the Respondent was a very different one, with little or no opportunity for her to bring her legal knowledge to bear.

<u>21 February 2022</u>

38. Following the meeting on 18 February 2022, Ms Chillingworth made some further enquiries. She discovered the date of birth for the customer who made the complaint, although not recorded in the system where it should be, did appear on another page. Ms Chillingworth decided to give the Claimant the benefit of the doubt and assume she may have checked the date given by the customer against the information on this page. As such, Ms Chillingworth proceeded on the basis this did not represent a further data breach. Nonetheless she was of the view the Claimant's employment should terminate. Asked to

explain her decision, Ms Chillingworth told us she was an experienced team leader and had not previously encountered an accumulation of concerns of this sort, within such a short period of time. Furthermore, the Claimant appeared resistant to training. Her performance had not improved with additional training and she had rejected the repetition of this. Mr Smith agreed with this decision and Ms Chillingworth made notes reflecting their rationale before meeting with the Claimant again:

> **• 2 Previous data breaches while training**
>
> **• Negative feedback from trainers - this to be provided**
>
> **• Negative attitude to being offered additional training to support - VM rejected this, offered by JS and JR on separate occasions**
>
> **• Complaint received from a customer about VM the day after offer of additional support**
>
> **• Call Listening highlighted real concerns. Chase calls being received / duplicate jobs raised / mis information given to customers on what priority a job had been raised with.**
>
> **• Admission in meeting 18.2.22 that role was not for her**
>
> **• Requesting to be trained on rents in addition to repairs demonstrated that feedback from our seniors and trainers had not been digested.**

39. Ms Chillingworth began the meeting by telling the Claimant her induction would not be passed, as despite the additional support there had been no real improvement and errors continued. The Claimant was told she would receive pay in lieu of notice. In response, the Claimant proceeded to set out a number of complaints:

> **• She felt that a training colleague had deliberately been negative about her because she was thinking of applying for the position in Fire Safety Dept that training colleague was interested in**
>
> **• People who started before her have still not been signed off induction**
>
> **• People who started with her have not been signed off induction**
>
> **• As a company we are racist - this was followed up by an email from VM**

Claimant's Email

40. Shortly after being given oral notice of dismissal, the Claimant sent an email to the Respondent in the following terms:

> **Based on the discussion this morning Monday 21st February 2022 at approximately 10:30am, where you Miss Donna Chillingworth stated that you will not be proceeding to sign off my training which is premature, discrimnatory and is a clear case of victimization as trainees that have started before me have not been signed off and those who have started with me have also not yet been signed off as their training like mine is incomplete. Furthermore, you Ms Donna Chillingworth communicated**

> **with me in the Presence of Josh Smith (Trainee Team Leader on Secondment) that I should make arrangement to return the company's equipment . Your stance in the ambush meetings seemed premeditated you had made up your mind about me , my faith was already decided. You failed to investigate this matter at all and you were one sided and dismissive of anything/everything I had to say. In fact, when I asked for you to document the contents of the meetings your response was " you are not sure you could do that". Reminding you i made a complaint of discrimination and victimization from a member of your training team . This makes me to believe that my service is terminated and I am of the view that i am constructively dismissed . This leaves me with no alternative than to take constructive dismissal from the company . You will hear from me further.**

41. Whilst the copy of the Claimant's email in the hearing bundle includes a time sent of 8.12 am, plainly this is incorrect, as from the body of the email it is apparent it was only sent after the meeting at which the Claimant had been dismissed, which did not begin until 10.30am.

42. Ms Chillingworth made some enquiries into the matters raised by the Claimant. The employee interested in the Fire Safety vacancy was identified as Ms Verdi. Ms Chillingworth found no substance in the complaints made, nor any evidence of discrimination.

