



EMPLOYMENT TRIBUNALS

Claimant: Ms S Patel

Respondent: Deloitte MCS Limited

Heard at: London Central

On: 19, 20, 21, 24 and 25 July and 26 and 27 September 2023

Before: Employment Judge Joffe
Mr P Secher
Ms L Jones

Appearances

For the claimant: Represented herself

For the respondent: Mr J Davies, counsel

JUDGMENT

1. The claimant's claim for constructive unfair dismissal is not upheld and is dismissed.
2. The claimant's claims of direct sex discrimination contrary to section 13 Equality Act 2010 are not upheld and are dismissed.
3. The claimant's claims of direct race discrimination contrary to section 13 Equality Act 2010 are not upheld and are dismissed.
4. The claimant's claims of harassment related to sex contrary to section 26 Equality Act 2010 are not upheld and are dismissed.
5. The claimant's claims of harassment related to race contrary to section 26 Equality Act 2010 are not upheld and are dismissed.

6. The claimant's claim for breach of an equality clause incorporated into her contract by virtue of section 66 Equality Act 2010 is not upheld and is dismissed.

REASONS

Claims and issues

1. Although the list of issues had previously been settled at a case management preliminary hearing in front of Employment Judge Connolly on 20 March 2023, the claimant wished to amend the list at the outset of the hearing. She had failed to respond to an invitation in the case management orders to contest the list as set out at the case management hearing. This was an oversight by the claimant.
2. We spent some time dealing with that and other case management issues such as issues about disclosure. There were ultimately a fairly narrow range of points in dispute as to the content of the list of issues and the respondent pragmatically agreed that it would not oppose amendments to the list of issues where it had witnesses available to deal with the points.
3. The claimant had made a claim that she was directly discriminated against due to sex in being paid less than two male comparators. As a matter of law, this was a claim for equal pay not a direct sex discrimination claim, and the parties did not object to the Tribunal considering it in that way.

Law on lists of issues

4. Where a list of issues is agreed, that will generally limit the issues to be considered at a substantive hearing to those issues. The Tribunal is not required to stick slavishly to such a list where that would impair its duty to hear and determine the case in accordance with the law and the evidence: Parekh v London Borough of Brent 2012 EWCA Civ 1630, CA.
5. Where deviation from the list would require documents, evidence and argument which the parties are not prepared for, a tribunal may refuse to allow the list to be altered: Chalmers v Mentor Graphics (UK) Ltd EAT 0151/14 and see also Scicluna v Zippy Stitch Ltd and ors 2018 EWCA Civ 1320, CA.
6. Where a case involves a litigant in person, it is good practice for a tribunal to consider at the outset of the hearing whether a list of issues drawn up at the case management stage properly reflects the significant issues between the parties. If it is clear that it does not, the tribunal should consider whether an amendment of the list is necessary in the interests of justice: Mervyn v BW Controls Ltd 2020 ICR 1364, CA and Moustache v Chelsea and Westminster NHS Foundation Trust 2022 EAT 204.

Our conclusions on the list of issues

7. We did not allow the list of issues to be amended to add issues which were not in the claim form. An amendment to the claim form at this late stage would prejudice the respondent, which had not prepared to deal with the matters sought to be raised by way of amendment. A postponement of the hearing to allow the respondent to respond would have led to very significant additional cost and inconvenience and a waste of Tribunal resource. None of the matters which the claimant wished to add seemed to us to be central to her case, which was reflected in the fact that they had not been included in the list of issues drawn up at the case management hearing. Without an amendment, she was able to pursue the many substantive issues which we ultimately considered. There was nothing in the materials before us which suggested that the issues she sought to add by way of amendment enjoyed better prospects of success than those which were in front of us on the basis of the claim form as drafted. It seemed to us that the balance of hardship was firmly on the side of refusing this amendment.
8. We also did not allow the list of issues to be amended to add matters which, whilst in the claim form, would require additional witnesses who were not available. This was a small handful of matters. Again the prejudice to the respondent in having to deal with issues in respect of which it had no witness or bear the costs and inconvenience of a postponement was considerable. The claimant had had the opportunity to amend the list of issues after the case management preliminary hearing and had not done so. The list of issues we considered is as set out in our Conclusions.

Findings

The hearing

9. There were extensive discussions about the claimant's requests for specific disclosure. Ultimately some further documents were produced by the respondent and the claimant did not continue to pursue any application for specific disclosure.
10. We were provided with bundles of documents running to 657 pages. Various further documents which were produced later in the hearing were placed in a supplemental bundle running to several hundred further pages.
11. We had a witness statement from the claimant and heard oral evidence from her. She produced a witness statement from Ms L Dittmar, an employee of the respondent who did not attend to give evidence.
12. For the respondent we received witness statements for and heard oral evidence from:

- Mr M Juden-Bloomfield, a senior manager at the respondent in the Net Zero Transformation Team;
- Ms G Airoidi, formerly a manager at the respondent;
- Mr B Combes, a director in the Net Zero Transformation Operations Unit at the respondent;
- Ms L Takeh, a director at the respondent;
- Ms K Burgess, a partner at the respondent in the North and South Sales Excellence Team;
- Ms J Del Carlo, Head of Monitor Deloitte;
- Ms H Shephard, also known as Lewsley, her maiden name, a director at the respondent.

Facts

Structure of the respondent

13. After some prompting by the Tribunal, we were provided with some evidence about the structure of relevant parts of the respondent, which is itself part of a larger global group and specialises in providing consultancy services. 'Deloitte Digital' is a part of the respondent which is responsible, amongst other things, for consulting on design and implementation of digital systems, marketing technology, websites and e-commerce technology.
14. 'Monitor' is the respondent's strategy consulting practice; it works with executive level clients to make decisions about the future of businesses: eg mergers and acquisitions, entering new markets or product lines, transitioning to net zero carbon and identifying opportunities for further growth.

Promotion at the respondent

15. It seemed to us from the evidence we heard that promotion through a hierarchy of possible ranks/grades was of very considerable importance to employees of the respondent and the respondent had elaborate systems for determining which employees should be promoted. There are various levels which an employee can attain - consultant, senior consultant, manager, senior manager, director, partner. As we understood it, very broadly, an employee's title / grade would influence the role they played in client projects.

Pay scales

16. Ms Del Carlo gave evidence: that every grade has a pay band with a maximum, minimum and market rate within it. When an employee joins on a particular grade, that employee will be paid no less than the minimum for the grade but lateral hires can enter the grade at any point on the pay scale, depending on their skills and experience. Internal transfers will remain at the same point in the pay scale they were on before transferring to a new role.
17. Internal promotions will be at entry point of the pay scale for the next grade. The policy of the respondent is that salaries can only be adjusted at the end of

the year. Rare exceptions would require a strong business case. Salary increases are determined centrally and there is a blanket percentage. Unless an individual's performance is poor, an employee at a particular grade will get the same increase as all other employees on their salary.

18. In the year the claimant resigned, the salary bands were increased, which had the effect that many employees found themselves lower within the band than they had previously been. A number of employees had emailed Ms Del Carlo to express their disappointment about that situation.

Promotion process

19. There are yearly promotion rounds. Talent reviews are conducted in an operating unit on a quarterly basis. They are conducted by senior people from the unit (managers, senior managers, directors and partners) and an independent observer from a different operating unit who attends to seek to ensure there is no bias. Everyone in a unit is reviewed, even those individuals who are not seeking promotion in that round.
20. Each employee has a 'people leader' and people leaders are invited to join the talent review panels to present feedback on the individuals they represent. For each person, the people leader will have about five minutes to present to a set format including a chronology of the employee's year, key projects, three strengths, three development areas and whether the employee is seeking promotion.
21. Individual performances are then calibrated against those of peers; the top marked individuals are priority promotion candidates. The individuals are then reviewed at the next level up against all people in the business at the same grade. The results are entered into a spreadsheet and managed by HR. Promotion would depend not just on feedback received by the employee but also relative performance, the business performance and the number of spaces available at the grade. Guidelines are provided by a central committee as to how many can be promoted. In a good year for the business, more can be promoted but it is usual for a small number of recommended candidates to miss out every year due to the cap on numbers who can be promoted. Within the strategy practice the promotion rate would be about 15% per grade per year. There were about 330 people in the department at the relevant time with about 200 of those at consultant, senior consultant or manager grades.
22. We were told that employees typically tend to spend two years at a particular grade.
23. The people leader role is a voluntary role an employee performs alongside their client facing role. A key part of the role is to present reviews of the individual's performance at the talent review. The people leader collates feedback from members of project teams the individual has worked with and that the individual has collected about themselves. We were told that it is not the role of the people leader to advocate for the individual 'leadees'. People

leaders also have a pastoral role, the extent of which varies from relationship to relationship.

Chronology

24. On 18 March 2019, the claimant commenced employment with the respondent as a consultant in the Digital Division. Her salary was £40,600 plus a discretionary bonus. The claimant describes herself as British born Indian.
25. On 1 September 2020, the claimant was promoted to senior consultant. Part of the work the claimant did in Deloitte Digital involved working on sustainability and she was hoping to make that a core part of her work. She had hoped for promotion to manager grade in the 2021 promotion round.
26. In the summer of 2021, the claimant had some discussions with Ms Takeh about a potential move to Monitor. The claimant said that Ms Takeh told her she might need to take a demotion in order to transfer. Ms Takeh told the Tribunal that that was not what she said, although she might have discussed with the claimant the fact different service lines used different grade mappings which could result in a change of title rather than grade. Some employees regarded the change in title as a demotion. She said that she might also have referred to a historical situation where demotions might happen on transfer.
27. In July 2021, the claimant applied for a role in the Net Zero Transformation Team in Monitor. This was a new team and internal transfers were required to go through the same process as potential external hires. The claimant applied for a manager role but was told by HR it would have to be a parity move. Although the claimant was not happy that she could not transfer at manager grade, she ultimately accepted the offer to move at senior consultant level. In discussions with Ms Takeh at this time, she said she was not sure she would transfer and that she wanted to leave the firm as she did not feel valued. She raised some concerns about her salary with Ms Takeh and Ms Takeh made clear to her that a salary review could not happen as part of the transfer and so she would need to negotiate any increase before her move.
28. In the summer of 2021, the claimant met with Mr Juden-Bloomfield for coffee; he provided her with help and guidance about the move to Monitor on a few occasions. He sat on the interviews for the roles and also made enquiries about the possibility of hiring the claimant at manager grade. He and the claimant became friends when she joined the Net Zero Transformation Team.
29. On 27 September 2021, the claimant transferred to the Net Zero Transformation Team.

30. On 29 September 2021, team drinks were held at the Brew Dog pub. The claimant attended as did Mr Combes, amongst others. Mr Combes and the claimant gave different versions of their interactions on that evening.
31. The claimant said that Mr Combes asked her if she had a partner. She told the Tribunal that she said she did and he gestured at her hand to indicate the lack of an engagement ring and asked her how long she and her partner had been together for. She said that they had been together for almost 5.5 years and Mr Combes then remarked: 'If someone doesn't propose before six years it becomes a bit of an afterthought'. She said that Mr Combes went on to speak about his wife and her accomplishments and remarked that his wife looked like Pocahontas.
32. When asked in evidence what she felt was the racial element of this alleged remark, the claimant said:
- I am an Indian female, the insinuation was that his wife looked similar to Pocahontas, the insinuation was that I had similarities to his wife and that he was in some way interested in me.*
- If his wife is a Caucasian female and Pocahontas in the Disneyfied version is tanned and somewhat looks like me, the insinuation is that I look like his wife who is tanned. It felt like he was implying he found me attractive; it had a sexual tone to it I felt uncomfortable about.*
33. Mr Combes said that he could not recall a conversation with the claimant about her partner and he would not have initiated that conversation. He initially said in evidence that someone had brought the claimant's engagement to his attention and he congratulated her. He did not say anything about the proposal being an afterthought as he does not believe that. Later in his evidence Mr Combes said that he must have conflated two events; his congratulations on the claimant's engagement must have occurred on another occasion.
34. Mr Combes said that he did not say his wife looks like Pocahontas as he does not think that, but he recalled discussing the BBC programme 'Who Do you Think You Are?' and mentioning the fact that his wife's family believe they are descendants of Pocahontas. He said that he was not insinuating any connection between his wife and the claimant and that he did not comment on the claimant's appearance.
35. We accepted that there was some discussion on this occasion about whether the claimant had a partner and how long they had been together which Mr Combes had forgotten. We did not consider that the claimant had made up the conversation altogether, although we were not confident that she had recalled the detail accurately, given that we did not accept she had correctly heard or recalled other aspects of this discussion.

