EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Karen Conaghan	**v**	IAG GBS Limited

Heard at: Bury St Edmunds (by CVP) **On:** 11, 12, 14, 17, 18 June (and in Chambers on 27,28) August 2024

Before: Employment Judge K J Palmer

Members: Mr R Allan and Mr D Hart

Appearances
For the Claimant: In person
For the Respondent: Mr O Lawrence (counsel)

RESERVED JUDGMENT
Pursuant to a hearing by CVP

It is the unanimous judgment of this Tribunal as follows:

1. It is the Claimant's claims for sexual harassment under section 26 Equality Act 2010 fail and are dismissed.

2. The Claimant's claims in victimisation under section 27 of the Equality Act 2010 fail and are dismissed.

3. The Claimant's claim for unfair dismissal fails and is dismissed.

RESERVED REASONS

Preamble and history

1. This claim was heard over five days on 11, 12, 14, 17 and 18 June and was conducted by Cloud Video Platform. The case was listed for seven

days but was listed at the eleventh hour before this Tribunal which could not sit for those seven days. The Tribunal could not sit on 10 June or 13 June due to other commitments. The Tribunal was therefore directed to hear the case in five days as opposed to seven.

2. This meant that it was impossible to complete the case in time, albeit with the efforts of all parties involved. The Tribunal did manage to hear all of the evidence. It was then necessary for written submissions to be sent to the Tribunal and for the Tribunal to then deliberate and produce a reserved judgment.

3. The Tribunal heard evidence from eight witnesses and had two statements from witness from the Respondent, who did not attend.

4. The case was listed for CVP. This was undesirable. A case of this length with a bundle running to some 1561 pages, with eight witnesses, is not an appropriate case to be heard by cloud video platform.

5. EJ Palmer, when the case was listed before him late on Friday 7 June, liaised with his members and contemplated converting the case to an in-person hearing. However, the fact that the Claimant has since moved to Yorkshire, meant that at such a late stage, it would not be in the interests of justice to expect the Claimant to travel to Bury St Edmunds with such late notice. Problems with the CVP system were encountered and hearing live evidence on such a lengthy case over CVP is never as desirable as witnesses giving live evidence in person.

6. The Tribunal had before it three volumes of bundles, both in hard copy form and electronically, running to some 1561 pages. We had ten witness statements and heard evidence from eight of those witnesses. We heard evidence from the Claimant and for the Respondent, from Ravinder Neta, Shahid Aziz, Anna Oparowska (with a Polish interpreter), Geoffrey Collins, Oli O'Dwyer, Gemma Capps, James Spender and we had two witness statements from Julia Giles and Justyna Crura, who did not appear to be cross examined. As always, in such circumstances, the Tribunal read their statements but applies little weight to their evidence as they were not here to be cross-examined.

7. The Tribunal took place over five days. There were then a further 2 days in chambers. The first day was a reading day.

History

8. This matter has a considerable history and has been before the Tribunal in a number of Preliminary Hearings which we do not propose to repeat in detail, save to say that the Claimant was employed by the Respondent as a business liaison lead from August 2019 until she was dismissed by reason of redundancy with effect from 31 December 2021. Early conciliation started on 15 March 2022 and ended on 24 April 2022. The claim form was presented on 23 May 2022.

9. The Claimant originally presented claims including claims relating to alleged sexual harassment by Mr Neta and Mr Aziz in 2019. That part of her claim was dismissed pursuant to a Preliminary Hearing before EJ Alliott on 17 April 2023.

10. The remaining claims are in harassment related to sex in respect of events occurring in 2021, victimisation pursuant to two alleged protected acts, one in December 2019 and one in December 2021 relating to detriments alleged to occur in 2021. There is also a claim for unfair dismissal pursuant to the Claimant's dismissal by reason of redundancy in December 2021. It is accepted by the Claimant that the reason for dismissal was redundancy. The issue before the Tribunal, therefore, is the fairness of that dismissal.

11. At the outset of the hearing the Tribunal was presented with an agreed list of issues which distilled the remaining claims pursuant to the various Preliminary Hearings which had taken place previously in this matter. For the sake of clarity and for the avoidance of doubt, we set out that list of issues below.

12. However, prior to finalising that list the parties, by agreement, removed certain parts of the claim relating to victimisation, namely, paragraphs 15.5, 15.7, 15.8, 15.9 and 15.12. Moreover, 15.18 is a detriment that is alleged to relate only to the second protected act.

13. The remaining list of issues and the issues upon which this trial then proceeded and in respect of which this reserved judgment relates is as follows:

Issues

Time limits

13.1 Were the discrimination and victimisation complaints made within the three month time limit as set out in section 123 of the Equality Act 2010.

13.2 Was the claim made to the Tribunal within three months (plus early conciliations extensions) of the acts to which the complaints relate?

13.3 Was there conduct extending over a period?

13.4 If so, was the claim made to the Tribunal within three months of the end of that period?

13.5 If not, were the claims made within further reasonable period that the Tribunal thinks is just and equitable?

Unfair dismissal

13.6 What was the reason or the principal reason for dismissal?
It is agreed that the reason for dismissal was redundancy.

13.7 Did the Respondent act reasonably in all the circumstances in treating redundancy as a sufficient reason to dismiss the Claimant? The Tribunal will decide whether the Respondent took reasonable steps to find the Claimant suitable alternative employment.

The Claimant says that there was a certain alternative role based in Newcastle of IAG GBS People Obs Advisor but the offer of that role was revoked and she was told that the best that could be done was to offer her a role working in London two days a week and working from home three days a week.

Harassment related to sex

13.8 Did the following acts occur?

13.8.1 Ravinder Neta, forcing the Claimant to be on the on-call roster working on her days off from 6.00 pm to 6.00 am (the Claimant did not in fact have to work these shifts but there was a threat that she would have to) in early 2021?

13.8.2 Ravinder Neta, forcing the Claimant to do the TTX project in February 2021?

13.8.3 Shahid Aziz extending a call with the Claimant and Geoffrey Collins as a delay tactic to delay the Claimant signing off for the day on 8 March 2021?

13.8.4 Shahid Aziz texting the Claimant on her personal number regarding her miscarriage on 7 May 2021?

13.8.5 Geoffrey Collins forcing the Claimant to return from her dinner midway through to help him with an email to senior stakeholders. When the Claimant sent the email by herself, then belittling the Claimant and calling her a liar on a Teams Chat on 29 June 2021.

13.8.6 Ravinder Neta, copying the Claimant's use of the word "whiz" and correcting her spelling of it to "whizz" on Vickram Johal's leaving card on 5 July 2021?

13.8.7 Geoffrey Collins not joining in an important call with suppliers and stakeholders, then making the Claimant explain the content to him on 5 July 2021?