Dismissal Letter

43. The Claimant's dismissal was confirmed in a subsequent letter of 25 February 2022. Although the letter was written by Ms Chillingworth, this reflected a joint decision she had made with Mr Smith. The material parts of the letter provided:

> **The meeting was to consider the following concerns:**
>
> **2 Data Breaches during training**
> **Additional internal Support being rejected and errors continuing**
> **Notifying customers that their job had been raised as an emergency when they had been raised as appointable jobs which had caused customers to chase**
> **Customer Complaint received about the way a call was handled**
>
> **You were given the opportunity to answer any outstanding questions, present your case and put forward any mitigating factors you wanted me to consider.**
>
> **After careful consideration of the information discussed, and having listened to what you had to say, I have made the decision to dismiss you.**
>
> **The reason for my decision is that the number of errors that were being made was not acceptable and we could not see sufficient improvement in the calls that you were handling despite trying to offer support. When we offered to put in additional support this was not accepted and we then received a customer complaint about the way that a call was handled by yourself.**
>
> **Your employment will end with immediate effect as of 21st February 2022, and you will be paid up to 28th February and including this date only. All**

> **terms and benefits associated with your employment will cease as at today.**
>
> **[…]**
>
> **In response to the email that you sent following your dismissal, I have investigated the allegations of discrimination and victimisation from a member of the training team. I can see no evidence to support this. In response to one of the points that you raised in relation to the colleague and the vacancy for the Fire Officer role, I can confirm that this would not have been available for you to apply for as you were in your induction period.**
>
> **In relation to your comments about other staff and their induction periods, and your comments about racism in the meetings, while we are not at liberty to disclose the confidential employment status of other staff, the suggestion that there is any racism is strongly refuted.**

Appeal

44. By email of 3 March 2022, the Claimant appealed against her dismissal. She attached a lengthy grounds document, which is substantially the same as that she relied upon as her particulars of claim in these proceedings.

45. The Claimant was invited to and did attended an appeal meeting on 21 March 2022, with Ms Havenhand as the decision-maker. The Claimant's grounds were discussed at length. Following this Ms Havenhand carried out extensive enquiries and interviewed several witnesses. The notes of her investigation were included in the bundle and we accept these accurately reflect what she found and was told.

Black Trainees & Coconut

46. One of the complaints in the Claimant's grounds of appeal document (as in her complaint to the Tribunal) was an allegation that Ms Verdi referred to a group of trainees including the Claimant, as "the black trainees". The Claimant also said that Ms Verdi described herself as a "coconut".

47. In her witness statement for the Tribunal, the Claimant says:

> **(24) I heard Selina referring to us as the black trainees on an occasion, she also refers to herself as a coconut who is person black on the outside but white inside. […]**

48. In making our findings of fact we have taken into account (whilst attaching only limited weight to) what Ms Verdi is recoded as saying in her witness statement:

> **4. At no point did I refer to anyone as the black employees or black trainees, and at no point did I ever say to the claimant that the company had a culture of treating black people badly. I have commented on one or two occasions commented in general conversation about how my father referred to me as a bounty.**

It was necessary to approach Ms Verdi's (unsigned) statement with considerable caution, given she did not attend the hearing and was unavailable for challenge by the Claimant.

49. Because this complaint was included in her appeal, Ms Havenhand conducted her own investigation into it at the time. The notes she made, include an interview with Ms Verdi, who denied having spoken of "the black trainees". She said she may have referred to them as "newbies". As far as "coconut" was concerned, Ms Verdi denied using this term. She did volunteer having told colleagues that her father had called her "bounty".

50. Ms Havenhand also proceeded to interview two of the other trainees, who it was alleged by the Claimant had been described as "the black trainees".

51. The notes of the first trainee interview include:

> **Observed Selina being supportive and encouraging VM even when discussing the role that was discussed in the canteen, she witnessed Selina encourage VM to apply for the role,**
>
> **She never heard the group being referred to as black trainees**
>
> **Did not observe any discrimination or victimization. SV called herself a bounty not a coconut but was referring to a name her Dad gives her.**
>
> **Only observed that SV and the others supporting ad worked extra hard for VM and had extra support through out.**
>
> **Never witnessed being called black trainees**