36. We accepted that there was a discussion about Mr Combes' wife and Pocahontas although we considered it was closer to the discussion Mr Combes remembered than that which the claimant remembered and that the discussion was one about ancestry and not appearance. We were satisfied that Mr Combes was honestly reporting what he remembered, as was the claimant but Mr Combes was more likely to remember what he had said insofar as it reflected what he actually thought; we considered that the claimant may have misheard and/or misinterpreted what was said.
37. In October 2021, the claimant started her first project in Monitor. She worked on a number of different engagements with different individuals over the remainder of the year.
38. At a work Christmas party in December 2021, Mr Combes said the claimant encouraged him to stay longer when he said he had to leave early to catch a train. He cited that incident as evidence which was inconsistent with an allegation that he had harassed the claimant.
39. In December 2021, the claimant approached Ms Lewsley to be her people leader and Ms Lewsley agreed. Ms Lewsley had a handover with Ms Cole, the claimant's previous people leader, who said that the claimant would need to gain experience of strategy methodology and project leadership. Ms Lewsley's view was that the claimant could be ready for promotion in the next round if she could demonstrate those skills.
40. The claimant told Ms Lewsley that she had expected to be promoted to manager already. Ms Lewsley expressed the view that the claimant had the skills required for promotion although she told the Tribunal that as time went on she became more wary about expressing opinions to the claimant as the claimant was apt to treat them as fact.
41. Ms Lewsley would have biweekly calls with the claimant lasting about thirty minutes.
42. Around 25 January 2022, Ms Lewsley started gathering feedback for the claimant and encouraged the claimant to gather feedback herself.
43. On 31 January 2022, the claimant and Ms Airoidi started working together on strategy engagement for a UK and US based client; this was the Amex GBT project.
44. Mr Combes was the director of the project and Ms Airoidi was managing the project. Ms Airoidi was an experienced strategy consultant but relatively new to sustainability. All of the team were getting to know each other. Also on the project team was a consultant, Oliver Harris. Ms Takeh was the responsible director and Mr M Guest was the partner assigned to the project.

45. Mr Combes said the claimant asked if she could act up as manager on the project but he did not consider that was appropriate as the claimant was new to Monitor and they had sold the project as a 'Monitor strategy sprint with a well-established method and approach'. He told the claimant that he would speak to the manager to see what opportunities there were for the claimant to demonstrate manager capabilities on the project. Mr Combes asked Ms Airoidi to provide the claimant with some managerial tasks to support the claimant in demonstrating manager capabilities.
46. The claimant was given responsibility for interviewing directors and the senior leadership team from the client.
47. The claimant complained to the Tribunal that she was bullied and micro managed by Ms Airoidi in the following ways:
- Ms Airoidi making comments about the claimant's work before reading it and often starting her remarks with the sentence 'I'm confused';
 - Ms Airoidi not respecting the claimant's request to do course work¹ on a particular day and insisting on the claimant joining a meeting despite there already being 2 people already joining (which was the number agreed by the team for such meetings);
 - Ms Airoidi implying that the claimant was taking Fridays off to study for her firm funded course;
 - Ms Airoidi stating that the claimant had taken a half day off when she left slightly early on a Friday afternoon to take a flight;
 - Ms Airoidi attempting to make the claimant revise down her billable hours to reflect this particular Friday despite the claimant working late nights during the week;
 - Ms Airoidi telling Mr Combes that she had not heard from the claimant when they had communicated via Teams and on documents;
 - Ms Airoidi asking the claimant to be the note taker in an interview they were conducting together after initially agreeing to the claimant's request that the claimant would be the interviewer and Ms Airoidi the notetaker;
 - Ms Airoidi commenting that the claimant did not follow process when setting up a team meeting invite as she did not include everyone, irrespective of whether they would join or not;
 - On 24 February 2022, Ms Airoidi commenting in response to the claimant stating that she needed to catch up on her Cambridge work to say "what have you been doing in the rest of the week" despite the claimant and Ms Airoidi having worked together earlier in the week and done interviews together until 8pm the previous night.

¹ The claimant started a firm-funded Cambridge Institute of Sustainable Leadership course at the beginning of February 2022.

48. We heard evidence from Ms Airoidi that she considered that the claimant wanted to be in the manager role but she nonetheless considered that they had a good relationship overall.
49. She denied micro managing the claimant. She said that she wanted the claimant to take responsibility and to be able to delegate work to her. Part of her role as manager was to question the work of others. If she had said, 'I am confused', that would have been part of the process of asking the claimant to explain the work she had presented. She needed to ensure that the slides the claimant created were clear to the reader. She treated the claimant in the same way as she would any other employee in that position.
50. Mr Combes gave evidence that the claimant did not wish to present her slides to Ms Airoidi prior to team meetings, despite Ms Airoidi asking her to do so. Comments were therefore made by Ms Airoidi in front of the whole team which could have been made privately had the claimant produced the slides to Ms Airoidi in advance. Mr Combes said that he asked Ms Airoidi to work with the claimant prior to the meetings so that work would not be criticised in the meetings but the claimant declined this request, which she characterised as micro management. Mr Combes accepted in cross examination that he had said to the claimant that he had some concerns about how Ms Airoidi interacted with her; he said that he thought that was partly due to the claimant not sharing the slides in advance of the meetings.
51. Mr Combes said that he saw the problem as arising from the claimant trying to prove that she could operate at manager level, which meant that she did not approach the project with a learning mindset but instead competed with Ms Airoidi. He believed that there was a personality clash. He did not agree with the claimant when she cross examined him to the effect that Ms Airoidi created a feeling of chaos due to her alleged lateness to meetings and issues with her laptop.
52. Mr Combes said that Ms Airoidi approached him during the Amex GBT project with a concern that she was not receiving regular updates from the claimant despite chasing for responses. This led to a decision to move to daily rather than weekly or sporadic deadlines, to ensure that the project was progressing as quickly as it should.
53. In about January or February 2022, there was a mid year review panel.
54. Also in February 2022, Mr Juden-Bloomfield was leading a project on Alternative Delivery Models; he asked the claimant if she wanted to lead on it to support her promotion case. She did so and her work was well received.
55. Some time in February 2022, there was a call between the claimant and Ms Lewsley. The claimant's evidence was that Ms Lewsley said it would be

'crazy' if the claimant was not promoted. Ms Lewsley told the Tribunal that she informed the claimant that she appeared to be on track for promotion but she did not recall saying that it would be crazy if she were not promoted. In the grievance outcome, Ms Burgess reported that Ms Lewsley accepted that she had made that statement. Reference to the notes of Ms Burgess' meeting with Ms Lewsley were ambiguous as to whether Ms Lewsley had in fact agreed that she had made that statement. We accepted that at this point in time, Ms Lewsley was strongly supportive of the claimant's potential promotion.

56. On 8 February 2022, Ms Airoidi asked the claimant to take notes in a client interview rather than being the person who asked the questions. Ms Airoidi said that that happened because the claimant was working at home next to her partner on that occasion and the claimant said that her partner would be on a call during the interview. Ms Airoidi therefore suggested that she and the claimant swap roles to ensure that the claimant's partner was not disturbed and could not hear private or confidential information. She only asked the claimant to swap roles for that single interview and the claimant led all of the other interviews and she, Ms Airoidi, took notes.
57. When asked about that version of events in cross examination the claimant said she could not remember if her partner was also working at home and simply denied that that was the reason for the switching of roles between her and Ms Airoidi..
58. On 8 February 2022, the claimant received a letter saying that she was receiving a discretionary bonus.
59. On 14 February 2022, the claimant left work early to catch a flight. Ms Airoidi said that she did not take issue with this but did tell the claimant that there was a client interview booked for that Friday at 7 pm as the client was based in the US. Ms Airoidi said that she agreed she would take the call with Mr Combes and Mr Harris so that the claimant could catch her flight. She said that she might have suggested that the claimant take the afternoon off so she could leave early.
60. There was some discussion about this incident in evidence. The claimant said that she only needed to leave 1.5 hours early and should not have had to take the whole afternoon as leave. This matter is to some extent intertwined with the issue about how many chargeable hours the claimant had done which is discussed below.
61. The claimant alleged that on 24 February 2022, Ms Airoidi asked her 'what she had been doing all week'. Ms Airoidi denied that she said that to the claimant. She said that she would have asked the claimant what work she had

on that week and if she could assist with her work on the project and perhaps for an update on progress with the project.

62. On 25 February 2022, Ms Lewsley emailed the individuals she was people leader for asking them to start work on tasks connected with the gathering of feedback for the talent review. At this time, the timing of the talent review was being changed to align with the financial year; the review would take place in March / April 2022 rather than in June 2022. Ms Lewsley said she asked individuals to focus on the most recent quarter, as feedback for earlier periods would have been collected already.
63. The claimant said that some time in February 2022, Ms Airoidi insisted she join a client call despite there already being two Deloitte people on the call. Ms Airoidi said that she asked the claimant to join a call which she thought would be a good development opportunity for her but the claimant did not join the call and she had no issue with her not joining.
64. In relation to the Cambridge course the claimant was doing, Ms Airoidi said that the claimant did not have a set day to complete the work for the course; they agreed that she could dedicate a day each week to work on the course and she could choose the day as long as she let the team know so that they could plan. She said that she did speak to Mr Combes about the situation at some point as it felt like a lot of time was spent on the course sporadically which made it harder for team to manage its workload.
65. In respect of the claimant's allegation that she required the claimant to invite everyone to team meetings, Ms Airoidi said there was a daily team meeting every day at 9:30 am for half an hour for the team to check in and discuss what they were doing. She usually sent the invitations herself but if she was not able to attend on a particular day she would ask someone else to send the invitation as otherwise the meeting could not go ahead. Our understanding was that this was because these were remote meetings only the host could start. Ms Airoidi said that she did tell the claimant that everyone should be invited to all meetings so that the meetings would be in their diary in case they could attend. Ms Airoidi said that she would treat any team member in the same way in this respect.
66. On 3 March 2022, the claimant submitted a request to work remotely overseas as she was planning to spend some time in Australia to see family members she had not seen for a long period. The claimant was advised that it was not possible to work remotely at that time but that the respondent was changing its policy as a number of people had not been able to see friends and family abroad over the pandemic period. The new policy was not put in place until June 2022 – it allowed longer periods of remote working than had previously been permitted. The claimant's request was not granted as the

policy was not yet in place and the claimant took some unpaid leave to travel to Australia instead.