13.8.8 Geoffrey Collins refusing to let the Claimant take responsibility for emailing in response to her priority 1 incident ticket instead telling her to send the required text message (a lesser task) on 5 July 2021?

13.8.9 Geoffrey Collins ended the Teams conversation with unprofessional language “Are you taking the piss Karen” in response to the Claimant asking him to send the text on 5 July 2021?

13.8.10 Ravinder Neta forcing the Claimant into a call with Geoffrey Collins about whom she had made complaints (Mr Neta not taking her complaints seriously and dismissing them) on 6 July 2021?

13.8.11 In a call with Mr Neta, Geoffrey Collins undermined the Claimant by saying things like, “Karen, are you joking? I do everything” on 6 July 2021?

13.8.12 Geoffrey Collins not adding the Claimant to the Business Liaison Teams Group chat when they were on shift together, which was the only way of communicating amongst the team about work related issues at that time on 6 August 2021?

13.8.13 Ravinder Neta denying that he had agreed to the Claimant working from Yorkshire insinuating that she was a liar at the end of September 2021?

13.8.14 Ravinder Neta making the Claimant give him her home address and telling his line manager that she had moved to Yorkshire at the end of September 2021?

13.8.15 Ravinder Neta forcing the Claimant to work 12 straight hours alone for three days (one day and two nightshifts) without a break in December 2021?

13.8.16 Ravinder Neta pressurising the Claimant into cancelling a weeks’ leave and rostering her to work alone from 16-19 December 2021?

13.8.17 Ravinder Neta pushing the Claimant to have a return to work meeting in mid-December 2021.

13.8.18 Shahid Aziz not providing the Claimant with a leaving card or acknowledgement of her contribution/existence within the company on 27 December 2021?

13.8.19 If so, was that unwanted conduct?

13.8.20 If so, did it relate to sex?

13.8.21 If so, did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

13.8.22 If not, did it have that effect?

13.8.23 If so, was it reasonable for the acts to have had such an effect taking all of the circumstances of the case into account?

Victimisation

14. Did the Claimant do the following protected acts:

14.1 In December 2019 the Claimant spoke to James Spender regarding the alleged sexual harassment by Mr Neta and Mr Aziz.

14.2 In the first week of December 2021, the Claimant disclosed to her Trade Union Representative, Christopher McNulty, information about the alleged harassment she had suffered and Mr McNulty then shared this information with Julia Giles?

15. If so, was the Claimant subject to a detriment as a result of any of those protected acts?

15.1 Ravinder Neta forcing the Claimant to be on the on-call roster, working on her days off from 6.00pm to 6.00am. (The Claimant did not in fact have to work these shifts but there was a threat that she would have to) in early 2021.

15.2 Ravinder Neta forcing the Claimant to do the TTX project in February 2021.

15.3 Shahid Aziz extending a call with the Claimant and Geoffrey Collins as a delay tactic to delay the Claimant signing off for the day on 8 March 2021.

15.4 Shahid Aziz texting the Claimant on her personal number regarding her miscarriage on 7 May 2021.

15.6 Ravinder Neta copying the Claimant's use of the word "whiz" and correcting her spelling of it to "whizz" on Vickram Johal's leaving card on 5 July 2021"

15.10 Ravinder Neta forcing the Claimant into a call with Geoffrey Collins about whom she had made complaints (Mr Neta not taking her complaints seriously and dismissing them) on 6 July 2021.

15.11 In a call with Mr Neta, Geoffrey Collins undermined the Claimant by saying things like “Karen, are you joking? I do everything” on 6 July 2021.

15.13 Ravinder Neta denying that he had agreed to the Claimant working from Yorkshire, insinuating that she was a liar at the end of September 2021.

15.14 Ravinder Neta making the Claimant give him her home address and telling his line manager that she had moved to Yorkshire at the end of September 2021.

15.15 Ravinder Neta forcing the Claimant to work 12 straight hours alone for three days (one day and two night shifts without a break) in December 2021.

15.16 Ravinder Neta pressurising the Claimant into cancelling a weeks' annual leave and rostering her to work alone from 16-19 December 2021.

15.17 Ravinder Neta pushing the Claimant to have a return to work meeting mid-December 2021.

15.18 Because of the second protected act, on or around 14 December 2021, the Respondent revoked the offer of a role of IAG GBS People Obs Advisor as suitable alternative employment stating that the best that could be done was working in London two days a week and working from home three days a week.

15.19 Shahid Aziz not providing the Claimant with a leaving card or acknowledgment of her contribution/existence within the company on 27 December 2021.

16. If so, did those things occur because the Claimant had done a protected act?

Preliminary issues

17. Prior to commencement of the hearing proper, we dealt with a number of preliminary points which were raised by the parties. The Respondents wished to call additional evidence from an Anna Oparowska, which was the subject of a witness statement that had not previously been exchanged.

18. The Respondents also applied for an Anonymity Order under Rule 50 of the Employment Tribunal Rules of Procedure.

19. We also considered whether the acts relied upon by the Claimant in her list of issues numbering 8.1 to 8.15 and 15.1 to 15.15 were in or out of time

and, if out of time, whether we should exercise our discretion to extend time.

20. All of these issues were dealt with as preliminary points and judgment was given extemporarily at the beginning of the hearing after due consideration by the Tribunal. That judgment is set out in a separate judgment attached to this main judgment.

21. In summary, however, the Respondents were permitted to adduce the evidence of Anna Oparowska. The application for an Anonymity Order was refused. We determined that the Claimant could pursue her claims based on the acts set out in the list of issues from 8.1 to 8.15 and 15.1 to 15.15 as they were all acts extending over a period and therefore treated as done at the end of that period. They were therefore in time and the Claimant was permitted to proceed.

Sifting the evidence

22. Prior to making findings of fact below, it is important for a Tribunal to set out how evidence is considered when it is heard by a Tribunal and tested under cross examination.

23. Evidence that is not tested under cross examination such as the evidence in the witness statements we have in front of us from Justyna Crura and Julia Giles, is accorded little weight by the Tribunal.

24. Where evidence of witnesses who have been cross examined is considered, it is important that the parties understand that the Tribunal has a duty to sift and assess that evidence very carefully. Where there is a conflict between evidence before the Tribunal it is necessary for the Tribunal to consider, on the balance of probability, whose evidence it prefers and make a determination on that basis. Preferring one party's evidence over another, where there is conflict on the evidence, does not mean that it considers that the party, whose evidence it does not prefer, has been lying or telling untruths. It is merely an assessment based on all the available information before the Tribunal and is an assessment on the balance of probability. That means that if the Tribunal's view is that it is 51% more likely that the evidence of one party was true as against 49% of the evidence of the other party, it will prefer, on the balance of probability, the evidence of the first party. It is an exercise that all tribunals must carry out and they must sift and weigh the evidence before them to draw such conclusions.