52. The notes of the second trainee interview include:

> **VM - observations , struggled to understand the contact centre environment," couldn't deal with it"**
>
> **Example given when VM threw down her stuff mid afternoon and said she was done, […] spoke about how that's not how it works in a contact centre i.e there taking calls from customer etc, explained that the environment at Bromford was actually unlike traditional contact centres.**
>
> **Observed VM having additional one to one support from SV for several days after induction - "invested so much time in her"**
>
> **Witnessed no discrimination or victimization towards VM - quiet the opposite, very supportive to VM,**
>
> **never heard anyone use the term "black trainees"**
>
> **VM had contacted […] by SMS after leaving but didn't not return her SMS**
>
> **Shared a conversation she had with VM walking to bus stop, VM shared that she" wasn't coming back and had had enough"**

53. The Claimant disputed the accounts given by the other two trainees. She did not say their answers had been inaccurately recorded. Rather she said they had

only answered questions in this way because they feared for their employment and were under duress. There was no evidence to support this contention.

54. Whilst the Claimant's witness statement included Ms Verdi saying "black trainees", when she was cross examined about this by Mr Jagpal, her account appeared to change. In two separate answers, the Claimant said that Ms Verdi had referred to "the black ones".

55. Having considered the evidence very carefully, we are not satisfied on the balance of probabilities that Ms Verdi spoke of "the black trainees". The Claimant's evidence on this is vague and inconsistent. She has given us no context for this usage. She does not say when the term was used, in what circumstances, or comment upon how (i.e. tone or manner) it was said. Her account appeared to change in the course of cross-examination from "black trainees" to "black ones". The Claimant has not, generally, shown herself to be an accurate and reliable historian who is able to recall the detail. The Claimant made no complaint about this comment at the time and we think she would have done, if it had been made and she was offended. The two other trainees, who might have been expected to hear this remark and / or be offended by it, heard nothing of the sort. Indeed, the evidence of the other two trainees is highly corroborative of Ms Verdi's denial and suggests she was supportive of the Claimant.

56. We also think it more likely than not Ms Verdi referred to her father calling her "bounty" rather than "coconut". Ms Verdi is unlikely to be mistaken about a term her father used toward her and her account in this regard is, again, corroborated by the other two trainees.

Appeal Outcome

57. Ms Havenhand did not uphold the Claimant's appeal. By a letter of 5 April 2022, she set out her findings and provide a detailed rationale over several pages.

Comparator

58. One of the Claimant's complaints was that an employee who had started before her was still in an extended induction period and had, therefore, been afforded a longer period in this regard. Ms Havenhand's decision letter included:

> **Although this point was covered off in your outcome letter dated the 25 th of February, we clearly stated that we are not a liberty to disclose the confidential employment status of other employees. What has been apparent during my investigation is that your capability level was behind those who had started within the same induction. It is clearly documented in your one to one that you felt frustrated with your progress around systems and the speed at which you have been progressing. In a subsequent one to one it is also noted that you still struggled to navigate through the systems. During the recruitment process you shared with us that you deemed yourself as competent, that previous roles had been heavily involved in using various applications including databases. This did not transpire even after training for the role and further support.**

59. At the hearing in the Tribunal, the identity of this comparator was clarified. She is a White British woman, who was recruited to a different position with the Respondent. Prior to the commencement of her employment, the comparator had explained she lacked any experience of IT, to the extent that she had not even used a computer mouse. This background was taken into account when the Respondent addressed the length of her induction period. Conversely, the Claimant had held herself out as being competent in matters of IT.

Law

60. In the employment field and so far as material, section 39 of **the Equality Act 2010** ("EqA") provides:

> **(2) An employer (A) must not discriminate against an employee of A's (B) -**
>
> **(a) as to B's terms of employment;**
>
> **(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
>
> **(c) by dismissing B;**
>
> **(d) by subjecting B to any other detriment.**

61. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL**.

62. EqA section 13(1) provides:

> **(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.**

63. The Tribunal must consider whether:

63.1 the claimant received less favourable treatment;

63.2 if so, whether that was because of a protected characteristic.

64. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise may involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. In making this comparison we must be sure to compare like with like and particular to apply EqA section 23(1), which provides:

> **(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.**

65. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless by of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.

