



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs N Lawrence

**Respondents:** (1) Barclays Execution Services Limited  
(2) Mr M Brooke  
(3) Mr M Bell

**Heard at:** East London Hearing Centre (in public, in part by video)

**On:** 13, 14, 15, 16 February and 27 March 2024 (in public),  
28 March, 5 and 16 April 2024 (in chambers)  
2 July 2024 oral judgment

**Before:** Employment Judge Moor  
**Members:** Mrs J Land  
Mr S Woodhouse

## Representation

**Claimant:** Ms S Aly, counsel  
**Respondents:** Mr A Ohringer, counsel

# REASONS

## Index

1. The claimant was employed from 27 July 2015 as a Risk and Control Business Partner, Vice-President with the First Respondent, which is the service company to Barclays' wholesale and retail banks.
2. The Claimant presented complaints of race, sex and religion discrimination or harassment and victimisation to the Tribunal on 7 April 2022 after a period of ACAS EC from 2 February 2022 to 15 March 2022. The Second and Third Respondents were, at times, her line managers.

## Issues

3. This hearing was held to deal with the liability issues set out in the list of issues agreed by the parties and the ACAS uplift/decrease points at issues 14, 15 and 16. We refer to the wording of each issue in our analysis below.

## Adjustments and Timetable

**Case Numbers: 3201387/2022 and 3205577/2022**

4. We agreed adjustments for the hearing day that the Claimant would ask for any extra breaks if she required. At one point in the hearing the Claimant became very stressed and we paused proceedings until she was composed enough to continue. The first three days were very warm in the Tribunal and we adjusted as best we could with fans. The parties were able to continue and we thank them for their forbearance.
5. Ms Mason, gave evidence from New York by video. She is a US citizen and resident. Otherwise this was an in-person hearing.
6. We were provided with a useful agreed chronology, cast list and glossary of abbreviations, an agreed bundle of documents and written summary submissions. We thank those preparing these documents for their diligence.
7. The parties provided an agreed timetable to fit with the 4-day listing. We lost an hour for a fire alarm, further time for the Claimant's genuine need for a longer break during questions, and an afternoon when Ms Mason was unable to connect by video. Despite counsel's best efforts, we went part-heard for a further half day of evidence and submissions. We have deliberated in private for 2.5 days. We were ready to give judgment after 16 April 2023: the first day the parties were able to offer us was 2 July.

**Findings of Fact**

8. Having heard the evidence of the following people:
  - 8.1. the Claimant,
  - 8.2. Mr Malcolm Brooke, latterly Group Chief Controls Officer, mentor 2019 -2021, line manager March – August 2019 and the Second Respondent;
  - 8.3. Mr Mark Bell, at the time Head of Controls in the Chief Operating Office, Line Manager November 2021 – October 2022 and the Third Respondent;
  - 8.4. Mr Adrian Gilheany, Head of Operational Rigour Barclaycard Payments, line manager November 2019 to November 2021;
  - 8.5. Ms Linda Hall, BX Chief Controls Officer, head of the reporting line;
  - 8.6. Ms Dominique Douglas, Global Head of BX Payments Commands Centre, who decided the grievance; and
  - 8.7. Ms Azura Mason, Global Head of Race at Work, who decided the grievance appeal;

and having read the documents referred to us, we make the following findings of fact.

9. For ease, we include an index for our findings of fact.

**Case Numbers: 3201387/2022 and 3205577/2022**

<b>Paragraph Numbers</b>	<b>Content</b>
13-15	Claimant's Role
16-18	Promotion Routes and Procedures
19	High Cost Location Strategy
20-25	Appraisal System
26-27	Claimant's Performance (generally)
33-36	2019: covering for 70% Director's Role
37-39	2019: Brooke's appraisal and 'promise/encouragement'
40	2019: Management De-layering
41	What would Brooke have Decided on Stroud's not return
42-44	2019 Appraisal by Gilheany
45-46	2020: effect of pandemic on Claimant;
47-48	feedback by Gilheany and Hall on presentation.
49-52	2020: Brooke's mentoring comments
53-54	2020 Appraisal
55-56	2020: Mr Gilheany's approach to in-role promotion
57-61	2021: leadership course; Bell February 2021 feedback; reduction in role; rejection of secondment;
62	personal issues
64-66	2021 mid-year review
67-68	August statement to Gilheany about promotion and personal issues
70-72	2021 end Oct Gilheany hands over to Bell
73-76	Mr Rimmington's promotion: business case
77-81	Rimmington: Approval of director role by SLT
81-82	Rimmington: no review/benchmarking of new grade
83-86	Rimmington's: no approval of location

**Case Numbers: 3201387/2022 and 3205577/2022**

<b>87</b>	Was Double Outstanding a Prerequisite to In-Role
<b>88</b>	Rimmington: Procedure Overall
<b>89</b>	Bell's consideration of the Claimant for in-role promotion
<b>90</b>	Announcement of Rimmington's Promotion; Claimant's reaction
<b>96-98</b>	19 November 2021 conversation with Brooke PA1
<b>99-100</b>	21 November 2021 email to Brooke PA2
<b>103-107</b>	Bell feedback to Claimant about Rotheroe 'challenge'
<b>108-111</b>	30 November 2021 Brooke response to Claimant's
<b>112-114</b>	Rest of 2021
<b>115-125</b>	Jan 2022 arrangement to benchmark, request for list of competencies, request to benchmark her role April 19-21 and Mr Bell's refusal.
<b>126-127</b>	Grievance Email 10 January 2022
<b>128-134</b>	Appraisal 2021 Rating
<b>135-139</b>	Appraisal Meeting Bell Gilheany 20 Jan 2022
<b>140-147</b>	Appraisal Follow-up Bell 26 Jan 2022
<b>148-150</b>	10 February 2022 ACAS notification received by Bell
<b>151-164</b>	1 March 2022 Grievance Meeting, email and investigation
<b>165-172</b>	18 March 2022 Grievance Outcome and our analysis of it
<b>173-190</b>	Grievance appeal – dealing with issues for us
<b>191</b>	Provision of competencies
<b>194-199</b>	D&I and Statistics

*Terminology*

- The First Respondent is the service company to the two sides of Barclays Bank in the UK: the wholesale and retail banks. We refer to all three legal entities as 'the bank', as did witnesses, and will distinguish between the three only where necessary.

11. The Claimant self-describes as Asian. She is Muslim. We use the words and phrases to describe race that she used in putting her case, including 'ethnic minority'.
12. Each job in the bank has a grade. The grades of Vice-President and Director are relevant here. Very roughly in the division of the bank we are considering, the Chief Controls Office, there were around 200 VPs and around 30/40 directors and Managing Directors, those in the grade beyond that were in single figures.

#### *The Claimant's Role*

13. By 2019 the Claimant had worked at the first Respondent for 4 years in its Chief Controls Office ('CCO') as 'Global Tax Operations Risk and Control Officer (Vice-President)'.
14. The management of risk and control is an important part of the first Respondent's function. The Claimant was one of many employees across different business units whose job it was to advise those units on the risks associated with their activity and persuade them of the control measures required to minimise those risks. This was done through risk and control frameworks, which the Claimant, her team and manager, created, maintained and developed. The implementation of the control measures was for others.
15. The Claimant worked within a line of management. In her work she had to establish relationships with people across the business units of the bank for which she had the risk and control function. These people were her 'stakeholders' and this relationship was known as a 'horizontal' one. A good part of her role was to ensure the 'engagement' of these stakeholders and 'ownership' by them of the risks in their parts of the bank that the risk and control team identified.

#### *Promotion Routes and Procedures*

16. There are two ways of achieving promotion within the bank. Either by a successful application for a vacant post, advertised internally, or by an 'in-role' promotion whereby *'colleagues who have grown in their existing role are confirmed to be operating at the next grade and may be eligible for in-role promotion'* (539).
17. On 24 August 2021 employees in the CCO, including the Claimant, were emailed a description of this promotions process (539). We have also seen the briefing to managers about the process (247). For in-role promotion to director, there were two rounds per year and, from the second half of 2021, this would apply to all in-role promotions. The timetable at p250 shows that a final list of nominations for in role promotions had to be produced on 10 September, and that interviews be completed by 8 October. From these documents we find the process had 3 stages:
  - 17.1. ***'Line managers identify colleagues that have grown in their existing roles and put forward a business case to support the required upgrading of that role. This will require approval from***

*senior leadership.*' (543). The FAQ section to managers says more simply, '*you will need to consider whether the role has genuinely grown in scope and should now be considered to be at the higher corporate title*', 255. (Our emphasis)

- 17.2. If approved, the role is then **benchmarked** to confirm that it meets criteria at the next grade. This is explained in the more detailed document, 249: '*New role profiles **must** be reviewed and benchmarked at the relevant level **by the job evaluation team** in advance of the interview process*'. (Our emphasis)
- 17.3. Then colleagues were invited to interview.
18. The promotion documents also include principles managers should follow including that: the 'business can afford the role' and the '*candidate and role must be in same location*'.

#### *High Cost Location Strategy*

19. At the time of the events complained about, the bank had a location strategy to reduce costs. This meant it avoided creating new posts in high cost locations such as London. We have not seen this strategy in writing and have heard contradictory evidence about its impact on in-role promotion opportunities:
  - 19.1. In a contemporary email Mr Brooke thought it meant **no** in-role promotions could be made, 509. This is consistent with the Claimant's understanding of what he told her in 2019/2020.
  - 19.2. But Ms Hall and Mr Bell thought a re-grade of a role already in London by way of in-role promotion was not prevented by the policy.

#### *Appraisal System*

20. In the annual appraisal system managers, colleagues and internal 'stakeholders' provided feedback on what the employee has done well and what could be improved. The employee assessed their own performance and the line manager reached an assessment using all of that information.
21. There were three ratings: Needs Improvement (NI); Strong (S); and Outstanding (O).
22. The appraisal assesses two aspects of performance called the 'What' and the 'How'.
  - 22.1. The 'What' assessed how well an employee had achieved their objectives i.e. done the work.
  - 22.2. The 'How' assessed whether and how well they had done their work in accordance with the bank's values: **respect, integrity, service, excellence and stewardship** (these are described at,

## Case Numbers: 3201387/2022 and 3205577/2022

for example, 1067); **mindset: empower, challenge, drive** (these are described at, for example, 1068-9).

23. Managers had a mid-year appraisal meeting with their reports. It was not formally recorded but an employee could fill out a self-assessment template to inform the discussion.
24. There was a formal process for challenging appraisal grades.

### *Claimant's Performance Generally*

25. All agree the Claimant had an excellent working record. Litigation means more time is spent on areas of dispute, but it is worth repeating this basic point: the Claimant was regarded by the First Respondent an excellent performer. Her managers and stakeholders were fulsome in their praise of her. The appraisal feedback we have read shows the Claimant was well-organised, executed her work brilliantly, learned new areas quickly, and was respected by her colleagues. It is unsurprising that she was identified within the bank as having High Potential.
26. In her appraisals for 2019, 2020 years she achieved Outstanding ratings on the 'What' and Strong ratings on the 'How'. The Claimant did not challenge these appraisals.
27. We now turn to the relevant events in chronological order.
28. The Claimant began in her role on 27 July 2015 at the VP grade giving risk and controls advice globally on tax.
29. Ms Stroud, BX Controls Officer (Director), was the Claimant's line manager from mid 2017 to March 2019.
30. In about mid 2018, the Claimant's role expanded to include responsibility for Enterprise Process Taxonomy ('EPT') as well as tax.

### *2019*

31. On 7 February 2019, Ms Stroud put the Claimant forward for a developing leaders programme because she was identified as a High Potential individual, 193. This was to Mr Brooke, Ms Stroud's manager and then Chief Controls Officer CCO.

### *Covering for 70% of her Director's Role*

32. From 1 April 2019, Ms Stroud went on a secondment planned for 6 months. In her email of 8 March 2019, Ms Stroud explained the arrangements made to cover her role while she was away, agreed with Mr Brooke. The email records her thanks to Mr Gilheany, the Claimant and Ms Shah for their cover.
  - 32.1. Mr Gilheany, already a Director, took Chief Controls Officer responsibilities for Internal Suppliers.

- 32.2. For Execution Risk, T&D and Group Insurance, Mr McCullough was to continue as primary controls officer for that area but he now reported to the Claimant and not Ms Stroud.
- 32.3. For CCO Governance, RCSA and Controls Assurance Ms Shah would 'oversee anything that required a consolidated controls view'. However this team also would now report into the Claimant. Ms Shah would chair BX COO Controls meetings.
33. We find therefore that the Claimant took on temporarily three new areas of greater management responsibility that all had been undertaken previously by a director (the two above and her own area that Ms Stroud had managed). The facts that Ms Stroud said the Claimant would '*join Malcom Brooke's leadership team*' and that Mr Brooke became the Claimant's line manager, reflected this expansion in her role and greater management responsibility.
34. A dispute arose in oral evidence, after re-examination of the Claimant, about the proportion of Ms Stroud's role that Mr Gilheany took on. After weighing the evidence we judge it to be about 30%. While it was normally around 10-12% as the Claimant suggested, we accept Mr Brooke's evidence that it was around 30% at the time because the service company was being created and the bank was working out how to run the internal supplier relationship. We do not put it as high as 40% as Mr Bell suggested because we judge he was not as near to these arrangements as Mr Brooke at the time.
35. Thus, while the Claimant was not covering Ms Stroud's director role entirely, she had taken on about 70% of it, a significant amount. This expansion in her role, was referred to as a 'stretch opportunity' – one designed to test a VP and help them on the path to directorship.

*Mr Brooke's encouragement*

36. As part of her mid-year appraisal 2019, Mr Brooke discussed with the Claimant three positives and three negatives from her feedback, which were agreed and summarised in his email of 16 July 2019, 197.
- 36.1. The pluses were that she worked hard, was a subject matter expert and was adaptable.
- 36.2. The minuses were her '*communication style, impact in senior meetings and 'let go' of work on the journey to Director*'.
- 36.3. Mr Brooke wrote, '*as discussed I will support you on your continuing journey to become a Director working with you to improve your communication style and impact.*'
37. We find that '*impact*' meant how well the Claimant explained the risks she had identified and persuaded her stakeholders of them in meetings. Persuading her 'stakeholders' to 'own' and act on the risk and control advice she gave them was an important part of her job. (In the parlance of managers, she had 'impact' if her message 'landed'.) Good impact required good communication skills but also required her to select



appropriate content for the meetings - identifying the wood from the trees.

38. Mr Brooke continued our interpolations are in square brackets: *'We discussed timing and with your role only being interim there are no guarantees especially as I need to ensure the role is kept open for Lisa [Stroud] should she choose to return.*

*Having said that, should that situation arise [i.e. Stroud returning] I will work with you to look at any other options [i.e. not Stroud's role] that could help you get a Director role.*

*Finally I appreciate all the hard work and dedication you have shown over the past few months as we have worked together.'*

Having heard the oral evidence, we find this to mean that, while there were no guarantees, Mr Brooke was informing the Claimant that, if she performed, she would be considered for promotion if Ms Stroud did not return. This made sense: the Claimant was covering a large part of Ms Stroud's role as well as undertaking her own role and it was described as a stretch opportunity.

#### *De-layering*

39. On 30 July 2019 Mr Brooke stopped being the Claimant's line manager when he moved to become Chief Controls Officer for Barclays Bank plc. Mr Ashton briefly became her line manager before, in September 2019, Mr Gilheany, a director, then became her line manager until November 2021. This has been called a 'de-layering' because the Claimant was put back to being line managed by a director (Mr Gilheany) rather than a managing director (as Mr Brooke had been). We find, however, that the Claimant continued to do those things that Ms Stroud had delegated in her email except that, now, a director was line managing her and she did not attend the senior leadership team meeting. This reflected a change in status but significantly she was still doing 70% of the work Stroud had been doing. It was not until April 2021 that the Claimant's areas of responsibility were reduced by the loss of two areas of responsibility (Tax and Transaction Ops) to India (see below). And even after that time she retained the areas she had taken on in covering for Ms Stroud's role.

#### *Stroud Does Not Return: What Would Brooke have Decided?*

40. By the end of September 2019 it will have been known that Ms Stroud was not returning. Mr Brooke was no longer the line-manager and he therefore did not consider the Claimant for in-role promotion. In any event, we accept that there were still some communication/impact development points for her to work on, which she had agreed at that time. Thus, consistently with what he had told her, those outstanding development points would likely have meant that, if he had considered her for promotion at that stage, he would not have put her forward.

#### *Mr Gilheany's Approach to Career Development; Appraisals*

**Case Numbers: 3201387/2022 and 3205577/2022**

41. Up until mid 2021, Mr Gilheany understood the Claimant's desire for promotion and set aside time to discuss career development with her each month.
42. In the year-end Appraisal of 2019 (1020) Mr Gilheany awarded the Claimant an Outstanding on the What and a Strong on the How. The development points were to build her confidence and impact when chairing the senior controls forum and improving her technical skills for change management, an area she had to advise on. We accept Mr Gilheany's evidence about this: his evidence is consistent with the minuses Mr Brooke had identified earlier on in the year.
43. The Claimant did not put to Mr Gilheany any questions for why he had not put her forward for an in-role promotion in 2019. Mr Gilheany did not put anyone else forward for in-role promotions. Indeed Ms Aly had to be reminded to put the case to him that he had discriminated against the Claimant on grounds of race/sex/religion in any period.

2020

44. From February 2020, Mr Brooke became the Group Chief Controls Officer. From then he said and we accept that he saw little of the Claimant's work directly and would depend on the line managers informing him about their opinions for in-role promotion.
45. In March 2020 the Covid pandemic arrived in the UK. Like all managers, the Claimant had to support her team and adapt to different ways of working, and the pandemic was in general a new focus for her controls work. But we find that the matters raised in cross-examination of the Respondents' witnesses were not significant expansions to her work: had they been, they would have been referred to in appraisals and the Claimant's lengthy and detailed written statement by which time she had understood work during Covid to be an issue in the case. We find that the Claimant's work did not expand or become more challenging to any significant degree as a result of the pandemic.
46. On 21 May 2020, Mr Gilheany gave the Claimant feedback on an execution risk call that she had chaired " *Excellent call well chaired, it was totally different from Q4 – flowed better, got the right conversation and as we know will improve with all the work you and team are putting in. Good job! Adam*" (our emphasis, 200) This concerned the 'impact' development point from the 2019 feedback and shows the Claimant had worked to improve her impact.
47. In November 2020 Ms Hall, who had taken on Mr Brooke's role as BX Chief Controls Officer, gave the Claimant feedback, at her request, about a regular horizontal forum meeting she chaired, 206. *'I think you managed to time well and summarised the horizontal very well. The meeting is getting much better at forward looking and taking action so again I think that is good. I think getting Dave and John and Jon to participate and take ownership is the next improvement required.'* (our emphasis) Ms Hall thought the Claimant was doing a good job but identified, in this last sentence, a development point on 'impact': Ms Hall

thought the Claimant should do more to persuade the key stakeholders to participate and 'own' their risks.

