



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000003/2023

5

Held in Glasgow on 21, 22, 23, 24, 27 and 28 November 2023

Employment Judge L Doherty
Members Dr S Singh and Mr J McElwee

10 **Dr Aamir Rasheed**

**Claimant
In Person**

15 **University of Strathclyde**

**Respondent
Represented by:
Ms E Drysdale -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The unanimous judgment the Employment Tribunal is that:

- (1) the claim under Section 13 of the Equality Act 2010 (the EQA) is dismissed;
and
- (2) the claim under section 27 of the EQA is dismissed.

REASONS

25 1. In a claim presented on 4 January 2023 the claimant brings complaints of direct race discrimination and victimisation under the Equality Act 2010 (the EQA).

2. Following Preliminary Hearings for case management, the claims were identified as follows:

30 **Direct discrimination (Section 13 of the EQA)**

3. The complaint of direct discrimination is made on the grounds that the claimants not being shortlisted for the post of Skills Researcher was an act of less favourable treatment. The comparator relied upon is the candidate who

was appointed to the post. The protected characteristic relied upon is race, being the claimant's Pakistani national origin.

4. It is accepted that the claimant was not shortlisted. The issue for the Tribunal is to determine whether in not being shortlisted for the post of Skills Researcher the claimant was subjected to less favourable treatment than his chosen comparator. Consideration of that question includes considering whether the circumstances of the claimant's comparator were materially the same as the claimant's circumstances, other than the protected characteristic of race, and if the less favourable treatment was on the grounds of the claimant's race.

Victimisation Claim (Section 27 of the EQA)

5. It is accepted that the grievance the claimant raised in October 2022 was a protected act for the purposes of Section 27 of the EQA.
6. The act of dismissal upon the conclusion of his fixed term contract is said to be an act of victimisation. The claimant also claims that he was subjected to a detriment in not being appointed to the role of Business Development Manager after interview.
7. No issue is taken that both of these acts amount to detriments. The issue is whether the claimant was subjected to this treatment because he had done a protected act.

The Hearing

8. The Parties produced a joint bundle of documents.

9. The claimant gave evidence on his own behalf.

10. For the respondent's evidence was given by:

- Mr. Stewart McKinlay – who dealt with claimant grievance into the recruitment process for the Skills Researcher post;
- Mr. James Hannigan - Panel convenor for the shortlisting/interviews for the posts of Skills Researcher/Skills Project Leader;

- Dr. Ekaterina McKenna - the claimant's line manager;
- Ms. Christine Dent - Interview panel convenor for Business Development Manager role;
- Dr. Lynne O'Hare – Head of Department in which the claimant worked; and
- Prof Douglas Brodie – dealt with the claimant's appeal against redundancy dismissal.

Findings in Fact

11. The Respondents are a university based in Glasgow involved among other things in the provision of further education and research.
12. They benefit from a number of policies and procedures for the management of staff, including a grievance policy and a recruitment policy.
13. The claimant, who is 41 years old, was employed by the respondents under a full time fixed term contract, his employment commencing on 19 April 2021.
15. The claimant's fixed term contract expired on 18 April 2023. He was employed as an SME Engagement Adviser (an SME) within the National Manufacturing Institute Scotland (NMIS). NMIS is part of the Faculty of Engineering at the University of Strathclyde.

Skills Researcher Post/ Skills Lead Post– Energy Transition to Net Zero Carbon

- 20 14. At some point prior to July 2022 the senior management of the Manufacturing Skills Academy (MSA) which is part of NMIS, and which included Mr Hannigan, Mr Hernandez and Mr McKinlay, decided that two new posts should be created. One was the Skills Project Lead – Energy Transition to Net Zero Carbon (Skills Lead post) and the other was the Skills Researcher
- 25 post.
15. It was considered that it was necessary to create a Skills Researcher post in order to help understand the demand for the types of skills work in Scotland. The main elements of the role were a good understanding of the labour

market indicators in Scotland, as supported by the data from public entities such as Skills Scotland and Scottish Enterprise; the ability to interpret output from public entities and influence public policy; an understanding of the what is happening with skills globally and how that impacted the demands of skills in Scotland; and a good knowledge of the skills landscape in Scotland which involved the demand for skills, education, provision, and public impact.

- 5
16. The Skills Lead post was a technical post which required candidates with relevant technical skills.
17. On 14 July 2022, the respondent advertised for the role of Skills Researcher, with a closing date for applications of 7 August 2022.
- 10

18. The job specification for the advertised post contained the following:

“...The Manufacturing Skills Academy within NMIS seeks to appoint a Skills Researcher to guide MSA Leadership/Programme Managers/Project Leads in delivering evidence-based informed skills projects as well as provide research into the global skills landscape, foresighting trends that can be used to inform the MSA strategy and business planning process.

15

You will join external networks to share information and ideas, inform the development of research objectives and look to identify potential sources of funding. You will collaborate with colleagues to ensure that research advances inform MSA teaching and pedagogy and you will collaborate with colleagues on the development of knowledge exchange activities by, for example, participating in initiatives that establish skills research links with industry, wider education and influence public policy.

20

Your outputs will address future skills transition needs and requirements including transition to net zero – providing research into upskilling and reskilling to support the development of green skills in support of the ambitions within UK & Scottish Governments – for example Climate Emergency Skills Action Plan (CESAP) and Just Transition and Digital Strategies.”

25

19. The main activities of the job were advertised as follows:

“You will work closely with MSA team members and stakeholders and will be responsible for overseeing, organising and reporting on skills project related activities.

To be considered for the role, you will be educated to a minimum of Degree 5 level and you will have sufficient breadth or depth of knowledge in the relevant discipline/s to contribute to skills research programmes and to the development of skills research activities as required by NMIS MSA. You will have experience of working with industry, education, academia and the public sector; strong skills research experience, project management experience, and excellent oral and written communication skills.”

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20. The main activities of the job were advertised as follows:

“Leadership – As part of the MSA group, lead on developing skills research proposals and objectives and play a lead role in relation to other project/s or broader projects, with guidance from MSA colleagues as required. Represent skills research and the MSA to industry, business, education and the public sector as required.

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Finances - Identify sources of funding and contribute to the securing of funds for skills research, including drafting grant proposals and planning for future proposals. Join external networks to share information and ideas and inform the development of wider skills research objectives.

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Function - Conduct individual and/or collaborative research, including determining appropriate research methods and contributing to the development of new research methods as appropriate to skills.

Collaboration - Collaborate with NMIS & MSA colleagues on the development of knowledge exchange activities by, for example, participating in initiatives, which establish skills research links with industry and influence public policy.

25

Reporting - Write up skills research work for publication, individually or in collaboration with colleagues, and disseminate results as appropriate to the discipline by, for example, peer reviewed journal publications and presentation at conferences.

30

Innovation - Collaborate with NMIS colleagues to ensure that skills research advances inform MSA pedagogy and teaching strategies.

Development - Contribute in a developing capacity within NMIS MSA to administrative and management functions and committees.

5 *Relationships – Build relationships with other skills research individuals and bodies across the educational landscape in Scotland and the UK e.g. Scottish College Sector*

General - Engage in Continuous Professional Development.

10 21. The job advertisement stated that whilst not essential for the role, applications were welcomed from candidates with a skills/engineering/manufacturing background.

22. This was included in order to broaden access to the role in an organisation which included a number of employees from a technical background.

15 23. On 20 July 2022, the respondent advertised for the role of Skills Lead. The content of the job advertisement indicated that the post was a technical role.

Claimant's application for post of Skills Researcher

24. On 8 August 2022, the respondent received the claimant's application for the Skills Researcher post. Though this application was submitted late, it was accepted by the respondents.

20 25. The claimant's covering letter with his CV stated following:

25 *"... I am confident that I have the particular skill set and industrial experience desired and essential for the role. I have completed my doctorate in Sustainability and Net Carbon zero and Chartered Mechanical Engineer, working towards Chartered Environmental (CEnv) status. During my doctorate programme, my primary focus was on sustainability performance assessment in manufacturing and identifying the hotspots in manufacturing operations to reduce carbon emissions. I have experience working directly and indirectly as a Sustainability custodian with SMEs and Multinationals around the globe. As*

a Carbon auditor, I have completed many audits in manufacturing organisations and set the standards and targets for the organisation. In 2019, I led Reckitt Benckiser in the Low Carbon Award category for Chemicals Industry Awards (CIA). We won the best category award in the Low Carbon emissions category in the UK manufacturing sector. After reading the Job description, essentials and desired details, I found deep interest and matched skill set for the role.