66. As to whether any less favourable treatment was because of the claimant's protected characteristic:

    66.1 direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts;

    66.2 if we are satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason;

67. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case is may be sufficient to answer the "reason why" question - why did the claimant receive the treatment complained of.

68. The definition in EqA section 13 makes no reference to the protected characteristic of any particular person, and discrimination may occur when A is discriminated against because of a protected characteristic that A does not possess; this is sometimes known as 'discrimination by association'.

69. The burden of proof is addressed in EqA section 136, which so far as material provides:

> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision occurred.**

70. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; **see Laing v Manchester City Council [2006] IRLR 748 EAT**.

71. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA**.

72. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

> **39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB 17 Ed IV f.1, pl. 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law […]**

Conclusion

73. We will address each of the alleged detriments in turn.

Right to Work Checks

74. Various checks were made of the Claimant's right work in the UK and it was necessary for her to provide documentary evidence. The reason this was done was, quite obviously, compliance with a statutory duty. It had nothing whatsoever to do with the Claimant's race or national origin. The Respondent had a legal duty to carry out checks of this sort. Default in this regard would expose it to the risk of financial liability. There was no evidence of an unduly onerous approach having been adopted. The Respondent appeared to be following its own written procedures. Whether or not the Claimant had previous experience of other UK employers adopting a more light touch approach, sheds no light on the measures adopted by this large employer in compliance with policies it had set out. There are no facts from which in the absence of an explanation we could find the Claimant had been subject to these checks because of her race or national origin. Further and separately, had the burden shifted, we would have been satisfied by the Respondent's explanation. We were provided with documentary evidence showing that similar requirements had been made of other candidates for employment, including British nationals.

Interview Cancellation

75. We are not satisfied on the balance of probabilities that the Claimant's interview on 1 December 2021 was "cancelled", in the sense of a deliberate decision being made not to proceed with this. There is no evidence of this being done. Whilst it is true, the Claimant's interview did not go ahead on 1 December 2021, the overwhelmingly likely explanation for this is an inadvertent mistake. Once this omission was drawn to the Respondent's attention, the Claimant received an immediate apology and her interview was rescheduled for the following day. There are no facts from which in the absence of an explanation we could find the Claimant's interview had been deliberately cancelled or inadvertently overlooked because of her race on national origins. Once again, had the burden shifted, we would have been satisfied by the Respondent's explanation, namely this was a simple mistake.

Faulty Equipment

76. The faulty equipment to which the Claimant refers is a laptop. For the reasons set out above, we do not find that she was provided with a faulty laptop. She may have experienced some difficulties with her IT but these are likely to have been relatively minor in nature, given there is no evidence of her making a report to the IT department (continuously or at all) and she did not put this forward to Mr Smith or Ms Chillingworth, contemporaneously, as an explanation for her poor performance, which we think she would have done had it been the case. General slowness in the system, which she did raise, is something that all of her colleagues would have to deal with as well. Whilst for these reasons, we have found the alleged detriment did not occur, it is also clear that the Respondent's IT department could not have taken into account the Claimant's race or national origins when issuing her with a laptop. There is no evidence to show those who dealt with the ticket for issuing the Claimant a laptop were aware of her race or national origins. The Respondent is not a small business, it has 1,800 employees. Furthermore, the Claimant's ethnicity would not be apparent from her name. Accordingly, there are no facts from which in the absence of an explanation we can find that the Claimant had been discriminated against. Furthermore, if the burden had transferred we would have been satisfied by the Respondent's explanation, namely that IT was provided to her without any consideration of her race or national origins.