*Brooke mentoring comments*

48. Mr Brooke continued to be an informal career mentor for the Claimant after he stopped being her manager. They met every 6-8 weeks. At the time, the Claimant and Mr Brooke plainly had a good relationship: one based on mutual respect and trust. Not only did they talk about the Claimant's development, career aspirations and steps she could take but also about her experience of disadvantage growing up and the racial prejudice she had experienced in her life. This trusting relationship only appears to have been broken when Mr Brooke discovered that she had recorded their conversation in November 2021 without his consent.
49. Mr Brooke knew the Claimant wished to find a promotion to director, but it is simply incorrect for him to state in his written witness evidence to us, that the Claimant focussed on looking for a promotion rather than development. First, we doubt he would have acted as mentor if she had this approach. Second, our findings are that the Claimant actively sought feedback and sought to improve on those areas where development feedback had been given and, third, we find Mr Brooke knew this at the time. It reflects badly on him to include this back-handed criticism in his statement: we find it derives from the loss of trust in her after she recorded him without her consent and his upset at feeling personally accused of 'racism' as he saw it. As a senior individual who values diversity at Barclays we would have expected him to understand the need for the bank to face discrimination challenges from staff from time to time to test the robustness of its diversity and inclusion agenda.
50. In relation to promotion in London, while her mentor Mr Brooke told the Claimant effectively that his hands were tied (as he agreed in cross-examination) by the high cost location strategy. Our finding on this is supported by what he said later at 509 '*I held the line in conversations around CCO not doing in-role promotions...*' (our emphasis). We find the Claimant reasonably understood this to mean there was no chance of a promotion in London. Later, Mr Brooke thought Mr Rimmington such an exceptional candidate that he was an appropriate exception to this policy.
51. Mr Brooke suggested to the Claimant she look at vacancies in the bank outside of London. The Claimant said she could not move out of London for family reasons. He therefore went on to say that if she wanted a directorship in London then she might have to look beyond Barclays. He was aware of the buoyant job market at the time elsewhere. She did not object to this statement and their mentoring continued. We accept Mr Brooke's evidence that he said or would have said this to any other mentee including white non-Muslim men: his role as a mentor was to discuss in a positive way the career progression for the mentee and, if one option was finding a quicker path to director elsewhere, then he would say that. We do not find, in this context, that Mr Brooke made this remark in an effort to encourage the Claimant to leave, nor did she take it that way at the time.

2020 Appraisal

52. In the Claimant's 2020 year-end appraisal, Mr Gilheany graded her as Outstanding on the What and Strong on the How again. On the 'What' he stated, *'Nazia will automatically take the lead to cover all of my areas, which is broader than her remit. Nazia is my delegate and I am very comfortable for her to represent myself and the team in a senior forum'*. His praise was fulsome and he gave an example of one new area in which the Claimant had taken *'the initiative immediately to start to build a new relationship with her Stakeholder'*. He described another example in her 'horizontal' where she ensured by the way she took a stakeholder through the content that he was *'comfortable to sign off'*. (1036) On the 'How' he described the high level horizontal that *'has a lot of senior level focus'* and how *'Nazia over each quarter has improved the running of [it] has developed her presentation style that has contributed enormously to the running of the forum, driving better participation from others and a much better outcome that supports the horizontal owner'*. He described her as a *'strong and excellent leader'*. The appraisal and feedback, read as a whole, do show the Claimant having clearly improved communication and impact as this summary suggests. We find, given this feedback, she could reasonably have concluded that she had resolved the communication 'minus' raised with her by Mr Brooke. Indeed it is Mr Brooke's evidence that from what he had seen and heard of her, he considered she had improved throughout 2020.
53. In the 2020 appraisal under the How, Mr Gilheany described the *'key focus area for Nazia is to be able to pivot towards and demonstrate her ability to operate more strategically enhancing her thought leadership across her horizontal and vertical areas of coverage. This includes raising/escalating areas of improvement, presenting the solution, obtaining sponsorship to execute the delivery'* (our emphasis). Plainly this is not about her communication style. Mr Gilheany explained and we accept that this development aim was for the Claimant to do her job with the big picture in mind, strategically, seeing what was coming down the road, looking at how risk and controls might develop in the future or was being done differently by others. The Claimant did not challenge this appraisal rating.

*Mr Gilheany decision on in-role promotion*

54. When it was put to Mr Gilheany that he should have put the Claimant forward for an in-role promotion, he said he did not regard her role as a director-level role.
- 54.1. Our consensus is that his opinion looks odd on the evidence we have heard that the Claimant was still doing about 70% of a director level role, had plainly improved her performance in 2020, and had had something of an indication from Mr Brooke.
- 54.2. We find, however, that it was not Mr Gilheany's practice to consider his VPs for in-role promotion: in the 2 years he was her line manager he had not suggested anyone.

- 54.3. We have found no evidence from Mr Gilheany's assessments of the Claimant that he stereotyped her in any way or that he made subjective comments about her performance that could have hidden any kind of unconscious bias. He was fulsome in his praise; he did not criticise her communication 'style'; and the Claimant did not disagree with his development point on strategic action which he explained objectively to us.
- 54.4. Taking all of this into account, our consensus is that Mr Gilheany really did not look beyond the line management structure. Once he was inserted into the line as a director managing the Claimant, he saw her as a VP. He did not see beyond the loss of status that de-layering effected. No one had told him to consider, once the Claimant had improved in her performance, that she might be put forward for promotion as per Mr Brooke's earlier suggestion nor did the Claimant raise it with him.
55. Mr Gilheany commented at the end of 2020 that '*with the recent management changes within the organisation it will be important that Nazia ensures her profile is achieving the right level of visibility*'. Visibility means being seen doing your job by senior management. Opportunities for visibility are at meetings like the horizontal forums and by way of an ex officio appointment to the senior leadership team. We find, contrary to the suggestions in her witness statement, that the Claimant had been given good opportunities for visibility generally:
- 55.1. When covering for Ms Stroud she joined Mr Brooke's leadership team until November 2019 – this gave her a lot of visibility.
- 55.2. Ms Hall, the most senior person in the division, saw her to give her feedback in November 2020, 206.
- 55.3. The 2020 appraisal refers to the fact that the Claimant had had high level senior focus (see above).
- 55.4. The Claimant has contradicted herself about this in her evidence. While she complained about not being put forward into positions that gave her senior level focus in her witness statement, in her oral evidence, she explained that part of the reason for not accepting a secondment in 2021 was because she '*already had plenty of senior level focus*'.
- 55.5. Mr Gilheany gave an example of when she presented to Ms Hall's meeting and not him, 219. As he said in his feedback about her, he was happy for her to represent him.
- 55.6. She had the mentorship of Mr Brooke, a very senior colleague.

2021

56. In the first half of 2021, the First Respondent sent the Claimant on a Women in Leadership course. Again this identified her as someone with potential.

## Case Numbers: 3201387/2022 and 3205577/2022

57. On 24 February 2021 she asked Mr Bell for feedback on her chairing of a meeting. In an email he told her that her chairing was excellent, keeping it on track and establishing relationships. He suggested, however, that instead of reading numbers and narrative straight from her slides she should give insight into their meaning and prioritise certain points. This feedback on presentation but we find was objectively based on what Mr Bell saw and makes sense as a feedback point: selecting content in order to persuade was a way to improve impact.
58. In April 2021, the Tax Ops and Transaction Ops parts of the Claimant's role were transitioned to India. This reduced her role. We accept Mr Bell's explanation that it was for a valid business reason.
59. In June 2021 the Claimant had a preliminary discussion with Mr Merrick who was screening interested candidates for a vacant Director role. She was unsuccessful because they were looking for candidates with project management experience.
60. In July 2021 the First Respondent offered the Claimant a secondment in Operational Risk. She declined mainly because the timing was not right for her. The Claimant also saw it as something of a poisoned chalice. We find that it was appropriate to offer her this secondment: it was not an 'abuse', as she suggested.

### *Personal issues*

61. Over the course of 2021, the Claimant clearly had some significant personal family issues involving the health of close family members and requiring changes in her personal life which will have placed an extra burden upon her at that time. She described these in detail to her managers.
62. In August 2021 details about the two promotion routes (in-role and vacancy) were sent to all members of staff including the Claimant, although she does not recall seeing this email.

### *Mid-year review*

63. In her mid-year self-assessment the Claimant described herself as having a very strong year, 227. We do not read into this, as Mr Ohringer suggested, that she did not class herself as outstanding.
64. At the mid-year review the Claimant and Mr Gilheany had a very positive discussion about her progress.
  - 64.1. We accept Mr Gilheany's evidence that he did not say to the Claimant that she was on track for Outstanding, because grades were not normally discussed mid-year, nor did it seem to us the Claimant's evidence about what was said was entirely clear after cross-examination on the point. Nor does the January 2022 Whatsapp that she relies on identify Mr Gilheany as telling her this.

- 64.2. We accept, however, that because of the very positive discussion, the Claimant understood herself to be on track for an outstanding grade.
65. We do not accept Mr Gilheany's evidence that the Claimant did not always want to take on his development feedback. This general observation derives from only one incident where he made some suggestions about slides that the Claimant did not take up. It seemed to us that this incident was evidence of a respectful difference of approach rather than illustrating some general attitude problem. If it had been, we have no doubt it would have appeared his appraisal feedback. Mr Gilheany makes no mention, however euphemistically, of this kind of attitude in the very full appraisal notes. Plainly the Claimant had shown herself to be someone who sought feedback, heard it and aimed to improve and we find Mr Gilheany did not at the time hold this contrary view about her.

*What was said about family issues?*

66. In his witness statement Mr Gilheany explains, *'I recall that around August 2021, the Claimant had some family issues and started cancelling those career development 121 meetings. When I discussed this with her, she told me that these meetings were no longer required, as she was focusing on her family and therefore at that time, her career development or promotion was not a priority for her.'* (our emphasis) We find the Claimant did not cancel career discussion meetings (plural) with him. He was happy to accept that his witness statement was incorrect on this point. We find that one meeting was cancelled by each of them.
67. Did the Claimant even say to Mr Gilheany that she could not prioritise promotion at that time?
- 67.1. The Claimant said she did not say she was no longer looking for promotion.
- 67.2. In cross-examination Mr Gilheany said that the Claimant had *'not said 'I do not want to be promoted any more'. It was more about priority at that time due to other personal things going on.'* This is consistent with his witness statement. It is not consistent, however, with the summary of his interview with Ms Douglas during the grievance but we weigh more heavily his witness evidence to us.
- 67.3. On the one hand it is plausible that the Claimant did say something about her priorities because she had pressing family issues at that time.
- 67.4. On the other hand her family commitments did not prevent the Claimant from putting in outstanding work in 2021 and Mr Gilheany understood that the Claimant was seeking promotion. And from what managers told Ms Mason in the grievance appeal, Ms Mason thought so too.

**Case Numbers: 3201387/2022 and 3205577/2022**

- 67.5. It is equally plausible to us that more was made of this point during the grievance by Mr Gilheany and Mr Bell to bolster their response. (We consider this further below.)
- 67.6. On balance we find the Claimant is likely to have said to Mr Gilheany no more than that she could not focus on or prioritise going for promotion at that time because of the pressing personal issues she was dealing with. This meant looking and applying for vacancies. It did not relate to her desire for promotion and he did not understand it to.
- 67.7. We are all clear, that the Claimant had not said that she 'no longer' wished to try for promotion – this would have made no sense given he knew her to be ambitious. Her comment to Mr Gilheany was purely temporary bearing in mind the personal pressures on her at the time and was not about no longer pushing but simply a matter of priority. We find that he understood this.
68. By September 2021 why was Mr Gilheany not putting forward the Claimant for an in-role promotion? He was clear it was a VP level role. *'I had no bandwidth to make it any bigger than it was and what she was doing was VP level.'*
- 68.1. We find his reasons for this are as above in 2020. Now however, because of the role reduction in 2021 we do not find this to be as odd.
- 68.2. We do not consider the Claimant's comment about not being able to prioritise seeking promotion made any difference to his thinking. His practice was not to think about in-role promotion for the VPs in his line of management.

*Mr Gilheany Handover to Mr Bell as Line Manager*

69. Mr Gilheany moved roles at about the end of October 2021 and Mr Bell took over as the Claimant's line manager from 8 November 2021. Mr Gilheany and Mr Bell talked about the Claimant in their handover towards the end of October and prepared the majority of her 2021 appraisal at that point.
70. In cross-examination, Mr Bell said *'I was advised by Mr Gilheany as he moved out of my reporting line and Nazia became direct report to me. He said in a recent conversation with Nazia she wasn't actively pushing for Director at that time because she was focussing on her family.'* (our emphasis) This is very close to what Mr Gilheany recalls being told and to our finding. Importantly we find Mr Bell did not understand from what Mr Gilheany told him that the Claimant did not any longer want promotion – that is a qualitatively a very different statement, about desire rather than priority.
71. Nevertheless, Mr Bell told Ms Douglas in his grievance interview (see below) that Mr Gilheany had told him that the Claimant 'no longer' wanted to push for promotion. We find this was a misleading statement.



*Mr Rimmington's Promotion*

72. In November 2021, the bank announced that Mr Rimmington, a Controls Business Partner (Vice President) for Corporate Real Estate (CRES), had obtained an in-role promotion to Director in London i.e. staying in the same role but being re-graded to director.

*Rimmington: Business Case*

73. Shortly before Mr Bell had proposed Mr Rimmington for an in-role promotion and, consistently with the procedure, he wrote a rationale to support this in an email, the text of which we have at 523. It states as follows:

*Business case:*

- *Rated Outstanding for both the 'what' and the 'how' for the last 3 years, and on track for the same in 2021.*
- *A recognised leader across CRES & Location Strategy, recognised by Vivienne herself and her LT.*
- *Consistently called upon by CRES LT members for support and counsel, and glowing positive feedback from those senior leaders.*
- *To expand Dan's remit and offer further stretch, I asked him to lead CCO CBP for Chief Data Office / Data & Records Management Horizontal which he has done incredibly successfully in 2021.*
- *CDO LT feedback on Dan's delivery and influence has been excellent.*
- *Outstanding ability to navigate ambiguity and drive to effective solution efficiently and quickly.*
- *Swims outside his lane and consistently delivers on Stewardship, working with stakeholders within and outside of his direct network to drive and embed sustainable improvement.*
- *Laser focus on colleague development and invests accordingly, with excellent feedback from his direct reports.*
- *CDO Vertical and Data & Records Management Horizontal reflects a significant expansion to Dan's role and remit which, particularly given his outstanding performance across his broader portfolio, warrants in-role promotion to Director.*

74. From this, we find the key reasons for the business case to put forward Mr Rimmington for promotion were:
- 74.1. There was an expansion of his role (by the addition of the CDO Vertical and Data & Records Horizontal work). Mr Bell called this a 'stretch opportunity'.
- 74.2. Mr Rimmington was a double-outstanding performer with outstanding ratings for 3 years and was on track for the same in 2021. He had performed consistently at a very high level and was very highly regarded by senior managers.
75. We have heard evidence about Mr Rimmington's work during Covid. Sometimes it was suggested that this work expanded his role. We find that it did not because it was what his job role required him to do. What Mr Rimmington did during the pandemic was within his job description and not additional to it. That said, his work became more challenging

because of the pandemic: going from a fairly steady estates picture for risk and control to one that was fast-moving and highly varied globally according to the rules that each state or country declared about who could go where and when during the pandemic. This required a great deal from him and his teams: we refer to the detail set out in Ms Mason's outcome letter. This speed and variety of change in advice was not what his role had demanded prior to the pandemic. That he dealt with those very frequent and varied mandatory covid changes in estates risk and control in an excellent way is what is reflected by Mr Bell's various references to outstanding performance in the business case. Mr Bell made no specific mention of the Covid pandemic expanding Mr Rimmington's portfolio rather we find Mr Rimmington's response to Covid was all part of what Mr Bell regarded as his outstanding performance. The business case makes clear that the expansion of his duties (the stretch) was *CDO Vertical and Data & Records Management Horizontal*

*Rimmington: approval by Senior Leadership Team*

76. Following the procedure, this business case was then considered at the senior leadership team ('SLT') led by Ms Hall. Mr Bell attended and 2 others, 1 man and 1 other woman, all were white. They considered about 4 in-role proposals but only approved Mr Rimmington.
77. Ms Hall's recalls that the SLT approved Mr Rimmington because of his work during the pandemic, the expansion of his role created by the stretch opportunity and his overall performance.
78. This meeting was not minuted, no notes were taken of the reasons for approvals or rejections, even though it was obviously a very important step in the promotion process. Ms Hall agreed that meetings like this should be recorded.
79. The senior leadership team did not merely rubber stamp Mr Bell's proposal because they rejected another 3 such proposals, but we do not know anything more about their rationale for each case or the protected characteristics of the other three, none of whom were referred to in the written evidence.
80. Although Ms Hall told us her team's approval would have had to be approved by Mr Brooke's 'table' too, we have no written evidence that this took place and heard nothing specific in the evidence about it. Mr Brooke's evidence in cross-examination was that Mr Rimmington's role was similar to the Claimant's until Covid came along. In his view, Mr Rimmington was responsible for the risk and control framework across the bank's properties that kept staff safe and it was this Covid work that was the difference between them. He told Ms Douglas the grievance investigator that Mr Rimmington's role '*aligned to a role profile review at director level, in addition to heavily increased responsibilities across Health and Safety laws through Covid across the entire Barclays firm.*' 509. As we understand it Mr Brooke was not involved directly in the decision to promote. We therefore apply less weight to his reasons which were at one remove.

*Rimington: No Review or Benchmarking of Grade*

81. The written in-role promotion procedure requires that the new role is reviewed and benchmarked at the relevant level by the job evaluation team. Ms Hall also agreed in cross-examination that there is an *'assessment phase to ensure the role benches'* at director level. This is supposed to be done outside the line of management, by HR or Reward.
- 81.1. There is no evidence of a job evaluation or any work done to 'bench' the role as director. In his statement Mr Bell said the business case was independently assessed, in evidence, when it became clear there was no evidence that this had been done, he explained that was merely his understanding.
- 81.2. Ms Douglas went to some effort during the grievance investigation to find out whether Mr Rimington's role had been evaluated to check its grade. Eventually she was told that it had not. She was aware, from her own experience, that this had been done when she was promoted in-role from VP to director (552, 565).
- 81.3. HR advised Ms Douglas that it was appropriate that no separate evaluation took place because it was not a new role. This interpretation is simply at odds with the procedure: it was the grade that had to be evaluated. We are clear that the in-role promotion process was not followed in full for Mr Rimington because no evaluation was done to check that his role 'benched' at director level. This plainly had been done for Ms Douglas.

*Rimington: no location approval*

82. The in-role promotion process also requires that the location of the newly graded role is approved. We have not seen any approval in writing. This appears to have been done orally at Ms Hall's meeting.
83. Ms Hall's considered that the location strategy could allow promotions because to do otherwise *'would be unfair to colleagues whose roles expanded such that they needed to be recognised at the new grade'*. This is also how Mr Bell put it in his cross-examination – in essence because it was not the extra cost of a wholly new vacancy. Mr Brooke took a very different view: that Mr Rimington's promotion was an exception to the high cost location strategy. He agreed it was outside the normal rules. He said that it was an exception because of Mr Rimington's performance during covid.
84. We accept Mr Bell's evidence for why Mr Rimington's role was divided once he left and those two roles were then undertaken out of London.
85. We find that Mr Rimington was interviewed by other individuals and found to have met the relevant director competencies. Only after this was he promoted.

*Is a Double Outstanding a Pre-requisite?*

86. Mr Gilheany, Ms Douglas and Mr Rimmington, who all obtained in-role promotions, all had double outstandings in their previous appraisals. Nevertheless, we find a double outstanding was not a prerequisite to being considered for an in-role promotion. It is not written anywhere that it must be. The key to an in-role promotion was to show that the role had expanded to one at director level. We find therefore that such gradings were not a pre-requisite to being put forward.

*Rimmington: Procedure Overall*

87. The bank's witnesses talked about the process of promoting Mr Rimmington as if it were formal, but it was not. It was approved in principle by Mr Bell's business case and an un-minuted leadership team meeting. The role was not separately evaluated as it should have been for its grade or its location. It is clear that Mr Rimmington was promoted in breach of the bank's procedure. (We do not say that he did not deserve this in-role procedure merely that the processes were not complied with.)