While working in the manufacturing sector for over 17 years, I have gained experience and training to identify the organisation's skills gap in operations and employees' training programs. This follows an action plan to develop a training program to meet the organisation's challenges and future needs. I understand the challenges for the manufacturing sector, including SMEs, to deal with the Environmental challenges and the regulations and targets. I have a solid track record of managing and completing complex projects in industrial and academic environments. In my current role, I am dealing with Scotland's manufacturing sector, particularly SMEs. I am already aware of the skills gaps and the need for the training program for companies to work on Net Carbon zero goals.

I look forward to further discussing how we can develop a road map for the manufacturing sector, including courses, training and literature to achieve Carbon Neutral status for the manufacturing industry in Scotland.”

26. The claimant's CV contained details of the following qualifications:

EngD – Engineering Doctorate (2014-22) - University of Strathclyde Glasgow, UK

25 CEng – Chartered Engineer (2018) - Institute of Mechanical Engineers, UK

MBA – Project Management (2007-09)- Government College University Lahore, PAK

BEng – Mechatronics & Control (2001 – 04) - University of Engineering and Technology Lahore, PAK

27. The claimant's CV set out the details of his Professional Experience as follows:

*National Manufacturing Institute Scotland (NMIS) & University of Strathclyde
Glasgow*

5 *Glasgow, UK - April 2021 to Present*

SME Engagement Adviser – Food & Drinks Sector

- *Advisory services for the manufacturing sector, including sustainability issues and industry 4.0.*
- *Develop strategy in line with NMIS research and business development plans to help NMIS meet manufacturing SMEs' research, innovation, market research and analysis*
- *Build a strong network internally and externally to enable the exchange of information, forming relationships with customers, suppliers and colleagues to enable future collaboration*
- *Define and maintain technology roadmaps and other records of strategic direction as required to support effective programmes, bids and ongoing relationships*
- *Use technical and project management skills to plan, lead and deliver projects*

20 *Moy Park*

Sep 2020 to Feb 2021

Project & Site Services Manager

- *Environment and sustainability elements managing, reporting and dealing with compliance issues.*
- *Identify, prioritise, and create CAPEX proposals to maintain and develop the site infrastructure according to Business Team/Group strategic objectives*

- *Ensure full compliance with project management policies and procedures, and work with developers, designers, and sub-contractors to define and document the scope of work*
- 5 • *Manage sub-contractor testing and commissioning, conduct witness testing with subcontractors*
- *Assist in writing and reviewing Commissioning and Testing RAMS Project (10) (December 20 to February 21)*

Total Cost: £200 K

COVID19 Lab/testing facility

- 10 • *Design, construct and manufacture a COVID lab for employees and visitors to test*
- *Prepare SOP and procurement materials and meet the compliances and KPIs*

Reckitt Benckiser

15 *March 2019 to Oct 2020*

Engineering Project & Sustainability Manager - FTC

- *Delivery of the engineering projects starting from feasibility study to installation and commissioning.*
- *Review progress, budget resources and planning, and prepare the tendering details of the work.*
- 20 • *Engagement, communication with multiple stakeholders and preparation of the project brief*
- *Continually assess and identify improvement initiatives to support engineering development*
- 25 • *Aware of Upper Tier COMAH site, DSEAR regulations, HAZOP, LOPA and calculation of SIL rating*

Project (9) (January 20 to August 20)

Total Cost: £260 K

Site CCTV surveillance

- *Complete the feasibility study and construction of the work*
- 5 • *Managing contractors and coordinating site services to complete work On-Time and On-Budget*

Project (8) (April 19 to August 20)

Total Cost: £650 K

HVL Flammable bunds protection

- 10 • *Design work of bund protection (assessment) as per CIRA guidelines*
- *Execute work through suitable contractors On-Time and On-Budget*

Project (7) (February 20 to May 20)

Total Cost: £220 K

Aerosol line capacity enhancement

- 15 • *Complete the feasibility study and prepare the scope of work*
- *Procurement and complete the installation and commissioning of the product line*

Project (6) (April 19 to October 19)

Total Cost: £250 K

20 *LPG Tanks farm*

- *Design Construction and upgrade the LPG tank farm area*
- *Execute work through suitable contractors On-Time and On-Budget.*

TRB Light Weight Manufacturing

Sept 2018 to Feb 2019

Automation Project Engineer - FTC

- *Automation of battery panels manufacturing*
- 5 • *Manage automation and control projects*
- *Manage the installation and commissioning of three hydraulic presses*

Distell International Ltd

Project Engineer

- *Managing sustainability issues, reporting and setting KPI*
- 10 • *Organise engineering works, contracts and vendor development and relationship with key stakeholders*
- *Prepare feasibility reports, assuring the returns on engineering projects' investments and Construction (Design and Management)*
- *Assess and manage site sustainability and sustainability reporting*
- 15 • *Prepare project briefs, URS and preparation of the tendering/bidding documents*
- *CAD Drawings & Design of Manufacturing Facilities*
- *ISO14001 certification – Lead assessor role*

Project (5) (November 15 to Jan -16)

20 *Total Cost: £ 300 K*

Transformation of Carton assembly hall

- *Spiral conveyors of bottling lines*
- *Prepare planning application & new floor production hall.*

- *Up-gradation of case erectors Project (4) (August -14 to Feb -15)*

Total Cost: £ 1.6 Million

Combing of bottling old line-3 & 4 with using existing Labeler

- *Project concept, feasibility and design layout*
- 5 • *Installation & commissioning of new and old equipment in line with a process*
- *New epoxy floor coating in the manufacturing facility*

Nestle Pakistan Limited

SKP Factory - June 2006 to May 2011

10 *Project Engineer (Jan-10 to May -11)*

- *Concept layout, start-up, and successfully commissioned various engineering projects*
- *Ensure that the scope, deliverables, performance, and milestones are detailed and agreed upon upfront when working with external engineering contractors and suppliers*

15

Project (3) (January 10 to May 10)

New PET blowing machine (Nestle pure life)

Total Cost: £ 1.1 Million

- *Project concept and design layout*
- 20 • *The combination of two PET bottle blowing machines and filler commissioned on 1.5L*
- *Installation & commissioning of second hand palletises unit*

Site Performance Engineer (June 06 to December 09)

- *Sustainability assessment & CI projects*

- *Energy Audits and performance reporting about project KPIs*
- *Operations Excellence Award – 2008 received (performance-based - Nestle Pakistan Ltd)*

EMS Project (2) (April 08 to September 08)

5 *Total Cost: £ 200K*

Energy Saving Solution (EMS) for cooling water / hot water / raw water pumps provides pressure-based flow control by continuously sensing the back pressure at standard headers Based on the sensor signal, the controller increases/decreases the speed of the distribution pumps through variable frequency drives (VFDs)

10

Coca-Cola Beverages Pakistan Limited

Jan 2005 to June 2006

Trainee Project Engineer

- *Support the Project team in different activities*
- 15 • *AutoCAD drawings & Utility layouts*
- *Manage clear communication and instructions to contractors*
- *Ensure work completion as per timeline and as per quality defined*

PET Mega Project (1) August 05 to January 06

Total Cost: \$ 4.2 Mio (Green Factory)

- 20 • *Construction of the building and manufacturing facilities*
- *Installation and commissioning of SACMI filler with a capacity of 18,000 bottles / Hour*
- *Installation and commissioning of BLOW MAX SIG 8 mould Unit*
- 25 • *Installation, Commissioning and Training of Husky HYPET – 300 (Pre-form maker)*

Technical Skills

- *Microsoft Project (2000 to Present)*
- *AutoCAD (2001 to Present)*
- *SAP (2005 to present), HACCP 1 & 2*
- 5 • *Safe Work System & Risks Impact Matrix*
- *The Carbon Trust (Carbon auditor qualification – 2016)*
- *BRC Auditor (2016)*

28. The claimant attended an awards dinner in 2019, where in his capacity as project manager for RB Derby he, along with the Site Services manager, accepted on their behalf a Low Carbon Award. The claimant produced an email dated 25 June confirming this. This was not included in the application considered by the shortlisting panel.