Writing to the Claimant, Chance to Respond to Allegations

77. By "allegations" the Claimant means the performance concerns raised with her by Mr Smith and Ms Chillingworth. It is true the Claimant did not receive these concerns in writing. Rather, they were the subject of ongoing discussion with the Claimant during her induction at meetings with Mr Smith and / or latterly Ms Chillingworth. It is not, however, correct to say she had no chance to respond. On the contrary, on each occasion the concerns were explained to the Claimant and her response invited. It is apparent that both Mr Smith and Ms Chillingworth listen to what the Claimant told them, as evidenced by the detailed notes they made of what she had to say. The Claimant did not challenge any of these notes during the hearing or suggest that the conversation on these various occasions was other than as reflected in the notes. With respect to the concerns raised with the Claimant on 18 February 2021, she had two opportunities to respond, namely on the day and then again on Monday, 21 February 2021, having been invited to reflect on matters over the weekend. The Claimant's difficulty was not the lack of an opportunity to respond, it was that her responses were not found by the Respondent to be satisfactory.

78. Whilst the Claimant may believe that this matter ought to have proceeded with more formality, including invitation letters to disciplinary or capability meetings attaching evidence in support, there is no evidence to suggest the approach adopted here involved any departure from the Respondent's standard practice. Induction or probationary periods are intended to provide employer and employee with an opportunity to assess whether each is a good fit for the other. Where a new recruit fails to meet expected standards and the employer terminates their employment, this is often done at an early-stage and without the same formality that might be applied in the case of an established employee, especially where such a person has accrued the right to complain of unfair

dismissal. There are no facts from which in the absence of an explanation we could find the Claimant had been discriminated against by the Respondent dealing with this matter at one-to-one meetings, rather than by adopting a more formal approach with written invitations to disciplinary or capability hearings. Furthermore, if the burden had shifted, we would have been satisfied by the Respondent's explanation, namely that this was their standard approach and had nothing whatsoever to do with the Claimant's race or national origins.

Mr Smith

79. We do not find that Mr Smith was uncomfortable with Black people, distanced himself from the Claimant or formed a negative view of her (save with respect to accumulation of performance issues and lack of improvement). They had a good relationship, at least prior to the Claimant's termination. The one occasion on which Ms Smith responded to an enquiry in writing rather than orally was an obviously a sensible way for him to proceed. The true position is that on interviewing the Claimant, Mr Smith had high hopes that she would be a success in this role. Sadly, that proved not to be the case. For these reasons, the Claimant has not shown the alleged detriment on the balance of probabilities. Furthermore, there are no facts from which in the absence of an explanation we could find that Mr Smith's manner or demeanour toward the Claimant was to any extent whatsoever because of her race or national origins. Again, had the burden shifted, we would have been satisfied by Mr Smith's non-discriminatory explanation for his dealings with the Claimant.

Black Trainees / Coconut

80. For the reasons set out above, we found on the balance of probabilities that Ms Verdi did not use the expression "Black trainees". She did, however, say that her father had referred to her as a "bounty". In the absence of Ms Verdi attending as a witness, there was no opportunity for her to tell us any more about the context within which she had this latter discussion. We are aware that language such as this can be considered a racial slur, meaning black on the outside white on the inside. Clearly, however, this was not a comment directed at the Claimant. Ms Verdi was talking about herself. It is unclear whether she was citing her father's remark as having been light-hearted or something by which she was offended. In either event, she did not say this about the Claimant, the other trainees or anyone else at all. In order for this utterance to be a detriment to the Claimant for the purposes of a complaint under EqA section 13, we would need to be satisfied that she had been disadvantaged by this in the circumstances in which she had to work thereafter. The Claimant has told us of no such disadvantage. The Claimant did not say she was offended by Ms Verdi disclosing something that had been said to her. The other trainees who heard this remark did not say they were offended by it. Having considered all of the evidence put before us, we can see no basis upon which the Claimant could, reasonably, consider that she had been put at a disadvantage in the **Shamoon** sense. Accordingly, no detriment is shown.

