



EMPLOYMENT TRIBUNALS

Claimant: Mr C Edmonds

Respondent: Roehampton University

Heard at: London South Employment Tribunal, Croydon (in person)

On: 18-19 December 2024, with deliberations on 7 January 2025

Before: Employment Judge Abbott, Mr N Shanks, Mrs M Oates-Hinds

Representation

Claimant: representing himself

Respondent: Mr Paul Wilson, barrister

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. the Claimant's complaints of direct race discrimination are not well-founded and are dismissed; and
2. the Claimant's complaints of race-related harassment are not well-founded and are dismissed.

REASONS

Introduction

1. The Claimant, Mr Chrispen Edmonds, was employed by the Respondent, Roehampton University, from 13 September 2021 as a Recruitment Co-ordinator. His employment ended on 28 April 2023, the Claimant having submitted a letter of resignation on 3 April 2023.
2. The Claimant brought the following complaints: (1) Direct race discrimination contrary to s.13 Equality Act 2010 (**EQA**); and (2) Race-related harassment contrary to s.26 EQA. The Respondent denied the Claimant's complaints.

3. The case came before the Tribunal for Final Hearing on 18-19 December 2024. The hearing was originally listed for three days but due to judicial availability only two days could be allocated. In the event, it was possible to hear all of the evidence and submissions on the liability issues in the allocated two days, and the Tribunal re-convened on 7 January 2025 to finalise its deliberations and this reserved judgment.

Application to amend

4. Before beginning to hear evidence on the first day of the hearing, the Claimant sought permission to amend his claim to allege that he was constructively dismissed and that this was an act of direct race discrimination. (He could not bring an unfair dismissal claim as he did not have two years' continuous service prior to his termination.) This was an application that had been previewed at a Preliminary Hearing on 9 September 2024, and was formally made in writing on 11 November 2024.
5. When considering an application to amend a claim, the Tribunal is required to take account of all the circumstances and to balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The EAT in *Selkent Bus Co Ltd v Moore* [1996] ICR 836 set out a list of factors which are certainly relevant. In brief they are (1) the nature of the amendment, (2) any applicable time limits and (3) the timing and manner of the application. The assessment may also include an examination of the merits. However, as confirmed by the EAT in *Vaughan v Modality Partnership* [2021] ICR 535 this is not an exhaustive list of factors and it is the balance of injustice that is the critical part of the test.
6. Having heard submissions from both parties, we allowed the amendment, in essence because, though it was brought at a late stage, the Respondent conceded that there was no real hardship to it in dealing with the allegation at this hearing, whereas there would be some hardship to the Claimant were he unable to pursue this aspect of his case. Permission to amend was granted without prejudice to the Respondent's ability to argue that this complaint was out of time.

The issues

7. The issues to be determined were settled by EJ Curtis at the Preliminary Hearing on 9 September 2024 and confirmed with the parties at the beginning of the hearing. The list, limited to the liability issues, is as follows.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 7 March 2023 may not have been brought in time.

1.2 Were the discrimination & harassment complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

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

2.1 The Claimant is Black.

2.2 Did the respondent do the following things:

2.2.1 In October 2022 Kieron Bird and Nimrah Butt did not suggest to the Claimant that he apply for the role of recruitment officer when it became available.

2.2.2 On 14 December 2022 the role of recruitment officer was offered to another candidate and the Claimant was informed he had been unsuccessful in his application.

2.2.3 On 20 January 2023 Kieron Bird sent the Claimant an email which gave the impression that Mr Bird preferred Brielle Hetherington as a candidate for the role of Recruitment Officer. Mr Bird also amended the recruitment process to disadvantage the Claimant by saying that the Respondent would not consider how candidates are performing in their current role as part of the recruitment process.

2.2.4 On 3 April 2023 the Claimant resigned in circumstances such that he was entitled, because of the Respondent's conduct, to terminate the employment contract without notice and was therefore dismissed for the purposes of s.39 Equality Act 2010.

2.2.5 On 27 April 2023 Nimrah Butt failed to respond to the Claimant's complaint that Kieron Bird had upset him the previous day.

2.3 Was that less favourable treatment? The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

2.4 If so, was it because of race?

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

3.1 Did the respondent do the following things:

3.1.1 On 14 December 2022 have five panel members on the Claimant's interview panel, including Charlotte Fox and Kayleigh Browne in circumstances where the Claimant did not attend the interviews for either Ms. Fox or Ms.

Browne when they were appointed to their roles.

3.1.2 On 14 December 2022 have an interview panel which contained only white people.

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race?

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

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

Relevant law

RACE DISCRIMINATION CONTRARY TO s.13 EQUALITY ACT 2010

8. Section 13 EQA prohibits direct discrimination. Section 13(1) EQA states:

"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."

9. Race (including colour, nationality and/or ethnic or national origins) is a protected characteristic (section 9 EQA).

10. The primary focus in a direct discrimination case is on identifying why the claimant was treated as he was, before coming back to whether it was less favourable treatment because of the protected characteristic (see e.g. *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11). It is well established law that a respondent's motive is irrelevant and, indeed, the possibility of unconscious discrimination is recognised (see e.g. *Nagarajan v London Regional Transport* [1999] IRLR 572, HL). Moreover, the protected characteristic need not be the sole or even principal reason for the treatment as long as it is a significant influence or an effective cause of the treatment.