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Comparators Application for Skills Researcher Post

29. The application from the successful candidate contained the following:

15 *“I am an extremely self-motivated and enthusiastic individual with a can-do attitude who thrives on working in a friendly, fast-paced environment seeking a rewarding role. Since graduating with an Economics and History degree I have worked for Skills Development Scotland within both the Evidence & Impact team and the Government & Parliamentary team contributing to*

20 *Economic Impact Assessments and labour market analysis. I also managed a Briefing Bank producing high-level briefings for senior colleagues for committee appearances with Scottish Government. I have also studied modules on Economic Development, Urban & Regional Economics and Advanced Macroeconomics and have a solid understanding of the economic*

25 *principles associated with skills, development and infrastructure. I believe that the Skills Researcher role would be the perfect opportunity for me to contribute my skills and experience whilst also immersing myself into the Strathclyde team.”*

.....

EXPERIENCE

APRIL 2022 – JULY 2022

5 *After finishing my previous role, I have been on a career break travelling Europe where I have vastly enhanced a wide range of skills including communication, confidence, resilience and time-management.*

OCTOBER 2021 – APRIL 2022

BRIEFING BANK ASSISTANT, SKILLS DEVELOPMENT SCOTLAND

10 *I was responsible for producing a large selection of economic and political briefings for audiences including the CEO, internal colleagues as well as the Scottish Government. I quickly understand large sources of literature and data, producing easily understandable results at pace for a multitude of audiences. Interacting with colleagues and external stakeholders has excelled my communication and influencing skills further.*

15 *I successfully produced a new collection of Briefings for every Scottish local authority. This involved excellent planning and organisation followed by detailed research and collaboration with internal stakeholders before I delivered 32 new briefings for all colleagues and selected external stakeholders to use.*

20 *I was also the secretary for the Youth Board responsible for organising meetings and wider events and helping to promote projects based on the climate emergency, the future of work and wellbeing.*

NOVEMBER 2020 – OCTOBER 2021

25 *EVIDENCE AND RESEARCH GRADUATE INTERN, SKILLS DEVELOPMENT SCOTLAND*

I worked as a graduate to assist in the Skills Alignment directorate. I was involved in projects aiming to understand the economic requirements for the Scottish labour markets and potential policies which could be implemented

across Scotland to improve education and employment possibilities. I routinely used my skills in data projects as well as written communications. I also assisted in providing briefings for the CEO and Skills Directors.

*MAY – AUGUST 2017, JUNE -AUGUST 2018, JULY -SEPTEMBER 2019
AND AUGUST-OCTOBER 2020*

ADMINISTRATION ASSISTANT, LEICA BIOSYSTEMS

I worked across multiple departments archiving medical documentation and assisting in producing goods sold by the company. I learnt to complete detailed forms ensuring all information was accurate as this was vital. I also improved my communication skills and responsibility, ensuring a high-quality outcome was achieved.

In addition, I have also completed a number of roles in the hospitality industry including waitressing and bar work which developed my ability to work confidently in a pressured and fast-paced environment.

EDUCATION

SEPTEMBER 2016 – MAY 2020

*BA (HONS) ECONOMICS AND HISTORY WITH INTERNATIONAL STUDY,
UNIVERSITY OF STRATHCLYDE*

In 2020 I finished my degree studying Economics and History. I took classes in Advanced Macroeconomics, Natural Resource and Environmental Economics, History of Human Experimentation alongside my dissertation focused on economic recovery in Thailand following the 2004 Tsunami after pursuing my interest in economic development. This involved detailed research combining a series of data forecasts I produced examining multiple economic indicators with a literature review to produce an interpretation of my findings.

I have also studied Microeconomics and Game Theory to a high level alongside classes in Modern European and World History. Together these

have given me a clear understanding of the world today, as well as the way it has been shaped by the past. AUGUST 2018 – JULY 2019

STUDY ABROAD, CANADA AND SPAIN

I seized the opportunity to participate in an Academic Exchange at Queen's University in Canada for 4 months and an Erasmus Exchange at Universitat Pompeu Fabra in Spain for 6 months.

This enhanced my confidence hugely as well as my communication skills and cultural adaptability, which came from moving internationally independent and learning Spanish.

10 *I enhanced my experience taking classes in European Economics, Game Theory, Economic Development and Urban and Regional Economics as well as Modern History across Europe and the world.*

30. The CV also contained details of volunteering in the period from 2015 to 2020.

15 31. This application was accompanied by a supporting statement which contained, among other details, the following:

Supporting Statement

20 *After completing my degree in Economics and History from the University of Strathclyde and working at Skills Development Scotland (SDS) within the Evidence & Impact Team and the Government & Parliamentary Team for eighteen months, my curiosity and enthusiasm to research and understand skills and the bigger picture has been cemented. Thus, I am confident that the role as a Skills Researcher would be the perfect opportunity for me to contribute my skills to the Manufacturing Skills Academy and Strathclyde, as well as being able to develop my own research skills and experience further*

25 *learning from industry experts.*

Through my role in the Evidence & Impact team I was involved with a number of skills research projects seeking to understand the impact of net zero on the manufacturing and energy sector. This followed evaluations from the Climate Emergency Skills Action Plan (CESAP) and our research aimed to help

understand the challenges that would arise in the labour market and what SDS and the wider economy could do to support this skills transition. Through this project we collaborated with external stakeholder teams at Warwick University to intertwine both sets of research and widen our data outreach.

5 *In addition, I played a large role in the Green Energy Deep Dive project where I have been responsible for conducting a vast amount of research into the Construction sector analysing an assortment of literature and data from a diverse range of sources. This has allowed me to demonstrate my management skills where I am able to contribute to a product through from*
10 *the beginning to the end helping to shape the final output and contribute to a product impacting the wider economy and the future of climate change in that sector.*

This research on net zero and manufacturing through a number of PESTEL reviews as well as literature and data reviews has given me a fundamental
15 *understanding of Net Zero Carbon, the Manufacturing Sector, digital transformation and the Just Transition. I have been able to understand these different policy impacts and the changes required in the labour market to meet these adjustments in a sustainable way.*

Working across other educational research skills projects including school
20 *and university leaver destinations has provided me with a solid awareness of skills developments within multiple industries, the public sector and further & higher education as well as the overall external professional environment and the impacts that these have on overall outcomes.*

I am also confident in being able to undertake a detailed and high-level piece
25 *of analysis examining a wide range of sources to analyse and evaluate evidence and to make informed decisions providing insight and recommendations for specific requirements. Through this I have been able to prove my ability to find data from key sources such as Burning Glass, ONS and Nomis, as well as then co-ordinating that data to deliver new and*
30 *improved evidence and insights to whatever the needs of the individual or business may be. This gave me direct experience of skills knowledge*

exchange related activities and has provided me with many opportunities to network across the educational landscape.

5 *After working for a biomedical firm, I am confident in my ability to handle confidential information securely and sensitively. I was solely responsible for documenting all medical information for confidential cancer diagnostic kits meaning it was vital all information was correct. This demonstrates my capability to work accurately whilst also in a high-pressured environment.*

10 *My dedication to continuously developing my own skills, experience and knowledge is something I am deeply committed to within every role I undertake. I routinely set myself professional targets to develop my specialist, technical and professional capability and seek out opportunities to increase my expertise through an array of training courses and experiences. I have taken part in a number of online courses through EDAS, Glasgow University and Santander covering Economic Development, Inclusive Growth and Digital*
15 *Skills to name a few.*

I have strong analytical skills with the ability to pay close attention to detail whilst accommodating a demanding, fast-paced and changing environment. This was paramount to my work in the Evidence team where I solely updated three different Reports on a monthly basis - the Covid Dashboard, North-East
20 *Update and the Chair's Brief. For this I was required to source all new data and update previous figures, tables and charts before sending them to an internal mailing list as well as one to be published online for an external audience. This requires me to work efficiently and effectively under pressure to meet strict time deadlines as I had 1.5 days to get everything completed.*

25 *This helps me to intertwine my problem-solving skills as these reports share some of the same data sets but different pieces of data from within them. I was able to be more efficient in my role by tackling one data set at a time and then using this to update all three reports simultaneously. This helped to make the process a lot quicker overall and kept my outputs more accurate too, as*
30 *well as requiring strict attention to detail and strong organisational and planning skills on my part.*

Alongside these reports I also hold skills using a variety of data software including Excel, Word, PowerPoint, Power Bi and R. This provides me with the capability to produce accurate data analysis and transform large datasets into manageable outputs that have contributed to decision making within the wider skills planning directorate. I have also expanded my knowledge further becoming familiar with a large selection of databases and software that have helped me to excel in my role. These include Burning Glass, Oxford Economics, HESA, Infact, Nomis, Stat-Xplore and the Office for National Statistics database as the most relevant examples. This was important in my previous positing to quickly familiarise myself with these and gain a solid understanding for how to use these databases in different projects and knowing which data is most suitable to each output. I believe these skills and knowledge would be extremely beneficial to the role as a Business Analyst Executive.