Asian Colleague

81. There is no evidence of an Asian colleague being chosen, whether by Ms Verdi or anyone else, to make a final verdict / observation of the Claimant. There was

an occasion, for which the Claimant provides no date, on which an Asian colleague observed her and then proceeded to give her one-to-one training on the Respondent's Systems. The detriment alleged has not been shown. Furthermore, there are no facts from which we could find, in the absence of an explanation, that this particular colleague was sent to the Claimant's workstation because of race or national origins. The Claimant's evidence included the suggestion that because the colleague was Asian and Ms Verdi is Asian, the former would carry out improper instructions from the latter given their common ethnicity. There is no evidence to support this. Furthermore, we are satisfied as a result of the Claimant's evidence that this colleague was endeavouring to assist her, by providing one-to-one training, so she might better understand and being able to navigate the Respondent's systems. Beyond her suspicions, the remainder of the Claimant's account is consistent with the colleague being helpful to her.

Mistakes Highlighted

82. The Claimant's mistakes were highlighted to her. This is a normal part of an induction or probationary period. The Respondent provided training. Where the Claimant in practice failed to deal with matters in the way she ought, then it was incumbent upon the Respondent's managers point this out to her. This was a supportive measure, intended to identify additional training needs and assist the Claimant in meeting the required standard. This was not, objectively, a detriment. The Claimant could not, reasonably, consider that she was at a disadvantage in the workplace thereafter.

83. In case we are wrong about such matters amounting to a detriment, we have gone on to consider why the Claimant's mistakes were drawn her attention. There are no facts from which in the absence of an explanation we could find this was because of her race or national origins. If the Claimant was making mistakes, then it would have been a failure on the part of the Respondent if these were not drawn to her attention. Had the burden shifted, we would have been satisfied this was not to any extent done because of her race or national origins.

Celebrating Successes

84. The Claimant did not identify any particular success which she said should have been celebrated and were not. Nor did she refer us to examples of successes by her colleagues, which were celebrated. In a request for further information before the hearing, the Respondent asked the Claimant

> **22. Which other colleagues' successes were celebrated and reported,**
>
> **23 . What were the successes that were celebrated**
>
> **24. How and when**

85. The Claimant provided a written response to this request. She did not, however, answer these questions at all. In cross-examination, Mr Jagpal asked the Claimant what she was referring to. She said her colleagues were celebrated by being given a contract (i.e. not dismissed).

86. No detriment in this regard has been shown. To the extent, if at all, this complaint is intended to be construed as one about her dismissal, then we address this below.

Same Opportunity as British Colleague

87. This complaint refers to a White British comparator, who was allowed a longer period of induction than the Claimant was. The circumstances of this person do not satisfy section 23 of the Equality Act 2010. There were material differences. This particular individual was recruited to a different position, she was not taken on as a Customer Service Adviser. At the point of her recruitment, she declared her complete lack of IT skills, to the extent of never having even used a computer mouse before. A longer induction period was anticipated and allowed in her case because of the point from which she was starting. The Claimant on the other hand, held herself out as being IT literate and competent in the use of various systems or software packages. The Respondent had good reason to believe she would be able to get to grips with its own systems and procedures swiftly.

88. In substance, this is less a freestanding detriment complaint than it is the identification of a comparator for the purposes of the Claimant's complaint about being dismissed at the point she was and not, say, having her induction period extended. Suffice to say, however, there are no facts from which we could find the treatment of the comparator identified had anything to do with race or national origins. There were specific circumstances identified in advance and taken into account in her case.

89. In the Claimant's case, which we will address further below, at the point when her induction period was terminated, there had been an accumulation of problems, some of which created particular risks to the business around data breach or customer safety. The Claimant had also refused additional training when this was offered to her by Mr Smith. The Claimant adopted a somewhat inconsistent approach in that she reported her lack of confidence and frustration to Mr Smith in navigating or using the Respondent's systems but rejected additional training as being unnecessary or repetitive. If the Claimant was not getting to grips with particular aspects, then repetition of the training in this regard would seem to be necessary and reasonable.