*Bell's Consideration of the Claimant for In-Role Promotion*

88. Mr Bell considered other VPs in his reporting line, including the Claimant, for in-role promotion but only put forward Mr Rimmington. Mr Rimmington's promotion was effective from 1 November 2021. According to the cycle for in-role promotions we find therefore Mr Bell considered the Claimant for in-role promotion in September 2021. He agreed that he had considered her before he was her line manager. We accept his oral evidence, which was clear about this even though he did not say so in his written statement. He did not put her forward: in a later email he stated he considered that she was working at VP level and there were still development points for her to work on. (We will consider whether this decision was influenced by any of the protected characteristics later in this decision).

*Announcement of Mr Rimmington Promotion*

89. In November 2021, in an all-colleague call, the Claimant found out about Mr Rimmington's promotion to Director in London. She was very frustrated about this. From her point of view, she had felt close to promotion because:
- 89.1. she had been covering the major part of a director's role for 2 years;
  - 89.2. she had understood from Mr Brooke that, subject to performance, she had a good chance of being promoted if that director did not return;
  - 89.3. after that director's failure to return, she then understood from Mr Brooke that his hands were tied as far as director roles in London

went, but now Mr Rimmington had been promoted to a director role in London;

- 89.4. she had worked on the development feedback she had received about her communication in 2019 with positive resulting feedback in her 2020 appraisal and an excellent mid-year review in 2021.
90. On hearing about the promotion she therefore suspected that she had not been given the same opportunity as Mr Rimmington who was white, because of her sex or race or religion. We understand why in this context she could feel frustrated.

*2021 Claimant's end of year appraisal: timing*

91. Mr Bell prepared the Claimant's end of 2021 appraisal with a lot of input by Mr Gilheany, because Mr Bell had only been the line manager from 1 November. Mr Bell's evidence was that the deadline for preparation of the appraisal was around 14 November 2021, this is consistent with what he told the grievance. We find that adjustments to the wording of the appraisal were possible after that time. (By 14 November 2021 the Claimant had not done any protected acts.)
92. We find that, in the 2021 appraisal, the communication development points were Mr Bell's opinion not Mr Gilheany's because neither in the mid-year assessment nor at any other stage had he said anything to the Claimant about communication, whereas Mr Bell had done so in his February 2021 email.

*Complaints leading to Grievance*

93. We need to deal with the Claimant's complaints in detail to establish who knew what about her complaints and when. The Claimant has not put her victimisation case on the basis that managers suspected from her complaints that she would do a protected act, so we do not make findings about their suspicions, simply their knowledge.
94. Mr Gilheany did not know anything about the Claimant's allegations or complaint about discrimination until the grievance appeal in May 2022. We will make findings about Mr Bell's knowledge below.

*19 November 2021 conversation with Mr Brooke (agreed protected act 9b)*

95. On 19 November 2021 the Claimant spoke to Mr Brooke. The Respondents accept that the Claimant's words in this conversation were sufficient to amount to a protected act. She said she had felt that she had not been given 'equal opportunities'. She thought there was one rule for one 'set' of people and another for another. She referred to the racism she had experienced at school and in her first job. She talked about all the work she had done, the involvement in reverse mentoring, and how hard she had worked. Mr Brooke listened and acknowledged her feelings. He said he could not understand, however that she saw it as a personal insult, given that there were other VPs in the organisation who could equally feel the same way. (We should note here that no such VPs have been identified to us by Mr Brooke in his evidence.)

96. Prior to Mr Rimmington's promotion the Claimant thought she had a special relationship with Mr Brooke, which was meaningful, honest and helpful. After it she felt betrayed. She told Mr Brooke she had been happy to wait for a promotion, given that he'd led her to understand there was nothing in London. She sought from him an independent assessment of her role in 2019 (1273) and an answer for why she wasn't considered for Mr Rimmington's role (this is not something she pursues). She also wanted someone in the company to meet her face to face to explain. She was going to go offline that day to return on Monday.

97. The Claimant recorded that conversation without Mr Brooke's consent.

*21 November 2021 email to Brooke: request for independent review and agreed second protected act 9c*

98. The Claimant followed up this call with an email of 21 November 2021 with questions that she wanted answered, 237:

98.1. Why was she told there were no director roles in London, but an exception had been made for Mr Rimmington?

98.2. Why was the exception made for Mr Rimmington not made for her, when she covered the Director role in 2019 and continued those responsibilities into 2020/21?

98.3. She asked for 'this' to be independently reviewed to ensure compliance with diversity and inclusion as there '*appears to be evidence of discrimination, injustice, inequality and favouritism and if need be by an external employment tribunal*'.

99. By now Mr Brooke felt that the Claimant had accused him of racism. This is what he told Ms Douglas during the grievance.

100. Also on Friday 19 November 2021 the Claimant had written briefly to Mr Bell to say that she was logging off for that day and was extremely upset and demoralised. She referred to her conversation with Mr Brooke and said she would leave it up to him (Mr Brooke) to share or not.

101. Mr Brooke simply does not recall whether he spoke to Mr Bell about the Claimant's allegation of discrimination. Mr Bell recalls a conversation in which Mr Brooke said the Claimant was frustrated at Mr Rimmington's promotion but made no mention of equal opportunities. Mr Bell recalled his surprise when he got the ACAS notification in early February 2022 and says he would not have been so surprised if he had known about the allegation beforehand. (While in his email of 5 January 2022, Mr Bell's refers to needing to share Claimant's return to work meeting note with managers 'given recent conversations', he was not cross-examined about what this meant and we do not draw any inference from it given it could refer to a number of issues.) We observe that while some managers would want to share an allegation of racism others would want to keep it confidential. Bearing in mind the relationship of mentor/mentee between Mr Brooke and the Claimant, we find it likely in this case that Mr Brooke kept confidential the fact that the Claimant had alleged discrimination out of discretion and in accordance with the mentoring

relationship which usually operates in confidence. Thus in November 2021 on balance (rather than being certain about it) we find that Mr Bell did not know about the first and second protected acts. We find Mr Gilheany certainly did not.

*Feedback by Mr Bell to Claimant on her 'challenge' to Mr Rotheroe*

102. The Claimant worked the next week, 22-26 November 2021.
103. On 26 November 2021 she wrote to a colleague, Mr Rotheroe, 1296. In the email the Claimant expresses her frustrations about a particular process. She does not do so aggressively or even rudely but her frustration is evident. She accepts her tone in this email was not her usual style and she subsequently apologised to Mr Rotheroe.
104. Mr Bell wrote to her on the same day thanking her for her input but suggesting, *One point of feedback is that you may benefit from softening the tone and language of this type of note. I appreciate it can be frustrating when the central team adds unplanned activities with little notice and it's right to challenge and understand the associated value, but we're one team with the same goals so it's important we embrace the principle of partnership and communicate in a commensurate manner.* We find that Mr Bell's reference to frustrations here is about the issue she was writing to Mr Rotheroe about not the complaint she had made about promotion.
105. The Claimant apologised, *'Apologies you perceive this tone to be strong, it does stem from my current frustrations and is not my usual style, However I acknowledge your feedback.'*
106. However, and importantly, we find that this one slightly frustrated email did not represent the Claimant's communication style or her usual approach to challenge in 2021. The remaining feedback in the Claimant's appraisal colleagues was highly complimentary on this. On the other hand, it is probably not surprising that Mr Bell's fed back to her on her tone, 274. Although we can see that wiser managers, at an early stage of their line management of a colleague, might well have waited to see whether this was a characteristic or a one-off. The 'How' values we set out above, illustrate that the bank sets high standards for respectful communication. We will consider whether how he did so: 'soften your tone', evidences any unconscious bias.

*Mr Brooke's Response to Claimant's Questions*

107. Having sent a holding reply on 23 November 2021, Mr Brooke sought HR advice and replied to the Claimant on 30 November 2021, 275.
  - 107.1. As her mentor he said he was not best placed to explain Mr Rimmington's promotion and referred her to Mr Bell to do so.
  - 107.2. He answered her request for an independent review by saying she could put in a grievance, although recommended she try resolve it informally with Mr Bell first.

108. Even if the Claimant had clearly asked for an independent role review at this stage: the bank did not have a process for independent reviews of roles. It was unsurprising therefore that this was not offered to her.
109. On the question about director role availability in London, Mr Brooke said *'I also wanted to try to clarify your comments regarding our discussions about Director roles in CCO in London. You mention that you believe I advised there were no CCO Director roles available in London or there would never be any opportunities in London. I explained that it would be **very difficult** to obtain a Director role in London as there are very limited opportunities for Director roles in London within CCO. Director roles in London are, and will continue to be, considered on a case by case **exceptional** basis based upon business needs.'* (our emphasis) We find this is effectively what he had told her in the 19 November conversation. It is not however the explanation he gave to her earlier when he said his hands were tied.
110. This is the point at which Mr Brooke likely spoke Mr Bell but we do not infer at this point he referred to any allegation of discrimination as we have found above.

*Hall's Offer to Benchmark against Director Competencies*

111. After 6 more working days, about which we have heard no evidence. On 6 December 2021 the Claimant wrote to Mr Bell and Ms Hall. She described the significant family issues that were distressing her and she complained that no one had forewarned her of Mr Rimmington's promotion so it too had hit her hard. She had experienced uncontrollable crying and panic attacks.
112. Ms Hall replied on the same day and copied in Mr Bell, 291. In summary:
- 112.1. she offered sympathy and agreed that self-care and time off to rebalance was a good idea;
  - 112.2. she was available to speak;
  - 112.3. when the Claimant was strong enough, Ms Hall offered to talk through the detail of Mr Rimmington's promotion with her and Mr Bell; and
  - 112.4. Ms Hall offered to talk with the Claimant and Mr Bell about *'where you are and how you are benching against Director competencies and what support Mark and I can provide to help you grow to fulfil your ambitions [To create] a support path, action plan and open feedback so you and we know where you are on that trajectory at any point in time.'*
113. Also on 6 December 2021 Mr Bell wrote to the Claimant offering his support, providing details of a confidential counselling, stating he would refer to OH, which he did, and offering himself if she wished to call. The Claimant responded that she wished to be left alone for December but would appreciate a meeting in January 2022, 299.



2022

*Arrangement to Discuss Benchmarking Against Competencies and Refusal of Request of List of Competencies*

114. On 4 January 2022, the Claimant returned to work and met with Mr Bell. They discussed her well-being and she confirmed she was feeling much better. Mr Bell offered his support and the Claimant appreciated this.
115. Mr Bell did not agree with the Claimant that it was the London location strategy that was the reason she was not a director. He felt there were gaps in 'benchmarking her against director competencies' and they arranged a future meeting to discuss this.

*Request for Competency List*

116. The Claimant followed up with an email on 5 January 2022 in which she asked for '*the latest director competency list in order that I can review against the version I have available in preparation for our meeting next week*' (341).
117. The Claimant also asked for her role between April 2019 to April 2021 to be compared. She chose these dates because they were the time during which she covered for Ms Stroud and before her role was reduced by the transfers to India. She stated she considered that the feedback in her year-end 2019 about communication and impact to have been addressed and that this had been confirmed by Mr Brooke, 346.
118. In reporting this meeting internally, Mr Bell acknowledged that there were 'only very limited opportunities for Director promotion in London', but that he considered her role 'to bench as a VP role' and her 'strong' rating reflected '*development opportunities ranging from proactive discovery and insight through to her communication style*', 341.
119. Mr Bell forwarded the Claimant's request for a 'director competency list' to HR who replied, '*there's not a director competency document to review/send on that exists*', 344. On 7 January 2022, 343, Mr Bell replied to the Claimant stating: the First Respondent did not keep '*a list of director competencies as such, which I have confirmed with HR*'. He suggested at their meeting that they did not tick her attributes off against a list but discussed '*(i) your role, and (ii) your performance including strengths and areas for development*'.

*Written Director Competencies*

120. We find that a written document of director competencies (by whatever name) was not available to everyone. HR's practice was that the competencies were set out in an interview pack, given to interviewers and not the interviewees. The Claimant's reverse mentor had given her a copy of the pack earlier in 2021.
121. The problem was that HR did not want to share the pack. We find this is why we find they told Mr Bell no 'competency list' was available.

122. Ms Hall's intention was to use the pack when discussing how the Claimant 'benched against competencies'. After the formal grievance was over, Ms Hall told HR that she was not happy that she could not share the information and asked them formally to produce something and this was shared with the Claimant in October 2022.
123. What do we make of Mr Bell's reply? We find that it was clumsy management: on the one hand he knew his senior director, Ms Hall, had offered to talk to the Claimant with him to bench her against director competencies. It made sense to know what those competencies were. The 'as such' in Mr Bell's email looks officious, as if he knows there is something written down relating to competencies. Nevertheless he was following the HR line given to him after enquiry. It seems odd to us that he failed to square the circle, for example, by saying something along the lines '*HR tell me that I can't give you the list as such because it is for use only by interviewers, but I can tell you we'll be looking at the following criteria....*' He did not propose discussing the role in April 2019 because it did not sit within his team but to concentrate on her current role.
124. We find that when Mr Bell wrote this reply he is still not likely to have known that the Claimant had made a complaint of discrimination or done anything else by reference to the Equality Act. While his response to her request is clumsy, officious and odd, we do not infer it was influenced by the PAs because of our view that Mr Brooke will have kept those matters to himself. Mr Bell did not know of a protected act until receipt the ACAS early conciliation notice on about 10 February 2022.

*Grievance (disputed protected act 9a)*

125. On 10 January 2022, the Claimant sent a formal grievance notice to Mr Bell copied to Ms Hall and Mr Brooke, 347:
- 125.1. She could not understand how, in the light of Ms Hall's offer to benchmark her against director competencies, that there was no competency list.
- 125.2. Mr Brooke and Mr Bell were reluctant to address her request for an independent review of her role from April 2019 to April 2021.
- 125.3. Mr Bell thought she was operating at VP level but raised gaps in her performance that she had addressed in 2019 and that had not been communicated with her. Whereas she had understood from Mr Brooke that it was London as a high cost location that prevented her gaining promotion. She was left confused by this contradiction.
- 125.4. She had been covering a senior director role for Ms Stroud who had not returned. She continued with that responsibility for two years (April 2019 to April 2021). She was told that she could not be promoted because of the location strategy and had meet the feedback, but now she has been told there was an exception criterion for London promotions.

125.5. Of this process: *'this is not transparent to ensure there is a level playing field for all and provide evidence for a fair and balanced process for all'. (our emphasis)*

126. Ms Hall responded by still offering the benchmarking exercise regardless of the grievance going ahead and that HR would be in touch. The Claimant did not follow up this offer of benchmarking.

#### *Appraisal 2021 Rating*

127. Mr Bell completed the Claimant's end of year 2021 appraisal, 1064, but with a lot of input from Mr Gilheany because he had been her line manager in that year.

128. The Claimant was awarded another outstanding for the What. This reflected another excellent year of achieving her objectives as is reflected in the excellent feedback she obtained from colleagues (as seen from 1071-1077). The summary records: *overall execution delivery this year has been outstanding.*

129. For the How, the appraisal includes much praise based again on feedback comments, see for example 1066-1068. The Claimant again achieved a Strong for this section. Mr Bell's comments under the How Values were that the Claimant demonstrated strong stewardship and collaborated effectively with her stakeholder network and was a supportive line manager. Under the How on mindset he wrote that she consistently demonstrated drive and empowered her team members. He talked about her ability to present constructive challenge and added: *'on occasion Nazia's communication style could be refined a little, eg when presenting a challenge or responding to a challenge'*.

130. The summary records the development points as follows:

*Beyond the core BCF-focused activity and Cerpa-level data, drive activity which enables greater levels of insight and independent perspective across the SICM landscape and/or with individual portfolios. Pausing to interpolate, we find that this reflects Mr Gilheany's opinion: it is consistent with his evidence to us about the need for the Claimant to be more strategic in her thinking.*

*Be more impactful in her messaging and presentation style. For example, slowing down little, distilling key messages and landing them with context for the audience at HCF*

131. We have read the feedback from colleagues, managers, stakeholders attached to the feedback to see how far, if at all, the development points are reflected in it:

131.1. Virtually all of the feedback from her colleagues and stakeholders is praiseworthy. The Claimant was obviously regarded highly not only for the What but the How by those providing feedback.

131.2. The development point about 'slowing down a little' is not reflected anywhere except in Mr Bell's appraisal summary.

## Case Numbers: 3201387/2022 and 3205577/2022

Where the appraisal feedback mentions communication at all it refers to the Claimant as eloquent. We therefore find the comment about speed was Mr Bell's opinion and it was not feedback relayed to the Claimant at any stage prior to the appraisal.

- 131.3. We find the development point about 'distilling key messages and landing them in context' is really about 'impact' and echoes Mr Bell's feedback in February 2021 from his observations of a meeting (see above) and it chimes with the one development point from Ms Callison otherwise fulsome praise at 1074. 'I encourage Nazia to continue *to look for more ways to put her messages into context for her audience, who may not have as much command of the detail of both controls and processes.*' (It is also consistent with Ms Hall's feedback on impact from late in 2020.)
- 131.4. Ms Callison's feedback is otherwise praiseworthy pointing out with very specific examples the Claimant's excellence in execution. She also wrote '*Nazia is a trusted partner to me. ... she has strong relationships with my team.. portfolio teams and the other lines of defence which enables her to ... be highly effective at her job*'. This summary comment relates in large part to the How (integrity, excellence, service)
- 131.5. On challenge: the feedback suggests that the Claimant challenged issues in an appropriate way. Ms Howe and Ms Dutta refer to the Claimant's effective challenges and eloquence, 1075. Mr Rotheroe calls her a '*strong voice for change and improvement where it is needed and she articulates some of the pain points and solutions very clearly... On a personal note I enjoy working with Nazia, she is honest, intelligent and works with a proactive attitude...*' 1075. There is no sense from this that he thinks her unprofessional in those challenges and that remark relates in large part to the How (excellence, integrity). We therefore find that point in the appraisal about challenge [see above] is Mr Bell's opinion and likely only to relate to her email sent to Mr Rotheroe in late November 2021. This is because it is the only instance of slightly inappropriate challenge we have been shown for that year or that Mr Bell showed to Ms Mason on appeal (wrongly calling it an 'example'). We are clear that it was not an 'example' but a one-off incident written at a time when the Claimant allowed her frustrations over Mr Rimmington's very recent promotion to get the better of her in a minor way. We find that this point of feedback must therefore have been added into the appraisal by Mr Bell after 26 November 2021.

132. In summary on the appraisal:

- 132.1. Lots of positive feedback is reflected in the appraisal. It was not ignored. We therefore reject that positive feedback was hidden.

## Case Numbers: 3201387/2022 and 3205577/2022

- 132.2. Ms Callison's positive feedback is reflected in the Outstanding rating on the how and strong on the what.
  - 132.3. The slight development point on putting messages in context is supported by what happened in the year: Mr Bell's email in February 2021 and Mr Callison's single development point, 1074. It is evidenced by objective remarks based on the facts of what Mr Bell observed and therefore appropriate.
  - 132.4. The development point about strategy was appropriate and reflected Mr Gilheany's genuine view.
  - 132.5. The development point about how the Claimant might want to refine a little her approach to challenge only related to a one-off incident on 26 November 2021. Other feedback was that she challenged appropriately. It was inappropriate to refer to this as 'on occasion'.
  - 132.6. The development point about speed of presentation was only Mr Bell's view and had not been raised with the Claimant at any time during the year. Although it probably related to his observation about reading from slides and presentation at the February feedback rather than any point in general about speed of speech.
133. We have asked ourselves whether there was enough in the appraisal development points to turn an obviously outstanding performer from all the feedback into a strong one. We remind ourselves that we are not the managers; we have little sense overall of how this feedback would compare to others; Mr Gilheany's feedback on strategic thinking and the feedback justified by in-year comments on putting messages into context was probably enough to mean the rating not outstanding despite all the other glowing material. The feedback on challenge was obviously inappropriate but was put as a minor point 'refine a little' and therefore probably did not make the difference. These are fine margins and we are not able to say on the evidence that the rating looks obviously wrong.