Through my previous role in the Government & Parliamentary team, I positively communicated with a range of programme stakeholders as well as staff of all levels of seniority. From this experience I am confidently able to absorb large volumes of information quickly and translate them into key insights and short briefings. As part of the Briefing Bank, I also produced a wide variety of briefings on demand for senior colleagues to take to board discussions and meetings with government members. This gave me direct experience of working in a cross functional team with colleagues from multiple departments. These briefings covered a wide array of topics including, Levelling Up, Skills Shortages and Apprenticeships as well as sector specific information. Due to the tight timescales, it was essential I could quickly grasp what would be most important to that specific audience and put it into the most suitable format. This shows my ability to present complex information in a clear and accurate way. Furthermore, I also used these opportunities to expand my own knowledge and I have been able to contribute these skills back to my team through shared learning opportunities where I presented a session on poverty and its impact on the labour market. This additionally demonstrates my proven track record of managing and prioritising my

workload successfully as well as handling competing demands from other projects and stakeholders too.”

Shortlisting Process - Skills Researcher post

32. The respondents received 13 applications for this post.
- 5 33. The recruitment and shortlisting process for the post of Skills Researcher were carried out in accordance with the respondent’s standard practices.
34. Mr Hannigan acted as the convenor of the recruitment panel; Mr Hernandez was on the panel alongside him. Ms Johnstone of HR provided HR support.
- 10 35. At the shortlisting stage of the recruitment process the applicants were scored out of three. A score of zero was awarded for “does not meet the criteria”; one was awarded for “partially meets the criteria;” two was awarded for “meets the criteria; and three was awarded for “exceeds the criteria.”
- 15 36. All of the applications were considered through in light of the requirements for the skills researcher post. The panel was looking to recruit someone with a background in skills research who understood the economic relationship between skills, the economy and workforce development.
37. The criteria on which the job applications were marked were as follows:
- (1) *educated to Degree level in a relevant discipline;*
 - (2) *breadth or depth of knowledge in the relevant discipline/s;*
 - 20 (3) *experience of working with industry, education, academia and the public sector;*
 - (4) *Interpersonal, presentation and written communication skills;*
 - (5) *continuous development of postholder’s own specialist/technical/professional capability;*
 - 25 (6) *aptitude for working with staff of all levels of seniority;*
 - (7) *membership of relevant Chartered/professional bodies;*

(8) *experience of financial management and controlling budgets;*

(9) *experience of skills knowledge exchange related activities and networking.”*

38. The shortlisting panel carried out their scoring of the applications on the basis of the content of the applications only. Scores were agreed by Mr Hannigan and Mr Hernandez and reviewed by Ms Johnstone of HR.
39. The panel considered that the claimant’s application showed he met the degree requirements for the post. He was scored 2 against criteria 1. As the requirement was for a degree in a relevant discipline, and not a Doctorate, the claimant’s educational qualification did not attract a higher score.
40. The comparator also scored 2, as she had a degree in a relevant discipline. Economics was considered a relevant discipline to the post given the type of data analysis it involved.
41. The claimant scored 0 under criteria 2 (breadth or depth of knowledge in the relevant discipline/s). The panel considered that the claimant’s CV and covering letter were indicative of an engineering/project managing background. They did not consider that it demonstrated any experience in skills research, involving consideration of labour market indicators/workforce development and links to the economy, and that his application demonstrated professional experience of completely different types of role.
42. The panel considered that the comparator’s application contained evidence of relevant experience. This was demonstrated by her previous employment with Skills Development Scotland (the SDA) which included involvement in projects aimed to understand the economic requirements of the Scottish labour market; and work she has undertaken in skills research projects in the Evidence and Impact Team of the SDA seeking to understand the impact of net zero on the manufacturing and energy sector , as set out in her supporting statement. Mr Harrigan considered her supporting statement was very strong and indicated that she was a candidate who understood what was required of the role. The claimant scored 3 against this criteria.

43. The panel scored the claimant 1 under criteria 3 (experience of working with industry, education, academia and the public sector) on the basis that the claimant's application demonstrated his having worked in industry but there was nothing in relation to education and the public sector.
- 5 44. The comparator scored 2 on the basis of her experience with the SDA outlined in her C V and supporting statement.
45. The claimant scored 1 against criteria 4 (Interpersonal, presentation and written communication skills) on the basis that he had presented almost identical applications for the two posts (Skills Researcher and Skills Project
10 Lead) which had very different requirements.
46. The comparator scored 2 on the basis that the panel considered her application was well drafted in order to highlight relevant content.
47. Against criteria 5, 6, and 7, the claimant scored either higher or the same as his comparator.
- 15 48. The claimant achieved a score of 1 under criteria 8 (experience of financial management and controlling budgets) on the basis that his CV indicated the value of projects he had worked on but did not demonstrate his experience of budgeting.
49. The comparator scored 0 under this criteria as her application did not
20 demonstrate budgetary experience.
50. The claimant scored 0 against criteria 9 (experience of skills knowledge exchange related activities and networking). The panel did not consider that the claimants application demonstrated knowledge of skills knowledge related activities, and considered that it primarily demonstrated his technical
25 experience.
51. The comparator was scored 3 on the basis that the panel considered her application demonstrated a good understanding of skills knowledge exchange related activities and networking on the basis of her experience at the SDA and information included in her supporting statement.

52. The claimant achieved an overall score of 12. He was not shortlisted for interview.
53. The successful candidate achieved an overall score of 16 and was progressed to interview along with three other candidates.

5 **Claimant's application - Skills Lead post**

54. The claimant also applied for the Skills lead post. The CV he submitted was identical to that submitted for the Skills Researcher post. The cover letter accompanying it differed only to the extent of the job title, and it did not include the sentence *"After reading the Job description, essentials and desired details, I found deep interest and matched skill set for the role"*.
55. The claimant's application was considered at shortlisting by the same panel of Mr Hannigan and Mr Hernandez, supported by Ms Johnston, adopting the same methodology in line with the standard university practice, and as were applied to the Skills Researcher post shortlisting.
- 15 56. The panel considered the claimant's application demonstrated technical experience which was relevant to the post, and he was shortlisted along with one other candidate, for interview.
57. The interview panel comprised of Mr Hannigan and Mr Hernandez supported by HR advisor Ms Johnstone. The interview panel did not consider that the claimant performed well at interview, which was reflected in the contemporaneous notes made at the time. The claimant was not selected for the post.
- 20

Claimant's grievance

58. On discovering the identity of the successful candidates for the Skills Researcher post and Skills Lead posts, the claimant formed the view that they did not have any relevant qualifications for the posts.
- 25
59. On 14 October 2022, the Claimant emailed Stewart McKinlay, Roslynd Johnstone and Human Resources complaining that he had been unsuccessful in interview for the Project Lead role and had not being

shortlisted for Skills Researcher role. The email stated that the selection of candidates showed “*nepotism, discrimination, gender discrimination and abuse of authority*” and that the claimant did not believe those selected had the relevant skills and experience for the roles.

5 60. On 18 October 2022, the Claimant submitted his formal grievance in which he alleged discrimination due to “*background and gender*” by James Hannigan due to his unsuccessful interview for Skills Project Lead role and not being shortlisted for Skills Researcher

10 61. A formal grievance meeting took place on 1 November 2022. The Claimant attended alongside his Trade Union representative. Stewart McKinlay and Dawn Watt of HR were the investigatory officers.

15 62. In the course of the meeting the Claimant stated that he felt that his skills and experience were well-suited to both the Skills Researcher and Skills Project Lead posts. He stated that the successful candidate for the Skills Researcher post did not have the necessary technical experience and did not meet the qualification criteria for the post as she only had an undergraduate degree.