Dismissed before Specified 6 month Training

90. The Claimant's contract did not specify that she would receive a 6-month training period. The relevant clauses provided:

> **Induction Deal**
>
> **On joining the Company you will be placed on an Induction Deal Programme which is a learning style agreement linked to key activities within the business. Further details will be supplied by your Line Manager.**
>
> **The Induction Deal means colleagues take ownership of their learning and, with their Line Manager, work through core activities at their own pace with a view to embedding the Company's DNA.**

> **The length of time to complete the Induction Deal will depend on you and your Line Manager although we anticipate the induction process to take anywhere between four weeks and six months.**
>
> **[…]**
>
> **Notice periods**
>
> **Until you have successfully completed your Induction Deal, employment may be terminated by either party with one week's notice in writing.**

91. Accordingly, the Claimant was not entitled to any minimum period of training. The contract anticipated the induction period might take between 4 weeks and 6 months. During that time, however, she could be dismissed on one week's notice. There was no evidence of the Respondent, generally, waiting 6 months before considering dismissal of an underperforming inductee.

92. The reason for dismissal was a belief by Mr Smith and Ms Chillingworth that there had been a large accumulation of issues in the Claimant's short employment with the Respondent. Some of these, data protection and recording emergencies, created particular risks for the business. The Claimant had received additional training and shown no improvement. Latterly, the Claimant had been offered further training to address her difficulties in getting to grips with the Respondent's systems and had rejected this. There were also concerns around wrap-up time, correctly recording her presence and over-speaking customers.

93. There are no facts from which in the absence of an explanation, we could find the reason for dismissal was because of race or national origins. If the burden had shifted, we would have been satisfied by the Respondent's non-discriminatory explanation.

94. Not everyone is well-suited to working in the environment of a call centre, dealing with customer concerns and complaints, according to set procedures, using specific IT systems, all under pressure of time. Somewhat inconsistently, the Claimant struggled to get to grips with the Respondent's systems and yet, latterly at least, rejected further training as unnecessary and repetitive. We note there would be little or no opportunity for her to bring her legal knowledge into play in this role. Originally, the Claimant appeared to be frustrated by her own lack of progress. Following her dismissal, however, the Claimant became convinced she had been targeted. Notwithstanding her current strength of feeling, the Claimant's original view was more accurate.

<u>Opportunity to Raise a Grievance</u>

95. There is no evidence of the Claimant being denied an opportunity to raise a grievance. The Claimant had been advised of her rights in this regard in the contract sent to her with the offer of employment, which provided insofar as material:

> **Grievance procedure**

> **If you have any grievance relating to your employment, you should raise it with your Line Manager in the first instance. If you want the grievance to be dealt with formally, you must raise it in writing.**
>
> **A more detailed explanation of the formal procedure is contained in the Grievance Procedure available on the hub.**

96. There is no evidence of the Claimant attempting to raise a grievance, asking how this may be done or otherwise complaining, at any point prior to 21 February 2022, when she was told she was being dismissed.

97. When the Claimant made complaints to Ms Chillingworth, these were explored and responded to in the letter confirming her dismissal. On her raising further complaints in the grounds of appeal, these were investigated by Ms Havenhand, thoroughly, and addressed in the outcome letter. The Claimant made no other attempt to complain. The Claimant did not seek to raise a grievance separately from voicing her objection to the decision to dismiss.

98. Accordingly, the detriment alleged was not done. For the avoidance of doubt, however, there are no facts from which in the absence of explanation we could have found the manner in which the Claimant's post-termination complaints were responded to was discriminatory. Had the burden shifted, we would have been satisfied by the Respondent's explanation and the way in which these concerns were addressed had nothing whatsoever to do with race or national origins.

Direct Discrimination

99. Accordingly, the Claimant's complaint of direct race discrimination is not well founded and is dismissed. As set out above, variously, no detriment was shown or the matter established was not done because of race or national origins.

Victimisation

100. As set out above, the Claimant's claims were clarified as being matters of direct race discrimination. For the sake of completeness, however, we note that the earliest occasion on which it might be said the Claimant had done a protected act was orally on 21 February 2022, after she had been told of her dismissal, which post-dates the detriments contended for.

Breach of Contact

101. In her claim form, the Claimant had ticked the box for notice pay. In the course of her evidence, however, she accepted she was paid in lieu for the one week notice period given. We find the Claimant was correctly paid for her notice period and nothing is due in this regard.

EJ Maxwell

Date: 24 August 2023