25. Emotions run high in tribunals and recollections vary. It does not mean that anyone is not telling the truth or genuinely giving evidence which they believe to be true. Often facts are interpreted by witnesses to suit their case. It is the job of the Tribunal to weigh and sift these issues and make a determination.

26. The Claimant was quite emotional during the course of this hearing. She gave her evidence clearly but the Tribunal takes the view that she

interpreted many actions of those at the Respondent as having sinister or ulterior motifs where, on the balance of probability, we do not find those motives existed. This does not mean that the Claimant did not and does not genuinely believe that this was the case.

FINDINGS OF FACT

27. The Claimant was employed as a business liaison lead (BLL) from August 2019. The role of a BLL involved, on a daily basis, checking and resolving IT issues across the Respondent's business. When an individual makes a call to the IT Helpline Service desk an incident would be raised and if it was high priority then BLLs would get involved. There are different levels of IT issues ranging from a small every day problem to firm wide cyber attacks.

28. The Respondents prioritise IT issues from priority 1 (P1), which is the most serious, to priority 4 (P4), the least serious, based on impact and urgency. On occasions a P1 could become a major incident (MI).

29. A report may start as a P4 issue but be escalated, depending on how many people across the business report the same issue and whether it is impacting a number of different services across the business.

30. BLLs would help triage issues that are reported to them and help manage those that are high priority. Depending on the seriousness of the issue there were set processes in place for keeping people (management and other stakeholders) within IAG up to date by sending emails, text messages and notifying people of issues as they occur and keep them updated until the matter is resolved. BLLs were responsible for sending these communications.

31. BLLs also undertook individual/group projects based on business demand and management requests in an effort to continually improve IT service offering.

32. In or around September 2021 it was proposed that BLLs role be removed entirely from IAG as part of a wider scale restructuring exercise in the tech teams and the majority of IT service operations functions were outsourced to another company, Tata Consultancy Services (TCS). As a result of this BLLs had the opportunity to apply for a new role within the new target operating model or opt for redundancy. The Claimant was dismissed by reason of redundancy in December 2021.

33. The issues, the subject of this claim, are all issues set out as alleged incidents in the list of issues raised above.

34. Except where is necessary to make findings in respect of those alleged acts, the Tribunal proposes to concentrate on those acts alone and no other factual issues occurring during the course of the Claimant's employment.

35. We therefore propose to set out each of the acts which the Claimant relies upon and make findings of fact in respect of them. These findings will then feed into the ultimate conclusions in this judgement.

Harassment related to sex under section 26(1)(a) and (b)

8.1

36. We heard from Mr Neta, the Claimant in respect of this allegation and where there is dispute we accept the evidence of Mr Neta. We do not accept that the Claimant was either forced or threatened to be on an on-call roster, working on her days off from 6.00 pm to 6.00 am.

37. We do not the Claimant's interpretation of Mr Neta's evidence on this point. We accept his evidence when he says that BLLs always worked following a 24/7 roster. The roster took into account people's annual leave and shift patterns. He said there were four BLL shifts with up to three people working on each shift. The Claimant was part of shift 3 where there was herself and three others, Shahid Aziz, Malay Nemane and Matthew Price. In addition to the four shifts there was a team of two (Mr Price left) who would work on days 9.00 to 5.00 Monday to Friday.

38. On the roster, a D represents the shift working on days, normally 6.30 am to 18.30 or 9.00 to 17.00 for BLLs on days and an N represents shift working on nights between 18.30 and 6.30 am – annual leave is represented as A/L. O means off or rest days.

39. A copy of the 2021 roster was before us in the bundle at pages 992 -997.

40. Mr Neta said he has no recollection of any conversation with the Claimant about BLLs being on call. There was no need for anyone to be on call as BLLs were on shift 24/7. There was no overtime roster for BLLs. There was a separate tab on the BLL roster spreadsheet with BLL contact details numbers to allow for overtime callouts to be made. This would happen if someone called in sick, for example, on an on shift BLL and Mr Neta would make calls to the other BLLs to see if anyone could come into work. We accept that there was no question of forcing anyone in such circumstances. We accept that there was an on call roster for managers, that the managers had a general discussion about whether BLLs should take on any element of managerial activity during their shift in order to meet the general shortage and available managers. We also accept that the idea came to nothing. There is no evidence that the Claimant was forced or threatened and she would have to become involved in this. We accept that it may have been raised with her but, in any event, it never came to anything.

41. On balance, therefore, we make a finding that 8.1 did not occur.

8.2

42. This is the allegation that that Mr Neta forced the Claimant to do the TTX project in February 2021. Having heard evidence from both Mr Neta and from the Claimant, we do not accept that this occurred. The TTX exercise was a training project set up to demonstrate to BLLs and Management, what the correct processes are when a P1 incident ocurrs and ultimately becomes an MI. Mr Neta explained that he allocated a BLL from each of the shifts plus an additional two individuals who normally worked 9.00 to 5.00. These people were assigned to the TTX project. When selecting people for the TTX project Mr Neta considered their capacity work load skill set and shift pattern. He did select the Claimant to work on the TTX project as what was a normal part of her job. Including the Claimant there was seven BLLs in total who were assigned to the project. The Claimant and another BLL, Mohamed, were given ultimate responsibility for delivering the project and they had a number of other BLLs resourced to assist with it. We accept that when the Claimant was first placed on furlough in March 2021, the majority of the work was completed by Mohamed. Subsequently, the project was extended and others were assigned to it. We do not accept that this means that the Claimant was forced to work on the TTX project. Significantly, she raised no complaints at the time. She did work on the project in April of 2021 but we accept that the majority of the work was done by Mohamed. When the Claimant informed Mr Neta that she was pregnant in mid-April 2021 and then went sick on Sunday 11 April, her involvement with the TTX project was scaled down. We accept this. On balance, therefore, we do not find that Mr Neta forced the Claimant to do the TTX project.

8.3

43. This relates to the allegation that Mr Shahid Aziz extended a call with the Claimant and Geoffrey Collins, purely as a delay tactic to prevent the Claimant from signing off and going home on 8 March 2021.

44. We heard from Mr Aziz and the Claimant in this respect.

45. Where there is conflict we accept the evidence of Mr Aziz. He told us that handovers are all scheduled for up to 30 minutes but they vary in length and can take between 10 and 30 minutes. We accept his evidence that, on 8 March, he did not extend any handover purely to cause problems for the Claimant in signing off for the day. We find, on the balance of probabilities, that if the call was rather longer than normal then that was just as a result of necessity and the fact that such calls usually varied and would, of course, depend on the amount of information that needed to be imparted during such a handover call.