20 63. The Claimant alleged that Mr Hernandez had advised a colleague (Jannero) that James Hannigan was solely responsible for the decision not to shortlist him for the Skills Researcher role. The Claimant believed the successful applicants were less suitable for the roles than him due to being educated to undergraduate degree level only, with no engineering background. This led him conclude that James Hannigan had discriminated against him because of his “*race, background and possibly his faith.*”

64. The claimant asked for clarity on the shortlisting and interview scores.

25 65. An investigation was carried out which included Ms Watt contacting Mr Hernandez and Ms Johnstone to put the claimant’s allegations to them. A meeting took place with Mr Hannigan on 16 November to put the claimant’s allegations to him.

66. The claimant’s allegations were denied by everyone involved.

67. Ms Johnstone, Mr Hernandez and Mr Hannigan confirmed the recruitment protocols followed. Mr Hernandez denied that he had told Jannero that Mr Hannigan alone had shortlisted the post.

68. Mr Hannigan explained there was no evidence via the claimant's application for the Skills Researcher post that the claimant had the skills for the job, and expressed the view that the claimant misunderstood the role.

69. The grievance was not upheld and the report detailing the full reasons for this decision, which included an explanation of the scoring for criteria 2 which the claimant had highlighted, was sent to the claimant on the 20 on December 2022.

70. The claimant was advised of his right to appeal against the outcome of the grievance which he did in a letter dated 15 December 2022.

71. The purpose of the appeal was to conduct a review of the original decision, not to re-investigate the original decision, and this was confirmed to the claimant.

72. The appeal was dealt with by Gordon Scott, who did not uphold it. The appeal outcome letter was sent to the claimant on the 2 May 2023.

73. At some point in October 2022, during the course of a 1-1 meeting the claimant told his line manager, Dr McKenna the SME Engagement Lead, that he had not been appointed to the posts in the Skills Manufacturing Academy (SMS). He told her that he told her that he had made a complaint about this to Mr McKinlay. Dr McKenna did not discuss this with anyone.

Claimant's application for the post of Business Development Manager

74. The respondents created 3 new roles of Business Development Manager (BDMs) and advertisements were placed for these posts internally and externally. Dr O'Hare, who was the Head of Department in which the claimant, Dr McKenna and Ms Dent worked, convened the shortlisting panel.

75. The claimant applied for the post.

76. The shortlisting process took place in line with the respondent's standard procedure. On the panel alongside Dr O'Hare were a Mr Ingram and a Mr Miller.
77. The claimant was shortlisted for interview and attended for interview on the 21 November.
78. Christine Dent had been asked by Dr O'Hare to be the panel convenor for the interview process for these posts. Ms Dent was a senior member of the BD Team within NMIS and the BMD posts fell within her team. She had recently returned from Maternity leave and had the capacity to undertake the task.
- 10 79. At the claimant's interview stage Mr Miller had Covid and a Mr Burnham was substituted in his place.
80. The interviews were conducted by asking all of candidates a set list of questions and asking them to give a short presentation.
- 15 81. The claimant performed poorly at the interview. Contemporaneous notes from the interview process, which reflected the panels views, include notes to the effect that that the claimant lacked confidence and enthusiasm for an external facing role; he did not show a range of experience in the SME team; and he did not give clear response questions and appeared muddled. The claimant was not the preferred candidate for any of the panel and all the panel agreed after the interview that he was not suitable for the role.
- 20 82. Following the interview, Ms Dent reported back to Dr O'Hare either via teams or on the phone that there were three strong candidates for the posts.
83. Ms Dent had interviewed the claimant for the SME post which he was offered and had taken up. She was to some degree surprised at the claimant's poor performance at interview on this occasion which contrasted with his SME post interview, and told Dr O'Hare that the internal candidate had not performed well.
- 25 84. Ms Dent did not know that the claimant had a lodged a grievance. She was unaware of the outcome of the grievance report.

85. Dr O'Hare was unaware that the claimant had lodged a grievance. She was unaware of the grievance outcome report.

Claimant's Fixed Term contract

86. The claimant was employed under a fixed term contract with a start date of 5 19 April 2021 and an expected end date of 18 April 2023. The claimant signed an acceptance of this offer of this appointment specifying those terms on 7/4/21.
87. All of the SMEs were appointed as part of the SME programme, which was funded by Scottish Enterprise. The SME programme grant provided funding for capital expenditure and operational staff. The grant stipulated the build of a team of 10 SME Advisors for a fixed term of 2 years. The agreement for funding was signed in 2020 and was for a fixed term of 2 years.
88. The funding offer was based on a budget forecast. The respondents could claim the maximum amount on offer if they could demonstrate that they had spent the money on the purpose for which it had been allocated in the budget forecast.
89. The grant offer required the respondents to file claims each quarter for staff and other expenses, which were audited before submission. Costs could only be claimed for expenditure actually incurred.
90. The SME Advisor team did not have a full complement of SME advisors for the full duration of the programme, and therefore the respondents were not able to claims for the full amount of the budget forecast in the grant for staff costs. They could not draw down funds from the forecast budget in the grant for any purpose other than that specified in the grant.
91. There was funding available for the activities of the SME programme for two years only. The SME programme came to an end after two years.
92. All of SME Engagement Advisors were appointed on a two year fixed term contract basis. The SME Advisors were not all appointed on the same date, which meant that not all the SME Advisor contracts came to an end on the

same date. All of the SME Advisors, other than those who left their employment early had their contacts terminated on expiry of their 2 year fixed term.

5 93. A total of 8 full time SME advisors were appointed. Dr McKenna, who is employed under an open contract, was the SME Engagement Lead and was the team leader. The respondents wanted to have a geographical spread of SMEs which proved difficult. In order to try to achieve this, two appointments were made on a 2 year fixed term 0.5 FTE basis, one being based in the Highlands. These appointments were made later than the claimant's
10 appointment and these SME's remained employed by the respondents after the claimant's dismissal in order that the respondents could fulfil their contractual obligations to the two members of staff.

15 94. Some of the SME's advisors appointed did not remain in post for the full 2 year term. Dr McKenna made an application in September/October 2022 via the University's internal procedures to backfill two SME Engagement Advisor posts which had been vacated early, but this was not successful.

20 95. Dr McKenna also contributed to a paper prepared in December 2022 and presented in January 2023 to Scottish Enterprise which made suggestions about further work which could be done via some sort of the SME programme. No further funding was obtained and there was no further funding available the SME programme, which came to an end. There was no funding available to extend the contracts of any of the SME Advisors, including the claimant.

FOI Request

25 96. Information was obtained from Scottish Enterprise in response to a FOI request submitted by the claimant in which he asked:

1. *I have been reviewing the details and have noted that SE initially allocated a grant of £1.6 million for SME Advisors. However, it appears that a reduction of £668,735 was subsequently applied to the budget allocated for SME Advisors. I would greatly appreciate it if you could*

provide further insights into the reasons behind this reduction and the date on which it was implemented.

2. *Furthermore, I am aware that earlier this year, there were discussions at NMIS regarding the addition of two more SME advisors using the same funding. I kindly request that you provide details on whether these roles were approved and sanctioned for funding, or if they were declined. Response:*

97. The response was:

1. *The original grant offer dated 18 May 2020 included a full funding offer of £1.6 million for a SME Advisory Service to be delivered during the contract period. The funding was made available for a contract term that was for financial years 2020/21, 2021/22 and 2022/23 and a short extension was agreed to end in June 2023.*

The University of Strathclyde can only claim the grant from Scottish Enterprise based on sums expended. Scottish Enterprise has paid out a total of £852,353.85 based on verified claims made by the University of Strathclyde.

Further funding beyond the contract period was not available and this was made clear to the University from the outset of the contract.

2. *SE had no role in approving or declining additional SME advisors.*

Termination of employment

98. On 24 January 2023, the claimant had a 1-1 meeting with Dr McKenna, which was intended to deal with the handover of his work prior to a period of long annual leave.

99. In the course of the meeting the claimant told Dr McKenna about difficult personal circumstances he was experiencing.

100. Dr McKenna was concerned about the claimant's wellbeing and there was a discussion about that. She advised him to go home after the meeting. The

claimant presented a Fit Note from his GP dated 20 January for a period of 42 days certifying him as unfit for work for stress related problems.