### *Appraisal Meeting 20 January 2022*

134. The Claimant, Mr Gilheany and Mr Bell met to discuss her appraisal on 20 January 2022.
135. Mr Bell says and we agree he gave feedback based on Mr Gilheany's feedback, his own and stakeholder feedback. We find the managers went through the written feedback.
136. We find it likely that Mr Bell told the Claimant that she could afford to slow down when presenting. She heard this as speaking too quickly. This is unsurprising, they are two sides of the same coin but only relating to presentation.
137. The Claimant was unhappy with her rating of Strong on the How because she did not think it reflected the excellent feedback comments and her performance that year. She emailed the managers with her disagreement on 20 January 2022. She said that she should have received feedback

about the development points in the year if they were to be raised in the appraisal. She had not heard it mid-year and Mr Gilheany had advised her that she was on track for an Outstanding rating.

138. Ms Ann Callison, Head of Strategic Change, is described by the Claimant as one of her senior stakeholders sent Mr Bell some feedback on 25 January 2022 589. Ie after the first appraisal meeting but before the second. Her email began 'Happy to give you a little more colour on the feedback if you have time for a quick call.' We have not heard any evidence about that call.

*Follow up Appraisal Meeting 26 January 2022*

139. Mr Bell and the Claimant meet for a follow-up appraisal meeting on 26 January 2022. The Claimant had asked to be accompanied at this meeting but this was refused. We will make findings about the disputed facts. After the meeting but on the same day at 16.16 the Claimant sent Whatsapp texts to her colleague about her meeting with Mr Bell.
140. First, we find it is likely that Mr Bell said something along the lines that the Claimant was not willing to take feedback just wanted the **glory** for good work. That this comment is reflected in the contemporaneous text weighs in favour of the comment being said. We also consider it is likely the Claimant's willingness to take feedback had been raised, because she was complaining about the feedback in her appraisal. On balance we find Mr Bell is likely to have said something along these lines at the meeting.
141. We find Mr Bell is likely to have told the Claimant that on occasion she needed to slow down and that she interpreted this as him telling her that on occasion she spoke to fast. We find on balance that his reference to her speed chimes with his views in the February 2021 email about picking out points rather than reading from slides. It was not a reference more generally to the speed she spoke at.
142. However, we find Mr Bell did not inform the Claimant that she lacked insight and impact. If that were the case it is unlikely he would have agreed to the ratings of Outstanding and Strong. The Claimant's contemporaneous text reads in recalling what Mr Bell said, '*next breath Directors should be able to provide insight*'. We do find 'insight' was discussed by raised more subtly by Mr Bell in line with his February 2021 feedback and Ms Callison's feedback. We find he is likely to have said something along the lines of: '*slow down and land your key messages with context for the audience*'.
143. We find it likely Mr Bell said words to the effect that he understood she was happy to remain a VP. He told Ms Douglas that Mr Gilheany had told him that. Even though this is not what we have found Mr Gilheany is likely to have told him. The Claimant interpreted this as him telling her she was not showing desire to get to Director, which is supported by her text that day. This was a reasonable interpretation for her to make.

144. We find that Mr Bell did refer to the fact of the Claimant's grievance: he accepts that he did. We find it likely that he told the Claimant, as is referred to in her Whatsapp texts, 374, that he would have preferred the opportunity to help develop her first.
145. It is likely that much of the focus on these meeting was on the development feedback that is included in the appraisal. That was because the Claimant had challenged the strong rating.
146. We do not consider that Mr Bell was objectively aggressive in this meeting or had planned to be. We find that there was no more than a healthy disagreement between him and the Claimant about the rating of her performance. His use of the word 'glory' was probably not respectful but nor was it aggressive.

*Off sick from 1 February 2022*

147. The Claimant went off sick from 1 February 2022 until 4 April 2022.

*ACAS Early Conciliation Notification (agreed protected act 9e)*

148. The Claimant began early conciliation with ACAS with all three Respondents. Mr Bell recalls receiving it on or around 10 February 2021. From this point he agrees he knew about a protected act.
149. Mr Gilheany however was not an individual respondent. He did not tell us that he knew about any allegation of discrimination and was not cross examined on his knowledge. He was not her line manager and cannot therefore infer he knew about the ACAS EC.

*Grievance Investigation*

150. On 27 January 2022 Ms Douglas was appointed as grievance manager. She was Head of Global Investigations and Payments Command Centre, at director grade based in Bournemouth. She herself had received an in-role promotion in 2021. The process had required her to fill in a role profile to show how her role had expanded and there followed a benchmarking process to confirm she was undertaking Director-level duties.
151. Ms Douglas met with the Claimant (and her friend) on 1 March 2022. Ms Douglas summarised the grievance into three points of unfair treatment, which the Claimant agreed:
  - 151.1. not being provided with/wanting an independent role assessment of the corporate grading of her role;
  - 151.2. a lack of transparency in the in-role promotion process; and
  - 151.3. that the Claimant felt there was a misalignment between her and her managers' view of the level at which she was operating.
152. Later that day the Claimant sent Ms Douglas an email 412 providing: a 'grievance timeline' with embedded evidence; a *'grievance summary with*

*the six topics on which I am raising a grievance'* 435; and her 2020 and 2021 year-end feedback with the points where she disagreed; and the *'Director competency documents I had been given by my reverse mentor [427]*. She suggested Ms Douglas interview some of her key stakeholders. The Claimant provided a lot of written detail.

153. The six grievance topics identified by the Claimant in this email were clearly stated in the table on the left hand side. They were:
- 153.1. *Independent role comparison;*
  - 153.2. *Nazia overlooked for promotion in 2021;*
  - 153.3. *Discrimination based on the 2010 Equality Act and protected characteristics sex and race;* Mr Brooke advising her to leave Barclays to get a director role whereas a male colleague had got an in-role promotion. The Claimant suggested there were signs of structural sex and race discrimination; she relied on her outstanding year end performance; that Mr Rimmington's promotion meant that the first Respondent had failed to deliver against its D&I strategy; that she felt equally deserving for an exception to be made pointing to some of her achievements.
  - 153.4. *Dispute in Nazia's 2021 year-end performance rating;*
  - 153.5. *Victimisation/Bullying ... in follow up year-end meeting on 26 January 2022 for speaking up for her rights, post Nazia raising formal grievance.* [i.e. that Mr Bell had bullied her with the aim of pressuring her to accept a lower rating at this meeting because she had raised a grievance].
  - 153.6. *Lack of care for Nazia's well-being mental/physical family life impact.* In summary that managers had not supported her after 19 November 2021 when she had advised she was very upset/demoralised and although a line manager had seen her panic attack on 1 December he had not contacted OH until after her email on 6 December.
154. The Claimant ended this email saying, *'I feel victimised and discriminated against the continued unfair treatment from CCO leadership has had a terrible impact on my mental well-being and I have lost confidence in senior management.'*
155. Ms Douglas obtained agreement that the notes of the meeting were accurate (with some additions) and investigated the 3 points agreed within it. She decided that the 6 points raised in the Claimant's subsequent email could be subsumed under those three points. We find that she did not get to grips with the new issues and material that the Claimant sent her.
156. Ms Douglas interviewed Mr Brooke on 4 March 2022, Mr Bell on 7 March 2022, Mr Gilheany on 8 March 2022, and Ms Callison. Her meeting notes were summaries provided to the individuals afterwards for their approval.



157. By this time Mr Bell knew about a protected act. With him Ms Douglas explored the extent to which he discussed the Claimant's desire for promotion. He told her that Mr Gilheany had advised him that the Claimant had '*stated she no longer wanted to push for Director because she had wanted to focus on her family.*' She asked him about the 2021 rating. He said the ratings were input in November 2021 so the grievance process had no bearing on her ratings. He said to get outstanding on the How was a high bar and examples of feedback had been given, referring to his February 2021 email. She asked him about covering Ms Stroud's role. Mr Bell said she had only taken on part of the role and that she remained as a VP and was evaluated as such. Ms Douglas did not ask about discrimination as such.
158. There is no evidence that Mr Gilheany knew about any protected at the point Ms Douglas interviewed him. She asked Mr Gilheany about whether he considered her for in role promotion; asked about her career progression and ambition. He said '*I was aware of Nazia's ambition to get to the next level but during last year [she] made it very clear she was no longer interested in going for Director.* Nazia had personal reasons for this and therefore we stopped having this conversation around her development. It was clear to him that 'the opportunity for directors in a high cost for location was minimal'. He felt she was not operating at a Director level and that Ms Stroud's role had been split up. He had not discussed in-role promotion with her. He said ratings were not discussed mid-year.
159. Ms Callison was interviewed at the Claimant's request. She told Ms Douglas that she had told the Claimant that '*on the whole [her] feedback was positive... But did also mention that there were development areas for [the Claimant] eg: context setting*'.
160. Mr Brooke said he thought that Mr Rimmington's role had expanded to a director level role because of the heavy, increased responsibilities during the pandemic. He made it clear this was an exceptional circumstance. He said he had talked openly about the location strategy and held the line with the Claimant that CCO was not doing in-role promotions. It was Mr Brooke who raised with Ms Douglas that the Claimant had sent him an email 'to call me a racist ... which I sought advice from HR on response'.
161. Ms Douglas did not ask about discrimination directly in any of her interviews. But she did seek out reasons for decisions from the relevant managers.
162. We note here the significant difference in what the managers understood about the claimant's desire for promotion and what they told Ms Douglas. Both knew the Claimant wanted to be promoted but just could not prioritise it or actively push for it mid-2021. Yet at their interviews they both say the Claimant no longer desired. We find, this was a significant change in meaning and it had two material influences: the stereotypical assumptions about female caring responsibilities and wanting to defend their position in the grievance.

- 162.1. While the Claimant had said her de-prioritising of promotion temporarily was for family caring reasons, this had become in the manager's heads 'no longer desiring promotion'. This difference is not mere semantics or emphasis. It turns the claimant from an ambitious, promotion-seeking individual with high potential to a colleague who is just happy to remain a VP. We find this change to have been based on assumptions about caring responsibilities taking over, subsuming the female carer for the long term. We do not consider the managers would have reached this view if Mrs Lawrence had been a man who had just had family issues for a period. The stereotype of women caring for family members for the long term just doesn't apply to men.
  - 162.2. When a complaint is made it is natural, to some extent, to reach for possible defence lines. We find this too was a factor in the managers turning the Claimant into a person with 'no desire for promotion' when in fact that was not the reality.
163. Ms Douglas also requested the following documents from individuals within CCO:
- 163.1. The business case for Mr Rimmington's promotion. She obtained Mr Bell's email;
  - 163.2. A role profile for Mr Rimmington and Claimant. She found out that none existed.
  - 163.3. She spent some time trying to discover if a role evaluation for MR Rimmington's director role had been done as required by procedure (542, 577 and 582). She was advised that if there is a role of that kind at Director level then there was no need to re-evaluate it formally. This was incorrect advice. It is not what the procedure said.
  - 163.4. She checked whether the Claimant was on the distribution list for the explanation of promotion processes sent to staff on 24 August 547 and it was confirmed to her that she was.
  - 163.5. She investigated '... given the location strategy in this area' whether Reward had approved the location. Mr Malik in Reward advised that they did not police that. He stated, '*the so-called exception that was made to promote Mr Rimmington in a high cost location was made by the business*'.
  - 163.6. She saw the appraisal documentation.

#### *Grievance Outcome*

164. On 18 March 2022 Ms Douglas sent a written decision on the grievance to the Claimant. She did so on the three points she had summarised at the end of the meeting.
  - 164.1. On the role review/request for independent role profile assessments she concluded an exception had been made to the

high cost location strategy in London for Mr Rimmington. She concluded the in-role promotion review process was *'completed in full with all required approvals at every stage.'* This included, *identification of colleague's role growth and submission of a comprehensive business case to support this. Following business case approvals, the role profile, (if a brand-new role) is submitted to Reward for review, however if a peer comparison role is available this is not required. Following this a formal interview processes is undertaken to ensure the colleagues benchmark at the appropriate grade.*

- 164.2. She concluded the post-promotion communication could have been improved. She confirmed with managers that *'promotion was not discussed between you and your line managers as something that was been considered for you or your role. I was advised that you confirmed to Adam at mid year 2021 you are not looking to progress to director given your current situation outside of work... In addition I have received confirmation from the COO communications team that a communication was sent to all colleagues in BXCOO including yourself in August 2021 outlining both the vacancy lead and in-role promotion processes and advising to speak to your line manager for more information. There was no evidence of you approaching Malcolm, Mark or Adam on this communication.'* (our emphasis)
- 164.3. On the Claimant's disagreement with her manager's views at the level at which she was operating, Ms Douglas concluded that, having spoken to managers, looked at the performance development commentary, the one-to-one feedback, and the Claimant's self-review, she was unable to identify any tangible evidence that the Claimant was 'working to an outstanding level'. She concluded the feedback from Ms Callison did have a development point within it. She acknowledged there may have been a communication gap in the way it was presented by Mr Bell.
- 164.4. Overall she did not uphold the grievance but recommended to BX CCO LT that they improve communications with colleagues in relation to requirements for promotion.

*Our analysis of grievance outcome*

165. The six issues raised by the Claimant in her grievance email and those issues raised in this case do not entirely coincide but we have looked at both and conclude as follows:
166. On 'independent role comparison' (our issue 10 d i), Ms Douglas had done something of a role comparison by investigating at what level the Claimant was working at and checking the process for Mr Rimmington. What the Claimant had wanted was a role comparison independent of the bank and we find that was not within Ms Douglas' gift.

## Case Numbers: 3201387/2022 and 3205577/2022

167. On being 'overlooked for promotion in 2021' (including our issue 10d iii). Ms Douglas did investigate whether this was the case and relied on Mr Gilheany and Mr Bell's statements that the Claimant had said she was no longer looking for promotion. This was not correct but an understandable conclusion to draw from their accounts to her. She also found that the Claimant had been sent the in-role promotions process. She also investigated with Mr Brooke and Reward why Mr Rimmington was an exception to the high cost location strategy although she did not make a finding about this specifically.
168. Ms Douglas failed to respond to the 'discrimination' issue (our issue 10 d iv) raised by the Claimant. She did give a conclusion on some of the facts alleged to support this issue: she decided that the appraisal rating was correct; and that the Claimant was not seeking promotion in 2021. But although she investigated it, she did not reach a conclusion on whether the Claimant was operating at a director level while covering for Ms Stroud.
169. She reached no conclusion as to whether the conduct of Mr Bell at the appraisal was bullying (our issue 10 d v).
170. Ms Douglas reached no conclusion and appears to have done no investigation on whether the senior leadership had taken care of the Claimant's well-being in late November/early December 2021 (our Issue 10 d vi).
171. Finally, on our issue 10ii (the failure to provide the director competency details and being told by Mr Bell that they did not exist.) The Claimant did not raise this issue clearly in her grievance points. We are not therefore surprised that Ms Douglas did not respond to it.

### *Appeal*

172. The Claimant agreed Ms Mason was the right person to hear the appeal. She accepted in cross examination that to suggest it as a 'sham' process or fake was incorrect.
173. The Claimant appealed in a dense and very difficult to follow appeal letter. It was reasonable that Ms Mason considered the 6 issues the Claimant raised in her grievance.

### *Issue 10h*

174. During the appeal Mr Brooke said Claimant 'would rub people up the wrong way'. In his oral evidence he accepted this was 'not good English' but was a reference back to his feedback on communication style in one of the 3 minuses of 2019. In his witness statement he told us the Claimant '*often spoke to colleagues quite abrasively*'. His examples refer back to 2019 feedback, the only one after this was their 19 November 2021 conversation. He knew the 19 November 2021 conversation was a one-off: she was upset about the promotion and Mr Brooke acknowledged her upset. We note that even his three minuses do not suggest that the Claimant was abrasive to colleagues and he had not raised this with her. In his oral evidence, Mr Brooke accepted that he

could have told Ms Mason that the Claimant had addressed those 2019 communication minuses. Standing back, his evidence is inconsistent. While we do not find that his characterisation of the Claimant was intentionally false, because of the 2019 examples, it was obviously misleading, given Mr Brooke's acceptance in cross-examination that it did not present the whole story, namely that over the intervening 3 years the Claimant had improved her communication style.

175. The summary notes of the appeal meeting record Mr Bell summarising the Claimant's performance. They record that '*in terms of execution she was excellent*'. He referred to the development opportunities about '*proactive discovery*' and then referred to his criticism of her '*reading off the deck and content*' (this is a reference back to his February 2021 emailed feedback). We find none of this to be false or misleading or indeed surprising. The notes then record what we find to be Mr Bell saying '*communication style can be abrasive*' 823. The notes then record what we find to be Ms Mason's push back on this statement and whether his view was based on bias for racial minorities or as a woman. The next three bullet points, we find, summarise Mr Bell's explanation. In the second bullet point the notes record '*has an example of abrasive - Mark emailed Nazia in Q4 to think about how the recipient receiving your email would feel.*' He subsequently sent the Rotheroe email and his feedback on it to Ms Mason.
176. The Claimant contends that this characterisation of her as 'abrasive' was false or misleading. In cross-examination Mr Bell indicated he did not recall using the word 'abrasive', nor could he really say that the Claimant's email to Mr Rotheroe showed that kind of conduct. He suggested, somewhat thinly, that it was perhaps a word Ms Mason used to him in a challenge. We find it likely that Mr Bell did describe the Claimant as abrasive to Ms Mason. While the notes are a summary, the word is written twice and appears in the bullet pointed passages which we find summarise Mr Bell's responses to Ms Mason. The word does not appear in the passages that set out her questions.
177. We find Mr Bell was deliberately misleading in using that level of criticism about the Claimant's communication style. The 2021 appraisal feedback is absolutely contrary to the Claimant being an abrasive manager. It was also misleading of Mr Bell to provide Ms Mason with the Rotheroe email as an 'example' of this behaviour. It was not an example it was a one-off incident and even he could not say it showed abrasive conduct, perhaps irritated or brittle is as far as we'd go. He gave no other 'examples' to Ms Mason because he had none and we find it likely that is because there were none.

*Issue 10i*

178. What did Mr Brooke and Bell say about complexity or otherwise of the role?
179. Ms Mason's outcome letter shows that managers explained the complexity of the role by reference to what Mr Rimmington had to do during covid (see her para 1) 877 '*during Covid covering this area*

*required putting 92 controls in place at a critical point in time and required one of the more demanding skill sets in the financial services industry... Highly complex as they required satisfying legal obligations across not only multiple countries but even on the state by state databases dance portfolio also included a great global property portfolio covering 1000 to 1500 buildings.* She relied on Mr Bell's statement that in the external market the role was usually covered by director or managing director roles. And referred to the additional Data and Records management work that Mr Rimmington took on. She noted that the Claimant's areas of (strategic investment change, EBT, B exchange and business architecture) were not as complex and some did not present horizontal risks.

180. Ms Mason double-checked this with her experience and was satisfied that there was nothing surprising in what the managers were telling her, so she did not investigate more.
181. On balance, we are not able to find that the information given on complexity by Mr Brooke and Mr Bell to Ms Mason was misleading in any way, even though it was based narrowly on the work done by Mr Rimmington during the covid pandemic.

*Issue 10j*

182. The approach taken by Ms Mason was to check with the three relevant managers. She was satisfied that they all agreed that the Claimant was operating at VP level. Ms Mason double-checked this applying her own subject knowledge. She could find nothing surprising in the information provided and therefore did not investigate more with other stakeholders.
183. Ms Mason appears to have considered that the Claimant's covering for Ms Stroud was temporary and she looked at the role comparisons at the point that Mr Rimmington was promoted, at a point when the Claimant's role had reduced by the loss of business units to India.