8.4

46. This is the allegation where the Claimant alleges that the texting of the Claimant on her personal number, pursuant to her miscarriage on 7 May 2021, amounts to harassment. We heard from the Claimant and from Mr

Aziz. Certainly Mr Aziz did send a text message to the Claimant when he learned that she had undergone a miscarriage. We had a copy of this message in front of us at page 252 of the bundle. It reads as follows:

> "Hi Karen, I was so sorry to hear your sad news, I pray, as a family, you all have the strength to get through these challenging days. If there is anything I can do to help, I am just a message or call away. Hope to see you soon, take good care. Shahid and Family".

47. The Claimant then responded, some 30 minutes later, as follows:

> "Thank you Shahid. We appreciate your kind words at this time".

48. We have to say, the Tribunal is at something of a loss as to how the Claimant could possibly conclude that this text message amounted to an act of harassment. In many ways, this is indicative of the Claimant's misinterpretation of events. The actions of Mr Shahid in the circumstances were entirely appropriate and compassionate. It is clear that he reacted as a concerned and caring colleague. He was not alone in this as Mr Neta also offered considerable support at this time to the Claimant. Tellingly, the Claimant responded, indicating her appreciation of Mr Shahid's text.

8.5

49. This is the allegation against Mr Collins that he forced the Claimant to return from her dinner mid-way through a shift to help him with an email to senior stakeholders. The allegation is that when the Claimant then sent the email by herself, Mr Collins belittled her and called her a liar on Teams on 29 June 2021.

50. We heard from Mr Collins and from the Claimant in this respect. Having heard evidence from Mr Collins we do accept that Mr Collins and the Claimant had an uneasy relationship when they worked on shift together as BLLs. They clearly had different working styles.

51. The incident took place when the Claimant, Mr Collins and Mohamed Butt were on a shift, although Mr Butt was away from the shift during the time the incident occurred. Both the Claimant and Mr Collins were working from home at the time. There was an issue reported that was impacting systems across the business. We accept Mr Collins' evidence that the Claimant had not notified him that she was away from her desk or taking a break. Mr Collins was concerned that at 22.38 the proactive update, which should have been sent out at 22.00, had not been. He contacted the Claimant and attempted to split the task between him and her to try and catch up with matters. He suggested that matters be split between him and the Claimant as the update was late and there were other matters to take care of, such as making calls to various areas of the business to update stakeholders. Mr Collins' view was that it needed both of them to cover off the task that needed to be completed and was concerned that the proactive update, pursuant to the incident, was already 40 minutes late. The Tribunal saw an exchange of messages

between Mr Collins and the Claimant. Ultimately, Mr Collins fulfilled the duty to make the telephone calls and the Claimant completed the email update. Ultimately, Mr Collins did not feel that the email update was sufficiently detailed and took the view that the Claimant had not sufficiently updated earlier emails to include updated details pursuant to the telephone calls Mr Collins had made. He took the view that the Claimant had simply cut and pasted the earlier update and had not completed the task as she should have done. He accepts, and it is a matter of fact, that during a testy exchange, Mr Collins did accuse the Claimant of having lied in respect of not updating that email and suggesting that it was updated when it wasn't.

52. The Tribunal finds that there was clearly some pressure that evening as a result of the incident and there was something of a spat between Mr Collins and the Claimant. However, there is no evidence before this tribunal that the reaction of Mr Collins at that time was in anyway related to the Claimant's sex. There is simply nothing before us to suggest that and no inferences of such a connection can be drawn from any evidence before this tribunal.

8.6

53. This is the allegation that Ravinder Neta copied the Claimant's use of the word "whiz" and corrected her spelling to "whizz" on Vickram Johal's leaving card on 5 July 2021.

54. Having heard evidence from the Claimant and Mr Neta we do not accept that Mr Neta was, in any way, correcting the Claimant's spelling. We accept that he did use the same word spelt differently in a message sent to a leaver, Vickram Johal. It is not clear whether the Claimant's message was sent to Mr Johal first on the message from Mr Neta. Nevertheless, we accept Mr Neta's evidence that "Whizz Kid" was a phrase often applied to Mr Johal and it is coincidence that both the Claimant and Mr Neta used it. There is nothing sinister or significant, on the balance of probabilities, in the fact that he used the same word and spelt it differently. We also accept that he had no knowledge, at the time he sent the message, that the Claimant had sent a similar message.

8.7

55. This is the allegation that Geoffrey Collins did not join an important call with suppliers and stakeholders and made the Claimant explain the contents of that call to him on 5 July. We heard evidence from the Claimant and from Mr Collins in this respect. It is true that Mr Collins did not join the call and thereafter ask the Claimant to explain to him what had happened but we accept his explanation that there was nothing sinister in this at all.

8.8

56. This is the allegation that Mr Collins refused to let the Claimant take responsibility for emailing in response to her Priority 1 incident ticket instead of telling her to send the required text message, a lesser task, also on 5 July.

57. Having heard evidence from Mr Collins and the Claimant we accept Mr Collins' evidence that he was unaware that the Claimant had already pre-drafted the email in question. Accordingly, he was simply suggesting a division of tasks which would be quite normal in the operation of BLLs on shift. We do not accept the Claimant's evidence that this in some way an attempt to belittle or assign her a lesser task. We regard this as something that simply happens in the normal course of BLLs working together. There is nothing sinister and no ulterior motive behind this. This is rather indicative of the Claimant's constant view of normal interactions being something more sinister and the fact that she did exhibit a "conspiracy theory mentality" in respect of incidents and acts which were simple, normal workplace interactions.

8.9

58. This is the allegation that Mr Collins ended the Teams conversation with unprofessional language "are you taking the piss Karen", also on 5 July. Having heard the evidence from Mr Collins and the Claimant, it is clear that Mr Collins did send a text which used these words. That was clearly unprofessional but was a reaction to the Claimant suggesting that she had done all of the hard work and that it was Mr Collins' turn to do some. This was an overreaction and Mr Neta himself, also regarded this as unprofessional. It was perhaps further evidence of the uneasy relationship between Mr Collins and the Claimant and their different styles of working. Mr Neta immediately spoke to Mr Collins and the Claimant and then spoke to them both together to try and clear the air. Ultimately, Mr Neta separated Mr Collins and the Claimant and they did not work on the same shift together as Mr Neta moved the Claimant to another shift. Whilst use of this language is unfortunate and unprofessional, the Tribunal sees nothing sinister in this. It is unfortunate interaction between two parties who had not got on. There is no evidence before the Tribunal that it was, in any way, related to the Claimant's sex.