- 5 101. The claimant had been assigned a project on the Knowledge Transfer Programme (KTP) commencing on 13 January. The claimant stated he had worked there but when Dr McKenna checked she was advised by the KTP centre that claimant had not done any work.
- 10 102. The claimant had accumulated annual leave of 28.5 days and Dr McKenna told him to take that on his return from sick leave. The effect of this was that she did not anticipate seeing the claimant back at work before the expiry of his fixed term contract.
103. Dr McKenna spent time in the meeting gauging the claimant's understanding that his contract was coming to an end and there was no possibility of an extension, and she was satisfied that he understood this.
104. The claimant did not return to work prior to the termination of his contract.
- 15 105. Dr McKenna emailed Dawn Watt of HR, copying Dr O'Hare, on 24 January under the subject heading '*An update on leave arrangements/Amir Rasheed/Sickness leave/End of Contract*' providing information about what had been discussed at the meeting of 20 January . She forwarded a copy of the fit note, advising that she had no information prior to that meeting about
20 his sickness and that he had claimed to work at the KTP ; that she had told him to go home and log sick leave and rest in line with his GP fit Note. She advised that she had listened to issues the claimant had shared with her , but she did not give any detail what they were.
- 25 106. Dawn Watt of HR wrote to the claimant on 21 March 2023 to confirm that his appointment would terminate on 18 April and advising of right to appeal against the decision and the amount of his redundancy pay.
107. The claimant's fixed term contract came to an end on 18 April 2023.

Claimant's appeal against redundancy dismissal

108. The claimant submitted an appeal against his redundancy dismissal. His appeal letter stated among other things that he considered it standard practice that when the department has funding available, then the employment contract is extended. He stated that there were discussions several times within the SME team that because many of the SME team members have left earlier of their two years fixed term contract, surplus funds can be used to extend existing teammates even for a shorter period. He stated he was aware that NMIS has surplus funds under the SME Engagement Team account and secured further funding to continue the SME Engagement Team role.
109. The appeal was considered by Professor Douglas Brodie of the Faculty of Humanities and Social Sciences. He was unaware that the claimant had lodged a grievance or the outcome of it.
110. An appeal hearing took place on 17 April 2023. The claimant introduced 2 new points at the appeal hearing which had not been incorporated in his written appeal, which were recorded in the minutes of the appeal meeting and were subsequently dealt with. The claimant did not include in the points he raised that he considered his dismissal was as a result of having of his having raised a grievance.
111. Further to that hearing, investigations were carried out with NMIS management and Dr McKenna
112. Dr McKenna was asked about the claimant's statement to the effect that she had told him in 1-1 meetings where he expressed concern about his contract end date, that surplus funds could be used to extend existing contracts even for a shorter period.
113. Dr McKenna confirmed this was not correct and that at no time had she given any assurance to the claimant that his contract would continue beyond its original term. She confirmed that she has been absolutely clear with the team that the SME Programme of work was only for 2 years. She confirmed that

they would have wished to continue the programme, but no further funding has been secured to allow them to do that.

114. Investigations were also made with the respondent's finance department.

They confirmed in an email that Scottish Enterprise had confirmed that they
5 are working to a profile of £59k for 23/24 (from April) and most likely £0 for
the period beyond 31/3/24, but that was still to be confirmed by Scottish
Government, and that there was only sufficient funding to cover the remaining
contracts still in place in 23/24 with a small contribution to Dr McKenna's
costs.

10 115. Professor Brodie did not uphold the appeal and wrote to the claimant on 19
April providing his reasons for this.

Note on Evidence

116. A good deal of the evidence which was not in dispute, albeit there were issues
as to how matters should be interpreted.

15 117. There were however some issues of credibility which the Tribunal had to deal
with, and it was necessary to make an assessment of the overall credibility
and reliability of witnesses.

The claimant

118. While the Tribunal did not reach the conclusion that that the claimant
20 deliberately sought to misled, it did form the impression that he lacked insight,
and that his perception that he had been in some way wronged impacted his
evidence to such a degree that it significantly lacked credibility and reliability
on material points.

119. The Tribunal's view that the claimant lacked insight was underpinned by his
25 persistence of the position as to the availability of surplus funds in order to
extend the funding of his post, in the face of a clear explanation of the position
from Dr O'Hare. It was also contributed to by his insistence that technical skills
were necessary for the post of Skills Researcher. The Tribunal was
sympathetic to the view that the job advertisement was likely to be easier to

comprehend for an individual working in a skills landscape, however even taking that into account, the claimant had Mr Harrigan's clear explanation of what was required and why, but persisted in insisting in his submissions that he was right and Mr O' Harrigan was wrong about the job requirements. It
5 was an example of the claimant's lack of insight and dogmatic approach that he insisted in cross examination that his applications for the two posts were materially different, and that his Skills Researchers application was somehow tailored to that post, when it was palpable that there was no material difference between the two applications, as set out in the Findings in Fact.

10 120. The claimant's readiness to attribute the fact that he was not shortlisted to discrimination on the part of Mr Harrigan on the grounds of his race or faith or gender or Mr Harrigan's nepotism, on an unsubstantiated basis, was also indicative of a lack of insight on the part of the claimant. He appeared to fail to take account of the fact that he had been shortlisted for the Skills Lead post
15 for which the technical qualifications and experience highlighted in in his application was relevant, or that the interview panel had accepted his application for the Skills researcher post late. Neither of these actions was consistent with the claimant's very serious accusations.

The Respondent's witnesses

20 121. In general terms the Tribunal found all of the respondents witnesses to be credible and in the main reliable. It was satisfied that such lapses of memory as were exhibited by the witnesses were commensurate with the passage of time. An example of this is the difference in the evidence as to the means of Ms Dent communicating the outcome of the interviews for BDM posts to Dr O
25 Hare. Ms Dent said the discussion was on the phone; Dr O'Hare said she thought it was done by teams meeting. This was a matter which the claimant submitted was critical to the assessment of Dr O Hare's evidence. However, in the Tribunal's view a failure to accurately recall this detail on the part of one of the witnesses, when there was no material disagreement about what had
30 been discussed, was a minor reliability point which did not impact at all on the credibility of either witness.

122. Mr Stewart McKinlay - largely gave evidence about the grievance. There is no complaint about the conduct of the grievance before the Tribunal, and the Claimant's submissions about alleged failure on his part in the conduct of the grievances are irrelevant to the issues the Tribunals to consider. In an event
5 the claimant's submission to the effect that asking those involved in the shortlisting about his grievance about what had been done demonstrated impartiality, did not have any merit. It is fundamental to the grievance process that those against whom a complaint is made are given the opportunity to respond to it.
- 10 123. The Tribunal formed the view that Mr McKinley was credible and reliable The Claimant's submitted that Mr McKinley's attempt to explain the responsibilities of the Skills Researcher role relied on an example involving turbine blade cracks, saying when an expert identifies cracks in a turbine blade, the Skills Researcher's duty is to identify the skills, manufacturing processes and
15 comprehend future operations to either eliminate or prevent such occurrences. The claimant submitted that Mr McKinlay persisted in denying that this role requires technical expertise, asserting that individuals with backgrounds in BA history and international studies can adequately address these issues. The claimant submitted was a desperate attempt to justify the
20 job advertisement, providing a novel explanation to support the selected candidate for the role which did not match the job advert.
124. While the Tribunal did not find Mr McKinlay's explanation of what the Skills Researcher Post involved was as easy to follow as Mr Hannigan's, it did not conclude that his evidence supported the conclusion contended for by the
25 claimant. Mr McKinlay used the example of a turbine bade in attempting to explain the difference between a technical skills job and a skills researcher post. He explained that the in process of manufacturing technical skills would be required to deal with a cracked turbine blade, but that a skills researcher role involved looking at the level of skilled worker or how many of workers are
30 required in particular manufacturing jobs.

Mr Jim Hannigan

125. The claimant submitted that Mr Hannigan sought to alter the essence of the job description when explaining it and referred to his including words like ‘*economy, economics, labour data, labour indicators*’ in his evidence which were not included in the job advert.