67. As some point during this period the claimant and Mr Combes had a discussion about whether the claimant wished to continue to work on the Amex GBT project given the apparent personality clash between her and Ms Airoidi. It was agreed that the claimant would work on the project four days per week with a clear day for work on her course.
68. On 4 March 2022, the claimant asked Mr Combes for feedback and he provided her with a feedback 'snapshot'. This was largely positive but Mr Combes identified some areas requiring development.
69. On 7 March 2022, the claimant was asked to revise some of her reported hours as she had charged some training time to the client. Ms Airoidi was concerned to find money in the budget for another senior consultant whilst the claimant was in Australia and so looked closely at the billable hours. The claimant suggested that because she had worked late earlier in the week, she should have been able to set those hours against the hours she did not work that afternoon. Ms Airoidi said that the whole team had worked late because of the time difference between the UK and the US and that no one set those hours off. The claimant suggested Mr Harris sometimes left half an hour early to attend football matches. Ms Airoidi said Mr Harris always informed her when he left early and the time would not be charged to the client.
70. In terms of the claimant's undated allegation that she had told Mr Combes that she had not heard from the claimant, Ms Airoidi said she could not recall any such occasion but that communication from the claimant was somewhat sporadic. She said that she would not have said to Mr Combes that she had not heard from the claimant if she had been communicating with her that particular day.
71. On 8 March 2022, the claimant told the Tribunal that two male comparators, Mr E Bergqvist and Mr N Kastberg said at after work drinks that their salaries were £75,000 and £55,000 respectively. We saw documents about the salaries of these individuals which showed that the claimant was paid more than these men at relevant times.
72. At about this time, the claimant raised the issue of her pay with Ms Lewsley and said she was paid a lower salary than peers. She did not suggest to Ms Lewsley at the time that she believed the perceived disparity was due to race or sex. Ms Lewsley agreed to investigate the issue. She spoke to Mr Guest who said HR had looked into the matter and the claimant was within the agreed salary band for her grade. She then spoke to the claimant and

explained that there was no issue; the claimant was upset as she had thought it would be possible to upgrade her salary. Ms Lewsley told the Tribunal that the claimant remained unhappy and continued to say that she wished to be paid more.

73. On 13 March 2022, Ms Airoidi emailed the claimant setting out her understanding that the claimant would be working four days and on her course one day per week; she raised some queries about the claimant's chargeable hours as it appeared that the client had been charged for hours when the claimant was working on her course. She also sent this email to Mr Combes.
74. Ms Airoidi's explanation in evidence was she just needed to ensure the client had been charged correctly. The claimant had charged five full days for a particular week when she had spent time on her course and left early for her flight. The claimant put to Ms Airoidi that she asked her to revise down her chargeable hours to exert control over her as a female. The Tribunal could see nothing wrong in the enquiry made by Ms Airoidi in accordance with her duty to the client. We accepted that she had included Mr Combes in the correspondence with a view to showing that there were more budgeted hours available to cover some senior consultant time whilst the claimant was in Australia.
75. On 14 March 2022, the claimant sent Ms Lewsley a list of contacts to provide feedback on the claimant for the upcoming promotion board.
76. The claimant sent 25 names spanning work which she had done over the course of the year. Ms Lewsley told the Tribunal that she had asked each individual for whom she was a people leader to collect feedback for the previous quarter as there had already been reviews and feedback collected for earlier quarters. The more recent feedback would be added to feedback previously collected. Ms Lewsley had two weeks to collate feedback for the claimant and the other individuals she was people lead for. It was not possible for her to contact 25 people and she told the claimant that she would focus on the last quarter. She said that she spoke to about double the number of people she usually would, in order to support the claimant in her aspiration to be promoted to manager. Ms Lewsley also sought feedback from Ms Airoidi, who had not been named by the claimant, as the Amex GBT project was the most significant strategy project the claimant had worked on.
77. Ms Lewsley had spoken with the claimant about how the claimant had found it difficult to work with Ms Airoidi; Ms Lewsley considered it sounded like there was a personality clash. On 16 March 2022, Ms Lewsley suggested that the claimant could provide feedback to Ms Airoidi. She told the Tribunal that she suggested that the claimant have a face-to face conversation with Ms Airoidi;

she did not suggest that she email her with feedback. She also started gathering feedback on the claimant at that time.

78. Mr Combes and Ms Lewsley had a conversation about the claimant in mid March. Mr Combes told Ms Lewsley that the Amex GBT project had involved a personality clash between the claimant and Ms Airoidi. He suggested that Ms Lewsley should therefore expand feedback for the claimant as far as possible and he later satisfied himself that the development points raised at the talent review meeting had not come only from that project.
79. Mr Juden-Bloomfield told Ms Lewsley that he supported the claimant's case for promotion. When Ms Lewsley asked if there were any issues, Mr Juden-Bloomfield said that the claimant's reliability could waver; the claimant worked at her own pace and was very assertive about how she wanted things done, sometimes excluding the views of others; he had sometimes found that she snubbed his guidance and could be cutting or rude. On 20 March 2022, the claimant and Ms Airoidi had a handover call prior to the claimant's extended period of leave in Australia.
80. On 22 March 2022, Ms Lewsley contacted Mr Clarson, with whom the claimant had worked on a project for John Lewis whilst she was with Deloitte Digital. She was seeking to get a view on the claimant's soft skills. She wrote: 'To be honest, I am having a bit of a tricky time getting a good read on some of her soft skills, and whether some recent experiences are anomalies or consistent.' Mr Clarson said that the client on the John Lewis project had loved the claimant. She had not been moved away from the project because she was not a good fit but because the role changed to a technical role. Ms Lewsley asked him about aspects of the claimant's style and behaviours which had been picked up by the Amex GBT team and Mr Clarson said he was 'not necessarily surprised' to hear about that feedback and concurred that the claimant made it obvious if she was unhappy when asked to do things she did not want to do or did not consider relevant.
81. The Amex GBT project ended on 27 March 2022.
82. On 29 March 2022, the promotion board was held. The claimant was not promoted. Mr Juden-Bloomfield was present in order to represent some employees for whom he was people lead. He was also asked on the call for a view of the claimant and defended her case for promotion. He said that the feedback shared by Ms Lewsley, however, was overwhelmingly against the claimant being promoted. He said that his subsequent impression was that the claimant assumed that he had spoken against her at the promotion board and she therefore made negative remarks about him and ended their friendship.

83. That same day, the claimant sent Ms Airoidi a long email containing feedback about Ms Airoidi. In the email, the claimant said that there was a clash of working styles between the two. She made a detailed critique of Ms Airoidi, running over two and a half pages, including stating that Ms Airoidi's initial feedback to her was often 'both negative and brusque'. Overall the Tribunal considered it was a poorly judged document for the claimant to have sent; she did not accept responsibility for issues which arose and presented her criticisms as if they were unassailable fact; there was no effort to initiate a dialogue and we agreed with Ms Lewsley that it would have been far better if the claimant had sought to have a conversation with Ms Airoidi. Mr Combes felt that this email showed the claimant blaming Ms Airoidi for everything and not reflecting on her own behaviour.
84. On 1 April 2022, Mr Combes provided feedback to the claimant on the promotion process.
85. On 21 April 2022, the claimant had a call with Ms Lewsley and Ms Lewsley agreed to obtain further feedback on the promotion process.
86. The claimant told Ms Lewsley about the written feedback she had provided to Ms Airoidi. Ms Lewsley found the feedback blunt and aggressive and not in the spirit of the discussion she had had with the claimant about feedback for Ms Airoidi. She told the claimant that the feedback must have been difficult for Ms Airoidi to receive. She was disappointed with the claimant and thought the feedback showed a lack of empathy and people skills.
87. On 27 April 2022, Mr Combes met with the claimant to give her feedback on the promotion process and discuss future projects.
88. On 28 April 2022, Ms Lewsley and the claimant met to further discuss feedback on the promotion process. Ms Lewsley relayed to the claimant the three key strengths and three key development areas which she had identified. She said that these had been corroborated by multiple people, including from the John Lewis project. The claimant wished to have more feedback on the Amex GBT project and Ms Lewsley subsequently arranged for the claimant to speak with Mr Combes. Ms Lewsley said that there were some things the claimant said that for her chimed with the feedback she had received. She said that the claimant had said at one point, when they were chatting about her having had to travel to get to school, words to the effect 'what else was I going to do, go to a state school and get pregnant and do nothing with my life?' and at another point that she was not 'socially retarded'. The claimant denied making these remarks. We accepted that she had made remarks of this sort, even if she did not remember them. They fit with what seemed to us to be a theme which was apparent from the claimant's time at the respondent – that she sometimes did not appreciate how her own remarks came across or affected other people.

89. Ms Lewsley told the claimant that she had received feedback from around 15 people. That was intended as a ballpark figure as Ms Lewsley did not have the list of people in front of her at the time of the conversation. The total number was in fact 11 as Ms Lewsley clarified in an email to the claimant dated 6 May 2022.
90. On 3 May 2022, the claimant requested more feedback from Ms Lewsley about the promotion process. Ms Lewsley provided information and a list of the names of people she had collected feedback from in her email of 6 May 2022. She set out key strengths and also development areas which included a need to be more collaborative and communicative and some challenging aspects of her personal style including being 'too overt' when asked to do something she did not want to do.
91. On 4 May 2022 the claimant and Mr Combes had another meeting. He told the Tribunal that he was aware that Ms Lewsley had spoken to people in double figures and he had heard feedback from people in the meeting so believed there was feedback from 10 – 20 people. He therefore told the claimant in this meeting that there was feedback from 15 people, as being the mid point between ten and twenty.
92. The claimant was upset about the feedback discussed and said that Mr Combes had not been 'man enough' to give her this feedback earlier. Mr Combes reiterated that the feedback was collective. The claimant said that she had thought he was 'one of the good ones' and that they got on.
93. On 10 May 2022, Mr Juden-Bloomfield noticed that the claimant had stopped attending 'stand up' meetings in respect of the project workstream she was managing for him on the asset creation project. He sent her a meeting invitation to find out what was happening. They went out for a coffee and a walk. The claimant did not indicate there was an issue.
94. On 11 May 2022, the claimant took leave. Mr Juden-Bloomfield noticed that she was not at the stand up meeting again. He was becoming concerned about her and tried to call the claimant but she did not pick up. He then sent a WhatsApp request to which the claimant responded: 'All good – just not feeling great so taking a bit of time out.'
95. Mr Juden-Bloomfield emailed Ms Takeh to tell her that the claimant had been in touch to say she was not in a good place and needed to take the rest of the week off. He had told her to take as much time as she needed.
96. On 12 May 2022, the claimant was signed off work by her GP with stress and anxiety. Ms Lewsley contacted the claimant by email to see how she was, to

offer to talk about any work-related challenges and to make the claimant aware of wellbeing support offered by the respondent.

97. On 16 May 2022, the claimant emailed Ms Takeh, saying she had been signed off by her doctor for two weeks. She asked for some privacy as Mr Juden-Bloomfield had flagged her absence to Mr Combes and Ms Lewsley, although she said she appreciated that his actions were 'not from a bad place'.
98. On 19 May 2022, Ms Takeh phoned the claimant. The claimant said that she felt bullied by Ms Airoldi and unsupported during the Amex project, which was impacting her mental health and wellbeing. The claimant said that her sickness was exacerbated by her feedback. Ms Takeh sought HR support as to how to deal with the issues raised.
99. On 26 May 2022, the claimant and Ms Takeh had a short discussion about end of year results for promotion, salary and bonus. The claimant then emailed Ms Takeh, asking for feedback about the promotion board and in particular the rationale for not promoting the claimant.
100. On 27 May 2022, Ms Takeh emailed the claimant offering to have a discussion with the claimant. She asked whether the claimant would be comfortable with her speaking directly to some of the people who gave feedback and asking Ms Del Carlo to oversee the review. She proposed that they have a catch up when the claimant returned to work on 13 June 2022. The claimant agreed to these proposals.
101. Ms Takeh asked Ms Lewsley to provide a list of those whom she had spoken to in order to seek feedback about the claimant. Ms Lewsley provided the list on 1 June 2022.
102. On 9 June 2022, the claimant received a salary increase to £63,407 per annum.
103. That day Ms Takeh requested feedback from various individuals regarding the claimant's promotion board. That feedback was provided throughout June and we were provided with copies of the notes and emails. Taken as a whole, the feedback was consistent with the themes previously identified by Ms Lewsley. There was some strongly favourable feedback as well as feedback supporting the areas for development identified by Ms Lewsley. Some individuals the claimant had worked with in Deloitte Digital were of the view that the claimant was at manager level.
104. Mr Combes had many positive things to say, but also said, amongst other things, that the claimant needed to be much more open and collaborative and

that she was quick to see others' faults about had not responded to feedback she received.