8.11

59. We come to the same conclusion with respect to allegation **8.11**. Certainly Mr Collins did say "Karen, are you joking? I do everything" on 6 July, but this was not related, in any way to the Claimant's sex and was part of the ongoing difficulty in the working relationship between Mr Collins and the Claimant which was ultimately resolved satisfactory by Mr Neta.

8.10

60. This is the allegation that Mr Neta forced the Claimant into a call with Geoffrey Collins on 6 July. This is the call pursuant to the comment made by Mr Collins, "are you taking the piss Karen", and was part of Mr Neta's investigation into the unprofessional nature of such a missive. We accept Mr Neta's evidence that this was part of him dealing with a problem as swiftly as possible. He spoke to both individually and then them together. He then moved the Claimant to another shift so that Mr Collins and the Claimant did not have to work on shift together again. We do not consider the conduct of Mr Neta in dealing with this problem to be any way sinister and certainly there is no evidence to suggest that his actions were in anyway related to the Claimant's sex.

8.12

61. This is the allegation that Mr Collins did not add the Claimant to the Business Liaison Lead Teams group chat when they were on shift together. The Claimant alleges that this was the only way of communicating amongst the team about work related issues at that time on 6 August 2021. We heard from Mr Collins and the Claimant. The Tribunal accepts that BLLs would have a daily morning call on Teams and then keep the chat going after that to capture everyone who was on shift from the BLLs. It is worth remembering that the BLLs were working from home at this time. Therefore, it was the easiest and quickest way of keeping all in contact throughout the day. There was a new chat every day due to different people being on shift. We accept Mr Collins' evidence that it was not his chat to control, it would just include whoever was on shift at the time or whoever had been on the morning call at around 6.30 am. It was not an official means of communication, it was just an informal way of keeping in touch. If the Claimant had not been added or kept on this chat throughout the day on 6 July, we accept that that was simply an oversight. There would have been around five other people on those chats so it wouldn't be just at the behest of Mr Collins that she was not added. He cannot recall whether or not she was added to the chat on that day but we accept his evidence that if she was not, it was not at his behest and was certainly not done deliberately to undermine her and there was nothing deliberate or mallicious about her not being added.

8.13

62. This is the allegation that Mr Neta denied that he had agreed to the Claimant working from Yorkshire, insinuating that she was a liar at the end of September 2021. Having heard Mr Neta's evidence we accept it. He agrees that he did consent to the Claimant working temporarily from her parent's home in Yorkshire. He had no knowledge that she was intending to move permanently to Yorkshire and we accept that he did not give her permission to permanently work from Yorkshire remotely. He only discovered that she had permanently moved to Yorkshire at the end of September. The Claimant had not told him. Ultimately, she apologised for not telling him of her permanent move. We accept Mr Neta's evidence that he would not have

agreed to such a permanent move but had agreed to her working from Yorkshire remotely for a temporary period as the Team were all working from home due to Covid 19 restrictions.

63. We also accept his evidence that the norm was for BLLs to live within 1-2 hours of travel time to the businesses head office Heathrow, London. This was in case there was a major cyber threat or other major incident impacting the IT systems which would need all hands on deck.

64. The offices started re-opening on 1 September 2021.

65. We therefore do not accept that Mr Neta, at any time, consented to the Claimant working from home permanently, nor that he denied that he had agreed to do so when he had. As for insinuating that she was a liar at the end of September 2021, we do not accept, on the balance of probability, that he did so. He did not agree that the Claimant could move to Yorkshire permanently. He did deny he had consented to this but only because it was true.

8.14

66. This is the allegation that Mr Neta made the Claimant give him her new home address and then telling his line manager that she had moved to Yorkshire at the end of September 2021.

67. Once again, having sifted the evidence, we accept Mr Neta's evidence. He did not, in any way, make the Claimant give him her new home address. She entirely voluntarily sent to him a WhatsApp message with a link to a TV show where her new property was shown. Having moved to Yorkshire without telling Mr Neta, on a permanent basis, it was her responsibility to inform her employers of her change of address. Naturally, once he found out about her move, Mr Neta informed his line manager. We accept this is standard procedure. In fact, Mr Neta was very understanding about the Claimant's position and could have taken a far more strict view of her failure to tell him of her permanent move. In fact, he did the opposite. He agreed with his line manager that she could continue to work remotely from her new home in Yorkshire.

8.15

68. This is the allegation that Mr Neta forced the Claimant to work 12 straight hours, alone, for three days (one day and two nightshifts) without a break in December 2021.

69. Once again, we accept Mr Neta's evidence that shift numbers in December were vastly reduced due to resignations and voluntary redundancies pursuant to the restructure of the BLLs which had been ongoing since September 2021. It is a fact that some BLLs had to work alone on shifts as additional cover could not be sorted. However, throughout this period the third party that was taking over the BLLs work was assisting with the transition and so were dealing with calls and IT issues alongside existing

BLLs who were also working remotely. So there may not have been another BLL assigned to a shift but they were not necessarily working alone and did have support from the TCS Team who were the contractors taking over that part of the business. There is evidence in the bundle before us to support this. It is accepted by Mr Neta that there were occasions when a BLL was the only one on shift but in such circumstances he made sure that that BLL took regular breaks throughout the day and he constantly contacted them. In some circumstances he advised them only action priority calls.

70. We can see from page 995 in front of us that the Claimant and another BLL were working on shift in December 2021. The other BLL did have some annual leave and it is accepted by Mr Neta that the Claimant would have been the only BLL on shift between 1 and 3 December but the Claimant did have support from the TCS Team.

71. There was nothing unusual about this and there was no different treatment meted out to the Claimant in this respect as it was the same across all shifts and likewise, later in December the Claimant had annual leave booked and other BLLs were left on shift on their own at that time. Mr Neta accepts that it was not an ideal situation but it was the best that could be done in the circumstances. We did not see anything sinister in this nor anything related to the Claimant's sex.

8.16

72. This is the allegation that Mr Neta pressurised the Claimant into cancelling a weeks' annual leave and rostered her to work alone from 16-19 December 2021.

73. We heard the Claimant and Mr Neta on this. We accept Mr Neta's evidence that he indeed did reject the Claimant's request to book annual leave between 16 and 19 December 2021 as the other BLL, Jim, who was available at the time, had already booked his annual holiday first. Had Mr Neta not rejected the Claimant's application for holiday, there would have been nobody available at all on that shift. Mr Neta did, at the time, set out in an email the reasons why he needed to reject that request but there is nothing before this tribunal to suggest that this decision was made for anything other than business efficacy and was not related to the Claimant's sex. In any event, the Claimant did not work those dates as she was off work having contracted Covid 19.