126. The Tribunal concluded that Mr Hannigan’s explanation of the qualities which the panel was looking for in the skills researcher post, as set out in the findings in fact, was entirely credible and believable. Furthermore, he explained that with reference to the content of the job advert which he pointed out stated that what is sought is a:

“Skills Researcher to guide MSA Leadership/Programme Managers/Project Leads in delivering evidence-based informed skills projects as well as provide research into the global skills landscape, foresighting trends that can be used to inform the MSA strategy and business planning process.”

and

‘You will collaborate with colleagues to ensure that research advances inform MSA teaching and pedagogy and you will collaborate with colleagues on the development of knowledge exchange activities by, for example, participating in initiatives that establish skills research links with industry, wider education and influence public policy.’

and

‘Your output will address future skills needs and requirements including a transition to net carbon zero’

127. These elements of the job description are a clear indication that knowledge and experience of working in the skills landscape, (such as Skills Development Scotland) as opposed to technical manufacturing or engineering skills, was required. Even although the advert did not make specific reference to economics it or the ability to interpret labour data, these were skills which were consistent with the requirements of the post as

advertised. The Tribunal drew nothing adverse to Mr Hannigan's credibility from the fact that he referred to the relevance of a background or degree in economics and an ability to interpret data in explaining what the respondents were looking for in a candidate for the Skills Researcher post.

5 128. The Tribunal was satisfied that a correct reading of the job advertisement supported Mr Hannigan's evidence as to what was sought in the job candidate, and that it was not technical skills associated with the manufacturing process or engineering.

10 129. The claimant's application demonstrated that he possessed technical skills and experience, as well as a number of qualifications up to doctorate level in technical disciplines of engineering, project management, mechatronics and control. It did not demonstrate any professional in experience in skills research. The Tribunal therefore did not accept that, as submitted by the claimant, Mr Hannigan was unable to provide a reasonable or satisfactory
15 justification for how he scored the claimant's application against various criteria.

Ms Dent

130. The significant point of credibility in Ms Dent's evidence was whether she was aware of the fact that the claimant had lodged a grievance when she
20 interviewed the claimant but did not offer him the post of BDM. The Tribunal found Ms Dent's denial of this to be credible.

131. The claimant submitted that he understood that Ms Dent and Dr O' Hare knew about his grievance. This submission was made on the basis that it was challenging to believe that Dr McKenna has not discussed the fact that he had
25 raised a grievance with Dr O' Hare as her line manager and Ms Dent as her close colleague.

132. The claimant relied on what he categorised as Dr McKenna's breach of confidentiality in advising HR and Dr O'Hare that he had an issue with his personal circumstances. The Tribunal however was satisfied that Dr
30 McKenna had a legitimate reason for the contents of her email about the

claimant's ill health and sick leave/leave arrangements to her head of department and HR. She explained that the claimant had been assigned a project on the Knowledge Transfer Programme from 13 January. When Dr McKenna checked she was advised that the claimant had not done any work at KTP. The claimant's sick note was dated from 20 January and she required to explain the position from the 13 January to her line manager and HR. The Tribunal drew nothing adverse to Dr McKenna's credibility from the fact that she had disclosed that the claimant had shared issues with her, which she did not provide any detail of in that email.

10 133. Details of that information which the claimant imparted to Dr McKenna were put to the claimant in cross examination, however the Tribunal drew nothing adverse to Dr McKenna's credibility from that. These questions were asked in the context of a litigation which the claimant had chosen to pursue and were relevant to remedy.

15 134. Dr McKenna credibly denied having told anyone, including Ms Dent and Dr O'Hare, that the claimant had raised a grievance.

135. Ms Dent and Dr O'Hare credibly denied any knowledge of the claimant having raised a grievance. There was no evidence to support the conclusion that any of these witnesses should not be believed. The claimant's assertion that they did know about his grievance only relied on what he said was *his understanding* that they knew about his grievance.

20

Dr McKenna

136. The first relevant point of credibility is whether Dr McKenna told Ms Dent and Dr O'Hare that the claimant had raised a grievance, which is dealt with above.

25 137. The second point is whether she told him that he would not get another job at the university and that the decision to dismiss him was Dr O'Hare's. It formed part of the claimant's evidence that she had said these things, but there was no credible evidence to support the conclusion that she had.

138. The third point related to whether she had told the claimant that his contract would be extended. It was the claimant's position that she had done.

30

139. While she was not as familiar with the detail of how the funding for the SME programme worked as Dr O'Hare, Dr McKenna gave credible evidence that the claimant's contract, along with that of all the other SME's came to an end after two years as a result of the way in which the SME programme was
5 funded. She was adamant that she had not told the claimant otherwise. Her evidence was consistent with the contemporaneous email of 24 January in which she highlighted that the claimant's contract was coming to an end and she took time to make sure he understood that. Her evidence was also consistent with the evidence of Dr O' Hare as to the funding position and it
10 lacked credibility to suggest that she had told him that his contract would be extended in these circumstances.

140. The claimant criticised Dr McKenna for what he said was a lack of effort to make an application for funding to extend the claimant's post. In this regard, the claimant referred to information contained in response to an FOI request
15 provided by the university which showed 4 funding applications having been made. However, the Tribunal did not find that anything turned on this information. An application had been made to backfill SME posts which had not been successful, and the Tribunal was impressed with the sincerity with which Dr McKenna wished to continue the SME programme but was unable
20 to do so because of a lack of funding.

Dr Lynne O'Hare

141. The Tribunal found Dr O'Hare to be a reliable and entirely credible witness. She gave very clear and comprehensible evidence about how the funding of the SME advisor programme worked. Her explanation of this is set out in the
25 findings in fact.

142. The claimant's main plank of cross examination was information obtained from his FOI request. This demonstrated that a full funding offer had been made of £1.6 million for a contract term of three years from 2020, and that funds to the extent of £852,353.85 had been paid to the respondents. The
30 claimant submitted demonstrated that surplus funds were available to the extent of £648K.

143. The Tribunal had no hesitation in accepting Dr O'Hare's explanation that this was not the case, and that the 'surplus' which the claimant referred to was the part of the funding offer which the respondents had not been able to utilise, but that this could not be used by them for any purpose other than that specifically identified in the grant funding and that claims could only be made on costs actually incurred.

144. For the reasons dealt with above, the Tribunal accepted Dr O'Hare's evidence that she did not know that the claimant had raised a grievance.

Dr Douglas Brodie

145. The Tribunal found Dr Brodie to be a credible and reliable witness. There only material conflict in his evidence was whether the claimant attempted to raise a claim that he had victimized at the beginning of the appeal hearing. The claimant said he had; Dr Brodie said he had not done so.

146. The Tribunal was satisfied that the claimant had not done so. In reaching that conclusion it takes into account that the claimant had raised additional points orally, not included in his written appeal, at the beginning of the hearing. Dr Brodie noted these and dealt with them. The fact that he did so renders it unlikely that had the claimant raised a complaint that he had been victimised, Dr Brodie would have ignored it or refused to deal with it as was suggested. The Tribunal's conclusion on this point is supported by the fact that Dr Brodie investigated all the points the claimant raised.

147. The claimant submitted that Dr Brodie relied heavily on information from the respondent's finance team about the funding of the SME program, however the Tribunal could not conclude that it was unreasonable for him to do so.

148. Dr Brodie's evidence was that he did not know that the claimant had lodged a grievance. He was a credible witness and there was no evidence before the Tribunal to suggest that his evidence on this point should not be accepted.

149. In its assessment of the respondents evidence the Tribunal had regard to the information provided by the respondents in response to the claimant's FOI request about the ethnic origin of those engaged by the university in

Faculty/Professional Services Area, which was referred to by the claimant. The Tribunal did not consider that any inference adverse to the credibility of the respondent's witness could be drawn from this, taking into account its assessment of their credibility generally, the consistency of their evidence, and the consistency of their evidence with the contemporaneous documentary evidence produced.

Submissions

150. The parties helpfully produced written submissions which they supplemented with oral submissions. In the interests of pragmatism these are not rehearsed here but are dealt with below or above in the Note on Evidence where required.

Consideration

Section 13 Claim

151. Section 13 of the EQA 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.*

152. Section 23 of the EQA 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.*

153. Section 136 of the EQA deals with the burden of proof and provides:

(1) *This section applies to any proceedings relating to a contravention of this Act.*

(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

5 154. The first question for the Tribunal is whether in not being shortlisted for the post of Skills Researcher the claimant was subjected to less favourable treatment than his chosen comparator.

10 155. The claimant has the initial burden of proof under Section 136. The Tribunal must find that he has established facts from which it could conclude in the absence of an adequate non-discriminatory explanation from the respondents, that the respondents have treated him less favourably on the grounds of his race. If the claimant does so, the burden of proof then shifts to the claimant. (*Ingen v Wong (2005) ICR 931* referred to by Ms Drysdale).