105. Mr Harris, the consultant on the Amex GBT project, said that the claimant had not handled group discussion of something she had produced well and that she took things very personally. He noted that people in the team rubbed each other up the wrong way. It appeared that he had identified the tensions between Ms Airoldi and the claimant but was not laying blame for the situation with one rather than the other.
106. On 13 or 14 June 2022, Ms Takeh spoke with the claimant on the phone and set out the feedback she had received to date; she was seeking feedback from the people named in the claimant's original list. She sent the claimant a summary of the feedback the following day.
107. The claimant covertly recorded the conversation with Ms Takeh. The claimant said she was feeling alienated and would be embarrassed to return to work and be asked by others if she had been promoted to manager. There was a discussion about the claimant's salary and where that fell in the senior consultant band. Ms Takeh explained that the claimant fell below the mid point because of the ways the 'algorithms' worked. We understood this to be a reference to the respondent's policy as described above. There was a discussion about non-monetary rewards which the claimant raised with Ms Takeh in cross examination. Ms Takeh explained she had previously worked for a charity and they often talked about emotional reward in that sector, which is what she was referring to.
108. The claimant said that during June 2022, Mr Juden-Bloomfield sent her via Teams a couple of messages about having a catch up and apologising if he had done something to upset her. She did not respond to these messages.
109. On 23 June 2022, Mr Juden-Bloomfield provided feedback on the claimant to Ms Takeh in which he referred to a number of strengths of the claimant's but also made some criticisms including 'attitude can wildly vary – but tends to be very negative and can often feel like you have to walk on egg shells as one slight comment could derail a conversation.' He said that her upwards management and communication were poor. Ms Takeh had a telephone discussion with Ms Airoldi about the claimant. Ms Airoldi raised the issues she also mentioned to the Tribunal about communication and time management and also the email of feedback she received from the claimant, which she felt was not the right way to handle the issues between them.
110. On 24 June 2022, Mr S Brew gave feedback about the claimant; much of this was very positive but he also said that she could come across as 'aloof, stand offish, arrogant... almost ruthless ...Engagements were not poor – just kinda clinical.'

111. On 28 June 2022, Mr A Curry gave feedback in which, amongst other remarks, he described the claimant as demonstrating a lack of intellectual rigour and being obsessed with being a manager.
112. On that date, Ms Takeh wrote to the claimant to that she had some more people to talk to and that she had arranged for Susan MacDonald to be the claimant's people leader.
113. Also on 28 June 2022, Ms Takeh spoke with the claimant on the phone and the claimant again covertly recorded the discussion. We saw a transcript of the recording. Ms Takeh was still finishing gathering feedback and they discussed the salary issue again. The claimant suggested she had been gaslighted by Ms Lewsley about the issue of how many people she had sought feedback from.
114. The claimant also telephoned Mr Clarson and had a conversation which she covertly recorded. She raised with him some of the feedback she had received and Mr Clarson said that feedback had not come from him.
115. On 30 June 2022, the claimant resigned. She did not cite any reasons. In her resignation email, she said that she was happy to revise her notice period down. Ms Takeh said that by this she understood the claimant was considering leaving earlier.
116. In cross examination, the claimant put to Ms Takeh that Ms Takeh had persistently telephoned and emailed her to ask the claimant to agree a leaving date. Ms Takeh said that she asked the claimant for updates on how long the grievance process would take, as the claimant had said that she was waiting for the grievance outcome in order to decide when she wanted to leave. She denied that she was persistent and said that she just wanted to determine the leaving date. She said in writing that the respondent would be happy to consider a shorter notice period which could be discussed.
117. Around 1 July 2022, Mr Clarson spoke with Ms Takeh. He said that the claimant had told him he had provided unfavourable feedback, when he had not. Ms Takeh explained to Mr Clarson that the feedback about development had not drawn significantly from the John Lewis project work as that was largely work from the previous year. Mr Clarson said that the claimant was very capable but perhaps needed to work on collaboration.
118. The claimant raised a grievance on 3 July 2022. She raised a number of complaints about fabrication of her feedback by Ms Lewsley, mixed messages on her performance from Ms Lewsley, Mr Combes and Ms Takeh, lack of support from senior leadership, discrimination 'based on previous position in

Deloitte Digital', discrimination based on gender and race (the Pocahontas remark and some other issues) and complaints about her salary.

119. On 4 July 2022, Ms Takeh met with the claimant to give her the feedback she had collated. The claimant again covertly recorded the call. She said that the feedback was contradictory and the language used for some of the feedback was 'demoralising and malicious'.
120. The claimant put to Ms Takeh in cross examination that the language Ms Takeh used on the call was inappropriate and derogatory. Ms Takeh said that she accepted that the language was hard to hear, which is what she had said to the claimant on the call. She did not feel it was inappropriate or derogatory and she felt it was important to give the claimant actual quotes. She agreed to go back to those who provided feedback to see if they were happy for her to name them.
121. The claimant was correct in observing that there was some very positive feedback as well as negative feedback. We saw no evidence which suggested to us that the feedback had been fabricated or manipulated as the claimant alleged.
122. The claimant said that she had received a barrage of emails and Skype messages from Ms Takeh asking her to confirm her leaving date. That volume of communications was not evidenced in the bundle.
123. On 25 July 2022, the claimant had her grievance hearing with Ms Burgess and her last day of employment was 26 August 2022.
124. Ms Burgess then investigated the claimant's grievance. It was the first grievance she had conducted and she worked with an HR adviser. She said that it did take her some time to conclude her investigation because she had to work with her own schedule and the schedules of the HR adviser and the people she needed to interview. She disagreed that she had not dealt with the grievance promptly in the circumstances. The claimant had been on leave between 6 and 18 July and it would have been against the respondent's procedure to communicate with her about the grievance whilst she was on leave.
125. The claimant received a grievance outcome on 17 October 2022. Ms Burgess upheld the grievance on two points:
 - The claimant's feedback could have been shared in advance of the year end;
 - Ms Takeh and Mr Combes could have done more to resolve the issues between the claimant and Ms Airoidi.
126. The claimant presented her claim form on 8 November 2022.

Law

Direct discrimination

127. Direct discrimination under section 13 Equality Act 2010 occurs when a person treats another:
- Less favourably than that person treats a person who does not share that protected characteristic;
 - Because of that protected characteristic.
128. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key question is the “reason why” the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an ‘effective cause’: O’Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.
129. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: “(2) if there are facts from which the Court could decide, in the absence of any other explanation, that 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. “
130. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:
- (1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as ‘such facts’.*
- (2) If the claimant does not prove such facts he or she will fail.*
- (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that ‘he or she would not have fitted in’.*

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

131. We bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: ‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.’ The ‘something more’ need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.
132. The tribunal cannot take into account the respondent’s explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof: (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)
133. The distinction between explanations and the facts adduced which may form part of those explanations is not a water tight division Laing v Manchester City Council and anor 2006 ICR 1519, EAT. The fact that inconsistent explanations are given for conduct may be taken into account in considering whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12. In Commissioner of Police of the Metropolis v Denby EAT 0314/16 the EAT confirmed that a tribunal may consider all relevant evidence at the first stage of the burden of proof exercise, even if some of it is of an explanatory nature and emanates from the employer, whether or not it is called by the employer. The case law did not require the tribunal at the first stage to ‘blind itself to evasive, economical or untruthful evidence’ from the employer which may help the tribunal to decide that there are sufficient facts to shift the burden on to the employer to provide an explanation.
134. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16 Mrs Justice Simler said that: ‘It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal’s own findings.’
135. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.
136. We remind ourselves that it is important not to approach the burden of proof in a mechanistic way and that our focus must be on whether we can properly and fairly infer discrimination: Laing v Manchester City Council and anor

[2006] ICR 1519, EAT. If we can make clear positive findings as to an employer's motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT

Harassment

137. Under s 26 Equality Act 2010, a person harasses a claimant if he or she engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

138. By virtue of s 212, conduct which amounts to harassment cannot also be direct discrimination under s 13.

139. In Richmond Pharmacology Ltd v Dhaliwal [2012] IRLR 336, EAT, Underhill J gave this guidance in relation to harassment in the context of a race harassment claim:

'an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so...Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

140. An 'environment' may be created by a single incident, provided the effects are of sufficient duration: Weeks v Newham College of Further Education EAT 0630/11.

Constructive dismissal

141. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is taken to be dismissed by his employer if "the employee

terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".

142. It is established law that (i) conduct giving rise to a constructive dismissal must involve a fundamental breach (or breaches) of contract by the employer; (ii) the breach(es) must be an effective cause of the employee's resignation; and (iii) the employee must not, by his or her conduct, have affirmed the contract before resigning.
143. If a fundamental breach is established the next issue is whether the breach was an effective cause of the resignation, or to put it another way, whether the breach played a part in the dismissal. In United First Partners Research v Carreras 2008 EWCA Civ 1493 the Court of Appeal said that where an employee has mixed reasons for resigning, the resignation would constitute a constructive dismissal if the repudiatory breach relied on was at least a substantial part of those reasons.
144. In this case the claimant claims breach of the implied term that the employer should not, without reasonable and proper cause, conduct itself in a way that is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence that exists between an employee and her employer. Both limbs of that test are important. Conduct which destroys trust and confidence is not in breach of contract if there is reasonable and proper cause.
145. It is irrelevant that the employer does not intend to damage this relationship, provided that the effect of the employer's conduct, judged sensibly and reasonably, is such that the employee cannot be expected to put up with it: Woods v Car Services (Peterborough) Limited [1981] ICR 666. It is the impact of the employer's behaviour (assessed objectively) on the employee that is significant - not the intention of the employer (Malik v BCCI [1997] IRLR 462. It is not however enough to show that the employer has behaved unreasonably although "reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach": Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445.
146. The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In Omilaju v Waltham Forest LBC [2005] ICR the Court of Appeal said that the final straw may be relatively insignificant but must not be utterly trivial: "The test of whether the employee's trust and confidence has been undermined is objective."
147. A breach of the implied term of trust and confidence is necessarily a repudiatory breach of contract: Ahmed v Amnesty International [2009] ICR 1450.

148. In Kaur v Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978 the Court of Appeal listed five questions that it should be sufficient ask in order to determine whether an employee has been constructively dismissed;
- a. What was the most recent act (or omission) on the part of the employer which the employee says cause, or triggered, his or her resignation?
 - b. Has he or she affirmed the contract since that act?
 - c. If not, was that act (or omission) by itself a repudiatory breach of contract?
 - d. If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed together amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of the previous possible affirmation).
 - e. Did the employee resign in response (or partly in response) to that breach?
149. It is of course somewhat artificial to require an employer who denies having dismissed an employee to show a reason for the dismissal. The Court of Appeal addressed this problem in Berriman v Delabole Slate Limited [1985] ICR 546 where the Court said that, in the case of a constructive dismissal, the reason for the dismissal is the reason for the employer's breach of contract that caused the employee to resign. This is determined by analysis of the employer's reasons for so acting, not the employee's perception (Wyeth v Salisbury NHS Foundation Trust UK EAT/061/15).

Equal Pay

150. The relevant parts of the Equality Act 2010 provide as follows:-

“65 (1) For the purposes of this Chapter, A's work is equal to that of B if it is -

(a) Like B's work.

.....

(2) A's work is like B's work if -

(a) A's work and B's work are the same or broadly similar

(b) such differences as there are between their work are not of practical importance in relation to the terms of their work.

(3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to -

(a) the frequency with which differences between their work occur in practice, and

(b) the nature and extent of the differences.”

.....
66 (1) If the terms of A’s work do not (by whatever means) include a sex equality clause they are to be treated as including one.

(2) A sex equality clause is a provision which has the following effect-

(a) if a term of A’s is less favourable to A than a corresponding term of B’s is to B, A’s term is modified so as not to be less favourable;

(b) if A does not have a term which corresponds to a term of B’s that benefits B, A’s terms are modified so as to include such a term.”

Submissions

151. We received detailed written and oral submissions from the parties and considered these with care.

Conclusions

Constructive unfair dismissal

2.1 Was the claimant dismissed?

Issue

2.2 *Did the respondent do the following things:*

2.2.1 *On 29 September 2021, during work drinks at a Brewdog bar, Ben Combes questioned the claimant about her relationship with her partner and told the claimant that his wife looks like Pocahontas;*

152. We concluded that Mr Combes had said something to the claimant about the length of time the claimant had been with her partner which could have come across as mildly insensitive. As discussed in the Findings above, we accepted his version of the remarks about his wife and Pocahontas.