*Issue 10k*

184. In her outcome letter of 17 August 2022 876 Ms Mason dealt with all six grievance issues in turn.
185. We find that Ms Mason did address the question of comparison between Mr Rimmington and the Claimant. In her outcome letter she concluded *'Based on these findings, there are significant differences in the scale, scope, volume and complexity reflecting an appropriate designation of Vice President for your role and Director for Dan Rimmington's role.'*
186. We find Ms Mason had obtained sufficient material from the Claimant and managers to make this comparison. That is not to say we necessarily agree with it on the detailed evidence we have heard.

*Issue 10l*

187. The provision or not of the list of director competencies was not part of Ms Mason's decision, because it was not one of the 6 grievance issues.

188. The cross-examination of Ms Mason on this point was unhelpful because it was based on Ms Mason's misunderstanding that the competencies were available to all, when we have found they were not.

*Delay in Appeal Outcome*

189. Ms Mason was supposed to meet with the Claimant on 18 May 2022 for the appeal meeting but this was postponed at the Claimant's request to 26 May 2022. She then spent time speaking to managers mid to late June 2022. The first draft of her appeal letter was written on 7 July 2022. She met with the Claimant to give her decision on 17 August 2022. Ms Mason explained that HR had advised her that she had to give her decision in a face to face meeting and this had been delayed by her need to travel for the annual student work that she did which had been previously scheduled to coincide with college calendars as well as holidays. She explained this delay to the Claimant in an email on 24 August 2022, 872.

*Provision of Competencies*

190. The Claimant had a list of competencies provided by Mr James in reverse mentoring in 2021. Ms Douglas understood from HR that this was from an interview pack including competencies and was not commonly shared with employees. HR gave Ms Hall the same advice and asked for it not to be shared. Ultimately Ms Hall had to push to provide the Claimant with an interview pack showing competencies on 25 October 2022. We conclude, as sometimes occurs in mentoring, the reverse mentor had provided the Claimant with a document not available to all.
191. Was the failure to give the Claimant an up to date version of this document then a detriment? We do not think so given that it was not available to anyone. It does seem odd to us, though, that these competencies are not available to candidates to help them prepare for promotion interviews. It would be far more effective a recruitment process if candidates knew the criteria and were able to prepare in advance.
192. Was the failure to provide it influenced by the Claimant's discrimination complaints? We do not consider it was— rather that HR policy dictated it not be provided and only was when a very senior person in the organisation pushed back.

*Diversity and Inclusion at Barclays*

193. From the training records of all the key individuals involved, we see a high commitment by the bank to go further than identify the basics of equal opportunities to its managers and colleagues. The aim now is diversity and inclusion. There has been training in unconscious bias, allyship, inclusion and a reverse mentoring scheme where senior leaders in the bank receive mentoring by peers or others on their experiences of discrimination and prejudice. Mr Brooke sought to ensure a diversity on his recruitment panels. Ms Aly sensibly did not choose to cross-examine any decision maker on his understanding of unconscious bias or diversity

or inclusion. We also refer to Ms Mason's evidence about the work done by the bank on a Race Plan.

194. The Claimant has referred to individuals she was not prepared to name who felt they could not progress because of their race/sex, but we do not know any of the details of those cases and cannot therefore take this into account. Fairness would require the bank to have a chance to dispute this evidence or distinguish what happened in those cases with the Claimant's case.

### *Statistics*

195. In the Control Office there were 13 promotions to director (both by vacancy and in-role) in the 5 complete years 2019-2023, 1454 of which:
- 195.1. 8 were women; 5 were men. The Claimant agreed therefore of the 13 promotions in 4 years the majority were women.
- 195.2. 2 were Asian (15%); 3 were 'multiracial' (20%); 3 unknown and 5 white One of those unknowns is Mr Rimmington because he was the only person to be promoted in 2021. Thus that makes it 6 white people (40%). (Even if all the unknowns were white this would make the white people promoted amount to 53%.)
- 195.3. We take judicial notice of government statistics show that in 2021 residents of London were 20.7% Asian and 53% white. See <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/regional-ethnic-diversity/latest/#areas-of-england-and-wales-by-ethnicity> In the south east these figures are 7% Asian and 79% white.
- 195.4. We find therefore that the bank's figures are close to being representative of London and the South East. The Claimant agreed that, if correct, they are broadly what we would expect to see according to race with no surprising pattern on ethnic grounds.
196. The Claimant has provided examples of individuals she knows who were promoted to director 'in the last few years' (para 180). She does not present these as complete statistics and we know that they cannot be because they do not include any of the 5 ethnic minority colleagues identified in the Respondent's statistics. Five out of nine of the people she has identified as being promoted were women.
197. On race Ms Mason says and it was not challenged that Asian colleagues are fairly represented in the bank in the UK: in other words the proportion of Asian colleagues as compared to the proportion in the population is similar. We do not have any statistics for director level in UK.
198. Mr Brooke stated in his team was close to a 50:50 male/female split of directors and managing directors. Ms Hall stated and we accept, that she was aware of one *in-role* promotion of an Asian (Indian) colleague to director.



## Legal Principles

### Equality Act 2010

199. Section 39 of the Equality Act 2010 ('EQA') provides that employers must not discriminate against or victimise an employee... *In the way they make access to opportunities for promotion... Or (d) by subjecting them to any other detriment.*
200. Section 40 EQA provides that it is unlawful for an employer to harass an employee contrary to section 26. Section 212 EQA states that a 'detriment' does not include harassment and therefore such claims are brought as an alternative to detriment, direct discrimination claims.
201. Discrimination, victimisation and harassment all have particular statutory definitions under sections 13, 27 and 26 respectively.

### ***Direct Discrimination because of a protected characteristic***

202. Section 13 provides a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
203. Here the protected characteristics relied on are race, sex, religion.
204. The less favourable treatment must also either be in relation to the way in which the Respondent has made access for promotion and or have subject the Claimant to a detriment (so far as is relevant in this case).
205. While the basic principle can be stated in a couple of sentences, it is far more difficult to apply in practice.
206. Section 136 EQA provides: *'If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.'* Section 136(2) does not apply if A shows that A did not contravene the provision.
207. There are, thus, two stages to our decision making process:
- 207.1. First we must consider whether the Claimant has shown facts that could, in the absence of the Respondent's explanation for the treatment, lead us to conclude that there was less favourable treatment because of a protected characteristic.
- 207.2. If so, then we reverse the burden of proof. The Respondent must then satisfy us that the reason for the treatment was in no way whatsoever related to the protected characteristic.
208. In a clear-cut case it is open to the Tribunal to decide 'the reason why' question directly. But, where there is more of a question mark over the reason for treatment, it is better to follow this two-stage test, as explained in the guidance in Igen v Wong [2005] IRLR 258 CA.

## Case Numbers: 3201387/2022 and 3205577/2022

- 208.1. The first stage is that the claimant proves (on the balance of probabilities) facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of discrimination against the Claimant, which is unlawful. These are referred to below as 'such facts'.
- 208.2. If the Claimant does not prove such facts, she will fail.
- 208.3. 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. Direct discrimination is rarely admitted or clearly apparent from the primary facts. Those who discriminate sometimes do so unwittingly: unconscious biases can be very powerful. For example where a manager unwittingly applies a different standard to employees having a different protected characteristic to themselves. The outcome, at this stage, will usually depend therefore what inferences it is proper to draw from the primary facts.
- 208.4. At this stage the question is whether the primary facts 'could' lead to the conclusion of discrimination.
- 208.5. At this stage the Tribunal assumes there is no adequate explanation.
209. Less favourable treatment calls for a comparison. The Act says that there must be no material difference between the person compared to and the claimant except (obviously) the protected characteristic, section 23 EQA. This is the 'statutory' or 'actual' comparator. If there is a statutory comparator then the Claimant is long way down the road and an inference of discrimination can be more easily drawn.
210. If the Claimant does point to a real comparator but we conclude they are not a statutory comparator, they are not necessarily to be ignored. If their circumstances are similar and there is a difference in the protected characteristic, they are an 'evidential comparator', a piece in the jigsaw of evidence that, along with other facts, could assist the Tribunal in drawing an inference of discrimination (or reversing the burden of proof). This is because the evidential comparator helps us construct the picture of how a person would have been treated in the same circumstances as the Claimant but not sharing the protected characteristic. This is the hypothetical comparison sometimes referred to. In Virgin Active Ltd v Hughes 2023 EAT 130, para 62, HHJ Tayler gives a very helpful explanation of this process.

*62... There are two ways in which such a comparison may be relevant. If there are **no material differences** between the circumstances of the claimant and the person with whom the comparison is made (the person is usually referred to as an actual comparator), this provides significant evidence that there could have been discrimination. However, because there must be no material difference in circumstances between a claimant and a comparator for the purpose of section 23 EQA it is rare that a claimant can point to an actual comparator. The second situation in*

*which a comparison with the treatment of another person may provide evidence of discrimination is where the circumstances are similar, but not sufficiently alike for the person to be an actual comparator. The treatment of such a person may provide evidence that supports the drawing of an inference of discrimination, sometimes by helping to consider how a hypothetical person whose circumstances did not materially differ to those of the claimant would have been treated (generally referred to as a hypothetical comparator). Evidence of the treatment of a person whose circumstances materially differ to those of the claimant is inherently less persuasive than that of a person whose circumstances do not materially differ to those of the claimant. That distinction is not always sufficiently considered when applying the burden of proof provisions in section 136'. (our emphasis)*

211. It was approved of by Cavanagh J in Martin v The Board Of Governors of St Francis Xavier 6<sup>th</sup> Form College [2024] EAT 22, who went on to hold at paragraph 68 that :

*it is important to emphasise that HHJ Tayler did not say that in every case in which the claimant has been treated less favourably than an actual (statutory) comparator, the burden of proof will shift. It is more likely that the burden of proof will shift, but it does not follow that in every case the burden of proof will shift.*

212. Of course, if there are differences between the two cases, then the value or weight of the evidential comparator is reduced. Cavanagh J in Martin reminded us that Lord Scott, in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 at paragraph 109, observed that the consideration of comparators was not an end in itself

*The victim who complains of discrimination must satisfy the fact-finding tribunal that, on a balance of probabilities, he or she has suffered discrimination falling within the statutory definition. This may be done by placing before the tribunal evidential material from which an inference can be drawn that the victim was treated less favourably than he or she would have been treated if he or she had not been a member of the protected class. Comparators, which for this purpose are bound to be actual comparators, may of course constitute such evidential material. But they are no more than tools which may or may not justify an inference of discrimination on the relevant prohibited ground, e g sex. The usefulness of the tool will, in any particular case, depend upon the extent to which the circumstances relating to the comparator are the same as the circumstances relating to the victim. The more significant the difference or differences the less cogent will be the case for drawing the requisite inference. But the fact that a particular chosen comparator cannot, because of material differences, qualify as the statutory comparator, e g, under article 7 , by no means disqualifies it from an evidential role. It may, in conjunction with other material, justify the tribunal in drawing the inference that the victim was treated less favourably than she would have been treated if she had been the article 7 comparator. (Cavanagh J's emphasis)*

213. Evidential comparators can also be useful to a response to the claim, for example if the employer can show others were treated the same as the Claimant in similar circumstances this would reduce the prospect of any inference being drawn.
214. In this first stage, therefore, we consider the facts and consider whether they lead us to conclude that the Respondent 'could have' committed unlawful discrimination. Madarassy v Nomura International plc [2007] I.C.R. 867 at paragraph 56 Mummery LJ held:
- '56. The court in Igen Ltd v Wong [2005] ICR 931 expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. 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.' (our emphasis)*
215. In Virgin Active, HHJ Tayler pointed out that Madarassay was not a case where there was anybody was identified as a comparator. He observed:
- 67. If anything more is required to shift the burden of proof when there is an actual comparator it will be less than would be the case if a claimant compares his treatment with a person whose circumstances are similar, but materially different, so that there is not an actual comparator. ...*
- 69. Accordingly, where a claimant compares his treatment with that of another person, it is important to consider whether that other person is an actual comparator or not. To do this the Employment Tribunal must consider whether there are material differences between the claimant and the person with whom the claimant compares his treatment. The greater the differences between their situations the less likely it is that the difference of treatment suggests discrimination.*
216. We must therefore consider whether the comparator in this case is actual or evidential and, in any event, what 'something mores' might be required to show facts upon which we could conclude discrimination.
217. That the employer's behaviour calls for an explanation is insufficient to get to the second stage: there still has to be reason to believe that the explanation could be that the behaviour was "attributable (at least to a significant extent)" to the prohibited ground (see B v A [2010] IRLR 400, per Underhill P at [22]). In later cases this 'significant extent' has come to mean a material influence.
218. The vexed question of what evidence might assist a claimant in persuading a Tribunal to find 'such facts' and shift the burden of proof is again more easily stated than identified. The case law does little more than illustrate what the 'something mores' might be and the appeal courts have been careful not to limit the Tribunal's approach to what is a highly-fact sensitive and subtle area. Examples could be:

## Case Numbers: 3201387/2022 and 3205577/2022

- 218.1. Stereotypical assumptions or statements based on or influenced by protected characteristics;
- 218.2. Destruction of evidence like interview notes;
- 218.3. An unexplained reluctance to give reasons for the decision;
- 218.4. The number of comparators. This can work both ways: for example if there were a number of unsuccessful but equally well-qualified candidates for a job.
- 218.5. Inconsistent explanations for the decision.
- 218.6. Paragraph 16.44 of the ECHR Code of Practice on Employment, to which we can refer states: *An employer should ensure that these processes are fair and objective and that decisions are consistent. Employers should also keep records that will allow them to justify each decision and the process by which it was reached and to respond to any complaints of discrimination. If the employer does not keep records of their decisions, in some circumstances, it could result in an Employment Tribunal drawing an adverse inference of discrimination.*

### *The Reason Why*

219. Once the Claimant has proved 'such facts', it is then for the employer to prove that it did not commit the act. It is then necessary for the employer to prove, on the balance of probabilities, that the treatment was '*in no sense whatsoever*' because of the protected characteristic. A cogent explanation is normally required.

### *Detriment*

220. To find a 'detriment' (under section 39 and 27 of the EQA) a Tribunal '*must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work*' Shamoon. An unjustified sense of grievance cannot amount to 'detriment' but nor is it necessary to demonstrate some physical or economic consequence.

### **Victimisation**

221. Section 27 of the EQA defines victimisation as follows:
  - '(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
    - (a) B does a protected act, or
    - (b) A believes that B has done, or may do, a protected act.'

222. Ms Aly confirmed that the claimant relies on section 27(2)(d) for the disputed protected act in this case: *(d)making an allegation (whether or not express) that A or another person has contravened this Act.*
223. The Claimant must show that the protected act materially influenced the detriment in the sense that it was more than a trivial influence. It follows that the decision maker must have known of the protected act. A Tribunal may draw inferences of knowledge if there are sufficient facts upon which to do so.

***Harassment Relating to a Protected Characteristic***

224. Section 26 EQA provides so far as is relevant to this case:
- '(1) A person (A) harasses another (B) if—*
- (a) A engages in unwanted conduct related to [race or religion],*  
*and*
  - (b) the conduct has the purpose or effect of—*
    - (i) violating B's dignity, or*
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. ...*
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
- (a) the perception of B;*
  - (b) the other circumstances of the case;*
  - (c) whether it is reasonable for the conduct to have that effect.'*

225. We must ask the questions posed by the statute in turn.

226. For ease we will refer to intimidating, hostile, degrading, humiliating or offensive as the 'proscribed environment'.

227. To establish that the unwanted conduct is '*related to*' race or religion the Claimant does not have to show that the unwanted conduct was directed to her 'because' she has the protected characteristic, but that there was a connection between the conduct and the protected characteristic, see para 7.9 of the Equality Act Code of Practice ('the Code'), and Hartley v Foreign and Commonwealth Office Services 2016 (para 23-24). In that case the EAT held that whether the conduct is 'related' to the protected characteristic is a broad test, requiring an evaluation by the Tribunal of the evidence in the round. The alleged perpetrator's and victim's perceptions of whether it is related are not conclusive. The precise words and the context are important. It is also open to us to draw inferences if necessary.

228. The question of whether an act is 'sufficiently serious' (to quote from the Code at para 7.8) to support a harassment claim is essentially a question of fact and degree.

229. In Weeks v Newham College of Further Education EAT 0630/11 Langstaff P considered that '*environment*' means a state of affairs, which

may be created by one incident where the effects are of longer duration (para 21). But at paragraph 17 he observed:

*'Thus, although we would entirely accept that a single act or a single passage of actions may be so significant that its effect is to create the proscribed environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding.'*

The context of words used is very important.

230. Whether the conduct violates a person's dignity is also a question of fact and degree. We note the observations of Underhill P (as he then was) in Richmond Pharmacology v Dhaliwal [2009] ICR 724 (EAT) at paragraph 22 (in a harassment related to race claim):

*... We accept that 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 grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase...*

### **ACAS Uplift**

231. Under s207A of the Trade Union and Labour Relations (Consolidation) Act 1992, it is admissible for us to consider the ACAS Code of Practice on Discipline and Grievance at Work ('the ACAS Code').
232. Under Section s207A(2), if it appears to us that:
- (a) the claim to which proceedings relate concerns a matter to which a relevant Code of Practice applies,*
  - (b) the employer/or employee has failed to comply with that Code in relation to that matter, and*
  - (c) that failure was unreasonable,*
- [we] may, if [we] consider it just and equitable in all the circumstances to do so, increase [or decrease] any award [we] make to the employee by no more than 25%.*
233. We remind ourselves of the importance of taking a structured approach under section 207A(2). First ask if there was a failure to comply; if so, was that failure unreasonable; if so do we consider it just and equitable to exercise our discretion to uplift/decrease any award; if so, by what amount.
234. The ACAS Code applies in this case because the Claimant raised a grievance about the failure to adjust. The following paragraphs may be relevant after a formal grievance is made:

234.1. Paragraph 32. *If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.*

234.2. Paragraph 45. *The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.*

235. We must confine our reasoning, on whether to make an uplift or the size of any uplift, to the nature of the failure rather than extraneous matters. We must consider whether the failure was deliberate or inadvertent; the extent to which the Code was followed, if at all; whether there were any mitigating reasons for not following the Code.

### **Application of facts and law to issues**

236. We have decided to consider the decision to promote last (**issues 3a, 4a, 5a**). The Claimant invites us to draw inferences from the facts. It may assist us to ensure we have taken a full view to consider this question after each of the more discrete claims.

### **Issues 3(b) 4(b) 5(b) The Second Respondent's [Mr Brooke's] refusal to facilitate an independent role assessment for the Claimant on 30 November 2021: alleged direct discrimination because of sex, race or religion.**

237. At first, in the discussion with Mr Brooke on 19 November 2021, the Claimant wanted the promotion explained and an explanation for why she had not been considered. Second, in her email of 21 November 2021 she requested that '*this be independently assessed*'. While it is arguable that, at that stage, she had not asked for an independent role assessment at all, we address Mr Brooke's response to what she had requested – an independent assessment of why Mr Rimmington was promoted but not her. Mr Brooke suggested she raise a grievance, if she could not resolve it informally with Mr Bell first.

238. In our judgment, this response did not subject the Claimant to a detriment. It was appropriate for him to suggest that she raised a grievance. A grievance would be dealt with independently in the sense that the person deciding the grievance would not have been involved in the decision. A reasonable employee would not have seen that suggestion as disadvantageous. This is especially so, given that there was no other internal procedure whereby an employee could ask for an independent assessment of their role.

239. The Respondent did not therefore subject the Claimant to a detriment on this issue and the direct discrimination issues 3(b), 4(b) and 5(b) fail.