18.17

74. This is the allegation that Mr Neta pushed the Claimant to have a return to work meeting in mid-December 2021. Having heard the evidence we accept that, as per Respondent policy, Mr Neta sent the Claimant a copy of the return to work form and asked her to schedule a call to discuss her absence when she was off due to covid 19 between 16 and 19 December. We find that there was nothing sinister in this and was simply normal procedure after such an absence. In fact, no such call took place but the

Claimant did complete the return to work form. We have seen the email and see nothing untoward in it and it is not in any way related to the claimant's sex.

18.18

75. This is the allegation that Mr Aziz harassed the Claimant by not providing the Claimant with a leaving card or acknowledgement of her contribution/existence within the company on 27 December 2021. We heard evidence from Mr Aziz in this respect and entirely accept his explanation. He said that he was tasked by Mr Neta to arrange leaving cards and a collection for the colleagues who were due to leave the organisation in December 2021. There were several due to the re-organisation and restructuring. We accept his evidence that by 27 December, only two or three people had signed the Claimant's leaving card and he believed that it would have been more insulting to give her the card than not to give her a card at all. He was very busy at that time with many people leaving and/or the organisation handing over new and current roles. Subsequently more people did sign the Claimant's leaving card after she had left but Mr Aziz felt it was inappropriate to send such a card to the Claimant at a later date as she had raised a grievance against him and Mr Neta. A collection for the Claimant was arranged and ultimately the Claimant did receive a gift card from the Respondents.

76. It is true that no leaving card or anything else was given to the Claimant when she left at the end of December 2021. However, there were others, both of whom were male, who were in the same position and they did not receive anything until later, just the same as the Claimant. The reason for this was because how busy the team was with the restructure and the run up to Christmas. So the Claimant received a gift but did not receive the care because by the time Mr Aziz could send the card. The Tribunal did not consider there is anything inconsistent in this behaviour. The other two who did not receive their leaving cards at the time were both male and no actions of Mr Aziz in this respect could possible be construed to be related to the Claimant's sex.

Victimisation

77. The Claimant relies on two protected acts as set out at 14.1 and 14.2.

14.1

78. This relates to the Claimant reporting to James Spender in December 2019, allegations of sexual harassment by Mr Neta and Mr Aziz. This originally formed part of the Claimant's claim in these proceedings but does no longer. There is no question that she reported such behaviour to Mr Spender at that time and Mr Spender conducted an informal investigation at the time, which the Claimant said she was happy with.

14.2

79. The second protected act relied upon is that in the first week of December 2021 the Claimant disclosed to her Trade Union Representative, Christopher McNalty, information about the alleged harassment she had suffered and Mr McNalty shared this information with Julia Giles. This protected act is vague and unparticularised and despite having heard evidence, we are uncertain as to what the Claimant is referring. The Claimant, in her own submissions, suggests that it was a conversation between her and Mr McNalty which is evidenced by a diary entry which was before us dated 22 November 2021, a diary entry of Mr McNalty. This appeared before us in the bundle in the form of a series of notes put together by the Claimant. There is some mention of "difficulties and harassment" but no detail. It is unclear whether discussions revolved around the harassment that is part of this tribunal claim or the earlier alleged harassment in December 2019 which forms the basis of the report to Mr Spender.

80. However, there was some mention around that time of difficulties the Claimant felt she was experiencing to Mr McNalty and in her witness statement, albeit she did not appear to be cross-examined on it, Miss Giles did entertain the possibility that Mr McNalty had "flagged" this with her.

81. With respect to the remaining parts of the issues relating to victimisation, that is 15.1, 15.2, 15.3, 15.4, 15.6, 15.10, 15.11, 15.13, 15.14, 15.15, 15.16, 15.17 and 15.19 are all identical to claims made under paragraph 8 in the Claimant's harassment claim. These are dealt with above in terms of factual findings.

82. The only difference in the acts relied upon in the victimisation claim as being acts of detriment from those acts relied upon as acts of harassment is at 15.18 and this relates to the second alleged protected act. This allegation is that the Respondent revoked an offer of a role of IAG GBS People Obs Advisor which had been offered to the Claimant as suitable alternative employment. The allegation is that the role was offered and then withdrawn when the Claimant indicated she could not travel to London two days a week to fulfil that role.

83. As a matter of fact, the Tribunal does not find that any such offer was made and revoked.

84. We heard evidence from Miss Oparowska, through a Polish interpreter. We also had a witness statement from Miss Justyna Crura, who did not attend to be cross-examined. We had various documents before us in the bundle that were pertinent to this. Miss Oparowska and Miss Crura conducted an interview for a role for which the Claimant had applied. It was a role described as a People Obs Advisor Role and it reported to the People and Talent Operations Manager. We had a job description before us in the bundle at page 323 and the location is specified as London. This was an

alternative role the Claimant's applied for when she knew she was being dismissed by reason of redundancy due to the significant restructure.

85. The interview took place and was conducted by Miss Crura and Miss Oparowska. We accept that it is common ground that the Claimant indicated at the interview that she would not be able to attend the London office twice a week but only twice a month. As a result the Claimant was not offered that role as it was a role based in London and required attendance twice a week. The Claimant had, of course, relocated to Yorkshire by this time. The Claimant was not offered this role. The Claimant appears to believe that she was offered the role and it was revoked because of the limitations that she had expressed in attending London. The Tribunal does not accept, as a matter of fact, that that happened. No offer was ever made to the Claimant due to the fact that she could not attend the London office at least twice a week. The role was specifically one that involved onboarding new recruits, 99% of whom are based in London. The interview took place on 6 October 2021.

86. Due to the fact that the role was not filled, the Respondents then advertised the role. The job description was updated in November 2021 and that job description still specifies that the role was to be based in London. However, when the role was advertised externally on 16 November 2021 and subsequently, the external advert stated that the role could be based in either London or Newcastle. Whilst the Respondents do have an office in Newcastle, the role was in fact a role that could only be properly performed in London and the reference to Newcastle was simply a mistake. We accept the Respondent's explanation that this was an error. Ultimately, the role was filled in April 2022 and was based in London.

87. It appears to be this that the Claimant considers to be significant in terms of the advertising of the role in Newcastle which she could have done travelling from Richmond in Yorkshire. We find, however, as a matter of fact, that it was simply advertised inaccurately and the role in question was always a London based role and the reason it was not, at any point, offered to the Claimant was that she had indicated she could not attend London two days a week. It appears that it is this role and her rejection for it, that is the central tenet of the Claimant's argument that she was unfairly dismissed.