Issue

2.2.2 *Pay the claimant a base salary for the Financial Year 2021 / 2022 that was lower than others and use that lower base salary in assessing her reward package for the Financial Year 2022 /2023;*

153. The claimant was not paid less than the two comparators she relied on based on the evidence before the Tribunal. We accepted that there were aspects of the pay system which the claimant and others in the firms were frustrated by; in particular it appeared that employees could get stuck at a particular position

within the pay band relative to other employees who might have started higher in the band on being appointed from outside the respondent.

Issue

2.2.3 *During February 2022, on the Amex GBT project, the claimant was micromanaged and bullied by Giulia Airoidi in front of colleagues including:*

2.2.3.1 *Giulia Airoidi making comments about the claimant's work before reading the content and often starting with the sentence "I'm confused";*

154. We accepted the evidence of Mr Combes and Ms Airoidi that criticism of the claimant's slides ended up being raised in open meetings because the claimant did not share the slides with Ms Airoidi in advance. It was a legitimate part of her role for Ms Airoidi to press the claimant to clarify her slides but the claimant took offence.

Issue

2.2.3.2 *Giulia Airoidi not respecting the claimant's request to do course work on a particular day and insisting on the claimant joining a meeting despite there already being 2 people already joining (which was the number agreed by the team for such meetings);*

155. No particulars were provided in evidence of an occasion when Ms Airoidi allegedly did not allow the claimant to do her course work but instead required her to attend a meeting. We accepted that Ms Airoidi on occasion asked the claimant to join a call which already had enough people on it, as a development opportunity. This seemed to us to be unexceptionable.

Issue

2.2.3.3 *Giulia Airoidi implying that the claimant was taking Fridays off to study for her firm funded course;*

156. The claimant did not clarify in evidence what she meant by this allegation. We found that initially half a day was allowed for the claimant's study and that after a time that increased to a whole day with provision for the time to be taken on a regular day each week. We could see nothing unpleasant or inappropriate in the way the matter was dealt with on the evidence we had.

Issue

2.2.3.4 *Giulia Airoidi stated that the claimant had taken a half day when she left slightly early on a Friday afternoon to take a flight;*

157. The evidence we had was that Ms Airoidi was seeking to ensure the client was appropriately billed but was also accommodating the claimant's need to leave early for her flight. Again, there was nothing in the evidence we heard which suggested she had behaved inappropriately in this respect.

Issue

2.2.3.5 *Giulia Airoidi attempted to make the claimant revise down her billable hours to reflect this particular Friday despite the claimant working late nights during the week;*

158. We accepted that Ms Airoidi was reasonably seeking to ensure that the client was appropriately billed and there was budget available for a replacement senior consultant whilst the claimant was in Australia. No one in the team was credited for extra hours worked late in the day to accommodate a time difference.

Issue

2.2.3.6 *Giulia Airoidi telling Ben Combes that she had not heard from the claimant when they had communicated via Teams and on documents;*

159. The claimant did not provide any clear example of this allegation in evidence nor provide any date or approximate date, context or clarity as to what she said occurred, nor did she put any such particulars to any witness. We did not find that this occurred.
160. There were occasions when Ms Airoidi raised with the claimant her failure to update about where she had got to on the project. Mr Combes agreed that this was a problem.

Issue

2.2.3.7 *Giulia Airoidi asked the claimant to be the note taker in an interview they were conducting together after initially agreeing to the claimant's request that the claimant would be the interviewer and Ms Airoidi the notetaker;*

161. This occurred, however Ms Airoidi had what seemed to us a perfectly sensible explanation for why this occurred which the claimant did not rebut in any detail in evidence. Although the claimant sought to expand in her submissions on this incident, we were not able to take into account evidence which had not been given by the claimant nor put to relevant witnesses.

Issue

2.2.3.8 *Giulia Airoidi commenting that the claimant did not follow process when setting up a team meeting invite as she did not include everyone, irrespective of whether they would join or not;*

162. No particular occasion when this was said to have occurred was put to Ms Airoidi or described by the claimant in evidence so we were unable to make a finding as to what exactly happened. In any event, Ms Airoidi's account of why she would ask for everyone to be included in an invitation made sense to the Tribunal and we considered that if this did occur, there was nothing inappropriate about it.

Issue

2.2.3.9 *On 24 February 2022, Giulia Airoidi commenting in response to the claimant stating that she needed to catch up on her Cambridge work to say “what have you been doing in the rest of the week” despite the claimant and Giulia Airoidi having worked together earlier in the week and doing interviews together until 8pm the previous night;*

163. Ms Airoidi denied that she used that language. The incident was not put to Mr Combes who was also on the relevant call. We did accept that there was a significant amount of tension between the claimant and Ms Airoidi and their communications may have deteriorated. Ms Airoidi was frustrated as she did not always get updates from the claimant and the claimant resented what she felt was micro management by Ms Airoidi. We concluded that there was some discussion about what work the claimant had been doing and the claimant was offended by the tone of the enquiry.
164. Looking at this allegation and similar allegations, we concluded that Ms Airoidi was issuing reasonable management instructions in the context of a difficult relationship. There was a clash of personalities which, insofar as we can form a view, appears to have been contributed to by both to some extent. The claimant was aggrieved not to be the manager of the project.

Issue

2.2.4 *The respondent did not provide the claimant with any opportunities to demonstrate “readiness for Manager” and to action the one development point from the Q3 review, despite the claimant raising this concern with Ben Combes at the start of the Amex GBT project;*

165. This allegation was not clearly articulated or particularised in cross examination of witnesses. Mr Combes’ evidence, which we accepted, was that there were opportunities for the claimant to demonstrate her readiness for manager grade on the project. The claimant’s real complaint appears to have been that she was not acting as the manager on the project, but we accepted that this was a reasonable decision on the part of Mr Combes, given that the claimant was new to Monitor and not at manager grade.

Issue

2.2.5 *On 16 March 2022, Hannah Lewsley recommended that the claimant provide feedback to Giulia Airoidi but in a later meeting on 21 April 2022, once the claimant told Ms Lewsley that she had not had a response from Ms Airoidi, Ms Lewsley said “it must have been difficult for her to receive”;*

166. The claimant had delivered a great deal of strongly worded criticism in the form of an email, contrary to Ms Lewsley’s expectation that there would be a face to face discussion, which might have allowed for something more nuanced and not so one-sided. The claimant never really articulated what it

was that she said was destructive of trust and confidence about Ms Lewsley's remark, which seemed us to be both unsurprising and unexceptionable in the circumstances.

Issue

2.2.6 On 29 March 2022, during a formal year-end performance discussion about the claimant, Matt Juden said that she had an attitude problem;

167. There was no evidence that Mr Juden-Bloomfield said anything about the claimant having an attitude problem at the talent panel, where he was supportive of the claimant. The remarks emerged later when Ms Takeh was investigating feedback. We accepted that by that point, Mr Juden-Bloomfield's view of the claimant had changed somewhat. The remark he made is described in our Findings above.

Issue

2.2.7 April 2022 - Hannah Lewsley used false and misleading information in relation to the feedback on the claimant's performance to justify highlighting development points. This included Ms Lewsley saying that she had received feedback from 15 people but had only received feedback from 8;

168. We accepted that there were 11 individuals in total from whom Ms Lewsley received feedback about the claimant. The claimant appears to have thought it was eight, because three of the 11 had left by the time of the final gathering of feedback, however we were satisfied that Ms Lewsley had obtained feedback from those before their departure.
169. We were satisfied that Ms Lewsley gave an approximate figure for the number of people she had spoken to. We did not consider that she did so deliberately to provide unjustified support to the conclusions about the claimant's areas for development. It was an honest error, promptly corrected by Ms Lewsley.

Issue

2.2.8 April 2022 - Ben Combes continued to use the inaccurate figure of 15 people in order to justify his feedback points to the claimant;

170. Again, we accepted that Mr Combes made an honest estimate. Whether the number was 11 or 15, there was still ample justification for the feedback being given.

Issue

2.2.9 April 2022 - Ben Combes did not follow the correct year-end process in relation to feedback i.e. He did not share the feedback with the claimant before the review;

171. Mr Combes gave the claimant some high level feedback in March 2022. He told us that there was no expectation that he would provide her with further

feedback prior to the talent review. He also told the Tribunal that from that point on he was struggling to separate his impressions of her performance from her clash with Ms Airoidi. He was not sure whether the broader evidence would show that this was an anomaly and outweighed by other positive evidence from the rest of the performance year. The claimant was on leave the week before the talent review and would not have been available for further feedback at the date the project ended on 31 March 2022.

172. Ms Burgess upheld the claimant's grievance that three development points were raised which the claimant had not previously been made aware of. She accepted however that a number of factors had played a part in this – including the claimant's change in role, her change in people leader, the fact that the reward cycle had been brought forward and the claimant's leave.

Issue

2.2.10 May 2022 – Ben Combes provided unjustified feedback to the claimant; Para 32 CWS

173. The claimant said much more in her witness statement about why she said Mr Combes' feedback was wrong than she put to him in cross examination and ultimately we did not feel we could make findings in respect of matters which were not put to Mr Combes.
174. The feedback he gave appeared to be supported by what he told us about his observations of the claimant's work on the Amex GBT project, and was consistent with feedback provided by others, including Mr Harris, whom the claimant did not appear to believe had any animus against her, and the evidence of Ms Airoidi.
175. We did not conclude that Mr Combes' feedback was unjustified.

Issue

2.2.11 On 12 May 2022, Matt Juden repeatedly messaged and called the claimant and pressed her about what was wrong. Mr Juden emailed Hannah Lewsley to say that the claimant was off sick and told Ms Lewsley that he had put in a 121 meeting with the claimant as he noticed she was down, but this did not happen.

176. We saw the messages which Mr Juden-Bloomfield sent to the claimant; we saw no evidence that the number of calls and messages was oppressive. Mr Juden-Bloomfield offered a one-to one on 10 May 2022. Both he and the claimant agreed that they then had a walk and a chat. The difference between Mr Juden-Bloomfield and the claimant was simply as to whether this informal encounter should be described as a one-to-one. We note that the claimant did not request a more formal meeting. We considered that Mr Juden-Bloomfield had done what was reasonable to try to contact the claimant and provide her with any support she might need.

Issue

2.2.12 On 14 June 2022, Laila Takeh communicated to the claimant that her Financial Year 2022/2023 salary was just above the entry level salary for a new Senior Consultant, and stated salaries had been calculated using algorithms, with little discretion at an operating unit level to change this;

177. It was not disputed that there was a discussion to this effect. What Ms Takeh told the claimant was in accordance with the respondent's policies.

Issue

2.2.13 On 28 June 2022, Laila Takeh stated the outcome of her review was still not complete and ready to be communicated to the claimant, however she maintained the feedback she'd received was "mostly consistent" with the feedback collected by Hannah Lewsley in March 2022;

178. We could see from the transcript of this call, which the claimant had recorded, that Ms Takeh had said that the review was not complete but that the feedback she gathered had raised the same themes as the feedback collected by Ms Lewsley. We could not see that there was anything problematic about her remarks.

Issue

2.2.14 On 4 July 2022, the claimant had an informal meeting with Laila Takeh to discuss feedback about the claimant. This included unjustified feedback and derogatory comments such as that the claimant can come across as aloof, stand offish, arrogant, over confident as a cover for being nervous, and clinical;

179. Ms Takeh did deliver this feedback to the claimant in the context of other feedback which had been given. We could understand that it would have been very difficult for the claimant; we could also understand why Ms Takeh felt it was appropriate that she provide the specifics of the feedback, so the claimant could understand and address the issues raised.