### **Issues 6b, 7b, 8b: as above but alternatively alleged harassment relating to sex, race or religion.**



240. We do not consider that Mr Brooke refused the Claimant an independent review by suggesting she raise a grievance. These allegations therefore also fail.
241. In any event, even if Mr Brooke's suggestion of a grievance was somehow unwanted conduct, we find by doing so it was not Mr Brooke's purpose to violate the Claimant's dignity nor create the proscribed environment. This is because such a procedure would be independent of the decision-makers and he took HR advice for the best response to the letter.
242. In any event, even if his reply could be interpreted as a refusal of her request, on balance we find that Mr Brooke's suggestion did not have the effect of violating the Claimant's dignity: the Claimant understood she had an avenue for complaint and used it. In any event, such an effect would have been unreasonable because, by directing her to the grievance procedure, Mr Brooke acknowledged she had a complaint and treated it seriously. Equally for these reasons it did not create the effect of the proscribed environment: by its very nature his suggestion respected that she had a complaint.
243. Third, nor do we find that this response could be said to be in any way related to race, sex or religion. Mr Brooke would have done for any such request and the suggestion of a grievance was neutral in relation to race, sex or religion. It simply related to the fact that she had a complaint.

**Issues 3(c) 4(c) 5(c) The Second Respondent's [Mr Brooke's] advice to the Claimant to search for employment outside of the First Respondent in August/September 2020, alleged direct discrimination because of sex, race or religion**

244. It follows from our findings of fact that Mr Brooke's comment during mentoring did not subject the Claimant to a detriment. The context was that the high cost London strategy had limited vacancies for promotion in London. First, Mr Brooke explored with the Claimant whether she could look for work within the bank but at other locations. This was not the query of a manager who wanted to encourage an employee to leave. Second, Mr Brooke made the comment as her mentor rather than her manager while he was exploring all career options with her, being aware of the broader market. We are satisfied he did not make the comment as a manager who wanted the Claimant to move on. A reasonable employee would not have regarded the comment as disadvantageous. The Claimant did not perceive it to be unhelpful at the time and it did not reduce her trust in Mr Brooke as a mentor: the relationship continued for many more months.

**Issue 6c, 7c, 8c – as above but alternatively alleged harassment relating to sex, race, religion**

245. We have found as a fact that Mr Brooke's advice was intended to be helpful and certainly not for the purpose of violating dignity or creating a proscribed environment.

246. The Claimant at this time and afterwards found him to be a valued mentor and she regarded their relationship as a special one. She did not object to this comment at the time and continued with the mentoring for some months afterwards. Mentoring requires consent. We find that it is not likely in those circumstances that Mr Brooke's comment in fact had the effect on the Claimant of creating the proscribed environment. She likely saw it as his attempt to identify for her avenues for career progression, no more. We therefore find the comment did not have the effect of violating her dignity nor creating the proscribed environment.

247. Thus the harassment claims on this issue fail.

**Issues 3(d) 4(d) 5(d) Being informed by the Third Respondent [Mr Bell] that there were no Director competencies on 6 January 2022, alleged direct discrimination because of sex, race or religion.**

248. We all consider that Mr Bell's response to the Claimant's request for the latest director competency list troubling, given that he knew they were shortly to have a meeting to discuss how she benchmarked against those very competencies. How, we wonder and doubtless the Claimant wondered, was Mr Bell going to discuss that with the Claimant without them both knowing the competencies? Moreover the Claimant had told him she had a list and wanted the latest list so that she could prepare. It was an understandable request and the refusal to provide the competencies in writing we find did subject the Claimant to a detriment: any reasonable employee, in possession of a competency list and asking for an up-to-date version, would have felt disadvantaged by a refusal to give it in the circumstances where they soon had a meeting to discuss those very competencies. It likely did not help that Mr Bell wrote 'as such' in his reply.

249. Nevertheless, Mr Bell had forwarded her request to HR and they had told him that there was no document to provide. It is clear to us that this was why he responded as it did. We have found later Ms Hall, even in her more senior position, really had to push HR before they agreed ultimately to provide it.

250. The 'list' referred to was in fact a description of the competencies in an interview pack used for promotion interviews. HR practice was not to tell director candidates prior to interview what the competencies were prior to interview. HR wanted to maintain this approach with Claimant so that she was not treated more favourably. This shows that the HR approach, that Mr Bell followed through their advice, was to treat the Claimant like others and undermines the allegation of different, less favourable treatment. The Claimant in fact had had an advantage over others at VP level by being given a copy of the director competencies by her reverse mentor.

251. It follows that this refusal was detrimental but not less favourable (different) treatment. And therefore these claims fail.

252. Even if we are wrong about this, we find that the reason why Mr Bell did not give the list was because HR had told him not to and this did not

relate to sex, race or religion. This is because we would have found HR would have given that advice in any other case to maintain their policy of not providing candidates with the criteria and Mr Bell would have followed it in any other case.

**Issues 6d, 7d, 8d- as above but alternatively as harassment relating to sex, race or religion**

253. We do not consider that Mr Bell had the purpose of violating the Claimant's dignity or creating the proscribed environment by refusing her the competency list. He was simply following HR guidance.
254. We consider the Claimant was frustrated by the response and any employee would have felt frustrated, but we do not consider that this reaches the threshold of a violation of dignity: no reasonable employee's dignity would have been violated by this one-off refusal. The Claimant had a list from 2021 and she therefore had the wherewithal to prepare for the meeting.
255. Nor in our judgment did this refusal reach the threshold of creating the proscribed environment. It did not create an environment as much as a one-off frustration for the Claimant and this one-off feeling was not of such gravity as it amounted to either being intimidating, hostile, degrading, humiliating or offensive or creating such a state of affairs. We consider frustration is qualitatively different to these feelings. Nor do we consider a reasonable employee would have felt that the refusal put them in such an environment. This was a single, frustrating incident, and not one we consider reaches the threshold of the proscribed environment.
256. These harassment claims therefore fail.

**Issues 3e, 4e, 5e The conduct by the Third Respondent [Mr Bell] at the Claimant's end of year appraisal on 26 January 2022, referring to issues 10a-c. as an allegation of direct discrimination because of sex, race or religion.**

**10a Mr Bell displaying intimidating behaviour towards the Claimant [at this meeting] to exert pressure on her to accept a lower 2021 end of year performance rating specifically:**

- i Mr Bell advising [her] that [she] was not willing to take any development feedback and only want to take the glory for good work;**
- ii Mr Bell advising [her] that [she] talked too fast when sharing senior forums and it was difficult for members to follow her and that she lacked insight and impact;**
- iii Mr Bell advising [her] that [she] should slow down when presenting;**
- iv Mr Bell mentioning the Claimant's grievance to her;**
- v Mr Bell saying he felt she was happy to stay at VP.**

257. On issue 10ai, we have found that Mr Bell is likely to have said that the Claimant was not willing to take feedback and just glory for good work.
- 257.1. From the Claimant's point of view she had disputed the communication feedback because Mr Gilheany had not raised it with her during the year and crucially at her mid-year assessment. Our findings also show that, in general, the Claimant had actively sought, heard and responded to development feedback. She certainly did not want just the glory and it would have been unfair and inaccurate to make such a general remark about her.
- 257.2. From Mr Bell's point of view, he had provided presentation points in a February 2021 email and was faced with a colleague who did not accept some development points in her appraisal.
- 257.3. On balance we judge that Mr Bell made the glory remark because he was frustrated that the Claimant was not accepting his appraisal feedback at that time. It was an ill-judged, disrespectful, off-the-cuff remark, not meant in general though the Claimant could reasonably have understood it in that way. It was not in accordance with the bank's values and the high standards of communication that Mr Bell himself required (as illustrated by his response to the Rotheroe email).
258. On issues 10aai and iii. Mr Bell likely did say slow down when presenting and the Claimant likely heard this as talking too fast. We find that was his genuine view, chiming with what he said in his February 2021 email and made in the context of the selection of messages to give at the forums rather than a general comment on her speed of speech.
259. On issue 10aai, Mr Bell did not inform her that she 'lacked insight and impact' but likely said far more subtly '*land your key messages with context for the audience*'. All of these comments were said in a meeting at which there was a dispute about the appraisal rating. Mr Bell is to be expected therefore to have identified and explained what he regarded as development points about impact and speed. We do not find that this comment was an unreasonable way of doing so.
260. On issue 10aiv, Mr Bell did refer to the grievance but only to indicate that he would have preferred an opportunity to help develop her first. Mr Bell referred to the grievance in a way that was understandable and, in fact, in accordance with the ACAS Code. All he was saying was that he would have preferred the Claimant to try informal resolution first. We do not consider a reasonable employee would have found that intimidating.
261. On issue 10v, Mr Bell did say words to the effect that he felt she was happy to remain a VP. This is not what we have found he understood from what Mr Gilheany told him: that she had temporarily paused in pushing for promotion, not that she had lost desire or was happy to remain as VP. The Claimant was likely surprised to hear this as she had spent time seeking to improve and develop and, in mentoring, considering her director options, even though she had told her manager

earlier that year she was not at that time prioritising promotion. Further these comments were not to do with her appraisal. It was likely disconcerting to her to hear her new line manager have that view of her desire to progress.

262. We go on to consider the other sub-issues before reaching an overall conclusion.

**10b Mr Bell ignoring positive feedback the Claimant had received in providing feedback in her 2021 appraisal follow up meeting on 26 January 2021 and reflecting this in end of year rating.**

263. A great deal of the positive feedback was reflected in the written appraisal, the end of year rating of outstanding and strong. This was referred to at the first appraisal meeting. We do not find that Mr Bell ignored positive feedback
264. The focus of the second meeting was on the Claimant's challenge to the appraisal and it is therefore understandable and indeed necessary to the meeting's purpose that the focus was on the development feedback. Ignoring the positive feedback at that second meeting was not therefore, on its own, a detriment: it being the purpose of the meeting to consider the Claimant's challenge to the development feedback and the strong rating that it led to.
265. There is a separate question in this issue, however, and that is whether Mr Bell ignored positive feedback for the 2021 appraisal in the end of year appraisal rating.
266. Plainly the positive feedback was not ignored in general because the Claimant received an outstanding and a strong: both very positive ratings.
267. The only point that arises is Mr Bell's criticism about the Claimant's approach to 'challenge'. We judge that his criticism did indeed ignore colleagues' feedback that the Claimant challenged appropriately. He suggested that '*on occasion*' the Claimant's '*communication style could be refined a little e.g. when presenting a challenge or responding to a challenge*'. This point was based on one email. He had turned the occasion of the Claimant's mildly inappropriate challenge to Mr Rotheroe into more - 'on occasion'. We consider Mr Bell made more of this point than was necessary by suggesting it was more than a one-off. Nevertheless 'could refine a little' was a very minor criticism and on balance we have decided this point alone is unlikely to have changed the rating because Mr Gilheany's point about strategy was more significant in the context of the Claimant's work and coming as it did from the line manager for most of the year.
268. Thus, this issue does not therefore succeed on the facts.

**10c Bell hiding positive feedback given by Ms Callison to Claimant on 26 January 2022.**

269. It follows from our findings of fact that this allegation fails. Ms Callison's feedback was incorporated into the appraisal on the How and the What. The development point was raised appropriately at the 26 January meeting and, as we have said above, that meeting was designed to deal with the Claimant's challenge and therefore understandably it was the development points that were its focus.

**Overall then did Mr Bell's conduct at the 26 January meeting as per points 10a-c subject the Claimant to a detriment.**

270. We are clear that overall Mr Bells' conduct as we have found it did not have the purpose of being intimidating (as alleged) nor can have reasonably had that effect upon the Claimant. While the Claimant could reasonably have found glory comment unfair and inaccurate and disrespectful; and found his inaccurate assertion that she was happy to remain as VP as very concerning; and his minor criticism about challenge inappropriate (because it was suggested to be more than a one-off) we do not find they add up to intimidation: they were made in a discussion which by its very nature was likely to find the employee and manager in dispute because the Claimant had challenged her rating. But they did not trespass into pressure on the Claimant to accept her rating (as alleged). The remaining comments we find could not have reasonably be seen as disadvantageous, arising as they did from feedback, and been made in a specific and appropriate way.
271. We have asked ourselves whether the 'glory' and 'happy to remain at VP' and 'challenge' comments nevertheless subjected the Claimant to a detriment. We consider they did because a reasonable employee could have considered that Mr Bell was referring to an overall attitude by those remarks. That would have been reasonably seen to be unfair to the Claimant who had the desire to be promoted (albeit couldn't prioritise promotion at that time), who was a hard worker, sought feedback, and took it seriously aiming to improve and who had had one minor misstep on her approach to challenge rather than a characteristic. She could have reasonably understood herself to be at a disadvantage if her line manager held those views of her.
272. We consider the 'happy to remain as VP comment' on its own was clearly a detriment, even in the circumstances that the Claimant had told her manager she could not prioritise promotion for a temporary period because of family pressure. In fact, particularly in those circumstances: we find there was a real change of understanding (more than a change of emphasis - a change of meaning) by Mr Bell from what we find he understood on handover (a temporary lack of push for promotion in mid 2021 because of family issues) to the January meeting (happy to remain at VP). A reasonable employee would doubt whether her manager was taking her seriously by that remark and be concerned that he had not recognised her obvious ambition. A reasonable employee would think she risked being overlooked in any in-role promotion consideration if her manager thought about her in those terms. This is clearly being subject to a detriment.

**Case Numbers: 3201387/2022 and 3205577/2022**

273. We go on to consider whether there are any facts that mean, taken together or considered separately, those comments could have been because of race, sex or religion. There is no actual comparator here. We consider whether there are any inferences we could draw.
274. As for the glory comment: we consider it was made simply because of a frustration in the heat of the moment on his rating being challenged. It was not in accordance with the bank's values to say something disrespectful like this, but we do not find that there is anything in the surrounding facts that could suggest it was made for a reason relating to race, sex or religion.
275. We have much greater concern about the happy to remain as VP comment. The Claimant had not lost her desire for VP. She had been temporarily unable to prioritise it and, this is what we find Mr Gilheany told Mr Bell. Mr Bell's comment to her in the appraisal reveals he had assumed that the cause of her temporary lack of priority (family pressures) meant she had lost her desire totally for promotion. This is a significant leap, a large assumption to make. We consider that had she been a high-performing man (with similar temporary family pressures) he would not have made that assumption or stated at an appraisal that he was happy to stay as VP. We judge that Mr Bell has applied to the Claimant the stereotype of the female carer – the assumption that women take on family care and lose the desire for advancement at work because of home pressures. He has, in that one comment, brushed to one side the palpable and longstanding evidence of the Claimant's obvious appetite for work and progression. There is a clear distinction to be made here between the family pressures and caring the Claimant talked about that meant a temporary loss of priority to a total loss of desire for progression. We infer Mr Bell simply would not have lost sight of that distinction had the Claimant been a man to whom the stereotype of family carer would not have applied.
276. The context is also an organisation that demands the highest standards in carefully communicating with colleagues, as the values and the way the Claimant was assessed against them have shown.
277. Thus there are facts here upon which we could draw an inference that that this detrimental comment was because of sex: it was informed by a stereotype, that of the female carer and it would not have been made to a man in the same circumstances.
278. We therefore reverse the burden of proof and have then looked at the reason for the comment.
279. First the Claimant's ambition was not relevant to her appraisal rating, which was the subject of the meeting.
280. We have thought carefully about whether Mr Bell could have merely misunderstood Mr Gilheany's comment on handover, but his evidence to us in cross-examination shows that he did not. While he did not assume the Claimant had caring responsibilities and pressures – this is something she told the Respondent – he still applied the stereotype to his

assumption about the Claimant's desire for progression. The outcome of his thinking was not, as it should have been, that she had temporarily promotion was not her priority, but quite wrongly that she had lost desire to be a Director at all.

281. There was, thus, no good reason for Mr Bell to say this to the Claimant at the meeting and it was not based on a genuine misunderstanding of what Claimant had told Mr Gilheany. It was influenced by stereotypical thinking about women and caring. We cannot conclude therefore that the reason was nothing whatsoever to do with sex. On this point therefore we find that by stating to the Claimant in the meeting that she was happy to remain as VP he subject the Claimant to a detriment because of sex and unlawfully discriminated against her.
282. We do not find that there was race/religion discrimination because the stereotype upon which we base our decision relates to sex and there are no 'such facts' upon which we could reverse the burden of proof in relation to race or religion.
283. On the 'challenge' comment (issue 10b). We have considered whether there are facts upon which we could draw an inference of discrimination. Did Mr Bell unwittingly place more emphasis on this criticism because the claimant was a woman and/or Asian and/or Muslim? We have in mind that those 'othered' in the workplace can be criticised more heavily when they raise a challenge and viewed as aggressive whereas white/male colleagues who raise challenges might in the same circumstances be regarded as assertive. The shorthand for this stereotype might be angry black woman - a black or Asian woman being regarded as brusque or aggressive in making challenges when that behaviour in a white person might be ignored as minor or even praised as assertive. We have, however, concluded that this type of unwitting thinking was not present here. This is mainly because there were facts upon which Mr Bell could make a criticism, the Rotheroe email, and his criticism was not significantly out of proportion to those facts. The Claimant probably did challenge Mr Rotheroe in a mildly inappropriate way for which she apologised and Mr Bell's criticism of it, while making more of it than a one off ('on occasion'), was still minor ('could be refined a little'). We take into account here the high standards of communication required by the values and find it likely Mr Bell would have picked this problem up with a male or white or non-Muslim employee in the same or a similar way.
284. (By the time of the grievance appeal Mr Bell had changed his criticism and improperly alleged that the Claimant was 'abrasive' and improperly suggested the Rotheroe email was an 'example' of this. We decide this was unlawful victimisation (see below) because it so differs from the minor criticism he made in the appraisal. At the appraisal he did not know about the protected act, during the grievance he did. We find the change in the level of his criticism was because of the protected act as we explain later.)
285. We have gone on, because one interpretation of the list of issues requires it, to ask ourselves whether there was enough in the appraisal development points to justify the rating of Strong on the How, rather than



Outstanding. We remind ourselves that we are not the managers; we have no sense overall of how this feedback would compare to others; Mr Gilheany's feedback on strategic thinking looks relevant and relatively significant and Mr Bell's feedback on putting messages into context was supported by his objective February feedback based on observation as well as Ms Callison's feedback. These development points are probably sufficient to justify a rating of Strong and not Outstanding despite all the glowing material in the appraisal and colleagues' feedback. The feedback on challenge 'on occasion' was inappropriate but was set out as a minor point (the need to 'refine a little') and we have found probably did not make the difference. Overall we are not able to find on the evidence we have heard that the rating was obviously wrong.

**6e, 7e, 8e Harassment about 10a-c**

286. On issue 10cv we have found direct discrimination and therefore do not consider harassment. We are left considering the other comments we have criticised the glory comment and the challenge comment.
287. Our findings of fact mean the purpose branch of the harassment claim does not succeed: it was not Mr Bell's purpose to violate dignity or create the proscribed environment. He had no intention of doing so or being intimidating or aggressive. The glory comment was a one-off out of frustration that the Claimant did not accept his ratings. On the purpose of making the challenge criticism, we do not find that Mr Bell was seeking to violate dignity with this remark. It may have ignored other feedback and made more of the issue than the one email allowed, but our findings are overall that the criticism was no more than minor, and, although not in line with the high standards the First Respondent set for respectful communication, it simply does not get close to violating dignity.
288. We judge that the glory remark and the approach to challenge remark did not have the effect of violating dignity. Plainly, it was upsetting to the Claimant who likely heard them as an allegation of an attitude. But we apply Dhaliwal and consider it not to be reasonable in the circumstances for those remarks to have had the effect of violating dignity. This was a meeting about the challenge to the rating: there was to be expected a difference of views expressed. The glory comment should not have been said and was unfair but the approach to criticisms comment could have been made but should not have been described as 'on occasion'. It was reasonable for them to create a state of affairs for the Claimant in that they revealed an attitude about her but this state of affairs was insufficient in our view to meet the threshold of intimidating, hostile, degrading, humiliating or otherwise offensive environment. Critical yes, unfair yes, inappropriate yes, but none of that reaches these far more serious epithets.
289. Thus these harassment claims fail.