156. A difference in race and treatment is not sufficient for the burden of proof to shift (*Madarassy v Nomuria International POLC (2007) ICR 867-* referred to by Ms Drysdale.)

15 157. Fundamental to the Tribunal's consideration of the claim under Section 13 is whether there was any material difference in the claimant's circumstances and that of his comparator.

20 158. The Tribunal accepted Mr Hannigan's evidence as to the reasons why the panel scored the claimant as they did in the shortlisting process for the skills researcher post.

159. The Tribunal was satisfied that having regard to the claimant's CV and covering letter, that the scores applied by the panel at shortlisting were not unreasonable.

25 160. It was not unreasonable to score the claimant 2 on the basis of his qualifications. A Doctorate was not required, and the claimant's Doctorate was in a technical discipline, which did not add value to this post.

161. It was not unreasonable to score the claimant 0 under criteria 2 (breadth or depth of knowledge in the relevant discipline/s). The claimant relied on the terms of his covering letter. This did not refer to his having

gained experience and training to identify the organisation's skills gap in operations and employees' training program over his 17 years in the manufacturing sector. He stated that this *'follows an action plan to develop a training program to meet the organisation's challenges and future needs. I understand the challenges for the manufacturing sector'*. The panel were however reasonably entitled to take the view that he did not however provide any further specific detail of this or demonstrate what he had done. Further the claimant's CV listed his professional experience in engineering/project managing jobs in some detail but and did not demonstrate any experience in skills research. The Tribunal was satisfied that the panel did not act unreasonably in scoring the claimant as they did under criteria 2.

162. It was not unreasonable that the panel scored the claimant 1 under criteria 3 (experience of working with industry, education, academia and the public sector) on the basis that the claimant's application demonstrated his having worked in industry but there was nothing in relation to education and the public sector.

163. It was not unreasonable that the claimant scored 1 against criteria 4 (Interpersonal, presentation and written communication skills) and for the panel to take into account of the fact that he had presented almost identical applications for the two posts (Skills Researcher and Skills Project Lead) which had very different requirements. The claimant denied this vigorously in his cross examination questions, and in his submissions in which he stated that he meticulously crafted the two letters with a comprehensive understanding of the roles. However, on a realistic comparison of the two applications, there was no material difference.

164. It was not unreasonable that the claimant scored 1 under criteria 8 (experience of financial management and controlling budgets). The panel were entitled to have regard to the fact that the claimant's CV indicated the value of projects he had worked on; that did not demonstrate experience of budgeting.

165. It was not unreasonable that the claimant scored 0 against criteria 9 (experience of skills knowledge exchange related activities and networking). It was not unreasonable or the panel. On the basis of the application lodged to conclude that that claimant's application did not demonstrate experience
5 skills knowledge related activities as it primarily demonstrated his technical experience.
166. Even although another panel may have applied higher scores against some of the criteria, on the basis of the information before the panel it could not be concluded that they acted unreasonably in applying the scores which they did
10 on the basis of the application lodged by the claimant against the job specification and scoring criteria.
167. The claimant made much in his questions about an email of 23 June 2019 dealing with the Low Carbon Award to RB Derby which he had accepted on their behalf. The claimant said that this was included with his application,
15 however Mr Hannigan had no recollection of seeing it. The Tribunal accepted this, and furthermore accepted his evidence was that even if he had seen it would have made no difference to his assessment of the claimant's application. The claimant's employment as a project manager with RB Derby was already detailed in his CV.
- 20 168. Equally the Tribunal accepted Mr Harrigan's evidence as evidence as to why the comparator was scored as she was.
169. It was not unreasonable that comparator scored 2 under criteria 1 as she had a degree in a relevant discipline. The Tribunal was satisfied that economics was properly considered a relevant discipline to the post given the analysis
25 of information involved.
170. It was not unreasonable that the comparator scored 3 under criteria 2 The panel were entitled to take into account that the comparator's application contained evidence of relevant experience, as demonstrated by her previous employment with Skills Development Scotland (the SDA). They were entitled
30 to take into account that her application disclosed involvement in projects aimed to understand the economic requirements of the Scottish labour

market; and work she has undertaken in skills research projects in the Evidence and Impact Team of the SDA seeking to understand the impact of net zero on the manufacturing and energy sector. Mr Harrigan was reasonably entitled to conclude her supporting statement was very strong and indicated that she was a candidate who understood what was required of the role.

171. It was not unreasonable that the panel scored the comparator 2 under criteria 3 and for them to do so taking into account her on experience with the SDA outlined in her C V and supporting statement.

172. It was not unreasonable for the panel to score the comparator 2 under criteria 4 on the basis of the way in which her application was drafted to highlight relevant experience and insight into the role.

173. It was not unreasonable for the panel to score the comparator 3 under criteria 9 on the basis a that her application demonstrated a good understanding of skills knowledge exchange related activities and networking on the basis of her experience at the SDA and information included in her supporting statement.

174. On criteria 5, 6, and 7, the claimant scored either higher or the same as his comparator, which lends supports the conclusion that panel were seeking to score the applications fairly on the basis of the information contained in them.

175. The Tribunal was satisfied that the successful candidate's CV and supporting statement demonstrated a different education, work experience and skills to the claimants. The claimant accepted that her circumstances were different to his. It was Mr Hannigan's evidence that the comparator's circumstances were different.

176. That difference in circumstances was that that the panel was entitled to conclude that successful candidate's job application demonstrated more relevant skills and experience than the claimant's application for the post of Skills Researcher at the shortlisting stage, and that was the reason why she was shortlisted for the post and the claimant and was not. That Tribunal

concluded that this was the reason why the claimant was subjected to the treatment complained of and that it was unconnected to his race.

177. The effect of this conclusion is that the claim under section 13 fails and is dismissed.

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Section 27 Claim - Victimisation

178. Section 27 (1) states:

(1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*

10 (a) *B does a protected act, or*

(b) *A believes that B has done, or may do, a protected act.*

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179. It is accepted by the respondents that the claimant did a protected act in that he raised a grievance. No issue is taken with the position that failing to appoint him to the BDM post and dismissal are capable of amounting to determinants.

180. The question for the tribunal is therefore one of causation. This requires the Tribunal to consider whether the claimant was subjected to the treatment complained of because he had raised a grievance. The burden of proof rests with the claimant to show causation.

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181. The Tribunal accepted that Ms Dent did not know that the claimant had raised a grievance. There was no evidence to support the conclusion that any of the panel members in the BDM post interview were aware he had raised a grievance. The Tribunal drew nothing from the fact that Dr O'Hare did not sit in the interview panel. It was suggested in the claimant's submission that this was because she and Mr Miller had been involved in some other Employment Tribunal case. This was a matter which was raised only at the stage of submission and the Tribunal could take nothing from it.

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182. Nothing could be drawn from the fact that Dr O'Hare delegated the task of sitting on the interview panel to Ms Dent who worked in the BDM team where the post sat. Furthermore, the Tribunal accepted that Dr O'Hare did not know that the claimant had raised a grievance. There was no evidence to support
5 the conclusion that the reason Mr Miller did not sit on the panel was anything other than that he had Covid, as was suggested by the claimant.

183. Further the Tribunal accepted Ms Dent's evidence as to the claimant's performance at interview, which was consistent with the contemporaneous notes produced by the panel members.

10 184. The claimant failed to establish causation between the failure to appoint him to the BDM post and the protected act therefore and this part of the claim fails.

185. The second act of victimisation alleged is the act of dismissal. The question is, was the claimant dismissed because he raised a grievance?

15 186. The Tribunal agree with Ms Drysdale's submission that the claimant has failed to discharge the burden of proof and show causation between his dismissal his raising a grievance.

187. For the reasons given above in the note on evidence, the Tribunal had no hesitation in concluding that the reason why the claimant was dismissed was because his two year fixed term contract as an SME Advisor had come to an
20 end. This is supported by the fact that there was no funding available to extend the program or his post, and all the SME Advisors had their contracts terminated upon expiry of the two year fixed term.

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188. The effect of these conclusions is that the Section 27 claim fails and is dismissed.

Employment Judge: L Doherty
Date of Judgment: 14 December 2023
Entered in register: 18 December 2023
and copied to parties