Issues

2.2.15 The respondent failed to deal with the claimant's grievance promptly and the respondent's HR advisor initially assigned to the claimant ignored any further communication with the claimant after the formal grievance was submitted;

2.2.15.1 The claimant received no formal acknowledgement of her formal grievance from HR by 18 July 2022, after submitting the formal grievance on 3 July 2022. The claimant attempted to contact Dawn Glasgow on email, Skype and Teams and received no response. Another HR contact eventually responded to the claimant and stated it was "not typical" and the claimant should have heard back by now;

180. There was a delay in Ms Burgess contacting the claimant because the claimant was on leave. It seemed to the Tribunal that it would have been

better practice for receipt of the grievance to have been acknowledged even if no action was then taken until the claimant returned from leave.

181. However, this delay occurred after the claimant had resigned and played no operative role in her resignation.

Issue

2.2.16 During her notice period, the claimant was pressured by Laila Takeh into reducing her notice period.

182. It was the claimant who originally raised the issue of shortening her notice period and MsTakeh therefore understandably believed that was something the claimant wanted. Ms Takeh wanted clarity on the matter but we did not consider that she had exerted any pressure on the claimant in the correspondence which we saw.

Issue

2.2.17 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

2.2.17.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.2.17.2 whether it had reasonable and proper cause for doing so.

2.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

183. We considered carefully the small number of matters in this extensive list where we found that there was some fault by the respondent. Clearly there was a clash with Ms Airoidi which might have been more proactively addressed by the respondent. It seemed to us that there was good evidence that the claimant was also at fault and contributed to the difficulties with Ms Airoidi. She did seem to struggle with criticism and she handled some matters herself poorly, such as her email of feedback to Ms Airoidi. If the claimant had had more feedback on the Amex GBT project as it went along, she would have been less surprised by her non promotion. In a large number of these matters the claimant found fault with the respondent, where the Tribunal could see none at all. Overall, the matters of legitimate complaint did not seem to us to come anywhere close to being calculated or likely to destroy or seriously damage the relationship of trust and confidence.

Issue

2.3.1.1 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

184. Had we found that the matters complained of were a breach of the implied term of trust and confidence, we would also have found that they played a material role in the claimant's resignation. It was clear to us that she was

aggrieved about these matters although she was also aggrieved about the lack of promotion, which itself was also a significant reason for her resignation.

Issue

Issue

2.3.1.2 *Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.*

185. Because of our findings above, we did not go on to consider this issue.

Issues

2.4 *What was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?*

2.5 *Was it a potentially fair reason?*

2.5 *Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?*

186. It was not necessary for us to consider these issues because of our findings on constructive dismissal.

187. For the reasons set out above, we dismissed the claimant's claim of constructive unfair dismissal.

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

Issue

4.1 *Did the respondent do the following things:*

If so

Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

In relation to pay, the claimant says she was treated worse than male Caucasian comparators (EB and KK). In relation to other allegations, the claimant has not named anyone in particular who she says was treated better than she was.

If so, was it because of sex?

Issue

4.1.1 *Pay the claimant a base salary for the Financial Year 2021 /2022 that was lower than others and use that lower base salary in assessing her reward package for the Financial Year 2022 /2023;*

188. This was properly to be considered as an equal pay claim. It failed at the first hurdle because the claimant's chosen male comparators were paid less than she was. We did not uphold this claim.

Issue

4.1.2 *During February 2022, on the Amex GBT project, the claimant was micromanaged and bullied by Giulia Airoidi in front of colleagues including:*

4.1.2.1 *Giulia Airoidi making comments about the claimant's work before reading the content and often starting with the sentence "I'm confused";*

4.1.2.2 *Giulia Airoidi not respecting the claimant's request to do course work on a particular day and insisting on the claimant joining a meeting despite there already being 2 people already joining (which was the number agreed by the team for such meetings);*

4.1.2.3 *Giulia Airoidi implying that the claimant was taking Fridays off to study for her firm funded course;*

4.1.2.4 *Giulia Airoidi stated that the claimant had taken a half day when she left slightly early on a Friday afternoon to take a flight;*

4.1.2.5 *Giulia Airoidi attempted to make the claimant revise down her billable hours to reflect this particular Friday despite the claimant working late nights during the week;*

4.1.2.6 *Giulia Airoidi telling Ben Combes that she had not heard from the claimant when they had communicated via Teams and on documents;*

4.1.2.7 *Giulia Airoidi asking the claimant to be the note taker in an interview they were conducting together after initially agreeing to the claimant's request that the claimant would be the interviewer and Ms Airoidi the notetaker;*

4.1.2.8 *Giulia Airoidi commenting that the claimant did not follow process when setting up a team meeting invite as she did not include everyone, irrespective of whether they would join or not;*

4.1.2.9 *On 24 February 2022, Giulia Airoidi commenting in response to the claimant stating that she needed to catch up on her Cambridge work to say "what have you been doing in the rest of the week" despite the claimant and Giulia Airoidi having worked together earlier in the week and doing interviews together until 8 pm the previous night;*

189. We have set out our factual findings on these matters above. Overall we concluded that there was a clash between the claimant and Ms Airoidi and that there was probably some fault on both sides. We did not however

consider that any of the evidence supported a state of affairs which could properly be described as bullying or micro management.

190. We could see no evidence from which we could reasonably conclude that any issue with the relationship was because of the claimant's sex and the claimant did not draw our attention to any. The burden of proof did not shift and we did not uphold this claim.

Issue

4.1.3 *On 16 March 2022, Hannah Lewsley recommended that the claimant provide feedback to Giulia Airoldi but in a later meeting on 21 April 2022, once the claimant told Ms Lewsley that she had not had a response from Ms Airoldi. Ms Lewsley said "it must have been difficult for her to receive";*

191. We did not consider that this remark, which was made, could reasonably be construed as a detriment. It was an entirely fair comment provoked by the email the claimant had sent to Ms Airoldi.
192. Again there was simply no evidence from which we could reasonably conclude that Ms Lewsley would not have made the remark had the claimant been a man and we did not uphold this claim.

Issue

4.1.4 *On 29 March 2022, during a formal year end performance discussion about the claimant, Matt Juden said that she had an attitude problem;*

192. Mr Juden-Bloomfield did not make a remark about the claimant's attitude at the talent panel. He was supportive of her case for promotion at that stage.
193. When Ms Takeh asked for feedback later, Mr Juden-Bloomfield did comment negatively on the claimant's attitude. We found that his relationship with the claimant had soured by then and he was no longer so supportive of her promotion.
194. What Mr Juden-Bloomfield said was consistent with other feedback received by the claimant in the relevant period. We considered that Mr Juden-Bloomfield was less willing to ignore less positive aspects of the claimant's performance by this point but we had no evidence at all from which we could reasonably conclude that Mr Juden-Bloomfield would have acted differently had the claimant been a man.
195. We did not uphold this complaint.

Issue

4.1.5 *April 2022 - Ben Combes used the inaccurate figure of 15 people (who provided feedback according to Hannah Lewsley) in order to justify his feedback points to the claimant;*

196. We concluded this was a relatively trivial and innocent error. We could see no evidence which would cause us reasonably to conclude that Mr Combes

would have behaved differently had the claimant been a man and we did not uphold this claim.

Issue

4.1.6 April 2022 - Ben Combes did not follow the correct year end process in relation to feedback i.e. He did not share the feedback with the claimant before the review;

197. In respect of this complaint, we concluded that Mr Combes had shared some feedback but had been chary about sharing further feedback related to the clash with Ms Airoidi in case it had been anomalous. There were also issues with timing in that the dates for the end of the Amex GBT project, the claimant's leave and the talent panel made it more difficult to fit in further feedback. Ms Burgess concluded that the claimant should have been made aware of the tenor of the feedback and clearly that would have saved the claimant from being taken by surprise by the negative feedback and non promotion.
198. We could see no evidence from which we could reasonably conclude that a man would have been treated differently (leaving aside any explanation). If we had found the burden of proof had passed, we would have considered that Mr Combes's explanation discharged the burden.
199. We did not uphold this complaint.

Issue

4.1.7 May 2022 – Ben Combes provided unjustified feedback to the claimant;

200. We were not able to conclude on the evidence that the feedback was unjustified. Even if we had so concluded, we were unable to discern any evidence from which we could reasonably conclude that a man would have received different feedback in the same circumstances. We did not uphold this complaint.

Issue

4.1.8 On 12 May 2022, Matt Juden repeatedly messaged and called the claimant and pressed her about what was wrong. Mr Juden emailed Hannah Lewsley to say that the claimant was off sick and told Ms Lewsley that he had put in a 121 meeting with the claimant as he noticed she was down, but this did not happen;

201. We did not consider that there was any detriment. Mr Juden-Bloomfield was concerned about the claimant and took reasonable steps to investigate what was wrong and provide her with support.
202. Again we could discern no evidence which could cause the burden of proof to shift and we did not uphold this complaint.

Issue

4.1.9 *On 4 July 2022, the claimant had an informal meeting with Laila Takeh to discuss feedback about the claimant. This included unjustified feedback and derogatory comments such as that the claimant can come across as aloof, stand offish, and arrogant;, over confident as a cover for being nervous and clinical*

203. This was presented as a complaint against Ms Takeh. We were not asked to and were not in a position to consider whether the original maker of the remarks might have been influenced by the claimant's sex. No evidence was called about the maker of the comments.

204. Ms Takeh said that she would have also passed on these comments to a man in the same circumstances and we could see no evidence which would cause us to reject that account. She was concerned to share the exact feedback because of the claimant's concerns about accuracy.

205. Again, there was no evidence which would cause the burden of proof to shift and we did not uphold this complaint.

Issue

4.1.10 *The respondent failed to deal with the claimant's grievance promptly;*

206. The claimant did not challenge Ms Burgess on her explanation for the delay in dealing with her grievance. The reasons given were those commonly provided – the availability of those with whom Ms Burgess needed to consult and Ms Burgess' own availability. Our observation was that, although it would have been better had the grievance been concluded more quickly, the delay was not excessive given the number of matters the claimant had complained about.

207. There was no evidence at all from which we could reasonably conclude that a grievance by a man in similar circumstances would have been treated any differently by Ms Burgess and we did not uphold this complaint.

Issue

4.1.11 *During her notice period, the claimant was pressured by Laila Takeh into reducing her notice period;*

208. We did not find that Ms Takeh had pressured the claimant to reduce her notice period. We did not conclude the claimant had been subjected to a detriment, nor could we discern any evidence which would cause the burden of proof to shift. We did not uphold this complaint.

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

Issue

5.1 *Did the respondent do the following things and if so:*

Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

In relation to pay, the claimant says she was treated worse than male Caucasian comparators (EB and KK). In relation to other allegations, the claimant has not named anyone in particular who she says was treated better than she was.

If so, was it because of race?

Issue

5.1.1 Pay the claimant a base salary for the Financial Year 2021 / 2022 that was lower than others and use that lower base salary in assessing her reward package for the Financial Year 2022 /2023:

209. The actual comparators selected by the claimant were paid less than she was. We were satisfied that other unnamed people who were paid more in her grade were paid more because they had entered the grade on a different point.
210. There was no detriment or less favourable treatment and we did not uphold this complaint.

Issue

5.1.1.1 For the Financial Year 2022/2023, Laila Takeh acknowledged "a number of people had been affected by the way in which the firm has calculated salaries" with experienced colleagues disproportionately affected by the reward system which is "calculated using algorithms";

211. Ms Takeh was simply describing the system by which individuals remained at the point on the salary band on which they had entered, which could disadvantage those who had undergone internal promotion rather than being appointees from outside of the organization.
212. We had no evidence that the system itself, whatever its merits or lack of them, bore any relationship to race and nor could we see any evidence that Ms Takeh would have described the system to the claimant differently had she been of a different race. We did not uphold this complaint.

Issues 5.1.1.2

Ms Takeh stated this issue was being escalated but two weeks later stated there would be no changes to salaries

- 5.1.1.2 *Ms Takeh mentioned to the claimant “the firm can reward you in other ways”, to which the claimant questioned what that would be if it wasn’t monetary compensation;*
- 5.1.1.3 *Ms Takeh stated reward can be in the form of “PD and BD” (practice development and business development);*

213. Ms Takeh in good faith looked into the claimant’s salary concerns and reported back to her. She referred to other kinds of reward, we accepted, because of her background in charities.
214. Even if any of this could be regarded as a detriment (and we did not consider that it could), we could discern no evidence at all which would support a connection with race. We did not uphold these complaints.