11. The bare facts of (i) a difference in status and (ii) 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 (*Madrassy v Nomura International plc* [2007] EWCA Civ 32). Something more is needed.

12. The provisions relating to the burden of proof are found in Section 136(2) and (3) EQA:

"(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.”

13. It is thus for the Claimant to prove facts from which the Tribunal could conclude, in the absence of any evidence from the Respondent, that the Respondent committed an act of discrimination. Only if that burden is discharged is it then for the Respondent to prove that the reason for the treatment was not because of a protected act or characteristic (see, e.g., *Royal Mail Group Ltd v Efofi* [2021] UKSC 33). This will typically be based upon inferences of discrimination drawn from the primary facts and circumstances found by the Tribunal to have been proved on the balance of probabilities. Such inferences are crucial in discrimination cases as it is unlikely there will be direct, overt evidence that a Claimant has been treated less favourably because of a protected act or characteristic (see, e.g., *Anyia v University of Oxford* [2001] IRLR 377, CA).
14. Notwithstanding the above, in *Efofi*, Lord Leggatt repeated Lord Hope’s reminder in *Hewage v Grampian Health Board* [2012] UKSC 37 that it is important not to make too much of the role of the burden of proof provisions:

“They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”
15. Section 39(2)(c) EQA provides that a dismissal can be an act of discrimination and, by section 39(7)(b) EQA this can include a constructive dismissal (i.e. where the employee resigns in circumstances such that he is entitled, because of the employer’s conduct, to terminate the employment without notice). This requires the employer to have committed a repudiatory breach of the contract of employment and the employee has resigned because of that breach. An employee who waits too long before resigning, or otherwise acts in such a way as to indicate that he or she would wish the contract to continue, will be taken to have waived the breach and affirmed the contract (see e.g. the case law summarised in *Leaney v Loughborough University* [2023] EAT 155).

HARASSMENT CONTRARY TO S.26 EQUALITY ACT 2010

16. Section 26 EQA provides, so far as is relevant:

“(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.

[...]

(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.”

17. Race is a relevant protected characteristic: section 26(5) EQA.
18. The wording of section 26(1)(b) is important – as it requires conduct that is more than merely upsetting to B.
19. ‘Unwanted conduct’ means action, or inaction where action is wanted, that is unwanted by the employee. Whether there has been unwanted conduct is a question for the Tribunal to resolve on the facts of each case (*Thomas Sanderson Blinds Ltd v English* UKEAT/0316/10 at [28]).
20. The words ‘related to’ require the Tribunal to focus on whether the unwanted conduct is associated with the employee’s race. Whether the requisite associative link is established depends on all the facts, including the context in which the impugned conduct took place and the mental processes of the relevant decision-maker (*Unite the Union v Nailard* [2016] IRLR 906 at [100]; *Bakkali v Greater Manchester Buses (South) Ltd (t/a Stagecoach Manchester)* [2018] IRLR 906 at [31]).
21. The provisions relating to burden of proof have been covered in the “Race Discrimination” section above – they also apply to this section.

Findings of fact

22. The Tribunal heard live evidence from the Claimant and from two witnesses for the Respondent:
 - (1) Ms Nimrah Butt (the Respondent’s Head of UK Recruitment); and
 - (2) Ms Brielle Hetherington (who, like the Claimant, was a Recruitment Co-ordinator from December 2022 to January 2023, before being appointed to the role of Recruitment Officer with effect from 1 February 2023, thereby becoming the Claimant’s line manager from that date until his departure).
23. The role of the Tribunal is to consider all of the evidence, and the documentary materials we have been referred to, and form a view as to what is most likely to be the true position on the balance of probabilities. It is important to say that, simply because we may disbelieve the evidence of a witness on a particular point, does not mean that we consider they are deliberately seeking to mislead – nor does it mean we must automatically disbelieve them on other points. Ultimately we have to weigh up all the evidence on all different points and assess it on its merits.
24. The relevant facts are, we found, as follows. Where it was necessary for us to resolve any conflict of evidence, we indicate how we have done so at the

relevant point. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in these reasons. We have not referred to every document read by the Tribunal in the findings below, but that does not mean such documents were not considered if referred to in the evidence and/or in the course of the hearing.

25. The Claimant commenced employment with the Respondent on 13 September 2021. His title was initially "Schools and Colleges Engagement Co-ordinator" but this was changed to "Recruitment Co-ordinator" from 1 October 2021.
26. The Claimant was employed within the Respondent's Recruitment and International Development Department. The overall head of the Department was Nimrah Butt. The Department was split into two areas – (i) Open and Convention Events (headed at the relevant times by Kate Griffiths) and (ii) Student Recruitment (headed at the relevant times by the Senior Recruitment Officer (Schools), Kieron Bird).
27. The Claimant sat within the Student Recruitment area of the Department. His role involved working closely with schools and colleges; organizing and delivering events such as campus visits, HE fairs and talks; being responsible for the mature student program; working closely with external partners such as The Talent Foundry; organizing ad hoc and official campus tours; assisting colleagues to manage opening days, taster days and HE exhibition events; and line-managing student ambassadors.
28. The Claimant reported to the Recruitment Officer, initially Carella Fonseca, who in turn reported to Kieron Bird. In September 2022, Ms Fonseca resigned from her position and was due to leave the Respondent in November 2022. Ms Fonseca's role was advertised online on or around 21 September 2022 and, by an email on that date sent by Mr Bird, members of the Department (including the Claimant) were informed of this vacancy, as well as of another vacancy at the same level as the Claimant. Mr Bird ended his email as follows:

"Applications for both will close in mid-October and we will interview shortly afterwards. If anyone has any questions, please do send me an email or come and talk to me."
29. The deadline of 13 October 2022 for applications to the Recruitment Officer passed, and the Claimant did not apply. It is the Claimant's case that neither Mr Bird nor Ms Butt suggested to him that he apply for the role, and their failure to do so was an act of direct race discrimination. We will address the question of discrimination later in this judgment. In terms of the factual position:
 - (1) Mr Bird sent the email mentioned above to the Claimant. Beyond that, we accept the Claimant's evidence that Mr Bird did not actively target the Claimant to apply for the vacancy (contrary to what Mr Bird said in his response to the Claimant's later complaint to the Vice-Chancellor). However, consistent with Ms Butt's evidence, Mr Bird would not have been expected to do so, and there was nothing unreasonable or objectionable in him not actively speaking to the Claimant about the

vacancy.

- (2) Ms Butt confirmed in evidence, which we accept, that she did not actively target the Claimant, or anyone else, to apply for the vacancy. We also find that the Claimant's race played no part whatsoever in this approach, which was Ms Butt's standard practice when recruiting to fill vacancies within the Department.
30. Interviews took place on 21 October 2022, but no suitable candidate was identified. The vacancy was re-advertised in November 2022.
31. There was some debate in the evidence regarding the extent to which the Claimant was covering the Recruitment Officer role after Carella's departure and before a permanent appointment was made. It is common ground that there was no formal appointment to an 'acting' Recruitment Officer position. However, we find on the balance of probabilities, having regard to the size of the team, that the Claimant was undertaking some of the tasks that would previously have fallen to Carella (such as approving payment claims and ordering uniforms), but he did not take up any strategic or line-management responsibilities, which were instead covered by Mr Bird.
32. The Claimant did apply for the Recruitment Officer in the second recruitment exercise. He was one of two internal applicants who were shortlisted (the other being Brielle Hetherington, who had joined the Respondent on a temporary basis as a Recruitment Co-ordinator in early December 2022), alongside three external candidates.
33. Interviews took place on 14 December 2022 remotely via MS Teams. As explained in the Claimant's invitation email (and we accept Ms Butt's evidence that the same was applied to all five candidates), the candidates were initially required to give a 5 minute PowerPoint presentation titled "*How would you provide effective leadership to Roehampton's Student Ambassador scheme?*". The interview in total was to last 45 minutes.
34. The Claimant raises two complaints of harassment in respect of the conduct of the interview itself. First, he alleges that there were five panel members on the Claimant's interview panel, including Charlotte Fox and Kayleigh Browne in circumstances where the Claimant did not attend the interviews for either Ms Fox or Ms Browne when they were appointed to their roles. Second, he alleges that the interview panel contained only white people. In terms of the factual position, we accept Ms Butt's evidence (considered in the light of the contemporaneous records of the interviews in the form of "Panel Feedback Summary Sheets") that:
 - (1) The interview panel for the Claimant, and for the other candidates, comprised three individuals: Kieron Bird, Nimrah Butt and Kate Griffiths.
 - (2) The interview panel did not contain only white people. Ms Butt is a Pakistani Muslim. The interview panel was ethnically-balanced, consistent with section 3.3 of the Respondent's "Recruitment and Selection/Employment Checks Guidance".
 - (3) All candidates were asked the same set of interview questions and were

assessed on the basis of their answers to those questions (as well as on their presentation).

- (4) Ms Fox and Ms Browne did attend the 5 minute presentation section of the Claimant's interview. They also attended the 5 minute presentation sections of the other candidates' interviews. In all cases this was done without prior warning. They provided no feedback nor played any role in the panel's deliberations in respect of any candidate.
35. It is common ground that the Claimant did not attend any part of the interviews for either Ms Fox or Ms Browne when they were appointed to their roles. We accept Ms Butt's evidence that no members of the Department other than those having direct line management responsibilities for the respective roles were selected to sit on the panels for those interviews, nor did either interview involve a presentation observed by non-panel members (Ms Browne's interview did not involve a presentation at all).
 36. As to the reasons why Ms Fox and Ms Browne attended the presentation section of the interviews, Ms Butt's evidence was that this was a trial done at the suggestion of Mr Bird, based his prior experience in other organisations, to test how well the candidates would perform and deliver their presentation in front of a larger audience. Ms Butt fairly accepted that it was not a very successful trial and it was not repeated in later exercises. Given the fact that the observers were not invited to provide any feedback at all, we can see why it was not very successful, and could have led to some suspicion on the Claimant's part. However, as noted above, all of the candidates were subjected to the same treatment.
 37. The Claimant's interview ran from around 1.30pm to 2.20pm on 14 December 2022. By a call from Mr Bird at 4.27pm, the Claimant was informed that he had not been successful and that another candidate had been offered the role. The Claimant alleges this was an act of direct race discrimination. We will address the question of discrimination later in this judgment. In terms of the factual position:
 - (1) As confirmed by Ms Butt in her oral evidence, the individual panel members did not retain their own notes of the candidates' answers and their assessment of those answers, contrary to the expectation in section 3.7 of the Respondent's "Recruitment and Selection/Employment Checks Guidance". Instead, the only record of each interview is the "Panel Feedback Summary Sheet".
 - (2) Nevertheless, we accept Ms Butt's evidence (supported by consideration of the candidates' applications and CVs and the "Panel Feedback Summary Sheets"), that one of the external candidates ("Applicant 2.3" – a white male) justifiably scored significantly more highly than the other candidates, including the Claimant. It was not, as the Claimant alleges, a sham interview process. We also accept Ms Butt's evidence that the Claimant's race played no part whatsoever in him being scored less points than "Applicant 2.3" and, therefore, in the decision to offer the role to "Applicant 2.3" and not to the Claimant.

(3) That the Claimant was informed of the unsuccessful outcome only just over 2 hours after his interview ended was not inconsistent with the Respondent's "Recruitment and Selection/Employment Checks Guidance". The Guidance provides that successful candidates be informed as soon as possible (but not immediately) after the decision is made. In circumstances where the successful candidate was objectively a stand-out performer, there is nothing sinister about him being contacted very soon after the interviews had been completed and (because he verbally accepted the offer) the unsuccessful candidates also being informed soon after that of the outcome. Ms Hetherington (a white female), the other internal candidate who in fact scored lower than the Claimant, was also informed of the unsuccessful outcome that same afternoon.

38. The Claimant's immediate reaction to not being successful in his application for the Recruitment Officer was to apply for other jobs elsewhere, including at Imperial College London and SOAS University of London.
39. On 19 December 2022, "Applicant 2.3" declined the formal offer of employment to the role of Recruitment Officer. As is evident from the email exchanges between Mr Bird and Sabrina Owusu (HR Officer), Mr Bird was initially keen to readvertise the post as soon as possible but, once told that it could not be advertised on the jobs.ac.uk website until the New Year, this was paused.
40. On 6 January 2023, Mr Bird sent the Claimant an email containing feedback on his interview, further to a request from the Claimant. We will quote that email in full:

"Hi Chrispen,

Please see feedback below as requested:

- You delivered a strong presentation, demonstrating good communications skills and included interesting content
- You showed good understanding of the post of Recruitment Officer and the challenges of managing a student ambassador scheme
- You demonstrated clear experience working with student ambassadors
- While you showed a good understanding of management techniques, you did not demonstrate line management experience at the level we are seeking for this post. The panel would have liked to hear you talk about the difference between managing ambassadors and managing a full time member of staff
- Your answer on data analysis could have been improved by focusing on one clear example, rather than listing many examples
- Your answers to the working with colleagues and event management questions were a little underdeveloped. These answers could be improved by breaking down your example and using the STAR technique to communicate the Situation, Task, Action and Result in each case
- Your answers on managing workload and customer service were strong

In summary – you delivered some very good answers and the panel really enjoyed interviewing you. Your answers could be improved by developing them further and your experience in some areas wasn't as strong as other candidates. I'd be happy to talk to you about how to craft stronger answers and how we can give you some more experience in your current role to help with your next interview.

Best wishes,

Kieron”

41. The Claimant alleged that this feedback was inconsistent with what Mr Bird had told him on 14 December 2022, which was that there was no problem with the way he had interviewed. We do not see such a stark inconsistency. Whilst the email does give some constructive feedback on some aspects of his interview performance, the key message is that the successful candidate had more relevant experience and is why he succeeded over the Claimant.

42. On 16 January 2023, the Respondent's Director of Student Life, Jordan Kenny, sent an email with positive feedback regarding the Claimant and Ms Hetherington to the Director of Recruitment, Admissions and International Development, Guillaume Richard. Mr Richard was Ms Butt's manager. Mr Richard responded to Mr Kenny, copying the Claimant, Ms Hetherington and Ms Butt, thanking the Claimant and Ms Hetherington for their efforts. The Claimant alleged that the fact Ms Butt did not also reply to thank the Claimant indicated a negative disposition towards him. We reject that allegation. To the contrary, Ms Butt forwarded the chain to Mr Bird, saying:

“Please see below, some wonderful feedback for Brielle and Chrispen 😊”

That demonstrates no negative disposition toward the Claimant and, in any event, Ms Butt treated Ms Hetherington in exactly the same way.

43. By mid-January 2023, Mr Bird had decided that he wanted to limit a third round of recruitment to the Recruitment Officer role to internal candidates only. In an email to Ms Owusu on 17 January 2023 he said this:

“Since the last round of interviews, Brielle has been excelling as a temp in our team. Considering we have struggled to attract quality candidates, I'm keen to avoid losing good staff. Therefore, can we explore advertising internally? - hopefully we'll get a few candidates and even if it's only Brielle, I'm confident she's appointable. Is there a minimum period we need to advertise for?”

I look forward to hearing from you and if this is all possible, I'd be happy to start advertising later this week.”

44. It is evident from this email that Mr Bird considered that Ms Hetherington was potentially appointable to the Recruitment Officer role, but it is also evident that he contemplated other potential internal candidates. Given that the Claimant was the only other shortlisted internal candidate in the previous exercise, it is reasonable to infer that Mr Bird contemplated that the Claimant may also apply.
45. That inference is further supported by Mr Bird's email to the Claimant on 20 January 2023. Again, we will quote it in full:

"Hi Chrispen,

I hope you are well.

Sadly, the candidate who was successful in the Recruitment Officer interviews before Christmas has withdrawn and will no longer be joining us. This means we need to interview again. Later today, the job will go live. Only internal candidates can apply and it will be listed for one week only. We would of course welcome your application. I'm sure Brielle will also apply and we may have candidates from other internal departments but no external applications. The successful candidate will be the person who gives the best interview answers on the day, so we won't be able to take into account any prior knowledge of internal candidates in their current roles. However, I'm confident that we have enough talent internally to fill this post.

If you have any questions, please let me know – I'd be happy to talk in more detail.

Best wishes,

Kieron"

46. The Claimant makes two allegations in respect of this email which he says amount to direct race discrimination. First, he says that the email gave the impression that Mr Bird preferred Ms Hetherington as a candidate for the role of Recruitment Officer. Second, he says that Mr Bird amended the recruitment process to disadvantage the Claimant by saying that the Respondent would not consider how candidates are performing in their current role as part of the recruitment process. We will address the question of discrimination later in this judgment. In terms of the factual position:
- (1) We accept the Claimant's evidence that he interpreted the email as indicating a preference for Ms Hetherington. The targeting of the email to the Claimant and the specific reference to Ms Hetherington in this email stands at odds with the approach Mr Bird took when circulating details of the vacancy in the first recruitment round (which was a general email to all of the Department). It was reasonable for him to do so in all the circumstances, even if this was not Mr Bird's intention.
 - (2) The suggestion that the recruitment process was amended to disadvantage the Claimant has no basis. What Mr Bird says in his email is consistent with section 3.7 of the Respondent's "Recruitment and Selection/Employment Checks Guidance", in particular that "assumptions should not be made regarding the expertise or abilities of candidates because of their employment history", that the panel must "make an informed decision based on the content of the interviews" and that candidates need to "demonstrate their knowledge, skills, experience and abilities in relation to the person specification". We accept Ms Butt's evidence that this was, on its face, useful guidance intended to help the Claimant avoid a common mistake among internal candidates of not giving sufficient detail of particular examples because they assume the interviewers already know about them. However, the way in which Mr Bird set this out in the email was clumsy and was interpreted by the Claimant as further supporting a preference for Ms Hetherington (given her shorter time in role). It was reasonable for him to interpret the email in that way, even if this was not Mr Bird's intention.

47. Mr Bird's expectation that the Claimant (as well as Ms Hetherington) may apply is further demonstrated in an email he sent to Ms Owusu on 26 January 2023. This was in an email chain originating with a discussion around Ms Hetherington's right to work in the UK as a non-British citizen. The email reads:

"To update you: We're also aware that another person in my team, Chrispen, may make an application. If it is just Brielle/Chrispen, we have set some time aside to interview next Tuesday. I'm aware that this doesn't give them notice but as they're in the team already, it should be okay.

If we receive applications from outside of my team and wish to interview them, I will push the interview date back to give that person notice."

48. Applications for the third recruitment exercise closed on 29 January 2023. The Claimant did not apply. The only applicant was Ms Hetherington.
49. Ms Hetherington was interviewed at 11am on 31 January 2023. The Claimant submitted that he had been told by Mr Bird that she was going to be appointed at around 9am that morning. However, what the Claimant actually said in his complaint to the Vice-Chancellor (see later) and in his written evidence, which we accept, was that Mr Bird told him at 9am that Ms Hetherington was the only candidate who had applied for the role. That is not inconsistent with the formal interview process still having to be completed before an appointment could be confirmed.
50. Ms Hetherington was successful in her interview and was duly appointed to the role of Recruitment Officer with effect from 1 February 2023, becoming the Claimant's line manager.
51. The Claimant continued to apply for jobs elsewhere, including at Ucreative, but otherwise continued to fulfil his role without any outward signs of unhappiness or difficulty. He does not allege that any further acts of discrimination or harassment occurred from this point until his resignation.
52. On 3 April 2023, the Claimant sent a letter of resignation to Ms Hetherington. We will quote that letter in full:

"Dear Brielle,

Please accept this letter as a formal notice of my resignation from my position as recruitment coordinator at the University of Roehampton. My notice period is 4 weeks, and I would like my last day of employment to be on Friday 28th April 2023.

I would like to thank the university for giving me the opportunity to work in this position for the past year and seven months. I have learnt a lot working here, and I appreciate the experience I have been given. However, I have decided that it is time for me to move on to my next challenge.

Yours sincerely,

Chrispen Edmonds"

53. The Claimant alleges that he resigned in circumstances such that he was entitled, because of the Respondent's conduct, to terminate the employment

contract without notice and was therefore dismissed for the purposes of s.39 EQA, and the dismissal was an act of direct race discrimination. We address this allegation further later in the judgment. As a matter of fact, though he alleges he was entitled to terminate the contract without notice, (a) the letter of resignation does not, on its face, identify any alleged basis upon which the Claimant was so entitled, and (b) the Claimant actually served out his notice period (though we note that the Claimant did not have a new job lined up at the time he resigned).

54. During his notice period, the Claimant received several emails of thanks and with positive feedback from, in particular, student ambassadors. For the avoidance of any doubt, it has never been disputed by the Respondent (as we accept) that the Claimant performed effectively and competently in his role throughout his employment.
55. There were exchanges between Mr Bird and the Claimant about handover arrangements during the Claimant's notice period. A discussion took place early in the week commencing 17 April 2023, followed by an email sent by Mr Bird on Friday 21 April 2023 as follows:

"Thanks Chrispen – as discussed at the start of the week, please could you send me a summary about each of the events you have booked in May and beyond? Please include:

- Date of event
- Timings for the day and any agreed schedule
- Any ambassador bookings
- Contact name and email for the school/group
- Room booking details (ideally I'd like you to have booked rooms already for any event you have agreed, so please try to do this if you haven't already)
- Whether the school have requested a coach (again, please try to arrange this before you leave if this has been agreed)
- Any catering requests and whether catering has been booked yet or not
- Email chain containing everything that has been discussed for each event so far

Apologies for the long list but this is very important so we can make sure these events run smoothly once you have left. Please also send me details of any off campus events. Could you send this to me by Tuesday at the latest so we have time to go over anything I need more information about?

Any questions, let me know.

Best wishes,

Kieron"

56. By Wednesday 26 April 2023, Mr Bird was still chasing the Claimant for his handover notes. In a WhatsApp message sent at 10:19am that morning he

said:

“Good morning Chrispen. Please could you send me the update on school bookings (from my email last Friday) today. Please could we also have an update on progression with your handover notes.”

57. The Claimant responded as follows:

“Hi Kieron, I will send you the school update tomorrow and the handover on Friday.”

58. The Claimant and Mr Bird then spoke for just over 7 minutes at 12:49pm on 26 April 2023. The Claimant alleges that Mr Bird used “heavy-handed language and tactics about the need for me to work from the office” the following day, though this is not alleged to amount to direct race discrimination or harassment. In any event, Mr Bird emailed the Claimant on 1:45pm as follows:

“Hi Chrispen,

We can't force you to come in and I understand your childcare commitments so do work from home on Thursday. But please do send that information over to me as early as possible. I want to end your time with us on a positive note. I just need to ensure the team has everything they need in your absence.

Best wishes,

Kieron”

59. Mr Bird also escalated his concerns to Ms Butt, who also emailed the claimant at 2:08pm that afternoon as follows:

“Hi Chrispen,

I hope you're well.

How's it going with today's Powering Transformation group?

I wanted to touch base about your handover. I appreciate things have been busy, and it can be tricky writing a handover, making sure that you've covered everything and included the right level of detail etc. This was why Kieron had asked you to share a draft by the end of last week, so that you'd both have time to discuss the handover and ask any questions. Kieron didn't receive your handover by the end of last week or by Tuesday this week, and I'm sure you can understand why this has left him a little concerned.

Although you'll be in the office on Friday, I'm sure you'll be busy with the final Powering Transformation event and won't have time to meet and discuss your handover in detail. Can I therefore please ask you to send your handover notes to Kieron by tomorrow 12pm. This will give him time to read the document and for you both to meet virtually in the afternoon to discuss.

This document will be important in enabling the team to pick up your projects and continue to provide our partners with an excellent service.

If you have any questions, please feel free to give me a ring anytime today.”

60. The Claimant responded at 12:04pm the following day as follows:

"Hi Nimrah,

Thank you for your email.

Powering Transformation is going well.

It's not correct that I was supposed to share a draft with Kieron last week. The conversations I have had with him, and Brielle, were that I will be submitting my handover today.

Last week, on Monday and Tuesday, I had one on one meetings with both and promised that I would be submitting my handover today. So, there was no mention that I would be submitting a draft last week and that's a white lie.

However, I do acknowledge that I am behind sending him the school bookings handover, and this is not deliberate on my part, but this week has been more demanding than I anticipated for many reasons.

Lastly, I would like to put it on record that Kieron got me upset yesterday when he used heavy-handed language and tactics about the need for me to work from the office today.

This is after I said to him and Brielle that I would be working from home on the day finishing off my handover. Also, I told him about the need to work from home because my wife had moved her past two Wednesday work shifts so I could work on PGCE and Powering Transformation shifts. So, I do not appreciate anyone talking to me as if I am their child, or they own me.

Below is the email Kieron sent to me last Friday and I have attached the phone conversation I had with Kieron yesterday, to help you to understand what is going on.

Kind regards,

Chrispen"

61. The Claimant alleges that Ms Butt failed to respond to his allegations about Mr Bird's conduct within this email, and that this amounted to an act of direct race discrimination. We will address the question of discrimination later in this judgment. In terms of the factual position:

(1) It is common ground that Ms Butt did not respond to the email. Her evidence, which we accept, is that she decided against responding in writing as she did not want to put additional pressure on him during his final days in employment. She instead sought to discuss his complaint verbally.

(2) Ms Butt tried to call the Claimant several times on 28 April 2023, but he did not answer.

(3) Having failed to reach him by phone, Ms Butt sent the Claimant a WhatsApp message at 12:11 as follows:

"Hi Chrispen

I hope you're well.

Can I please check if you're going to be in today?"

The Claimant did not respond.

(4) Ms Butt also sought to find the Claimant in person, but to no avail.

(5) We accept Ms Butt's evidence that how she dealt with the Claimant's complaint had nothing whatsoever to do with his race.

62. The Claimant's employment ended on Friday 28 April 2023.

63. On 12 May 2023, the Claimant wrote a detailed letter to the Vice-Chancellor of the Respondent setting out "the reasons for my resignation". The letter overlaps materially with the allegations in this claim. The Respondent's HR Partner responded the same day as follows:

"Dear Chrispen,

With reference to your email below.

The Vice-Chancellor has asked the Executive Director of Human Resources to arrange for HR to look into the matters you have raised.

This note is to advise you that HR will be looking into the matters you raise. We will be in touch again shortly.

Kind Regards,

Owen"

64. Both Mr Bird and Ms Butt were invited to provide their comments on the Claimant's allegations, and their written responses were in the bundle.

65. In the event, no formal response was provided to the Claimant's letter to the Vice-Chancellor. The Claimant commenced ACAS Early Conciliation on 6 June 2023; that ended on 8 June 2023, and the claim was presented on 14 June 2023.

Determination of the issues

66. The Tribunal decided to come back to the jurisdiction issues (issue 1) only if necessary having considered the other issues. We will deal with the harassment complaints first.

HARASSMENT CONTRARY TO S.26 EQUALITY ACT 2010

Issues 3.1 – 3.3: Was the Claimant subjected to unwanted conduct, and if so was such unwanted conduct related to his race?

67. The alleged acts of unwanted conduct are those listed under sub-issues 3.1.1 – 3.1.2. We deal with them in turn.

68. The first is that, on 14 December 2022 there were five panel members on the

Claimant's interview panel, including Charlotte Fox and Kayleigh Browne in circumstances where the Claimant did not attend the interviews for either Ms Fox or Ms Browne when they were appointed to their roles. This allegation fails, in part, on the facts, as we have found that Ms Fox and Ms Browne did not form part of the interview panel. But it is common ground that Ms Fox and Ms Browne attended the presentation part of the Claimant's interview.

69. A fundamental difficulty for the Claimant is that they also attended the presentation part of all of the other candidate's interviews in the second recruitment exercise. The Claimant has not proved facts that would provide a basis for a finding that the decision to have observers present for the presentation section of the interviews was related to race. On the contrary, the fact this was done for all of the candidates indicates it had nothing whatsoever to do with race. The Claimant has failed to shift the burden of proof in respect of this allegation. In any event, we accepted Ms Butt's evidence that the decision to have observers had nothing whatsoever to do with the Claimant's race so, had the burden shifted, the allegation would fail in any event.
70. The second is that, on 14 December 2022, the Claimant was subjected to an interview panel which contained only white people. This allegation fails on the facts: we have found that the panel was ethnically-balanced by the presence of Ms Butt.
71. In any event, the Claimant has not proved facts that would provide a basis for a finding that the decision as to panel composition was in any way related to the Claimant's race. The Claimant has failed to shift the burden of proof in respect of this allegation. In any event, we accepted Ms Butt's evidence that the panel composition had nothing whatsoever to do with the Claimant's race so, had the burden shifted, the allegation would fail in any event.

Issues 3.4 – 3.5: Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

72. Given our conclusions above, it is not necessary to address these issues.
73. None of the harassment allegations are well-founded, and all shall be dismissed.

RACE DISCRIMINATION CONTRARY TO s.13 EQUALITY ACT 2010

Issues 2.2 – 2.4: Was the Claimant treated less favourably than a relevant comparator was or would have been, and if so was that because of race?

74. The alleged less favourable treatments are those listed under sub-issues 2.2.1 – 2.2.5. We deal with them in turn.
75. The first is that, in October 2022, Kieron Bird and Nimrah Butt did not suggest to the Claimant that he apply for the role of recruitment officer when it became available. As we have already found, the Claimant was made aware of the vacancy by Mr Bird's email of 21 September 2022 and was invited to come and speak to Mr Bird if he had any questions. He received the same email as

every other employee in the Department. No employee in the Department was actively encouraged to apply by Mr Bird or Ms Butt. There was no less favourable treatment compared to any real or hypothetical comparator.

76. Furthermore, the Claimant has not proved facts that would provide a basis for a finding that anything Mr Bird or Ms Butt did in this regard was because of the Claimant's race, in the sense of being a significant influence or effective cause. On the contrary, all the primary facts indicate equality of treatment among all of the Department's employees and there is no basis to infer otherwise. The Claimant has failed to shift the burden of proof in respect of this allegation. In any event, in respect of the specific allegations against Ms Butt, we accepted her evidence that her actions had nothing whatsoever to do with the Claimant's race so, had the burden shifted, the allegations against Ms Butt would fail in any event.
77. The second is that, on 14 December 2022 the role of recruitment officer was offered to another candidate and the Claimant was informed he had been unsuccessful in his application. As we have already found, the role was offered to another candidate ("Applicant 2.3", a white male) over the Claimant.
78. The Claimant has not proved facts that would provide a basis for a finding that the decision to select "Applicant 2.3" over the Claimant was because of the Claimant's race, in the sense of being a significant influence or effective cause. We rejected the allegation that the interview process was a sham based on when the Claimant was informed of the outcome and/or because of the feedback he was subsequently provided by Mr Bird. The available documentation indicates otherwise. The Claimant has failed to shift the burden of proof in respect of this allegation.
79. However, if we are wrong about that and e.g. the absence of detailed notes from the interviews (as opposed to summaries) was to be regarded as being enough to shift the burden, we accepted Ms Butt's evidence that the decision had nothing whatsoever to do with the Claimant's race. "Applicant 2.3" was justifiably offered the role based on his performance at interview having regard to his breadth of experience. In short, he demonstrated that he better met the person specification for the role, irrespective of the Claimant's experience of already working for the Respondent (including the extent to which he was already covering some of the Recruitment Officer role). Had the burden shifted, the allegation would fail in any event.
80. The third is that, on 20 January 2023 Kieron Bird sent the Claimant an email which (a) gave the impression that Mr Bird preferred Brielle Hetherington as a candidate for the role of Recruitment Officer and (b) amended the recruitment process to disadvantage the Claimant by saying that the Respondent would not consider how candidates are performing in their current role as part of the recruitment process. We have accepted, on the facts, that the Claimant did reasonably understand this email to express a preference for Ms Hetherington, even if this was not Mr Bird's intention.
81. However, the Claimant has not proved facts that would provide a basis for a finding that any preference Mr Bird had for Ms Hetherington was because of

race, in the sense of being a significant influence or effective cause. There is nothing in the primary facts to support the Claimant's race having any influence on what Mr Bird communicated to the Claimant. To the contrary, there are internal emails from the relevant time that indicate Mr Bird did expect the Claimant to also apply and that there would be a genuine interview process with a full interview panel. All the Claimant has done, at its highest, is show a difference in treatment and a difference in status, but nothing more. The Claimant has failed to shift the burden of proof in respect of this allegation.

82. The fourth is that, on 3 April 2023 the Claimant resigned in circumstances such that he was entitled, because of the Respondent's conduct, to terminate the employment contract without notice and was therefore dismissed for the purposes of s.39 Equality Act 2010. The circumstances relied upon by the Claimant are the instances of discrimination and harassment already dealt with above.
83. Since we have found against the Claimant in respect of his allegations of discrimination and harassment occurring prior to his resignation, we find that the Respondent had not committed a repudiatory breach of the Claimant's employment contract (specifically, the implied term of mutual trust and confidence) prior to when the Claimant resigned. Therefore the Claimant was not entitled to terminate the employment contract without notice. There was no dismissal and therefore this allegation fails.
84. In any event, having regard to the passage of time between the acts complained of (i.e. up to 20 January 2023) and the date the Claimant resigned (3 April 2023) and the fact that the Claimant was fully engaged in working in his role during that period, had we found there to have been a repudiatory breach by the Respondent, we would have concluded that the Claimant affirmed the contract by his conduct. The allegation would have failed in any event.
85. The fifth is that, on 27 April 2023 Nimrah Butt failed to respond to the Claimant's complaint that Kieron Bird had upset him the previous day. We have found that, whilst Ms Butt did make some efforts to speak to the Claimant about his complaint before his departure, she did not, in terms, respond to his allegations against Mr Bird.
86. However, the Claimant has not proved facts that would provide a basis for a finding that Ms Butt's failure to respond was because of the Claimant's race, in the sense of being a significant influence or effective cause. We rejected the Claimant's allegation of Ms Butt having a negative disposition towards him. The Claimant has failed to shift the burden of proof in respect of this allegation. In any event, we accepted Ms Butt's evidence that her actions had nothing whatsoever to do with the Claimant's race so, had the burden shifted, the allegations against Ms Butt would fail in any event.
87. Accordingly, none of the direct race discrimination allegations are well-founded, and all shall be dismissed.

JURISDICTION

88. Given our conclusions on the other issues, there is no need to address the jurisdictional points under issue 1 as the complaints fail on their merits.

Overall conclusion

89. For these reasons, the unanimous judgment of the Tribunal is that all of the Claimant's complaints must be dismissed.

90. The Tribunal appreciates that this is not the outcome that the Claimant wished for. That is not to say that the Respondent is beyond criticism – and the Tribunal has recognised in our reasons some flaws in the Respondent's actions, most particularly around individual interview panel members making and retaining their detailed notes. However, for the reasons given, these do not mean that the Claimant succeeds in this action.

Employment Judge Abbott
Date: 7 January 2025

RESERVED JUDGMENT SENT TO THE PARTIES ON
8 January 2025

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FOR THE TRIBUNAL OFFICE

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