88. We also heard evidence from Oli O'Dwyer and Gemma Capps who were involved in the re-organisation. During the course of the restructure and the consultation process which ran between September and December, there were dedicated weekly briefing sessions that took place on a Tuesday and were set up for people to attend and hear general central updates from the business on the ongoing restructure and to ask questions and raise queries. In early September communications were sent out who were classified as displaced, including the Claimant, setting out opportunities for people to set out their preferences and apply for new roles in the proposed new structure. The Claimant engaged in this process and indicated her preferences for applying for alternative roles including Learning and Development Manager, People and Policy Partner, Vendor Manager, essentially indicating her preferences, the Claimant applied for three roles

as indicated by her preference. She was unsuccessful in those applications. We had before us a copy of the scoring and commentary in relation to those three roles. For those who had been unsuccessful in the first preferencing exercise where the Claimant had applied for three roles, there was a second preferencing exercise which began in October 2021. The Claimant sent out a further two preferences for roles she wished to apply for as part of the re-deployment exercise, these were a Risk Analyst role and a Tooling Analyst role. She interviewed for these roles and was ultimately unsuccessful. The Claimant indicated that she did not require feedback in respect of her failure to secure those two roles.

89. Therefore the Claimant went through both exercises and applied for five roles but was unsuccessful. She also applied for the POA role referred to above and was unsuccessful.

90. Whilst, in the list of issues and prior to this hearing, it appears that the Claimant's only complaint about the process whereby at risk employees applied for alternative roles relate to the POA role the subsequent advertisement which indicated that the role could be undertaken in London or Newcastle, in her submissions before this tribunal the Claimant does seem to suggest that she was somehow disadvantaged in the preferencing exercises where she applied for the other five roles. It is not clear but we will propose to deal in conclusions with both aspects of this process.

THE LAW

Unfair dismissal

91. The law on unfair dismissal is governed by section 98 of the Employment Rights Act 1996. For the purposes of this claim it is accepted that the reason for dismissal was a potentially fair reason and was redundancy. Thus, the only issue for the Tribunal to consider is whether the dismissal was fair, applying the test under section 98.(4). 98.(4) reads as follows:

> 98. General
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> b)shall be determined in accordance with equity and the substantial merits of the case.

92. In this context the only argument advanced by the Claimant is that there was a failure to afford the Claimant the opportunity of securing suitable alternative employment.

93. Whether or not an employer had properly considered suitable alternative employment for a redundant employee will form part of the Tribunal's decision under section 98(4).

94. An employers decision under section 98(4) is scrutinised and assessed by a Tribunal with reference to well known authorities. The two leading authorities in this respect remain a British Leyland UK Ltd v Swift [1981] IRLR 91 Court of Appeal and Iceland Frozen Foods Ltd v Jones [1983] ICR17 EAT.

95. Under these authorities the Tribunal must consider whether the decision to dismiss were in the band of reasonable responses of an employer faced with the circumstances with which the employer was faced. It was not for the Tribunal to substitute its own view as to what it considered was reasonable.

96. In this case there is no argument from the Claimant that there was an unfair selection process and she accepts that the dismissal was by reason of redundancy. Her only dispute is with the way in which the Respondents dealt with seeking to assist her in securing suitable alternative employment.

97. When a question of alternative employment arises in the context of an unfair dismissal claim, the reasonable test under section 98(4) requires a tribunal to consider whether the employers actions lay within the range of reasonable responses as set out in the authorities above.

98. Mr Lawrence, on behalf of the Respondent, directs us that when a question of alternative employment arises in the context of an unfair dismissal claim, the duty on the employer is only to take reasonable steps, not to take every conceivable step possible to find the employer alternative employment. He refers us to Quinton Hazell Ltd v WC Earl [1976] IRLR296. He also refers us to the case of Morgan v Welsh Rugby Union in the EAT. In that case the following was emphasised:

> "To our mind the Tribunal considering this question must apply section 98(4) of the 1996 Act. No further proposition of law is required. A tribunal is entitled to consider as part of its deliberations how far an interview process was objective but it should keep carefully in mind that an employers assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgment. A tribunal is entitled to take into account how far the employer established and followed through procedures when making an appointment and whether they were fair. A tribunal is entitled and no doubt will consider, as part of its deliberations, whether an appointment was made capriciously or out of favoritism or on personal grounds. If it concludes that an appointment was made in that way, it is entitled to reflect that conclusion in its finding under section 98(4).

Harassment

99. Harassment is governed by section 26 of the Equality Act 2010 and reads as follows:

> 26 Harassment
>
> (1)A person (A) harasses another (B) if—
>
> a)A engages in unwanted conduct related to a relevant protected characteristic, 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.

100. It is important to remember that section 26 requires that any unwanted conduct must be related to the protected characteristics. In this case the Claimant relies on the protected characteristic of sex. This is under section 26(1)(a). In the case of Islam UK EAT 033990 his HHJ Auerbach held that whether or not the conduct is related to the characteristic in question is a matter for the appreciation of the Tribunal making a finding of fact, drawing on all the evidence before it and its other findings of fact. The fact, if fact it be in the given case, that a complainant considers that the conduct related to that characteristic is not determinative. We are referred to this case by Mr Lawrence and he refers us to an extract as follows:

> "Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix Identified by the Tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied the Tribunal therefore needs to articulate distinctly and with sufficient clarity what feature or features of the evidence or facts found have led it to the conclusion that the conduct is related to the characteristic as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the prescribed purpose or effect, it is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider this to be".

101. Therefore, As Mr Lawrence points out, the reason for the unwanted conduct is highly relevant to the question whether it is related to the protected characteristic in question.

102. We are also referred to the EAT case of Richmond Pharmacology v Dhaliwal [2009] ICR 724 and the EAT here gave some guidance as to how the "effect" test of section 26(1)(b) should be applied. It noted that the Claimant must actually have felt or perceived his or her dignity to have been violated or an adverse environment to have been created (the subjective test). If the Claimant has experienced those feelings or perceptions, the Tribunal should then consider whether it was reasonable for the Claimant to feel that way (the objective test) if the Tribunal finds that there was no such effect then there will be an end to the matter.

103. The objective aspect of the test is primarily intended to exclude liability where (b) is hypersensitive and unreasonably takes offence.

104. We are also minded that in all discrimination cases the burden of proof is relevant.

105. Section 136 of the Equality Act sets out the burden of proof.

> 136 Burden of proof
>
> (1)This section applies to any proceedings relating to a contravention of this Act.
>
> (2)If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3)But subsection (2) does not apply if A shows that A did not contravene the provision.

Victimisation

106. Victimisation is governed by section 27 of the Equality Act 2010

> 27 Victimisation
>
> (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.

107. We are referred by Mr Lawrence to Scott v London Borough of Hillingdon [2001] EWCA Civ 2005CA where that case indicated that facts which the Claimant must prove as part of her prima facie case, include that the alleged victimiser had knowledge of the protected act. Detriment cannot be because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. In the absence of clear circumstances from which such knowledge can be inferred, the claim for victimisation must fail.

108. It is not enough for the Claimant to show that the alleged victimiser knew that the Claimant had made a complaint of some nature. The Claimant must show that the alleged victimiser knew that the complaint was an allegation of discrimination or otherwise a contravention of the legislation. South London NHS Trust v Dr Bial-Rubeyi UKEAT 0269/09/SM.

CONCLUSIONS

The Claimant's claims in harassment.

109. We have, during our findings of fact, set out individually each and every one of the Claimant's alleged acts of harassment. We have indicated clearly where we consider that alleged acts did or did not occur. Where they did not occur, after we had carefully made findings of fact based on the sifting of the evidence, then those claims in harassment cannot succeed. As a matter of fact, the acts relied upon did not happen. Where the acts did occur, we have made it clear that on the facts and evidence before us, there is nothing to suggest that those acts were in any way related to the Claimant's sex. There were certainly some animus between Mr Collins and the Claimant during the time that they were rostered on shifts together. The behaviour of Mr Collins could, on occasion, as we have found, be said to be less than perfect. Nevertheless, there was no evidence at all for us to conclude that the actions of Mr Collins in his interaction with the Claimant in respect of which the Claimant has complained were, in any way, related to the Claimant's sex. We accept his evidence that he and the Claimant had an uneasy working relationship due to a different style of working. Mr Collins might have adopted a somewhat abrasive approach with the Claimant to that different style but no evidence at all has been produced which would, in any way, infer that his actions were related to the Claimant's sex.

110. The same can be said of each and every one of the allegations in paragraph 8 on which the Claimant seeks to rely.

111. For the reasons therefore we have set out in our findings of fact, we do not find that many of those acts happened and with those that did, they were not related to the Claimant's sex. Therefore, her claims in harassment must fail and are dismissed.

Victimisation

112. The Claimant relies on two alleged protected acts set out at 14.1 and 14.2.

14.1

113. The Tribunal concludes that this does constitute a protected act under section 27 of the Equality Act 2010. There was no question that in December of 2019 the Claimant raised a complaint about alleged sexual harassment she said she was subjected to by Mr Neta and Mr Aziz. This was raised to Mr Spender who conducted an informal process at that time.

114. Mr Neta and Mr Aziz were aware of this as they were spoken to at the time, albeit the Tribunal accepts their evidence that they regarded that at the end of that informal process the matter was over. We also accept the Respondent's evidence that it was the Claimant's position that the matter was over.

115. The Claimant then seeks to rely on alleged detriments identical, save for in one respect, which we deal with below, to the allegations of harassment ranged in paragraph 8. These detriments are set out in paragraph 15. All of these are alleged to have occurred during 2021. Some, towards the end

of 2021, some two years after the allegations raised against Mr Neta and Mr Aziz were raised with Mr Spender.

116. Our findings of fact in respect of those alleged detriments have been set out earlier in this judgment and they apply equally to the alleged detriment as they do to the alleged acts of harassment. Where we find that as a matter of fact the events relied upon did occur, we do not consider that any of those acts amounted to a detriment because of the protected acts. There is simply no evidence to connect any of those acts with the protected act that took place in December 2019.

117. It is in the Judgment of this Tribunal highly unlikely that Mr Neta and Mr Aziz, had they wished to subject the Claimant to detriments as a result of her protected act, would wait 18 months or two years to do so.

118. The Claimant has adduced no evidence to suggest a connection. Many of the acts relied upon either did not happen or, if they did happen, they were innocuous interactions in the normal course of employment. It is inconceivable that any of those events that did happen in the way in which they are set out in the list of issues were connected with the Claimant's reporting of the alleged incidents to Mr Spender in 2019. There is no evidence to suggest anything of the sort. For that reason the Claimant's claims in victimisation fail and are dismissed.

14.2

119 For the reasons set out in paragraph 79 above the alleged protected act at 14.2 cannot constitute a protected act for the purposes of section 27. It is not sufficiently identified even on the Claimant's own evidence.

Unfair dismissal

120. The Claimant accepts that she was dismissed by reason of redundancy. There is no issue before the Tribunal with respect to the fairness of selection for that redundancy.

121. The only issue is whether there was a reasonable process carried out by the Respondents to assist the Claimant in securing suitable alternative employment.

122. In this respect we heard evidence from Oli O'Dwyer, Gemma Capps and Anna Oparowska. We also had a witness statement from Miss Crura who did not appear to be cross examined.

123. The Respondent organisation is a vast undertaking and had in place an elaborate process for at risk employees to apply for suitable alternative roles. This was a very structured process and on the basis of the evidence we have heard from those individuals mentioned above was followed precisely. The Claimant applied for five different jobs in the two preferential rounds but was unsuccessful. The Claimant has not raised any question about her failure to secure any of those five roles but, and

insofar as that is part of her argument before this tribunal, we cannot see anything untoward in a way in which that process was conducted and in respect of the outcome following those five applications. There is no evidence before us to suggest that those processes were conducted in any way other than reasonably fairly. The Claimant has adduced no evidence which we accept to suggest otherwise.

124. With respect to the sixth role which the Claimant applied for and one was interviewed for by Miss Crura and Miss Oparaowska on 6 October 2021, we accept the Respondent's evidence that the Claimant interviewed well for this role but the reason that she was not offered it was because she could not, or would not comply with the requirement for the role to be fulfilled two days a week at the Respondent's London Headquarters. By this time she had initially, without informing Mr Neta, moved permanently to Yorkshire and had continued to work from home during the consultation period relating to the redundancy of the BLLs. She made it clear at interview that she was in no position to travel to London. When she interviewed for that job there was no suggestion that it might be conducted or carried out in Newcastle. She was not offered the job because she couldn't travel to London. It was a job that required a successful candidate to so do.

125. Ultimately, after the Claimant had not been offered the role, the job was readvertised and included what appeared to be a location option of Newcastle. We accept the Respondent's evidence that we heard that this was in error and that the job was never a job that could be carried out in Newcastle. Ultimately, it was filled and it was filled by someone who complied with the requirements for the job to be based in London.

126. Accordingly, on balance, we consider that the Respondent's discharged their duty to take reasonable steps to find the Claimant alternative employment. In light of the redundancy the decision to dismiss the Claimant therefore fell within the band of reasonable responses and the decision was therefore fair under section 98(4). The Claimant's claim in unfair dismissal therefore fails and is dismissed.

_____
Employment Judge K J Palmer

Date: 20 September 2024

Sent to the parties on:
..1 October 2024.....

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For the Tribunal Office

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