Issue

- 5.1.1.4 *On 16 March 2022, Hannah Lewsley did not take any action to remedy the concern raised by the claimant regarding the base salary discrepancy;*

215. There was nothing Ms Lewsley could have done, given the respondent’s pay practices, which did not directly discriminate against the claimant because of her race (we were not asked to and did not consider any possible indirect discrimination claims). She escalated the matter on the claimant’s behalf and reported back what she was told by others.
216. If paying the claimant in accordance with practices applied to all other employees could be considered a detriment, there was no evidence which we could see from which we could reasonably conclude that an individual of a different race would have been treated differently from the claimant. We did not uphold this claim.

Issues

- 5.1.2.1 *The claimant raised with Ms Lewsley that on moving into the Net Zero team, she was told by Laila Takeh she wouldn’t be able to adjust the claimant’s salary to reflect the pay bands in Monitor for the claimant’s grade, despite being paid less than other colleagues at the same grade;*
 - 5.1.2.2 *Ms Lewsley disagreed with this point and stated this guidance was not true;*
 - 5.1.2.3 *Ms Lewsley stated the claimant should have spoken directly to a partner and that “you shouldn’t always listen to what Laila says”;*
217. It was a difficulty for the Tribunal that the claimant did not put much of this clearly to witnesses. The complaint appeared to be that Ms Takeh had told the claimant (it appeared correctly) that her salary could not be increased when she moved to Monitor at her existing grade, consistently with the respondent’s policies. Ms Lewsley agreed that she said something to the effect that if Ms Takeh had been a partner she might have been able to adjust the claimant’s pay. It did not appear from the evidence of Ms Del Carlo that Ms Lewsley was correct in that belief.

218. The complaint as framed was simply that Ms Lewsley and Ms Takeh had said these things. The evidence we had was that Ms Takeh was correct and Ms Lewsley was incorrect. We could see that it was unfortunate if the pay system was poorly understood and the claimant received contradictory messages. We could see no evidence that any of this would have been different had the claimant been of a different race.

219. We did not uphold these claims.

Issues

5.1.3 *During February 2022, on the Amex GBT project, the claimant was micromanaged and bullied by Giulia Airoidi in front of colleagues including:*

5.1.3.1 *Giulia Airoidi making comments about the claimant's work before reading the content and often starting with the sentence "I'm confused";*

5.1.3.2 *Giulia Airoidi not respecting the claimant's request to do course work on a particular day and insisting on the claimant joining a meeting despite there already being 2 people already joining (which was the number agreed by the team for such meetings);*

5.1.3.3 *Giulia Airoidi implying that the claimant was taking Fridays off to study for her firm funded course;*

5.1.3.4 *Giulia Airoidi stated that the claimant had taken a half day when she left slightly early on a Friday afternoon to take a flight;*

5.1.3.5 *Giulia Airoidi attempted to make the claimant revise down her billable hours to reflect this particular Friday despite the claimant working late nights during the week;*

5.1.3.6 *Giulia Airoidi telling Ben Combes that she had not heard from the claimant when they had communicated via Teams and on documents;*

5.1.3.7 *Giulia Airoidi asked the claimant to be the note taker in an interview they were conducting together after initially agreeing to the claimant's request that the claimant would be the interviewer and Ms Airoidi the notetaker;*

5.1.3.8 *Giulia Airoidi commenting that the claimant did not follow process when setting up a team meeting invite as she did not include everyone, irrespective of whether they would join or not;*

5.1.3.9 *On 24 February 2022, Giulia Airoidi commenting in response to the claimant stating that she needed to catch up on her Cambridge work to say "what have you been doing in the rest of the week" despite the claimant and Giulia Airoidi having worked together earlier in the week and doing interviews together until 8pm the previous night;*

220. Our findings about these matters are as set out above. The claimant did not direct us to and we could not discern any evidence which suggested that a person of a different race would have been treated differently by Ms Airoidi. We did not uphold these complaints.

Issue

5.1.4 Reject the claimant's work from abroad request despite other colleague requests being approved in the firm;

221. The evidence before the Tribunal was that the respondent's policy allowing employees to work from abroad changed from June 2022. The claimant was treated in accordance with the then extant policy. There was no evidence that anyone who applied at the time the claimant had applied had been allowed to work from abroad and no evidence from which we could reasonably conclude that a person of a different race who had applied to work abroad in March 2022 and was of a different race from the claimant would have been allowed to do so, despite that not being the current policy.

222. We did not uphold this complaint.

Issue

5.1.5 On 16 March 2022, Hannah Lewsley recommended that the claimant provide feedback to Giulia Airoldi but in a later meeting on 21 April 2022, once the claimant told Ms Lewsley that she had not had a response from Ms Airoldi. Ms Lewsley said "it must have been difficult for her to receive";

223. We do not repeat our findings above but we did not conclude that this was a detriment and we could see no evidence that a person of a different race would have been treated differently. We did not uphold this complaint.

Issue

5.1.6 On 29 March 2022, during a formal year end performance discussion about the claimant, Matt Juden said that she had an attitude problem;

224. We do not repeat the findings we made above in respect of this complaint when framed as direct sex discrimination. We could see no evidence from which we could reasonably conclude that Mr Juden-Bloomfield would have behaved differently in relation to a colleague of a different race from the claimant in materially the same circumstances and we did not uphold this claim.

Issue

5.1.7 April 2022 - Hannah Lewsley used false and misleading information in relation to the feedback on the claimant's performance to justify highlighting development points. This included Ms Lewsley saying that she had received feedback from 15 people but had only received feedback from 8;

225. Our factual findings are set out above. We did not conclude that Ms Lewsley had deliberately misled the claimant about the number of people spoken to. We could see no other 'false and misleading' information. We could see no evidence from which we could reasonably infer that a person of a different

race would have been treated more favourably than the claimant. We did not uphold this claim.

Issues

5.1.8 April 2022 - Ben Combes continued to use the inaccurate figure of 15 people in order to justify his feedback points to the claimant;

5.1.9 April 2022 - Ben Combes did not follow the correct year end process in relation to feedback i.e. He did not share the feedback with the claimant before the review;

5.1.10 4 May 2022 – Ben Combes provided unjustified feedback to the claimant;

226. Our factual findings are set out above. We could see no evidence from which we could reasonably infer that a person of a different race would have been treated more favourably than the claimant. We did not uphold these claims.

Issue

5.1.11 On 12 May 2022, Matt Juden repeatedly messaged and called the claimant and pressed her about what was wrong. Mr Juden emailed Hannah Lewsley to say that the claimant was off sick and told Ms Lewsley that he had put in a 121 meeting with the claimant as he noticed she was down, but this did not happen;

227. Our factual findings are set out above. We could see no evidence from which we could reasonably infer that a person of a different race would have been treated more favourably than the claimant. We did not uphold these claims.

Issues

5.1.12 On 4 July 2022, the claimant had an informal meeting with Laila Takeh to discuss feedback about the claimant. This included unjustified feedback and derogatory comments such as that the claimant can come across as aloof, stand offish, and arrogant;

5.1.13 The respondent failed to deal with the claimant's grievance promptly;

5.1.14 During her notice period, the claimant was pressured by Laila Takeh into reducing her notice period.

228. Our factual findings are set out above. We could see no evidence from which we could reasonably infer that person of a different race would have been treated more favourably than the claimant. We did not uphold these claims.

6. Harassment related to sex (Equality Act 2010 section 26)

Issue

6.1 *Did the respondent do the following things:*

If so, was that unwanted conduct?

Did it relate to sex?

Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6.1.1 *On 29 September 2021, during work drinks at a Brew Dog bar, Ben Combes questioned the claimant about her relationship with her partner and told the claimant that his wife looks like Pocahontas;*

229. Our conclusions were that the conversation about Pocantas related to genealogy and that the claimant had misremembered / misheard and/or unconsciously embroidered the discussion. We concluded that Mr Combes had asked the claimant if she had a partner and said something about engagements after a long period being an afterthought but that he had forgotten these remarks. The claimant had a clear recollection of the remarks and we had no competing account. We did not find that either the claimant or Mr Combes was dishonest in their evidence to the Tribunal.
230. We could see nothing in the context or in any other behavior of Mr Combes which supported an inference that any of these remarks were intended to be flirtatious or arose from an attraction to the claimant which would make them inherently sexual. Nor could we see any evidence that Mr Combes would not have made similar conversation with a new (to him) male employee – ie enquiring about his domestic situation and discussing genealogy. It seemed to us that the inferences subsequently drawn by the claimant were a result of overthinking what appeared to us to have been some inconsequential small talk remarks made over drinks on a single occasion. The claimant did not suggest that Mr Combes ever indicated that he was attracted to her or did anything she perceived as flirtatious on any other occasion.
231. We accepted that these remarks were unwanted by the claimant. We did not consider there was any evidence that Mr Combes intended them to have the proscribed effect nor did we consider that they could reasonably be considered to have that effect, although the remark about relationships was somewhat insensitive. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
232. We did not uphold this complaint.

Issue

6.1.2 *During February 2022, on the Amex GBT project, the claimant was micromanaged and bullied by Giulia Airoldi in front of colleagues including:*

- 6.1.2.1 *Giulia Airoldi making comments about the claimant's work before reading the content and often starting with the sentence "I'm confused";*
- 6.1.2.2 *Giulia Airoldi not respecting the claimant's request to do course work on a particular day and insisting on the claimant joining a meeting despite there already being 2 people already joining (which was the number agreed by the team for such meetings);*
- 6.1.2.3 *Giulia Airoldi implying that the claimant was taking Fridays off to study for her firm funded course;*
- 6.1.2.4 *Giulia Airoldi stated that the claimant had taken a half day when she left slightly early on a Friday afternoon to take a flight;*
- 6.1.2.5 *Giulia Airoldi attempted to make the claimant revise down her billable hours to reflect this particular Friday despite the claimant working late nights during the week;*
- 6.1.2.6 *Giulia Airoldi telling Ben Combes that she had not heard from the claimant when they had communicated via Teams and on documents;*
- 6.1.2.7 *Giulia Airoldi asked the claimant to be the note taker in an interview they were conducting together after initially agreeing to the claimant's request that the claimant would be the interviewer and Ms Airoldi the notetaker;*
- 6.1.2.8 *Giulia Airoldi commenting that the claimant did not follow process when setting up a team meeting invite as she did not include everyone, irrespective of whether they would join or not;*
- 6.1.2.9 *On 24 February 2022, Giulia Airoldi commenting in response to the claimant stating that she needed to catch up on her Cambridge work to say "what have you been doing in the rest of the week" despite the claimant and Giulia Airoldi having worked together earlier in the week and doing interviews together until 8pm the previous night;*

233. Our factual findings are as above. In none of these instances did we find that Ms Airoldi had a proscribed purpose. We considered that it would cheapen the words of the statute to describe any of these matters as having the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.

234. We did not uphold this complaint.

Issue

6.1.3 *On 16 March 2022, Hannah Lewsley recommended that the claimant provide feedback to Giulia Airoldi but in a later meeting on 21 April 2022, once the*

claimant told Ms Lewsley that she had not had a response from Ms Airoidi. Ms Lewsley said “it must have been difficult for her to receive”;

235. Our factual findings are as above. We did not consider that Ms Lewsley’s conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
236. We did not uphold this complaint.

Issue

6.1.4 *On 29 March 2022, during a formal year end performance discussion about the claimant, Matt Juden said that she had an attitude problem;*

237. We found no evidence from which we could reasonably conclude there was a relationship with sex. We did not consider that Mr Juden-Bloomfield had a proscribed purpose. In considering whether the conduct could reasonably be considered to have the proscribed effect, we bore in mind that it was feedback about performance to a third party and that a system of this sort relies on a degree of frankness from those reporting which those who participate in the system must reasonably expect. We did not consider that Mr Juden-Bloomfield’s remarks went beyond those parameters.
238. We did not uphold this complaint.