**Issues 7f, 8f: harassment by feedback by Mr Bell regarding the claimant's communication style and pace of speech on 26 January 2022.**

290. This is a separate allegation of harassment relating to race or religion albeit overlapping with issues 6, 7 and 8 e.
291. Mr Bell told the Claimant to slow down. We judge this to have been made in the context of the impact points he made in February 2021 email. We judge this to have been Mr Bell's genuine view from observing at the meeting after which he provided the February 2021 feedback. It chimes with this feedback even though pace itself was not raised with her.
292. We have first asked whether the comment could relate to race or religion. Mrs Lawrence contends there is a race element to this because it related to her way of speaking English as a person of Asian origin. We reject this argument because we find the development point related back to Mr Bell's February 2021 feedback about impact. It was about pace in the context of selecting messages (slow down and land your points) and finding ways of persuading the audience. Mr Bell was not making a separate point about the way in which Mrs Lawrence spoke but how she approached her job of persuading her stakeholders by selecting points and slowing down to land them. We do not find that the comment related to race or religion.
293. As it did not relate to race or religion the allegation fails.
294. In any event we do not consider the comment could reasonably be said to have violated dignity given the brief way and the context in which it was raised.
295. Similarly and for the same reason it was not reasonable for it to have created a state of affairs. It was reasonable to consider that this was a one off comment made in a particular context rather than generally.

### **Victimisation Issues**

#### **Issue 9a. Is the following a protected act: the Claimant's grievance dated 10 January 2022 which references content of the conversation on 19 November 2021; the Claimant's email sent on 21 November 2021.**

296. We have considered carefully the wording of the grievance email of 10 January 2022. We do not consider any express allegation of a contravention of the EQA is made. We have therefore concentrated on whether an implied allegation was made. The words 'whether or not express' in the EQA must mean something.
297. First, we remind ourselves of the context in which the email was made: the Claimant had already made an allegation of discrimination to Mr Brooke both in her 19 November 2021 conversation and in her 21 November 2021 email. We have found that Mr Bell did not know about those allegations prior to receipt of the ACAS notification, i.e. at this point. We have concentrated on Mr Bell's knowledge because Mr Brooke already knew of the protected acts.
298. Even against that context we do not consider that the words of the grievance email are sufficient to amount to an implied allegation of a contravention of the EQA. The references to a lack of transparency to

ensure there is a level playing field for all imply a concern that there may not have been equal treatment. But the Equality Act makes unlawful equal treatment because of certain protected characteristics. Does the context of the Claimant's prior allegations and her status as a racial and religious minority at the bank give enough context to the reader to imply allegations of race or religious discrimination? We judge not because there is no reference in these passages to her own circumstances and it would require too much on the part of the reader to imply that meaning.

299. We add that the Claimant may well have been able to mount a case under section 27(1)(b) that her employer 'believes [she] may do a protected act' on the basis of the phrases in the grievance, but that has not been her case.
300. The protected acts are therefore:
- 300.1. Conversation with Mr Brooke 19 November 2021
  - 300.2. Email to Mr Brooke 21 November 2021
  - 300.3. Email to Ms Douglas 1 March 2022 as part of the grievance
  - 300.4. EC notification 2 February 2022 [received Bell about 10 Feb]
301. Therefore Mr Brooke and Ms Douglas and Ms Mason knew that the Claimant had raised protected acts.
302. Mr Bell did not know of the protected acts before 10 February 2022.
303. Mr Gilheany did not know until likely Mason asked him about discrimination at the appeal meeting. (Ms Douglas did not ask any discrimination questions of him at the grievance interview.)

**Issues 10 a-c as victimisation claims**

304. The victimisation issues 10a-c against Mr Bell fail because he did not know of the protected acts at the time of the 26 January 2022 meeting.

**Issue 10d i-vi the First Respondent running a sham grievance process completed by Ms Douglas on 18 March 2022; specifically, the grievance failing to include a detailed response to the issues the Claimant had raised about [namely]:**

- i independent role review request;**
- ii failing to provide director competencies and being told they did not exist;**
- iii exception criteria for London and why Claimant not considered for in role promotion;**
- iv discrimination sex race;**
- v victimisation and bullying by Bell on 26 January;**

**vi delays in lack of care for wellbeing by CCO leadership.**

305. We decide the grievance process was not a sham overall because Ms Douglas did investigate and respond genuinely to much of the grievance. she investigated the promotion process of Mr Rimmington, the grade the Claimant was working at, and her appraisal ratings and whether her managers had considered her for promotion. We have found that Ms Douglas did give an outcome which was adequate on issues 10 d i and iii and she was not asked to make findings on issue 10 d ii in the grievance. On those issues therefore we conclude Ms Douglas did not subject the claimant to the alleged detriment.
306. However Ms Douglas did not make adequate findings on issues 10d iv, v and vi.
307. Ms Douglas was not helped by the fact that the Claimant failed to make all of her grievance points clearly at grievance meeting and had agreed to the three areas Ms Douglas identified but then added others. On the other hand, in the written material that the Claimant sent, she clearly identified the 6 issues she wanted to raise. We consider that, as Director, Ms Douglas ought to have had the wherewithal to have identified that more points were being made, or at least have been helped by HR to do so. Given these were clear points raised in writing in the grievance by the Claimant, the failure to reach an outcome on them plainly subjected her to a detriment. Any reasonable employee would feel disadvantaged by not receiving an answer to those 6 points.
308. This failure does look surprising. It causes us to raise an eyebrow (Mr Ohringer's test for looking for issues that might lead to an inference). It is particularly shocking when someone has been brave enough to raise an internal complaint of discrimination for the employer not to respond to it.
309. But what inference do we draw? Is there material upon which we could conclude Ms Douglas' failure to make these findings was because of the protected acts. We have concluded not here for the following reasons:
- 309.1. We do not judge the approach to grievances by the approach we take to issues or to a police investigation.
- 309.2. We do not consider that Ms Douglas had in mind that she was protecting the bank by not deciding these issues. If anything, by leaving them undecided she made the route to a tribunal easier.
- 309.3. We asked whether Ms Douglas was discomfited by the allegation of discrimination and therefore did not ask questions about it to senior managers. But we conclude from her evidence that this was not the case. We find that she felt that at the meeting she had nailed down the three areas to look at and thereafter adopted a rigid approach to those three areas and persuaded herself that the six issues fitted into them.
- 309.4. Nor did Ms Douglas appear to us to have judged the Claimant adversely for having raised Equality Act allegations. She looked into, for example, the relative grading of the Claimant and Mr

Rimmington and whether it could be justified. This was at the core of the discrimination issue and she did not avoid it. Conversely she missed out on other points not related to discrimination.

- 309.5. Although six points were identified in the written material, they came with a great deal of commentary and documentation. We have concluded that Ms Douglas likely stuck to the three points she knew she had agreed with the Claimant at the meeting as a way of structuring the grievance and coping with it.
- 309.6. Overall for these reasons we do not consider the protected acts in fact influenced her to fail to reach express findings on those three issues.

**Issue 10 d vii On whether Mr Bell had provided false information to the grievance namely that the Claimant was no longer looking for promotion to director level due to her wanting to focus on her family. As an allegation of victimisation**

310. We note that Mr Gilheany also made this statement to Ms Douglas and it was clearly different to what he understood the Claimant to have told him, as he explained clearly to us in his evidence. He could not have made this statement because of the protected acts. We find it was made in an effort to defend himself.
311. We have decided that for Mr Bell there was a clear change in meaning from what he had understood Mr Gilheany had told him. A change from him understanding that the Claimant did not want to prioritise promotion at that time because of family reasons, to Mr Bell telling Ms Douglas that she no 'longer wanting to push for director... due to Nazia wanting to focus on her family' (see 513).
312. The issue 10dvii we have to deal with is whether Mr Bell gave false or misleading information to Ms Douglas about this matter. Or, alternatively, had he genuinely misunderstood/misremembered what Mr Gilheany had said to him?
- 312.1. The context is that the Claimant is a person very keen to progress: mentorship, seeking feedback. She is also a person with real family issues she has told her employer about.
- 312.2. Ms Mason, on appeal, disagreed with Miss Douglas's conclusion that the Claimant had not articulated interest in a director role. She found '*my interviews and review of the evidence suggests you clearly articulated a desire and interest in the director role*'.  
878
- 312.3. We have found that Mr Bell did exaggerate abrasiveness deliberately. He was prepared to do this.
- 312.4. Did Mr Bell really think that the Claimant had told Mr Gilheany that she 'no longer' wanted to push for promotion – if we think he

exaggerated abrasiveness to Mason, it is more likely that he exaggerated this too.

312.5. On the other hand we acknowledge that misunderstandings do arise when information about person A is discussed between person B and Claimant.

313. Balancing all of these factors, we do not find that what Mr Bell said was false because there was a kernel of truth in what he said. But we do consider that the change from 'not a priority for now' to 'no longer having desire for' was deliberately misleading and an exaggeration of the facts.

314. Was this a detriment? When Ms Douglas looked at transparency she concluded that promotion had not been considered for the Claimant or her role. She relied on the managers' statements to her that the Claimant had told them she no longer wished to push for promotion due to her family issues. These statements did therefore have an impact on the grievance outcome and therefore subject the Claimant to a detriment.

315. But we have already found he made this comment at the appraisal when he did not know about the protected acts. And Mr Gilheany also made this statement. We therefore find that the protected acts did not have a material influence on this statement: he would have made it anyway.

**Issues 10e, f The first and second Respondents (Mr Brooke) refusing to conduct an independent role review in relation to the Claimant's actual role in comparison to that of her Dan Rimmington on 30 November 2021 as alleged victimisation**

316. In respect of this allegation for the 30 November 2021 it follows from our findings of fact and conclusion at issue 3(b) that the Claimant was not subject to a detriment by Mr Brooke's response to her request.

**Issue 10g the third Respondent refusing to conduct an independent role review in relation to the Claimant's actual role in comparison to that of her Dan Rimmington on 6 January 2022 as alleged victimisation**

317. This issue fails because on 6 January 2022 Mr Bell did not know of the protected acts.

**Issue 10e the first Respondent refusing to conduct an independent role review in relation to the Claimant's actual role in comparison to that of her Dan Rimmington on 18 March 2022 as alleged victimisation**

318. It follows from our findings on issue **10d i** that this fails because we have found that the Claimant was not subject to a detriment because she was provided with a response after the grievance investigation, itself a process independent of the decision makers.

**Issue 10h the second (Mr Brooke) and the third (Mr Bell) Respondents providing false/misleading information to the appeal manager on perceived outstanding performance gaps ...**

319. Was Mr Brooke's comment ('rub people up') a detriment? On the one hand saying that someone rubs someone up the wrong way does not sound terribly bad. But we must look at the particular context in which

this statement was used. This is a grievance appeal. It is a serious moment for Mr Brooke and the Claimant: she has alleged discrimination and unfair treatment including in how her performance was assessed. The bank's 'How' values, that a senior director would be very much expected to uphold, include respect for others. In that context stating that a manager rubs people up the wrong way is shorthand for saying she did not deserve an outstanding on the 'how'. The Claimant had not heard this criticism before from Mr Brooke or anyone else. If a reasonable employee of this bank with this practice and these values were to hear a senior manager make a criticism about her approach to colleagues in this context, we find she could reasonably have regarded herself as disadvantaged. Therefore the comment did subject her to a detriment.

320. Mr Brooke knew about the protected acts from the November 2021 conversation and email. Indeed he had told Ms Douglas that the Claimant had accused him of being racist. He understood the allegations to be personal to him.
321. Was Mr Brooke's misleading account of the Claimant's style influenced by those protected acts? We find that it was. It weighs heavily on our decision that he had not said it before he knew of the protected acts in the long relationship he had had with the Claimant as a line manager and mentor. This criticism of her was, on his oral evidence to us, plainly misleading because he admitted that did not tell Ms Mason that the communication problems had been resolved. We find he adopted that misleading approach because he was upset to have been called as he saw it a racist and this was because of the protected acts.
322. We have concluded that it was unfair and deliberately misleading for Mr Bell to characterise the Claimant as abrasive. We adopt similar reasoning as for Mr Brooke's comments except to find that that stating a line report is 'abrasive' is even more critical and serious.
323. At the appeal Mr Bell knew that the Claimant had done a protected act. The stakes were high – he had received the ACAS Early Conciliation notice and knew that the Claimant was considering bringing a Tribunal against him. This was personal to him. We find this influenced him to tell Ms Mason that the Claimant was abrasive. It again weighs heavily that he had not raised this conduct with her. All he had done was ask her to reflect on 'softening' her tone to one email; his criticism in that email or the appraisal does not get near the idea that Claimant was abrasive – a far more serious problem. The management euphemisms that can sometimes be used in appraisals do not come close to the difference here. Mr Bell suggested this one email was an example of the problem. It was not. We find that Mr Bell was trying hard to defend himself, and gave completely misleading information to Ms Mason, because the allegations were of discrimination, serious allegations he wished to avoid. We note that he knew of the internal grievance at the time of the appraisal meeting but did not make such trenchant and misleading criticisms in that. The difference we find is likely to have been materially influenced by the protected act of the ACAS EC step.

324. We therefore conclude that all three Respondents unlawfully victimised the Claimant by the provision of deliberately misleading information to the appeal.

**Issue 10i the second Respondent (Mr Brooke) and the third Respondent (Mr Bell) advising the appeal manager that the Claimant's role is not very complex and was re-classified as a VP role in 2020**

325. This allegation fails on our findings of fact that the information provided to the grievance appeal was not misleading.

**Issue 10j Ms Mason's reliance on verbal evidence provided by Mr Gilheany, Mr Bell and Mr Brooke all of whom are in the Claimant's reporting line and individuals the Claimant had raised her grievance against. Failing to interview any of the Claimant's other senior stakeholders despite several requests...**

326. While we understand the Claimant's criticisms, we do not consider that this issue suggests Ms Mason took an unreasonable approach to the grievance. Grievances do not operate at the same level as Tribunals or police investigations. It was appropriate for her to hear what managers said, and to ask herself whether she found anything surprising in it, especially where the context allowed her to use her own subject area knowledge and where there was not good written evidence from detailed role profiles. It was inevitable that the main people to provide information were the managers complained about and while it would have been better to adopt a more sceptical approach and double-check their accounts with other stakeholders, it is not so surprising for her to have accepted their accounts that we are prepared to infer she did so because she was influenced by the protected acts. We take into account that in her role, the protected acts would not have shocked her and she would not have found someone making such allegations objectionable: her role was to improve equality at work. Thus even though her approach can be criticised to some extent we find it was not materially influenced by the protected acts.

**Issue 10k The appeal outcome letter dated 17 August 2022 lacking sufficient supporting evidence on the role comparison**

327. On the basis of our findings of fact this allegation fails.

**Issue 10 l the First Respondent, the second Respondent (Mr Brooke), the third Respondent (Mr Bell) and Ms Mason not providing the Claimant with the CCO benchmarking criteria for VP versus Director roles for the purposes of the appeal despite requests on the dates set out between i and vii.**

328. The allegation against Ms Mason fails on our findings of facts: the competency list was not part of the grievance issues.
329. In relation to Mr Bell the failure to provide the list in answer to the first requests in January 2022 was not victimisation because he did not know of the protected acts.
330. We have found the competency list was not available to others and this was the reason HR was unwilling to give it to the Claimant, not because she had done protected acts. Ms Hall had to assert her authority as the



most senior person in the division in the end to send it out to the Claimant. This may have frustrated the Claimant but it was not victimisation.

**Issues 3a, 4a, 5a Failing to be awarded an in-role promotion to the role of Director from 2019 ongoing as an allegation of direct discrimination because of sex, race and/or religion.**

331. First, what is the act of less favourable treatment that we are considering? In argument during the case it became 'not putting forward for in-role promotion'. There was no vacancy. The Claimant is not now saying she should have had Mr Rimmington's role. She is contending that what happened to Mr Rimmington in being put forward by his line manager for in-role promotion should have happened to her.

332. We have to consider the mental processes of the decision makers who would have put her forward for in-role promotion. The in-role promotion process requires the line manager to make this decision. The allegation extends from 2019 to 2021 so this means we look at:

332.1. Mr Brooke until around July 2019

332.2. Mr Gilheany November 2019 - October 2021

332.3. Mr Bell – September 2021. Mr Bell states and we have found he considered the Claimant for in-role promotion when he considered Mr Rimmington before he was line manager, so we will look at this September 2021 decision.

*Mr Brooke*

333. In the period Mr Brooke would be deciding until July 2019:

333.1. For the in-role promotion procedure: The Claimant's role had expanded temporarily because of Ms Stroud's secondment. At this stage they did not know whether Ms Stroud would return. It was a 'stretch opportunity' not a permanent one. Thus Mr Rimmington was not an actual comparator because he gained a permanent expansion in his role.

333.2. For Mr Brooke's promise that he would consider her for promotion into Ms Stroud's role if Ms Stroud did not return, this depended on high performance. For this additional promise, performance was material. In 2019 Claimant has admitted Mr Brooke had highlighted performance improvements and she agreed with his appraisal. Mr Rimmington therefore was not an actual comparator for this case because he had consistent double Outstanding ratings. Nor was he an evidential comparator in relation to this separate promise because performance was a material part of the criteria (unlike the in-role promotion, which we will explain below).

334. Is there any other fact upon which we could draw an inference of unlawful discrimination for Mr Brooke's failure to suggest the Claimant for in-role promotion. Are there any something mores?
- 334.1. His promise to put her forward for promotion once Ms Stroud did not return and once he acknowledged she had improved (2020/2021) was not acted upon even though he was a very senior director and we infer he could have had the power to do so.
- 334.2. His approach to the London strategy was that his hands were later tied in relation to that promise i.e. he understood that the policy did not allow promotions in London. But this was not the understanding of Ms Hall and Mr Bell when it came to Mr Rimmington. The goal posts appear to have changed. This inconsistency in approach raises questions.
- 334.3. The 'rubbing up the wrong way comment' was misleading and not raised with her. We have found it to have been influenced by the protected acts. Mr Brooke chose to use it in 2022 when those communication concerns he had had were in 2019 and on his own evidence had been resolved. This approach could also have been influenced by the stereotype of an angry black woman we refer to above. It is one thing to be challenged by an assertive white man but another thing to be challenged by what you perceive to be an angry Asian woman.
- 334.4. The procedure adopted for Mr Rimmington was casual and only dependent on white decision makers and crucially was not evaluated separately. The internal system of checks and balances designed precisely to rule out subjective decision making and unwitting prejudice was not complied with.
335. There are also facts pointing in the opposite direction: the statistics on promotions in the CCO for which Mr Brooke had overall control do not suggest that under his guiding hand there was any form of institutional preference for white men.
336. We are not persuaded that there is sufficient here to reverse the burden of proof on the *in-role promotion* because the Claimant was not, at the time of his management, in a role that had a permanent expansion and therefore the procedure would not have applied.
337. But given the something's more we are persuaded that there are facts upon which we could make an inference of race and sex discrimination: just enough to reverse the burden in relation to Mr Brooke's promise to consider promotion once Ms Stroud did not return. We do not reverse the burden in relation to religion there being insufficient in the facts to lead to an inference.
338. We find, however, his reasons were in no way whatsoever related to sex/race/religion.

- 338.1. We find his understanding of the London strategy to be his genuine understanding at the time as illustrated by his internal email sent contemporaneously.
- 338.2. There are enough facts about Mr Rimmington's exceptional performance during the pandemic to justify Mr Brooke understanding him to be a genuine exception to the London strategy as he understood it. While the Claimant's performance while she undertook 70% of Ms Stroud's work was plainly very good, it was of a different quality to the fast moving; unexpected work required of Mr Rimmington during the pandemic, his leadership of which ultimately was to keep the workforce safe. We find this was a real difference and justified Mr Brooke's distinction without reference to sex or race.
- 338.3. His 'rub up the wrong way' comment was based latterly on his experience of the November 2021 conversation and his hurt that the Claimant had alleged him to be 'racist' (as he saw it) this is classically victimisation territory. We do not consider those comments were influenced by the stereotype we have referred to. Up until that conversation Mr Brooke had had a good relationship with the Claimant and had sought genuinely to support her. He saw her as someone with high potential. We find he would not have done so if he had been holding on to the stereotype we refer to. Under his watch the overall statistics in the CCO reflected the population as a whole and did not point to any institutional approach that disfavoured women or Asian candidates for promotion.
339. Thus the claim of unlawful direct discrimination in failure to promote fails against Mr Brooke.

*Mr Gilheany*

340. We find it was Mr Bell not Mr Gilheany who made the decision in September 2021. Prior to that in the other in promotion cycles i.e. up to April 2021 it would have been for Mr Gilheany to consider the Claimant as her line manager according to the process.
341. Mr Rimmington was a good evidential comparator when Mr Gilheany was line manager:
- 341.1. At this stage until April 2021 the Claimant had permanently taken on the significant extra work that 70% of Ms Stroud's former responsibilities as director entailed.
- 341.2. The in-role criteria (unlike Mr Bell's actual rationale for Mr Rimmington as to which see below) is all about whether the role had *expanded* to become a director role. It does *not* include any reference to performance. Performance is simply not a criteria for whether to put someone forward (presumably because that will be dealt with at interview). Further having a Double Outstanding is not a prerequisite to be considered for in-role promotion. The law requires us to consider 'material differences': performance

was not 'material' to whether to put someone forward and therefore not a 'material' difference between the two cases. (It may however be very relevant to the reason why question, which we will come to if necessary below.)

- 341.3. At this stage until April 2021 on balance we consider Mr Rimmington was a statutory comparator because both had an expansion in their roles. Both were called stretch opportunities. And now both were permanent. We have found this to be a significant expansion in the Claimant's case: she was undertaking 70% of a director role plus her own VP role. And it was this criterion not performance that the procedure guided managers to consider in deciding who to put forward.
342. In relation to Mr Gilheany, are there any something's more?
  - 342.1. The procedure adopted for Mr Rimmington was casual, only dependent on white decision makers and crucially his role was not evaluated separately. Thus the internal system of checks and balances to avoid unwitting prejudice were not complied with.
  - 342.2. Mr Gilheany's stereotyping of her by informing Ms Douglas that she 'no longer wanted promotion'. Following the same reasoning as for Mr Bell (see above) this change in approach from what he understood to be the case to what he told Ms Douglas was informed by a sexist stereotype.
343. There are also facts pointing in the opposite direction:
  - 343.1. Mr Gilheany was not told about the Claimant's family commitments and reduction in priority on promotion until August 2021. He stopped being her line manager soon after and the in-role promotion decision in September 2021 was Mr Bell's. Prior to this point, he did not have facts upon which he could have adopted this attitude: as he understood it the Claimant was keen on promotion. Further, we do not consider he in fact had this attitude – his comment was a response to defending himself at the grievance.
  - 343.2. Nothing in Mr Gilheany's appraisals of her suggest any assumptions about sex, race or religion. His development point of strategic thinking was not challenged by Claimant and is entirely neutral from this point of view.
  - 343.3. The Claimant did not cross-examine him that his decision was influenced by sex, race or religion until prompted.
  - 343.4. The overall statistics at this time do not support an inference that sex or race were influential factors in the CCO promotions.
344. Thus, up to April 2021 while there is a very good statutory comparator and the something more in such a case does not need to be very much (after Virgin Active and Martin) we do not reverse the burden of proof. There being nothing in facts around Mr Gilheany's approach that would

suggest it. The failures in procedure later relating to Mr Rimmington had nothing to do with him.

345. If we had reversed the burden, we would have found that the reason why was a combination of:
- 345.1. Mr Gilheany's practice not to put *anyone* forward for in-role promotion.
  - 345.2. During his management the Claimant was not as visibly undertaking Ms Stroud's role because of the loss of status that the delaying of management effected.
  - 345.3. His reason not to put her forward was his reliance on the hierarchy: his thinking was that he was a director therefore she was a VP.

*Mr Bell*

346. Mr Bell made his decision in September 2021. At this point was Mr Rimmington a comparator?
- 346.1. After April 2021 Mr Rimmington was not an actual comparator because, on her own case, the Claimant's role had reduced after the transfer of responsibilities to India in April 2021. This was the date up until she wanted the independent role comparison to be done. She chose that date for a reason, because she knew her role had reduced since then with the removal of areas of responsibility. We cannot therefore find that from April 2021 that there was a significant expansion as required by the in-role procedure. We cannot therefore say Mr Rimmington was a statutory comparator.
  - 346.2. Nevertheless it is our finding of fact that the Claimant was still in an expanded role, therefore Mr Rimmington was something of an evidential comparator. They were both working in expanded roles – the criterion for considering in-role promotion - even if not quantitatively the same and there was a difference in race and sex and religion between them.
347. For Mr Bell, what are the something's more?
- 347.1. That Mr Bell told Ms Douglas the Claimant had no desire for promotion any longer when that was not what he understood initially. That was on two grounds – had heard 'carer' and stereotyped the Claimant into having long term caring responsibilities that stereotype based on sex as women generally take on that role. Thus Mr Bell applied a sex stereotype in stating during the grievance that she was happy to remain at VP.
  - 347.2. His criticism of the Claimant's approach to challenge is concerning: he turned one email about challenge into a practice ('on occasion'), he suggested she use a 'softer tone' And he described her to Ms Mason as 'abrasive' which he had not said

before. The use of the word 'soften' suggests essentially a feminine way to approach challenge we find it unlikely (contrary to his denial) he would have used for a man. Taken together, this could suggest he relied on the angry black woman stereotype we have referred to above..

- 347.3. It could also be inferred from the allegation about the Claimant being abrasive that he knew his decision in comparison to Mr Rimmington could not be defended and he is protesting too much.
  - 347.4. The procedure adopted for Mr Rimmington was casual, unminuted and crucially not evaluated separately. Thus the internal system of checks and balances designed to rule out subjective/prejudiced decision making was not complied with. The comparison here is with Ms Douglas. Mr Rimmington, a white man, was promoted with no proper approval process compared to Ms Douglas a white woman who had experienced the process applied in full.
348. Against that other factors point in opposite direction:
- 348.1. The first Respondent's statistics on promotion within CCO generally do not point to any institutional sex or race discrimination;
  - 348.2. Ms Hall's evidence that an Indian man gained in-role promotions.
  - 348.3. The good diversity and inclusion practice at the first Respondent, though this tempered by senior managers' approach to the grievance.
349. As we have explained above, the differences between Mr Rimmington and the Claimant in performance ratings are not relevant at this stage because performance was not a material factor, according to the process. We will look at those differences when we come to consider the Mr Bell's reasons.
350. We unanimously conclude that we should reverse the burden of proof here because there are sufficient facts which could enable us to draw an inference of sex or race discrimination but not religion.
- 350.1. Mr Rimmington is an evidential comparator of less weight but still relevant; because both were performing in expanded roles even in September 2021.
  - 350.2. Mr Bell's criticisms of Claimant as abrasive could be said to have been influenced by a stereotype based on race and sex;
  - 350.3. The failure to follow procedure for a white male in-role promotion but not for a white female in-role promotion shows a difference in sex. Such procedures have been developed to ensure objectivity and equality and the lack of them is an equality concern, we refer to paragraph 17.84 of the EHRC Code *'if an employer has a*

*recruitment policy and procedures it would be good practice to ensure that these policies followed when internal promotions are taking place this can help ensure that selection space strictly demonstrable merit.*

- 350.4. The inconsistent explanation between Mr Brooke and Mr Bell of whether promotion was allowed by the London location strategy suggests a white male promotion may have been favoured over a female Asian.
- 350.5. The minority judge also includes Mr Bell's later statement of Claimant's position on desire for promotion shows an attitude of mind that does not favour women. The majority judges do not include this because at the time Mr Bell made his decision he was not aware that Mr Gilheany had told him of the Claimant's change in priority.
351. We therefore ask ourselves what was the reason for not putting forward the Claimant for promotion? And have the Respondents shown that it was for a reason not related whatsoever to race or sex.

*Majority Decision on Reason Why (EJ Moor and Ms J Land)*

352. The majority conclude that Mr Bell's reasons for putting forward Mr Rimmington for promotion are clear on the face of his business case. He put Mr Rimmington's outstanding performance first on this list.
- 352.1. It does not matter that the process did not require performance to be considered at this first stage: we find as a matter of fact that it was. Mr Rimmington's performance was at the forefront of Mr Bell's thinking.
- 352.2. We have found that his thoughts about Mr Rimmington's performance probably include the exceptional performance during covid. While we accept that Mr Rimmington was doing his job during the pandemic, the majority consider that he had had never had to do his job in such way: with so many changes, globally so many differences, and in with such urgency and speed of change. While he was not doing it alone, he was responsible in large part for advising on the changes required in estates in a fast moving picture in order to keep people safe and comply with country and state regulations. We find Mr Bell was very impressed by the way Mr Rimmington did that work in those exceptional circumstances so as to ensure safety of a global workforce. In Mr Bell's view this made Mr Rimmington an exceptional candidate and it was clearly in his mind as a reason for the promotion proposal.
- 352.3. Mr Rimmington also had 3 years of consistent double Outstanding ratings. Mr Bell had this in mind in putting him forward: his consistent, excellent performance is referred to in the business case.

**Case Numbers: 3201387/2022 and 3205577/2022**

353. So, while the procedure did not require it, Mr Bell's first criterion was performance. When he looked at the Claimant's case she was not as outstanding a candidate: as at September 2021 her performance, judged by others, had been consistently Outstanding and Strong and Mr Bell agreed with this. But it was his genuine view that she still had development points to meet. He had given feedback in February 2021 with development points based on his actual observations, which appear to the majority to be objective. He was aware of the strategic thinking point. It was his genuine view that the Claimant's performance was not exceptional. In addition the pandemic had not required her to make the same exceptional changes in the work she had to do.
354. Further, by September 2021 the Claimant's role had reduced: it would not have been clear to Mr Bell at that time that she was operating in an expanded role. Mr Bell's conclusion that Claimant did not hold a Director-level role was therefore reasonable and genuine.
355. The majority therefore find that the real reason for Mr Bell putting forward Mr Rimmington and not the Claimant is Mr Rimmington's plainly consistently outstanding performance and exceptional performance during the pandemic; whereas Claimant did not have such consistently high or exceptional performance. Hers was very strong but not exceptional and, less importantly, that he genuinely believed one was in an expanded Director level role and the other was not.
356. To the majority, this makes sense of the distinctions in understanding between managers as to the location strategy. Mr Rimmington was exceptional in Mr Brooke's mind because of his pandemic performance and could therefore be an exception to his understanding of no high cost promotions. For Mr Bell this was not so much of an issue because he understood in-role promotions would be allowed in London as it was as he understood it the matter of a re-grade of a current role. He was supported in this view by his line manager, Ms Hall. Given that the location strategy does not appear to have been written down: the majority find the two men genuinely had these different views and do not draw any inference from them.
357. The majority decide that Mr Bell did not take into account the idea that the Claimant was happy to remain at VP when he made his decision in September 2021. For the simple reason that he did not know at that time that the Claimant had told her manager her priorities had temporarily changed because of family issues. He was only told this in the October 2021 handover. There was no hook at the time for him to hang that stereotypical thinking on. His later reference to this understanding, in the majority's view, was a lazy way of justifying his decision during the grievance.
358. The failures in procedure were not those of Mr Bell but came after his proposal. They were failures of the SLT minutes and HR/Reward benchmarking. The senior leaders at the SLT meeting must have supported Mr Bell's rationale because 3 other potential candidates for in-role promotion put forward were rejected. This lack of transparency and recording came after Mr Bell decided against the Claimant and proposed



Mr Rimmington which is the decision we are concerned with. The majority consider they do not present facts that undermine Mr Bell's reasons.

359. As to Mr Bell's accusing the Claimant of abrasiveness, again, the majority have concluded that this was not in his mind at the time he made his decision. It was not referred to in the appraisal he helped to write and that he approved. This comment was a way of defending himself afterwards: he did not have that view in his mind at the time.
360. Thus the majority decide that the Respondent has shown that the reason for not putting forward the Claimant for promotion was for a reason nothing whatsoever to do with sex or race or religion and this claim fails.

*Minority Decision on Reason Why (Mr Woodhouse)*

361. The minority judge considers there is still room for the influence of sex and race in Mr Bell's decision-making, whether or not unwitting. He does not consider that the decision has been fully explained by non-sex or non-race-related reasons. He takes into account the following factors:
- 361.1. That the Claimant had done 70% of a director role and been given and successfully achieved a stretch opportunity. He considers there is a closer comparison between the Claimant and Mr Rimmington on job roles in September 2021. Mr Rimmington was a weighty evidential comparator and there was a difference in race, sex and religion.
- 361.2. He considers the goal posts had clearly been moved in relation to the high cost location strategy. At one time it was the reason Mr Brooke gave (after the Claimant had improved) for her not been promoted. Yet it presented no problem whatsoever for the promotion of Mr Rimmington: the part of the process which required someone in HR/Reward to sign-off on location had not happened. The minority judge does not agree that this difference can be explained. He observes that three others were put forward for in-role promotion and we have heard no evidence about their race or religion or sex, which would have assisted the Respondent in rebutting any inference here. In the absence of this information the minority judge considers that the location strategy was a reason used for the Claimant who was woman and Asian but not used for a white man.
- 361.3. The minority judge considers that Mr Bell's subsequent stereotyping of the Claimant shows such an attitude of mind less disposed to women and non-white people, othering her, so that he cannot exclude it as having existed at time of Mr Bell made his decision and influencing it.
- 361.4. The failure of proper benchmarking procedures for Mr Rimmington means his promotion cannot be safely understood to be free from protected characteristic influences. The minority considers this lack of transparency in breach of the Code creates room for the drawing of an inference because of sex, because

the only other in-role promotion process we have heard evidence about shows that it was properly applied to a white woman.

361.5. The minority judge does not consider that it was only the fact of the grievance or the protected act that led Mr Bell to refer to the claimant as abrasive. This improper bolstering of his decision still in his judgment, leaves room for the drawing of the inference that sex and race influenced the decision.

361.6. While Mr Brooke had raised the 3 minuses in the Claimant's performance back in 2019, these had been broadly resolved by the time Mr Bell considered his reasons and he does not accept the differences between the Claimant excellent performance and that of Mr Rimmington fully explain the difference in treatment. The process did not require the candidate to be exceptional: for the minority there is still therefore a question why the excellent claimant was not put forward at the same time that has not been answered free of the taint of sex or race.

362. Thus for all of those reasons, the minority member does not find that the Respondent has shown the reason to be nothing whatsoever to do with race or sex and concludes that the Respondent directly discriminated against the claimant because of race and sex by not putting her forward for promotion in September 2021. He does not consider religion played a part because few of the something mores related to that.

**Issue 6a, 7a, 8a – the promotion decision but alleged as harassment.**

363. The minority judge has found direct discrimination he does not need to decide issues 6a and 7a.

364. The majority have decided that the decision not to promote was in no way whatsoever because of race or sex or religion. Do we consider that it nevertheless related to any of those protected characteristics, which is arguably a broader test.

365. The majority find even in relation to the broader test for the same reasons the decision did not relate to the protected characteristics. It was not in any way whatsoever because of them and was not in any other way related to them expressly or impliedly. .

366. For these reasons the harassment claims fail.

**ACAS Code Uplift/Decrease**

**Issue 14 did the Claimant fail to comply with the ACAS Code of Practice on discipline and grievance.**

367. The Respondents argue the Claimant did not try to resolve discrimination complaint informally with her manager and that was contrary to para 32 of the ACAS Code: *if it is not possible to resolve a grievance informally employees should raise the matter formally ...*

368. The Claimant had raised the matter with Mr Brooke informally first who then directed her to raise a grievance if she could not resolve the matter informally with Mr Bell. The Claimant did not approach Mr Bell informally. In those circumstances we find she probably had followed the Code given that she had tried to raise it with one manager informally. The prospect of promotion was such a serious issue that it was not unreasonable to go then to a formal grievance.
369. We therefore find no failure to follow the ACAS Code.

**Issue 15 – was the failure to follow the ACAS Code reasonable in all the circumstances.**

370. In any event, the Claimant was keen for there to be an independent review outside of the line of management and we do not consider this to have been unreasonable in the circumstances because her line manager was the person who had made the promotion decision. For such a significant decision it was reasonable to ask for someone else to look at it first. Thus if this was a failure to follow the ACAS Code it was not an unreasonable one.
371. We do not therefore need to consider whether to make any decrease of any award on account of the Claimant's conduct.

**Issue 14 did any of the Respondent's fail to comply with the ACAS Code?**

372. The Claimant relies on the delay from Ms Mason making her decision to informing her of it i.e. from 7 July 2022 until Ms Mason met with the Claimant to give her decision on 17 August 2022.
373. Paragraph 45 of the Code provides *the outcome of the appeal should be communicated to the employee in writing without unreasonable delay.*
374. Strictly therefore this was a contravention by the First Respondent of the ACAS Code, which only requires the appeal outcome to be communicated in writing. One reason for the delay was the First Respondent's policy to give the decision face to face.

**Issue 15 – was the failure to follow the ACAS Code reasonable in all the circumstances.**

375. Was the First Respondent's contravention unreasonable? We find that the delay had good reasons: it was a reasonable policy to meet with those grieving to give decisions face to face and the prior important work commitments of Ms Mason relating to students could not be rescheduled because they coincided with the student year and a prearranged holiday.
376. We therefore find that the failure was not unreasonable.
377. We therefore do not need to consider whether to make any increase in any award.

**Comments of the Industrial Jury**

378. The bank has shown some good practice in this case – its commitment to reverse mentoring, for example. However we have a number of queries the bank may wish to consider:
- 378.1. One of the concerns we have arising out of this case is how far the 'How' is a subjective assessment and therefore risks the application of unconscious biases. The First Respondent may want to reconsider whether those values can really be objectively assessed. At the very least managers should be careful to give concrete, objective examples where development points are given on the 'How' values. Sometimes this has happened in this case, but not always.
  - 378.2. We query, however, whether it is safe for the recommendation for in role promotion to depend on only the line manager – does that not risk narrowing the entry point to one subjective view?
  - 378.3. The senior leadership meeting at which any in-role promotion recommendation is considered should at the very least be minuted and any approval should record the reasons for approval or rejection against the criteria.
  - 378.4. The bank should keep statistics specifically on in-role promotions to check whether its recently good statistics on promotions as a whole are mirrored in them.
  - 378.5. The bank should consider sharing its Director competencies with all VPs so that they know what competencies they need to meet in preparing for promotion.
  - 378.6. The bank should, where discrimination grievances are raised, grapple with them head-on. In its D&I training there should be a section on the victimisation provisions of the Act and how important it is to allow such challenges to be aired: it is the sign of a mature, inclusive institution to allow itself to be challenged. Of course, all such grievances are not bound to succeed but should be responded to with integrity.
379. Tribunals try not to reach majority/minority decisions: we have discussed this case with care and sought to reach consensus where possible. The fact that we have not been able to find unanimity on all the issues illustrates the difficulty at the heart of the case. We all agree that the Respondents' surprise that this case was brought is misplaced. Mr Ohringer rightly pointed out to the Claimant in cross-examination where she had made unreasonable factual points and arguments in her witness statement and the Claimant sometimes conceded those points. But those excesses in her case do not obscure that, it was reasonable for her to point to Mr Rimmington's promotion and ask, given her very good record and the stretch opportunity which had expanded her role, why promotion had not happened for her. We consider that she has shown great

**Case Numbers: 3201387/2022 and 3205577/2022**

courage in testing that question at the Tribunal.

**Employment Judge Moor  
Dated: 5 August 2024**