Issue

6.1.5 *April 2022 - Hannah Lewsley used false and misleading information in relation to the feedback on the claimant’s performance to justify highlighting development points. This included Ms Lewsley saying that she had received feedback from 15 people but had only received feedback from 8*

239. Our factual findings are as above. We did not consider that Ms Lewsley’s conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
240. We did not uphold this complaint.

Issue

6.1.6 *Hannah Lewsley’s collection of feedback to determine the claimant’s formal year-end performance outcome did not adhere to Deloitte’s policy which stipulates feedback should be collected across the full breadth of the financial year to cover all aspects of an employee’s contribution across clients, practice development and business development;*

241. We saw no evidence that Ms Lewsley's approach of focusing on collecting new feedback from the most recent quarter and adding that to feedback which had already been received was outwith the respondent's policies. She obtained feedback from a larger number of people than was usual.
242. We did not consider that Ms Lewsley's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
243. We did not uphold this complaint.

Issue

6.1.7 *April 2022 - Ben Combes continued to use the inaccurate figure of 15 people in order to justify his feedback points to the claimant;*

244. Our factual findings are as above. We did not consider that Mr Combes' conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
245. We did not uphold this complaint.

Issue

6.1.8 *April 2022 - Ben Combes did not follow the correct year end process in relation to feedback i.e. He did not share the feedback with the claimant before the review;*

246. Our factual findings are as above. We did not consider that Mr Combes' conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
247. We did not uphold this complaint.

Issue

6.1.9 *4 May 2022 – Ben Combes provided unjustified feedback to the claimant;*

248. Our factual findings are as above. We did not consider that Mr Combes' conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
249. We did not uphold this complaint.

Issue

6.1.10 *On 12 May 2022, Matt Juden repeatedly messaged and called the claimant and pressed her about what was wrong. Mr Juden emailed Hannah Lewsley*

to say that the claimant was off sick and told Ms Lewsley that he had put in a 121 meeting with the claimant as he noticed she was down, but this did not happen;

250. Our factual findings are as above. We did not consider that Mr Juden-Bloomfield's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.
251. We did not uphold this complaint.

Issue

6.1.11 On 4 July 2022, the claimant had an informal meeting with Laila Takeh to discuss feedback about the claimant. This included unjustified feedback and derogatory comments such as that the claimant can come across as aloof, stand offish, and arrogant;

252. We accepted that Ms Takeh had no proscribed purpose. Some of the feedback was highly critical of the claimant and would understandably have been very upsetting to hear.
253. Could provision of the feedback reasonably be considered to have the proscribed effect? We bear in mind that the claimant had pressed for the detail, no doubt so she could understand precisely why she had not been promoted and what areas she might need to address. We note that there was a great deal of positive feedback. It is difficult to see how an employee can understand and address in particular issues concerned with style and communication unless feedback is frank.
254. It seemed to us that unless criticism in these circumstances was dishonest or overstepped the line from constructive criticism into abuse or unhelpful personal remarks it was unlikely to have the proscribed effect and did not do so in the circumstances of this case. The comments were about what the respondent described as 'engagement style' – it was delivered as impressions others had formed about behaviour not as definitive statements about the claimant's personality.
255. We could not see any evidence from which we could reasonably conclude there was a relationship with sex.
256. We did not uphold this complaint.

Issue

6.1.12 The respondent failed to deal with the claimant's grievance promptly;

257. Our factual findings are as above. We did not consider that Ms Burgess' conduct had the proscribed purpose or could reasonably be considered to

have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.

258. We did not uphold this complaint.

Issue

6.1.13 *During her notice period, the claimant was pressured by Laila Takeh into reducing her notice period.*

259. Our factual findings are as above. We did not consider that Ms Takeh's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with sex.

260. We did not uphold this complaint.

7. Harassment related to race (Equality Act 2010 section 26)

Issue

Did the respondent do the following things:

If so, was that unwanted conduct?

Did it relate to race?

Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Issue

7.1.1 *On 29 September 2021, during work drinks at a Brew Dog bar, Ben Combes questioned the claimant about her relationship with her partner and told the claimant that his wife looks like Pocahontas;*

261. As we have already found, there was no proscribed purpose or effect. In respect of the discussion about genealogy only, there was a (benign) relationship with race in the sense that Mr Combes was referring to the ethnic origins of his wife's family.

262. We did not uphold this complaint.

Issue

7.1.2 *During February 2022, on the Amex GBT project, the claimant was micromanaged and bullied by Giulia Airoidi in front of colleagues including:*

- 7.1.2.1 *Giulia Airoidi making comments about the claimant's work before reading the content and often starting with the sentence "I'm confused";*
- 7.1.2.2 *Giulia Airoidi not respecting the claimant's request to do course work on a particular day and insisting on the claimant joining a meeting despite there already being 2 people already joining (which was the number agreed by the team for such meetings);*
- 7.1.2.3 *Giulia Airoidi implying that the claimant was taking Fridays off to study for her firm funded course;*
- 7.1.2.4 *Giulia Airoidi stated that the claimant had taken a half day when she left slightly early on a Friday afternoon to take a flight;*
- 7.1.2.5 *Giulia Airoidi attempted to make the claimant revise down her billable hours to reflect this particular Friday despite the claimant working late nights during the week;*
- 7.1.2.6 *Giulia Airoidi telling Ben Combes that she had not heard from the claimant when they had communicated via Teams and on documents;*
- 7.1.2.7 *Giulia Airoidi asked the claimant to be the note taker in an interview they were conducting together after initially agreeing to the claimant's request that the claimant would be the interviewer and Ms Airoidi the notetaker;*
- 7.1.2.8 *Giulia Airoidi commenting that the claimant did not follow process when setting up a team meeting invite as she did not include everyone, irrespective of whether they would join or not;*
- 7.1.2.9 *On 24 February 2022, Giulia Airoidi commenting in response to the claimant stating that she needed to catch up on her Cambridge work to say "what have you been doing in the rest of the week" despite the claimant and Giulia Airoidi having worked together earlier in the week and doing interviews together until 8pm the previous night;*

263. Our factual findings are as above. In none of these instances did we find that Ms Airoidi had a proscribed purpose. We considered that it would cheapen the words of the statute to describe any of these matters as having the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

264. We did not uphold this complaint.

Issue

7.1.3 *On 16 March 2022, Hannah Lewsley recommended that the claimant provide feedback to Giulia Airoidi but in a later meeting on 21 April 2022, once the claimant told Ms Lewsley that she had not had a response from Ms Airoidi. Ms Lewsley said "it must have been difficult for her to receive";*

265. Our factual findings are as above. We did not consider that Ms Lewsley's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

266. We did not uphold this complaint.

Issue

7.1.4 *On 29 March 2022, during a formal year-end performance discussion about the claimant, Matt Juden said that she had an attitude problem;*

267. We found no evidence from which we could reasonably conclude there was a relationship with race. We did not consider that Mr Juden-Bloomfield had a proscribed purpose. In considering whether the conduct could reasonably be considered to have the proscribed effect, we bore in mind that it was feedback about performance to a third party and that a system of this sort relies on a degree of frankness from those reporting which those who participate in the system must reasonably expect. We did not consider that Mr Juden-Bloomfield's remarks went beyond those parameters.

268. We did not uphold this complaint.

Issue

7.1.5 *April 2022 - Hannah Lewsley used false and misleading information in relation to the feedback on the claimant's performance to justify highlighting development points. This included Ms Lewsley saying that she had received feedback from 15 people but had only received feedback from 8;*

269. Our factual findings are as above. We did not consider that Ms Lewsley's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

270. We did not uphold this complaint.

Issue

7.1.6 *Hannah Lewsley's collection of feedback to determine the claimant's formal year-end performance outcome did not adhere to Deloitte's policy which stipulates feedback should be collected across the full breadth of the financial year to cover all aspects of an employee's contribution across clients, practice development and business development;*

271. We saw no evidence that Ms Lewsley's approach of focusing on collecting new feedback from the most recent quarter and adding that to feedback which had already been received was outwith the respondent's policies. She collected feedback from a larger number of people than was usual.

272. We did not consider that Ms Lewsley's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

273. We did not uphold this complaint.

Issue

7.1.7 *April 2022 - Ben Combes continued to use the inaccurate figure of 15 people in order to justify his feedback points to the claimant;*

274. Our factual findings are as above. We did not consider that Mr Combes' conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

275. We did not uphold this complaint.

Issue

7.1.8 *April 2022 - Ben Combes did not follow the correct year end process in relation to feedback i.e. He did not share the feedback with the claimant before the review or include this feedback in the formal snapshot review required by firm policy;*

276. Our factual findings are as above. We did not consider that Mr Combes' conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

277. We did not uphold this complaint.

7.1.9 *4 May 2022 – Ben Combes provided unjustified feedback to the claimant and stated the claimant “could have done more to address the issues with Giulia Airoldi, rather than going to him with problems and no solutions”;*

278. The claimant did not put this to Mr Combes and we were not provided with context and an explanation of the circumstances by the claimant. In the absence of that and the matter having been put to Mr Combes we did not feel we could make any sensible findings of fact about this allegation, including as to whether it was said and whether it was unjustified.

279. Even if it had been said, we had no evidence to suggest a relationship with race.

280. We did not uphold this complaint.

Issue

7.1.10 *On 12 May 2022, Matt Juden repeatedly messaged and called the claimant and pressed her about what was wrong. Mr Juden emailed Hannah Lewsley*

to say that the claimant was off sick and told Ms Lewsley that he had put in a 121 meeting with the claimant as he noticed she was down, but this did not happen.

281. Our factual findings are as above. We did not consider that Mr Juden-Bloomfield's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.
282. We did not uphold this complaint.

Issue

7.1.11 *On 19 May 2022, the claimant spoke to Laila Takeh and raised the concerns regarding fabrication of feedback, lack of support from senior leadership on an engagement which led to bullying and harassment and mixed communication on performance which will potentially affect the claimant's year end outcome. Ms Takeh did not follow up on these concerns.*

283. Ms Takeh sought advice from HR and continued to seek to support the claimant and discuss issues relating to her non promotion and her pay. She investigated the feedback issue in significant detail. We considered that she devoted a great deal of effort to the claimant's issues. The only possible oversight we could discern was that she did not expressly invite the claimant to consider whether she wanted to raise a grievance.
284. It seemed to us that Ms Takeh was attempting to address the claimant's issues in good faith and had no proscribed purpose. If it was a failure not to refer the claimant to the grievance procedure, we did not consider that it had the proscribed effect. We could see no evidence from which we could reasonably conclude that the conduct had any relationship with race.
285. We did not uphold this complaint.

Issue

7.1.12 *On 4 July 2022, the claimant had an informal meeting with Laila Takeh to discuss feedback about the claimant. This included unjustified feedback, derogatory comments and comparisons made between the claimant's ability vs more junior colleagues.*

286. We have made findings of facts about these matters and why Ms Takeh raised the criticisms in detail. We did not find she had a proscribed purpose and nor did we find that the conduct could reasonably have had the proscribed effect. We could see no evidence from which we could reasonably conclude that the conduct had any relationship with race.
287. We did not uphold this claim.

Issue

7.1.13 *The respondent failed to deal with the claimant's grievance promptly;*

288. Our factual findings are as above. We did not consider that Ms Burgess' conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

289. We did not uphold this complaint.

Issue

7.1.14 *During her notice period, the claimant was pressured by Laila Takeh into reducing her notice period.*

290. Our factual findings are as above. We did not consider that Ms Takeh's conduct had the proscribed purpose or could reasonably be considered to have the proscribed effect. We could not see evidence from which we could reasonably conclude there was a relationship with race.

260. We did not uphold this complaint.

261. Because we did not uphold any of the claimant's complaints, we did not have to go on to consider issues in the list of issues about whether some claims had been presented in time and issues raised by the claimant about alleged breaches of the ACAS Code.

Employment Judge Joffe

London Central Region

10/01/2024

Sent to the parties on:

10/01/2024

For the Tribunal Office: