EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr E Derillo	**AND**	The British Library

Heard in London Central Employment:

Before: Employment Judge Nash **Date:** 25 February to 5 March 2025

Members: Mr Pearlman
Ms Plumber

For the Claimant: In person
For the Respondents: Mr Liberadski of Counsel

JUDGMENT having been sent to the parties and written reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant brought his claim to the Tribunal on 8 February 2024 following ACAS earlier conciliation from 8 December 2023 to 19 January 2024. Following a case management hearing, the case was listed for an in-person final hearing for seven days.

2. The Tribunal had sight of a bundle going to 1084 pages. All references are to this bundle unless otherwise stated.

3. Iin respect of witness evidence, it heard from the Claimant in person. For the Respondent it heard from

   a. Ms J Barlow of the Respondents Human Resources Team,
   b. Mr X Mazda who was at the material time Head of Collections and Curation and
   c. Ms L Mengoni who at the material time was Head of Africa and Asia collections.

4. The Tribunal also had sight of a statement by Dr B Quessel, Head of Tibetan Collections, which was submitted by the Claimant. Dr Quessel did not attend the Tribunal. The Tribunal advised the parties that, while there is no fixed rule, a Tribunal may attach less weight to the evidence of a witness who is not present, who cannot be cross-examined and who is not on oath.

The claims

5. The claims were

a. Direct race discrimination s13 Equality Act 2010
b. Victimisation s27 Equality Act 2010.

The Issues

6. The parties had prepared an agreed list of issues which is appended to this judgment. There were two amendments to this: -

a. at paragraph 3.1.5 the correct date was 31 January 2022; and
b. 3.1.10 was removed as an act of victimisation, although 2.1.10 proceeded.

Preliminary Issues

7. The were a number of preliminary and logistical issues.

8. The Claimant at the beginning of the hearing provided the Tribunal with a sixteen-page document listing what he said were difficulties he had experienced with the Respondent in the disclosure process and case preparation in general. The Tribunal advised the parties to raise any points arising from disclosure and other case preparation difficulties in cross examination and/or submissions as appropriate. In the event little reference was made to these matters.

9. The Tribunal accepted further late disclosure of documents by the parties. The Tribunal reminded the parties that they might raise in cross examination or submissions the timing of disclosure. Again, in the event there was very little if any such reference.

10. After the introductory session on the first day, the tribunal adjourned for reading. During this break it became apparent that one of the lay members had worked for the predecessor organisation to the Respondent - the British Museum - for about five years in the 1970s. They were employed as a Library Assistant. They did not work with any person on the Cast List and had no knowledge of any of them. They had no knowledge of any of the matters relevant to the issues.

11. The tribunal sent an email to the parties informing them of this and stating that if the parties had any questions, they should address the tribunal first thing the next day: -

> "The tribunal will need to know whether they would prefer to proceed with the tribunal as constituted or make a recusal application, that is an application that a member of the tribunal steps down from the case.
>
> If any recusal application is successful, the parties should know that there is currently a low chance that a replacement member will be found. The tribunal will then review the question of panel composition in line with the 2024 Presidential Guidance. The tribunal will consider whether the hearing should proceed judge alone. If the hearing were not to proceed during its current listing, it is likely that no new dates would be available until. 2026. The tribunal will have to consider the factors listed in the Guidance including the risk of delay to the case.

12. The parties – when this was raised by the Tribunal on the second day - did not raise any issues and both expressed themselves as content to proceed with the Tribunal as constituted.

The Facts

13. The events in the list of issues dated back to 2016. The Claimant had a long and complex employment history with the respondent. He held a number of roles, some of which overlapped in time. There were a number of grievances and appeals. The Respondent suffered a very significant cyber-attack in October 2023. The Tribunal accepted that some of the Respondent's records and its abilities to access those records had been adversely affected.

14. Both parties experienced difficulties in establishing the lengthy and complex timeline. For instance, the claimant's witness statement did not set out a clear chronology and he mistook the date of one of his protected acts by a year, and the respondent's chronology contained a number of corrections and errors. The tribunal recognised that both parties were trying their best to establish the timeline but were – unsurprisingly – prone to error. The tribunal spent a good deal of time seeking to establish a clear timeline but there were inevitable limits on its ability to do so, particularly in the early stages. The claimant, on the order of the tribunal, provided a very helpful timeline of his grievances and appeals.

15. Taking into account the extended period covered by the claim, and the wealth of detail, the tribunal has not referred to all the evidence in its reasons. It would not be proportionate to do so. However, it has considered all the evidence before it and taken a holistic view of the evidence.

16. The Respondent is a well-known arm's length Government body. It is funded via unrestricted funding, referred to as grant in aid (GIA). In addition, it receives restricted specific funds, including from donors.

17. At the material time the Respondent operated a restructure redeployment and redundancy process found at page 135.

18. The claimant started work for the Respondent in August 2014 as an intern in its Africa and Asia department and then became a library assistant. He was then employed on a series of fixed term, unusually part-time, and sometimes overlapping roles. At page 340, the Tribunal

saw a record that the respondent said had been produced by its HR function in 2020 setting out the Claimant's employment history up to that time. There was no material challenge to the accuracy of this document. Essentially the Claimant had had an internship in Asian and African studies from August 2014 for five months and this was extended until May 2015 at 20 hours a week. He then became a library assistant on 1 August 2015 until 30 June 2017.

Curator – Ethiopian Collections

19. The first substantive post was the Claimant's appointment as curator in the Ethiopian collections in May 2016. This was initially a fixed term position until 15 February 2017 but was subsequently extended until 31 March and then to 30 June 2017.

20. The Ethiopian department at that time was part of the Middle Eastern / Hebrew and Christian Orient department. The Claimant contended that this was essentially for linguistic, cultural and religious reasons. As curator of the Ethiopian collections the Claimant reported to the lead curator for the Hebrew and the Christian Orient / Middle East collections, who reported to the Head of Asia and African collections.

21. The post of curator in the Ethiopian collections was a new fixed term position. The Tribunal heard no satisfactory evidence as to how it was funded and why it was a fixed term post. The Tribunal was told that when a post fell vacant in January 2017, the respondent was able to use some funding to create the role. The role was described as "to assist in the development documentation, interpretation, preservation, promotion and exploitation of the library's Ethiopian collections".

22. The claimant described the respondent's Ethiopian collection as including about 700 manuscripts of significant historical importance and which constitute the great majority of the Respondent's sub-Saharan African collection. Ms Mengoni agreed, saying there was a lot of work needed simply to identify what was held by the Respondent.

23. The Respondent's case was that the Asia and Africa collection held a very large number of documents ranging over a very large number of languages. This formed one part of its larger worldwide holdings. The respondent needed clear priorities as it how it spent its limited funds. The Respondent contracted with a significant number of people with skills in the many languages contained particularly in the Africa collection. The tribunal was told that there were over 300 languages across the Africa and Asia department. On the Respondent's case it was accordingly impractical to have a curator for each language. Further, there was a great deal of work to be done on these collections. There were references to significant backlogs of documents that needed to be catalogued.

Meta data quality assurance cataloguer

24. When the fixed term curator role came to an end the Claimant's role changed to meta data quality assurance cataloguer, at page 984. He commenced that fixed term role on 1 May 2017, initially to the 30 April 2019 which was subsequently extended to 30 October 2019. The Claimant's case was that this role was substantially the same as his previous role as curator. Ms Mengoni's evidence was that this was a new role which had specific cataloguing targets

linked to a new Respondent project called Heritage Made Digital (HMD). The HMD project broadly sought to capture the entire Library physical collections in digital format. The Claimant's post was funded by grant in aid for a time limited period linked to the period of the HMD project.

25. The claimant gave evidence concerning his duties in the two roles. The tribunal found that there was a significant overlap between the two roles partly because it was the same person carrying out the two roles. However, there were also significant difference, for instance the duties under the HMD project.

26. In January 2018 Ms Mengoni was appointed as the head of Africa and Asia (AAC) collections.

27. **Protected Act 1.** According to the list of issues, in 2018 the Claimant and colleagues raised a complaint of racial discrimination and poor management behaviour in the Asia and Africa department to the Respondent's chief operating officer, Mr Spence and the Chief Librarian, Ms Jolly. This included concerns that a disproportionate number of fixed term curator contracts were filled by ethnic minority staff in the AAC. It was agreed that this complaint was not in writing and occurred by way of a meeting in October/November. The Tribunal's difficulty was in making an evidenced finding as to what had happened in a meeting over six years ago.

28. There were few relevant contemporaneous documents. The Tribunal had sight of an anonymous complaint - not from the Claimant - on 9 January 2019 at page 219. This was a wide-ranging complaint including but not limited to elements of race discrimination which the Tribunal accepted to some extent overlapped with the October 2018 meeting. The complaint contained complaints of bullying and harassment including on the grounds of sex and race.

29. The allegation was that the Head of Middle East had undermined and bullied the Claimant and a white colleague for the past three years. Further, a manager had said the Claimant should not be curator because of his background, and the complainant's view was that this was a reference to race.

30. The Respondent appointed Mr Appleyard Head of Operations North to consider the anonymous complaint of January 2019. Mr Appleyard interviewed the Claimant on 21 March 2019.

31. In the interview, the Claimant raised serious issues about the accessibility to scholars of the Ethiopian collection. It was the Claimant's case that this collection had been singled out and put behind barriers preventing access. There was reference to a black person who at some point in the last century had been tried to remove documents. Those seeking access to the Ethiopian collection were more likely to be black, than those seeking access to other collections. As curator he was not given access to his collection, although this was later addressed. Further, his immediate managers (which the Tribunal understood to be Head of AAC and Head of Hebrew and Christian Orient) were strongly opposed to the Claimant being appointed to the curator position at all. He felt that he was less well treated than other comparable staff, including restrictions on training. His view was that this involved race discrimination and also, he was inadvertently caught up in a turf war in the department.

32. The respondent added extra hours to the Claimant's role to enable him to do community engagement work from 1 January 2019 for four months. Then the original role was extended for six months. The Claimant's case was essentially that he was still working as a curator during this time. Ms Mengoni contended that the roles were distinct. The tribunal found that on the balance of probabilities there were clear differences between data cataloguing, community engagement and curatorial duties, the claimant's roles, while varying significantly in emphasis, contained elements of each.

33. It was unclear when the Ethiopian collection was moved from Hebrew and Christian Orient/ Middle East to the Africa department, it was logical that this was around the same time as the claimant's line manager changed. Ms Mengoni stated that the manager of Hebrew and Christian Orient had wanted the reorganisation to place the Ethiopian collection under the Africa department. In April 2019 Ms Wallace, who was the Lead Curator for Africa, became the Claimant's Line Manager. The Claimant was initially content because he did not have a good relationship with his former Line Manager the Head of Hebrew and Christian Orient.

34. The claimant stated that Mr Mengoni's account as to the reason for the departmental move was untrue but was not able to assist the Tribunal or explain why she or the Respondent in general might seek to mislead the Tribunal on this point. The Tribunal did not think that it was at first sight remarkable that the Ethiopian collection was moved from the Middle East to Africa. The Tribunal does not have the technical knowledge to know which would be more appropriate, but it was not obvious why it was wrong for the Ethiopian collection to be part of the Africa department. The tribunal accordingly accepted the Respondent's case on this point.

35. Although the Head of Africa was the Claimant's Line Manager it was agreed that in April 2019 the Claimant would have an additional Line Manager. Dr Quessel the curator for Tibetan documents became the Claimant's Line Manager in respect of support on digitization, that is the internal cataloguing system for manuscripts and archives. The Head of Africa did not have the relevant skills and experience for this work and the Tibetan curator was highly respected. Thus, the Ethiopian collection remained under Africa and the Head of Africa remained responsible for, matters such as performance reviews, whilst for many day-to-day purposes Dr Quessel was the Line Manager.

36. On 8 July 2019 Mr Appleyard provided an outcome letter from the anonymous complaint to the Claimant, page 247. This made few findings and did not engage with the status of the Ethiopian collection. It found that there was no evidence of racism from the two managers and then invited the Claimant to raise a grievance.

37. The Claimant followed this advice and raised a grievance on 20 September 2019, p257 his **second protected act**. This was 20 pages long. He repeated the concerns about race discrimination of the October 2018 meeting, promotion blocking, that his fixed term contract was not to be renewed, work overload, excluding behaviour, and invalid criticism. Further grounds were that his manager - who the Tribunal understood to be the Head of Africa, Ms Wallace - was refusing to speak to him, and he wanted to change Line Manager. He said he wished to carry on working as a curator. He briefly referenced the lack of access to manuscripts, but this was a small part of the lengthy grievance. He included allegations against a number of

senior staff including Ms Mengoni. The effect was that the Claimant would have to go through the investigation of his complaints again with a second manager.

38. In October 2019 the Claimant's meta data fixed term role came to an end as the HMD project was coming to an end. His role was due to end on 30 October 2019, and he was given a letter with formal notification of the six weeks' notice required to end his contract. He appealed (undated) against the decision not to renew his contract on the grounds that the role was still needed, less favourable treatment of a fixed term employee, and race discrimination. Mr Fryer, Head of Corporate Information Management was tasked with the appeal.

Ethiopian Collections Engagement Support Officer

39. The Respondent created the post of Ethiopian Collections Engagement Support Officer at Point 3 FTE starting in October 2019 funded to 31 March 2020. The Claimant had for a few months prior worked at Point 3 FTE as an Engagement Support Officer. The Respondent advertised the new role. With the assistance of his union, the Claimant identified the new Engagement Support Officer as a suitable role under the redeployment scheme. Under the scheme, if a new role was 80% similar to a role which was disappearing then the post holder should be slotted in. The Respondent quickly accepted this was correct and HR slotted the Claimant into the role of Ethiopia collections Engagement Support Officer in October 2019. The Claimant's view was that the advert was an attempt to remove him because the new role was obviously suitable.

40. The Respondent tasked Mr Gibby, Head of Governance with the Claimant's September 2019 grievance, in January 2020. Mr Gibby interviewed the claimant that month. There was no explanation as to why there was a three to four month delay. The respondent had invited the claimant to raise a grievance and then failed to act when he did. The grievance was very lengthy and involved many other staff and overlapped with previous complaints. The tribunal accepted that it would be challenging to set up the investigation, but it was the respondent's idea that the clamant should raise a grievance. The tribunal could only conclude that the respondent was reluctant to engage with the claimant's concerns and to a significant extent did not know what to do.

41. On 19 February 2020 Mr Fryer together with Ms Ali of HR, provided a 24-page investigation report into the Claimant's September 2019 appeal against the end of his fixed term contract. The grievance was not upheld but Mr Fryer recommended the respondent carry out an Equality Impact Assessment.

42. The Fryer investigation determined that 36% of Asia and Africa collection staff were on a fixed term basis as opposed to 10% in the contemporary British collection, 8% in Western Heritage, and 6% in European and American collections. It found that this was justified because it accepted the explanation of the Head of Collections and Curation Mr Jensen that the AAC had a large volume of background material awaiting re-cataloguing and a large number of languages with a relatively small number of items in each language. Accordingly, it was necessary and proportionate to engage specialists on a short-term basis for each separate language.

43. In respect of concerns about victimisation, the report considered the Claimant's contention that after the termination of his fixed term contract was directly attributable to his participation in the internal bullying and harassment investigation and because of his involvement in the BAME staff network. It found that these matters fell outside the scope of its investigation. However, it found no documentary evidence of discrimination on the grounds of ethnicity.

44. An appendix to this report by the Head of Collections Mr Jensen stated that in recent years the Respondent had sought to reduce complexity and expense in curatorial areas by consolidating expertise and the library could not afford to maintain full time expertise in every language or subject. The largest reduction to a single collection area in the last restructure in 2014 was disproportionately on the European and North American collection areas. It stated that historic collections of sub-Sahara Africa are important but of relatively small scale and among the African manuscript collections the Ethiopian collection is probably the most important.

45. In respect of access to the Ethiopian collections, Mr Jensen stated:

> "In recent years I have encouraged a focus on the digitisation of a fixed number of Ethiopian manuscripts. There was historically a tradition of minimising access to these materials in order to protect against post-colonial critique, and among our users this attitude was often quoted. The Library wanted to change this approach and demonstrated its commitment to these materials at the time by assigning GIA to a digitisation project for the first time"

46. Current research and curatorial priorities were shifting toward contemporary Africa and its rapid development, and he was seeking to address the changing landscape within a shrinking financial framework, and this was one of the reasons that so many short-term specialists were engaged.

47. The investigation also found that the Claimant had attained in effect four years continuous employment on 31 January 2019 and would therefore be entitled to be considered a permanent member of staff, absent any objective justification. However, as the Claimant had not made a request to be considered a permanent member of staff, he was not confirmed as a permanent member of staff.

> "ED had completed four years continuous service with the Library on 31 July 2019, and became a permanent employee after that date unless the Library maintains an objective justification for not making ED permanent. As previously noted, this is an objective matter of fact either way, and neither party is required to take any action. The panel notes that ED has not formally submitted a request for clarification of his employment status under Regulation 9 of the Fixed Term Employees (Prevention of Less favourable Treatment) Regulations 2002, and therefore the Library has not been obliged to officially confirm his status by statement."

48. The country then moved into Covid lockdown in March 2020. The Claimant's contract was extended by Ms Mengoni on a fixed term basis to 30 June and then almost immediately to

30 September 2020. During this time Mr Gibby made no progress on the Claimant's grievance. The Tribunal was somewhat surprised by this as in the Tribunals experienced many employers were able to make good progress on grievances during this time partly because other activities were in abeyance and it was relatively straight forward to deal with matters by video. This the Respondent finally did so in July 2020 and Mr Gibby spoke to the Claimant again on 5 August 2020. He confirmed that this was the second investigation meeting to take place and was to look at the evidence in more detail surrounding unacceptable management culture in the AAC which could constitute unlawful race discrimination.

49. The Claimant was worried by this point that his Community Engagement fixed term contract was coming to an end in September/October 2020. In May 2020 Ms Mengoni had applied for permission to recruit a curator for the Ethiopic and Ethiopian collections and she was successful. Internal documents recording the process, she said,

> "We have already received £20,000 from a single donor for this post and our current proposal FTE Point 6 for twelve months envisages expending this. There are two further pledges … which would allow an extension of six months for a total of eighteen months. We need to be able to put this post in place to fulfil our obligations to the donor."

50. In June 2020 the Claimant was over 100 signatories to a document entitled *Concerning the State of Emergency at the British Library with respect to racism towards its staff and the custodianship of its colonial collections,* the **third protected act.** This alleged racism towards staff, and institutional racism. It called for more anti racism training and mentoring and anti-bullying and to address inequalities in pay and grading with respect to race. The document did not refer to the pay of any individual. The Claimant said he was not aware of any other signatory to this letter being victimised. The signatories came from many different racial groups, including white people.

51. The Tribunal found that as the Ethiopian curator post was likely to start soon, the Ms Mengoni and the Respondent put together some funding to keep the Claimant employed so he could be slotted into the curatorial role in September 2020.

Curator for Ethiopic and Ethiopian collections

52. The Claimant started a new role from 1 October 2020 to 30 September 2021 as Curator for Ethiopic and Ethiopian collections. The Claimant took the view that this new curatorial role was continuous from his old community engagement role and the Respondent accepted that there was a degree of overlap.

53. The Respondent sent the Claimant a starting letter wrongly stating that the curator role was grant in aid funded, whereas the correct position was that it was private donor funding. Although the claimant reasonably believed at the time that the curator role was grant in aid, he very reasonably accepted at the hearing, based on the documents, that it was not.

54. On 3 November 2020 Mr Gibby provided his outcome to the grievance the claimant had raised at the respondent's suggestion 14 months earlier in September 2019. The terms of the grievance had been agreed as follows

> "There is an unacceptable/inappropriate management culture within the Middle Eastern section in particular of the Asian & African Collections department, including the Head of the Section and the Head of the Department. The management culture of the Middle Eastern section is poor, does not uphold the Library's values, has caused you to feel victimised, and could constitute unlawful race discrimination and unfair treatment."

55. Mr Gibby's report provided some useful context. In October 2018 the Claimant and his colleagues said that they were reluctant to raise a grievance for fear of victimisation. Mr Gibby accepted that the process had not been well managed. Both those making the complaints and those who were subject to the complaints suffered considerable stress. The subjects of the complaints were upset at being interviewed again following the Appleyard investigation.

56. As to the claimant's original curatorial role in 2016, it was said that the claimant's manager's manager had created this role without telling the claimant's manager, Mr Baker the Head of Middle East. And after she left there was no information for the Head of Middle East about how the role might be funded. The Tribunal accepted this account as it was consistent with the Claimant's independent account that Mr Baker was unhappy about the Claimant being appointed and had complained to the Claimant that the role had in effect been parachuted into his department over his head.

57. Mr Gibby also dealt with access to the Ethiopian collection. He stated that the policy was that only permanent staff typically in more senior roles could be given authority to order restricted collection items, such as the Ethiopian collection. Other staff would need to be specifically exempted by the Head of AAC. The head of Middle East had said to the Claimant that he did not have the "privilege" to access documents in the collection. It appeared to the Tribunal that all involved were more concerned about the use of the word "privilege", and less about the claimant's actual ability to do his job if he did not have access to his collection.

58. The Head of Middle East said that the decision to restrict access to all Ethiopic manuscripts was made some thirty years ago and that in the 1970s and 80s there had been a number of incidents involved with readers and restitution demands. Mr Gibby stated: -

> "It may well be time, perhaps, to review the policy and this decision but, in the meantime, we are obliged to comply with it.
>
> However, [the Head of Middle East] also realised that your inability to order [documents] directly for the HMD workflow was a problem for you. Therefore, he himself asked … to make an exception for you, on the basis that it was just for the HMD workflow and that his desk was next to yours enabling him to oversee you if that were necessary."

59. Mr Gibby stated that there might be a case for reviewing some policies such as governing access to restricted collection items to see whether they might be made more flexible or updated. However, after this statement in November 2020, there was little heard about this matter until the Claimant's witness statement for the hearing in early 2025 which referred to problems with access to the Ethiopian collection.

60. Mr Gibby partly upheld the Claimant's grievance in respect of the respondent's delay in the Appleyard investigation and the delay on the subsequent grievance. In terms nothing was upheld against Ms Mengoni.

61. The Claimant's curator role was extended to 30 September 2022 and the Respondent accepted that he had continuous employment from 1 August 2015.

62. The Claimant appealed against Mr Gibby's grievance outcome on 18 November 2020 at page 41, the **fourth protected act.** This was another lengthy document. Amongst a number of matters, he alleged that he was subjected to ongoing victimisation; there was a disproportionately high number of fixed term contracts within the AAC which had a discriminatory impact on employees from ethnic minorities; and that access to the Ethiopic collection was still unduly restricted for political, that is non conservation, reasons.

63. The claimant provided more detail about the lack of access to the collection saying that this had lasted for several months, it overlapped between his first curatorial role and the HMD role, and it made it difficult for him to do his job. He stated that the restrictions came about as a result of a political lawsuit advocating the return of the documents to Ethiopia. The Ethiopian restrictions disproportionately disadvantaged black scholars.

64. He made further allegations against Ms Mengoni as Head of the Asian and African collections for her failure to uphold the respondent's values and stated that there was unacceptable management culture across the department.

65. The 18 November 2020 grievance appeal was considered by Richard Davies, Interim Head of Collections and Curations. He provided his decision on 16 December 2020.

66. He partially upheld the appeal. He found that there was evidence that there had occasionally been a failure by the Head of Middle East to demonstrate the respondent values in his behaviour. However, this was not a disciplinary matter, and Ms Mengoni would take this further. He stated that the recommendations in the initial investigation report - which the Tribunal understood to be Mr Appleyard's report - be reviewed urgently and taken forward. He thus accepted that Respondent had not moved forward on recommendations which dated back to Autumn 2019, and it was now urgent. Ms Mengoni was required to put together a communications plan and that a specific program was needed to rebuild relations. The claimant's line manager was not changed from the Head of Africa, Ms Wallace.

67. In April 2021 Mr Mazda commenced employment as Head of Collections and Curation. He thus became Ms Mengoni's manager. He worked off site until June 2021.

68. In April 2021 the Africa department created a second curatorial role, at Grade B, which reported into Head of Africa. Accordingly, the Africa department then consisted of a Grade A Lead Curator (Ms Wallace) with reporting to her a Grade C Ethiopia Curator (the Claimant), and a new Grade B Africa Curator. The Claimant did not apply for the Africa Curator Grade B role.

69. The Claimant's case was that his role should be upgraded to Grade B in line with the new Africa curator role. He raised this matter with his Line Manager, Head of Africa, and she said

that she did not believe that this was appropriate, but he could process the application to HR who would carry out the job evaluation.

70. The Tribunal was satisfied that whilst responsibility for job evaluation lay with HR, according to the Respondent's job evaluation scheme a manager would have a very significant role in a job evaluation.

71. Ms Barlow of HR's evidence before the Tribunal was that the Ethiopia Curator Grade C role had been graded in accordance with the respondent's policy in October 2019, and again in 2020 - both times as a C. The Tribunal saw no documents going to this and no explanation as to why not. Nevertheless, the Tribunal found it credible that the role had been graded at least in June 2020 when it was going live in October 2020

72. According to HR, if an employee had concerns that a manager was unfairly blocking a re-grading, the staff member could go to HR or to the manager's manager, with union help. The Claimant's evidence was that he had a difficult relationship with the Head of Africa, and had sought to have a different line manager, partly because she felt that the appointment of Dr Quessel reflected poorly on her.

73. The Respondent extended the Claimant's contract as Ethiopia curator to September 2022. In May 2021 the Claimant wrote to the Respondent's head of people requesting confirmation that he was on permanent employment status.

74. The respondent's senior HR replied on 26 May 2021 and formally confirmed the Claimant's status as a permanent employee. It stated that as he was aware his current post did not have permanent funding with the post, and external funding was expected to end on 30 September 2022. The letter told the claimant he was in a limited funded position. It stated: -

> Therefore, under section 6 of the [restructure, redeployment and redundancy policy] you will enter redeployment six weeks before the funding end date of your post. … If during this six-week period you do not secure another role within the Library, the Library will continue to implement relevant measures to reduce the risk of compulsory redundancy by entering into a period of formal meaningful consultation for 45 days before any compulsory notice would be issued …

75. This was an accurate reflection of the Respondent's policy and of the situation. The Respondent for the first time here told the Claimant that his post was not GIA but externally funded, without explanation or apology. The claimant was understandably confused and unnerved by what appeared to be a change in the funding of his role.

76. Ms De Haan started in role as Grade B Africa curator on a two-year fixed term contract around Autumn 2021.

77. The Claimant in October 2021 raised a grievance against the Head of Africa concerning amongst other matters the grading issue. He also raised concerns about bullying, harassment and victimisation because of his 2019 complaint. The Tribunal understood that to be a reference to his complaint in September 2019.

78. The grievance was investigated by Ms Hart, Service Improvement Manager. The Claimant said that his work was not appreciated, and his promotions had been blocked. On 18 January 2022 page 475 Ms Hart provided an outcome.

79. She referenced an email from the Head of Africa on 14 May 2021 in response to the Claimant's request for regrading. Ms Wallace there stated that the two Africa curator roles had different levels of responsibility, and that the Grade B post had been through the Respondent's job evaluation process. Ms Wallace stated she had great admiration for the claimant's work in many areas. The outcome correctly outlined the process for making an application that a post be reconsidered under the job evaluation scheme. The investigation found that there was no evidence that the Director of Africa had refused to support the Claimant's regrading.

80. It was stated that Ms Mengoni had decided not to put the Claimant forward for a leadership program or involvement in a research fellowship because he was on a fixed term contract.

81. Ms Hart rejected the Claimant's grievance but accepted the concerns about his workload. It recommended a permanent change of line manager from Ms Wallace because of the breakdown in the relationship between them, and the mutual anxiety and stress. It was recorded that this was the second time in a short period that the Claimant had requested a change of line manager (from Mr Baker and then from Ms Wallace) and that further request to change line manager might require investigation. The Claimant saw this in effect as a threat.

82. The Tribunal accepted that the claimant did not understand how staff could be treated as permanent and having permanent status although their post itself only had time limited funding.

83. The Claimant met with Mr Mazda on 31 January 2022 - the **fifth protected act.**

84. Mr Mazda's evidence before the Tribunal given over three years later was that he did not have a good recollection of the meeting. He had made notes of the meeting and in his witness statement he accepted that in the meeting the Claimant had told him that he felt that he had been discriminated against. Mr Mazda to some extent attempted to walk back from this in oral evidence, but the Tribunal preferred what was in his witness statement and found that the clamant had made allegations that he had been discriminated against.

Lead curator Africa collection application

85. The Director of Africa left the Respondent in April 2022. The Respondent advertised the role that July as a Grade A role. The Tribunal considered Ms Mengoni's document of 6 July as to the restructuring of the Africa department. Although no party relied on this document, the Tribunal found it a useful account of Ms Mengoni's thought processes. It referred to the Africa grade B role funding from GIA for two years. It acknowledged the Ethiopic collection's significance and international importance, but that its needs were more limited compared to other larger collection areas, which were significantly under resourced. Given the limited GIA funding and the more pressing needs in other areas, the post of Curator Ethiopic and Ethiopian

collections would not be extended after September 2022, and the work would be conducted through other projects, for which funding should be specifically sought. There was no suggestion that there was not work to be done on the Ethiopian collection.

86. The Claimant applied for the lead curator Africa post. The decision makers in the recruitment process were Mr Mazda, Ms Mengoni and an external specialist panel member, the Manager of the African Studies Library at Cambridge University Library. The Claimant did not criticise this external panel member and specialist as in any way inappropriate. The process was that all three panel members would shortlist separately and then get together to finalise the shortlist. The claimant was shortlisted, and interviewed on 4 August 2022.

87. Candidates at interview were scored on nine questions or areas with a rating of: exceeds criteria 9-7 / meets criteria 6-4 / partially meets criteria 3-1 / fails to meet criteria 0. The Claimant's total score was the joint lowest, in a range of scores from 46 to 58 - at page 488.

88. The Claimant's scores were mixed. He scored 7 - exceeds criteria - for his presentation whereas his experience of "successful management of projects and resources, whether of staff, finance or information within a framework of audit and accountability" scored 3 - partially meets criteria.

89. The claimant scored 3 on budget management and the Tribunal accepted that this reflected the fact he had, because of the nature of his role, limited experience of budget responsibility. He did not have experience of managing staff. The Claimant did not accept that the lead curator had a greater budgetary responsibility than his role. But this was not borne out by the job description which showed that the role did indeed have significant responsibility for budget and also for managing staff. The Claimant also accepted that he worked alone and so did not have experience of working in a team. So, he could only evidence working well across teams. He was working to bring people together. Thus, his experience was relevant, while not entirely on point.

90. The Claimant said that he was sure that a white person would have been scored differently. The Claimant did not accept the respondent's evidence that the external interviewer's scores were included in the totals. In the view of the Tribunal, it was much more likely that the external panellist had voting rights. This was consistent with the Respondents documents (in this and other recruitment exercises) and the Claimant's suggestion had no evidential backing.

91. The Claimant was rejected on the 17 August. He sought feedback and received detailed feedback, which drilled down into his performance and gave him useful information. In the view of the Tribunal, the Claimant's criticism of this feedback was unjustified.

92. The Claimant said that it was possible for someone to be promoted two Grades, for instance from C to A and that two people had in fact jumped two grades in this way. The respondent denied this. However, there was little if any evidence from either party on this either way. The tribunal could therefore make no findings.

93. In respect of the successful candidate, there was no evidence from the documents or in a witness statement as to her racial or ethnic origins. It was said that she was from Tanzania. Ms Mengoni in oral evidence said that she was of East African origin but did not say what the candidate herself considered to be her ethnic or racial origin. The Tribunal noted that this information should have been available to the Respondent and that if the respondent had appointed a black candidate, it would have said so in terms.

94. The successful candidate for the Lead Africa Curator role was the former Africa B curator, which left her post vacant. The Respondent did not back fill this. This resulted in the Africa department having only a Grade A lead curator and the Claimant reporting to her in a role that ending in October 2022. The Respondent's explanation for this significant reduction in resources in the department - which was not addressed in any witness statement or backed up by any documents - was that the Respondent's policy in practice in such circumstances was that any vacancy would have to be justified in order to be back filled.

End of the Ethiopian Curator role

95. On 19 October 2022 just after the Claimant had been rejected for the lead Africa curator the Respondent wrote to him saying that he was now entering redeployment and that his employment would be terminated at the end of the fixed term role unless it could redeploy him.

96. The Claimant's case was that Ms Mengoni had deliberately completed the lead Africa curatorial recruitment before he was put into the redeployment process, in order to prevent him enjoying the advantageous provisions of the redeployment policy.

97. The Respondent policy was that an employee on a series of fixed term contracts for over four years should be treated as a permanent employer. The redeployment period was defined by the end of the fixed term contract so automatically a person would enter the redeployment phase six weeks before the end of their fixed term role.

98. Whilst in redeployment, suitable alternative employment would be considered in general terms if an employee applied for a post where the terms and conditions met their current terms or conditions in general terms, i.e. the grade, pay, location, working hours, and contractual benefits were the same, and that the status and skill levels of the post were generally comparable. The RRR policy was that staff at risk would need to monitor advertised roles and would need to apply. Members of staff who were at risk and met the essential criteria or who would meet the essential criteria for a new post with training would be given preferential treatment, that is they would be considered prior to other internal/external candidates.

99. The Tribunal found the Respondents evidence as to whether someone was slotted in or considered prior to other internal and external candidates during redeployment confused. But it accepted that if a role were identified as suitable during the redeployment period, that person would be considered prior to internal and external candidates if they were not slotted in.

100. The Respondent's case was that the lead Africa curator would not have counted as suitable alternative work under the RRR policy, even if the dates had aligned. Therefore, there was no reason to engineer the dates. The lead Africa curator was a Grade A role and the Claimant's role was grade C. Ms Mengoni's evidence was that any such application would have been assessed against the essential criteria, and he would not have met the essential criteria such as management experience of management and budgets and staff.

101. The Claimant stated that in or around March 2023 the recruitment for an Urdu curator was delayed to assist an in-post curator. We were not told of the in-post curator's race, although her name appeared to be South Asian. The Tribunal heard no meaningful evidence on this. The Respondent contended there were other positions advertised, and other candidates applied. There were internal and external candidates, and the in-post curator was not slotted in. The Tribunal could not make any findings as there was simply insufficient evidence from either party.

102. The Claimant's case was that he had not realised that his Ethiopian curator role was coming to an end. Work was ongoing and there were plans in place to do further work. Ms Mengoni did not warn him that his role was ending in October 2022. He had been on fixed term contracts before and something - in effect - always turned up. His view was that Ms Mengoni wished to exit him from the organisation, Ms Mengoni on the other hand said that they simply reached the end of the road on the funding.

103. The tribunal found that the respondent had misled and confused the claimant as to the funding and status of his curator role. He was first told it was GIA and then, without explanation, that it was fixed term non-GIA funding. The respondent did however state in terms in letters that it was a fixed term role with an end date.

104. Ms Mengoni had said she called a meeting for the Claimant and his line managers in March 2022 because she needed to remind them the fixed term role was coming to an end at the end of September 2022. The documents in the bundle recorded such a meeting and that the October end date of the contract was discussed. However, it was unclear how much emphasis Ms Mengoni put on this in circumstances when the claimant's employment had previously continued after the expiry of fixed term contracts.

105. The Claimant was concerned that he was being treated under the RRR not as a permanent employer but as a fixed term employee. His union had told him that the union should have been informed six months before the end of the funding.

106. In August, the Claimant met with Ms Barlow of HR. She sent the Claimant job adverts and explained how to apply. She made enquiries to recruiting managers about the Claimant and told him about current and upcoming vacancies (not for curatorial roles) and sought help from the learning department team with interviewing skills. She checked as required in the RRR as to whether there was use of overtime or agency staff, which might yield an alternative to redundancy, but to no avail. She said that she viewed and treated the Claimant as a permanent member of staff.

107. On 30 August, the Claimant appealed against the termination of the Ethiopia curator role, **protected act six**. He did not mention any funding available due to the failure to back fill the Africa B position, and he only relied on the Africa B role in respect of the grading. He stated in terms that he was rejected for the lead Africa role because of racism and victimisation, and he made further complaints about Ms Mengoni.

108. As the result of the Claimant appealing against the termination of his employment, Mr Spence extended the Claimant's employment by forty-five days. It was not entirely clear what the Respondent's reason was, but Mr Spence accepted that there had been errors in the process.

109. The Tribunal found on the balance of probabilities that the Respondent had treated the Claimant like a full time rather than a permanent staff because he did not get 45 days consultation until he appealed. The respondent then promptly rectified the situation. The tribunal found that this was the only failure to comply with the RRR.

110. The Claimant's view was that the Respondent was not trying to keep him in work. His view was that there was general funding available, however he was not able to be specific about this. He relied on for instance general government funding to the culture sector following Covid. He said there was a strong demand and a good business case for his role. The tribunal had no doubt that the claimant was passionate about the Ethiopian collection and completely committed to trying to extend the curator role. For instance, he suggested a social media appeal for funding, which the respondent rejected for reputational reasons.

111. There was no suggestion that anyone at the time, or before the tribunal, including the claimant addressed their mind to using the funding released by the failure to backfill the Africa B role to fund the Ethiopia curator role on at least a temporary basis.

112. Mr Mazda told the Tribunal what happened to funding released when a post becomes free because the post holder leaves. There is a high-level meeting, and the post automatically closes. Line managers may make a case to use the money. There was no suggestion that Ms Mengoni made any such case. Mr Mazda said he had nine managers who all wanted money. Ms Mengoni said that the respondent needed to save £200,000 and there were arguments between different managers seeking to capture their funding for their own department. The Respondent's case appeared to be that if a department lost a member of staff during their fixed term contract, then their funding was lost to their department. Neither witness had mentioned any of this in their witness statements. Nor were there any supporting documents.

113. The Claimant had not requested any evidence as to the Africa B funding and never said at the time or before the Tribunal that there was a pot of money - the balance of the Africa B funding - that had come free at about the right time which could have been used to fund his post or a comparable post. Further, the Claimant did not make this case before the Tribunal. The tribunal could not see that there was any reason why, if he believed that this was a valid argument, he did not pursue it. It was not a technical legal argument. The tribunal had accepted his case that he was trying hard to try to find funding to extend the role. He argued before the Tribunal that the Respondent could have found the money, but never said it could have used the Africa B role funding.

114. The tribunal accepted that not all respondent funding was unrestricted, and that the respondent could not necessarily easily swap funding from one post to another. In those circumstances, the tribunal could not draw adverse inferences from the respondent's failure to provide evidence as to what happened to the balance of the Africa B funding.

Alexander the Great Exhibition

115. In October 2022, the Respondent published a book which accompanied its exhibition on Alexander the Great. The Claimant had provided an artifact to the exhibition curators. The Claimant provided a description of a manuscript referencing Alexander from the 18th century from Ethiopia. This manuscript and explanatory text appeared in the exhibition book, but the Claimant was not credited with the text, unlike other contributing curators. The Head of Hebrew and Christian Orient, who was white Jewish, was credited with the text for an exhibit she had provided to the exhibition from the Talmud. The respondent's case was that the claimant's text needed fundamental re-writing, whereas the Talmud text did not.

116. The Claimant did not provide the Tribunal with a copy of the text that he sent to the curators, or any explanation as to its absence. The Tribunal was therefore unable to compare what he provided with the final text to judge the degree of re-writing. There seemed no reason he would not have access to his original draft. Further, the Tribunal had no evidence as to what the Head of Hebrew and Christian Orient had written and therefore whether her text had been similarly edited.

Head of Middle East and Central Asian collections application

117. The Claimant who remained in the redeployment period, applied on 25 October 2022 for the vacant role as Head of Middle East and Central Asian collections. On 9 November Ms Barlow of HR wrote to the relevant recruitment managers saying that somebody in redeployment - the Claimant - was interested and that therefore they were under a duty to consider him before internal and external candidates, and as the Claimant's contract was ending on 15 November could they let her know as soon as possible if he met the essential criteria.

118. That day Ms Mengoni replied saying the Claimant was rejected because he failed to meet the essential criteria, which included a good knowledge of one or more Middle Eastern or Central Asian languages - classical as well as modern. The Claimant agreed that he did not meet this criterion.

119. The Claimant's application was then considered by the recruitment panel who found that his skills and experience did not meet - and could not meet after training - the essential criteria. The panel scored the Claimant well on some criteria. However, on another criterion Proven leadership, the Claimant was again scored zero. The Claimant's case was he could have been trained to establish proven leadership skills.

120. The Claimant scored 21 and both shortlisted candidates scored around 40. He was one of a large number of applicants who were not shortlisted, some of whom had scored lower than him, and he was one of six candidates discussed by the panel.

121. An internal candidate, the curator for the Turkey collection who was white, was appointed to the post. The Tribunal was satisfied that Claimant did not meet the essential criteria for this role and could not see how someone could do the job effectively without knowledge of at least one relevant language.

122. The Claimant's case was Ms Mengoni should have altered the role to fit around him to include Ethiopia in this role. The Tribunal had accepted Ms Mengoni's account of moving the Ethiopian collection from Hebrew and Christian Orient /Middle East to Africa. There was no convincing reply to the Tribunal's focused questions on what benefit might accrue to the Respondent in misleading about this. Although this case was not made by the claimant, for avoidance of doubt, the tribunal would not accept that Ms Mengoni had well in advance taken the Ethiopia Collection out of the Middle East department to ensure that the claimant could not later meet the language requirements should he apply for the lead curator role.

123. On 15 November, following an application, the Respondent offered the Claimant a job as a reference specialist in a different department. The Claimant's union rep suggested this job to Ms Barlow who facilitated the offer.

124. The Claimant appealed against the rejection for his application for Middle Eastern lead, partly on the basis that the job should have been amended and the Tribunal understood this to mean that it should have been amended to include Ethiopia. His appeal was rejected on 28 November 2022.

Lead curator in black studies applications

125. In early 2023 Respondent advertised for a new role, a lead curator in black studies. The Claimant applied. The recruitment panel was Mr Mazda, the respondent's Ms Foss (as chair), and an external specialist. The tribunal was unable to accept the claimant's evidence as to the recruitment in his witness statement. He stated that he was very concerned that "there were no people of colour". Although he did not define this term, the tribunal had no doubt that he meant to include black people. Mr Mazda's evidence was that the external expert was a black man, and the claimant did not challenge this at hearing. The tribunal was satisfied that the external assessor was a black man.

126. The Tribunal had no reason to believe that anyone on the panel apart from Mr Mazda knew about any protected act. As before, the panel short listed separately and met to compare their scores. The claimant was shortlisted.

127. The candidates were scored at interview by each panel member on a number of questions including a presentation. The Tribunal had sight of the scores of the seven candidates.

128. The Tribunal had sight of Ms Foss's and the external expert's scores, but not Mr Mazda's. (It did have sight of Mr Mazda's shortlisting notes.) Ms Frost and the expert's scores for the claimant were broadly similar and were broadly similar to the panel's total scores. This led the

Tribunal to conclude that Mr Mazda's scores were in the same range as the other two panel members.

129. The Claimant's scores were mixed. The Claimant's scores were 5 out of 9 for his presentation. The Claimant's view was that this was unfair as his presentation was of good quality.

130. The Tribunal accepted Mr Mazda's evidence the panel could not and did not take into account the Claimant's answers to one question when scoring another, contrary to the Claimant's contention. Further, the Tribunal accepted Mr Mazda's evidence that they could not take into account their knowledge of the Claimant's work for the Respondent when scoring. The Tribunal accepted Mr Mazda's evidence on this as this is a common recruitment practice.

131. Mr Mazda's feedback was the Claimant could have said more in various areas. The Tribunal had sight of the external expert's scoring of all candidates, and of his notes of the claimant's replies to each question. There was a clear correlation between the Claimant having said more in reply to a question and receiving a higher score. This suggested that in areas where the Claimant had more to say, he scored better. The Claimant's score at interview was 29 whereas the successful candidate scored 42. He was not successful.

132. In the event the successful candidate did not take up the position. The Respondent reviewed the other candidates and decided that none were appointable and decided to pause before trying again.

133. It advertised a second time for the Black studies curator in November 2023. The Claimant applied but this time was not short listed. The Respondent gave unchallenged evidence that by this date, it had introduced a new recruitment system across the library. The new system was a competency-based approach. The Tribunal, relying in particular on the knowledge of its lay members, accepted this is a very common approach in recruitment. Previously applicants applied by way of a CV and letter in support. Under the new system they completed a competency-based application form.

134. The panel was the same. The Tribunal read the Claimant's application and his scoring together with that of the successful candidate. Candidates were sifted out at shortlisting stage if they did not score at least 4 against each competency. The claimant scored 3 / 5/ 3 /4 / 5 on the five competencies and so failed to score at least four on every competency and was not shortlisted.

Later events

135. The claimant in his witness statement stated that in or around March 2023, Ms Mengoni advertised the post of Urdu Collections Curator in time for an existing Project Curator, Ms Olivia Majumdar, to be in redeployment and thus to receive preferential consideration. Ms Mengoni appointed Ms Majumdar as Urdu Collections Curator, having given her preferential consideration for the role. In the bundle it was shown that Ms Majumdar was appointed in March 2023.

136. The tribunal heard oral evidence from the respondent that the Urdu position was advertised externally and internally. A panel recruitment involving interviews with a number of candidates was carried out. Ms Majumdar, who was of South Asian origin, was not slotted into the role.

137. Ms Majumdar was not a pleaded comparator. In the circumstances, it was reasonable that the respondent did not provide further evidence on this recruitment. The tribunal, on the balance of probabilities, accepted the respondent's account of this recruitment as its witnesses, which included the Head of AAC, Mr Mazda and a senior HR person, would be more likely to know about the recruitment than the claimant. The respondent evidence was consistent and inherently plausible.

138. In February 2025, the Respondent created a document which it said was drawn from the recruitment exercise showing the scores of each candidate against each question. According to this document, every candidate who scored less than four on any criterion, including the claimant, was not shortlisted. The claimant scored notably better than some candidates. After interview the successful applicant, a black British woman, accepted the position.

The Law

139. The applicable law is found in the Equality Act 2010 as follows

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others…

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.

(2)Each of the following is a protected act—

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

(d)making an allegation (whether or not express) that A or another person has contravened this Act…

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.

Submissions

140. The Respondent provided written submissions which were shared with the Claimant prior to both parties presenting oral submissions.

Applying the Law to the Facts

141. The Tribunal heard very considerable amounts of detailed evidence and had sight of a lengthy bundle. It was difficult to establish a reliable timeline. The tribunal was concerned that it should not "miss the wood for the trees". It therefore started with an overview of the Claimant's case. A theme in the Claimant's case was his contention that the Ethiopian collection was overlooked and neglected and was not prioritised in proportion to its global significance. This significance was undisputed; it is one of the most important collections of Ethiopian historical documents in the world.

142. It is not for this Tribunal to determine how a large public institution with limited funding and competing worthy calls on those funds determines its priorities. The Tribunal can go no further than what the Respondent said in its documents. Ms Mengoni in July 2022 described the collection as being of high significance and internationally renowned. However, the respondent has other collections which are proportionately worse resourced and therefore because of these pressing needs the Respondent cannot afford to allocate the resources to the collection that it might wish.

143. There was therefore a good degree of agreement between the parties that the collection was internationally important but not getting the resources it needed. Both parties agreed that this was a question of prioritization. Understandably, the claimant was focused on the Ethiopian collection and understandably the respondent was focused on the collection as a whole.

144. The Claimant in his submissions and his answers to questions from the Tribunal made it clear that he was not running a section 19 indirect discrimination case - although he did not put it in those terms. His case was straightforward - a white person (and logically based on his case, any person who was not black) who was in his position would have been treated differently. Accordingly, this was a direct discrimination claim.

145. The Tribunal during submissions sought to clarify the Claimant's direct case. It asked focused questions of the Claimant as to how or why he said the overlooking of the Ethiopian collection related to his case that a white person working on the collection would have been treated differently. He gave a very limited answer, he did not say, for instance, that the fact that the Ethiopian collection was not prioritised as he thought it should be, reflected some general undervaluing of African cultural achievements and/or an undervaluing of people from Ethiopia or black Africa more generally. After further questioning all the Claimant said was that one of the reasons the collection was not valued was that it reflected black identity.

146. It is for a party, whether a litigant person or represented, to run their case as they see fit. The claimant ran a legally straightforward claim of direct discrimination, a white (or non-black) person in his position would have been treated differently. He ran this together with a victimisation claim.

147. The Tribunal's task is to determine the issues in the list of issues and hear evidence focused on that. Tribunals may and often do take into account other facts which may help illuminate the Respondent's motivation. A tribunal can take into account matters which are not in the list of issues, but it must do so in proportion to the matters in the list of issues and ensure that the parties are not prejudiced.

148. In this case the tribunal was struck by the issue of access to the Ethiopian collection. It was manifest from the claimant's witness statements and documents that the claimant was highly engaged with the collection and deeply committed. However, Respondent documents recorded that when the Claimant was working as a curator and/or in the HMD role, he did not have full access to the Ethiopian collection.

149. The Respondent's investigations showed that there were access restrictions to the Ethiopian collection for political rather than conservation reasons, that was there was a tradition of restricting access to the collection to, it was said, protect against post-colonial critique. This would have a disparate impact on black scholars and indeed all those working on Ethiopian documents. In November 2020 the respondent said that access had been identified as something that needed to be looked at. The investigation therefore referred to considering the issue, rather than acting on it forthwith. The Claimant in his appeal in November 2020 said that the restrictions were a continuing issue and were unacceptable.

150. The claimant was permitted access, but according to the Respondent investigation only if he was physically overseen by the Head of Middle East. It was not explained why this would be necessary in circumstances where the collection was restricted for political reasons. The tribunal was surprised that the Respondent appeared unconcerned that the person working on the Ethiopian collection only had access in such circumstances.

151. After this there were few references to access, and it appeared on the Claimant's case no longer to be an issue. In the view of the Tribunal, if the Claimant had continued to experience difficulties in accessing his collection, he would have raised this as this would be a fundamental issue for him as the curator. Further, the Ethiopian collection moved from the Middle East to Africa departments so the role of the Head of Middle East would fall away. The claimant expressly accepted that his access issues were resolved. The parties did not seem to think there was any tension between the claimant's community engagement role with regard to the collection and any ongoing access issues.

152. It was unexplained why the claimant raised general access restrictions on the collection in his witness statement, seemingly as a current problem. The Tribunal was not taken to anywhere where Claimant raised the general access restrictions to the collection since November 2020 in circumstances where he had raised numerous other issues.

153. Further, the Respondent was not on notice that access issues, either personally or for scholars, post 2020 were in any way a focus of his case. The Respondent was not asked to explain what had happened to access since November 2020 or if it agreed that there was still an access restriction for whatever reason on the overwhelming majority of the Ethiopian collection. There was simply little reference to this issue by the parties.

154. The Claimant did not run a clear case that his advocating for the opening up of a collection either for scholars or for him as curator, led to victimisation in circumstances where he prioritised other elements of his protected acts. He did not rely on his personal access difficulties as an act of direct discrimination The failure to provide the Claimant with access was historic and the Claimant had seemingly not raised this since November 2020.

155. While the Tribunal was concerned at the issues surrounding collection access, both to scholars and the claimant personally, the picture was confused, and the parties did not provide enough evidence for the tribunal to make findings of fact or draw inferences.

156. The Tribunal therefore considered the issues in the list of issues. The Tribunal considered the allegations in the list of issues as best it could in chronological order rather than in the order in which they appear in the list of issues. The Tribunal considered each act both as direct discrimination under s.13 and in the alternative as victimisation under s.27.

157. In this case, the acts relied upon by the claimant were not inherently discriminatory, therefore (as per *James v Eastleigh Borough Council* [1990] IRLR 572), the Tribunal must look for the operative or effective cause. This requires consideration of why the alleged discriminator(s) acted as they did. Although their motive will be irrelevant, the Tribunal must consider what consciously or unconsciously was their reason. This is a subjective test and is a question of fact.

158. The tribunal reminded itself of the guidance in *Nagarajan v London Regional Transport 1999 ICR 877, HL* (a case under legacy race legislation but relevant to section 13) as follows,

> 'Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did.'

159. It does not matter if the decision-maker was consciously or subconsciously motivated by a protected characteristic. The tribunal asks why they acted as they did.

160. The Tribunal also had regard to the comments of Lord Phillips, then President of the Supreme Court, in *R* (*E*) *v Governing Body* of *JFS* [2009] UKSC 15, also a case under legacy race discrimination. In deciding what were the grounds for discrimination, a Tribunal is simply required to identify the factual criteria applied by the respondent. This is simple shorthand for determining whether the proscribed factor operated on the alleged discriminator's mind.

Whilst any discriminatory reason must be an effective cause of treatment, it does not have to be the only reason. The Equalities and Human Rights Commissions Employment Code states that the protected characteristic needs to be a cause of the less favourable treatment, but it does not need to be the only or even the main cause.

161. The House of Lords in *Najaragan* stated that for discrimination to be made out "racial grounds" (the material test at that time), it must have a significant influence on the decision. According to *O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor 1997 ICR 33, EAT* (a legacy sex discrimination case relating to pregnancy), the discriminatory reason does not have to be the main reason, as long as it is an effective cause. See also the judgment of the *Employment Appeal Tribunal in Amnesty International v Ahmed* [2009] IRLR 884.

162. As to the burden of proof, the Tribunal directed itself in line with the guidance of the Court of Appeal in *Igen Ltd v Wong and Others* CA [2005] IRLR 258. At the first stage, the Tribunal has to make findings of primary fact. It is for the Claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination. At this stage of the analysis, the outcome will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal. It is important for Tribunals to bear in mind in deciding whether the Claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination and in some cases the discrimination will not be an intention but merely an assumption.

163. The Court of Appeal reminded Tribunals that it is important to note the word "could" in respect of the test to be applied. At the first stage, the Tribunal must assume that there is no adequate explanation for those facts. At this first stage, it is appropriate to make findings based on the evidence from both the Claimant and the Respondent, save for any evidence that would constitute evidence of an adequate explanation for the treatment by the Respondent.

164. However, the burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination. "Could conclude" must mean that a reasonable Tribunal could properly conclude from all the evidence before it; see *Madarassy v Nomura International* [2007] IRLR 246. As stated in *Madarassy*: -

> "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

165. If the Claimant does not prove such facts, the claim will fail.

166. If on the other hand, the Claimant does prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed the act of discrimination, unless the Respondent is able to prove

on the balance of probabilities that the treatment of the Claimant was in no sense whatsoever because of her protected characteristic, then the Claimant will succeed.

167. The Tribunal also directed itself in line with *Hewage v Grampian Health Board* [2012] UKSC 37 that the burden of proof provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. They have nothing to offer where the tribunal is able to make positive findings on the evidence one way or the other.

168. In *Laing v Manchester City Council* [2006] ICR 1519, the EAT stated that:

> "No doubt in most cases it will be sensible for a Tribunal formally to analyse a case by reference to two stages. But it is not obligatory on them formally to go through each step in each case… An example where it might be sensible for a Tribunal to go straight to the second stage is where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator – whether there is a prima facie case – is in practice often inextricably linked to the issue of what is the explanation for the treatment, as Lord Nicholls pointed out in *Shamoon* …. it must surely not be inappropriate for a Tribunal in such cases to go straight to the second stage. … The focus of the Tribunal's analysis must at all times be the question of whether or not they can properly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race."'

169. In *Chief Constable of Kent Constabulary v Bowler EAT 0214/16* Mrs Justice Simler (then President of the EAT) stated that tribunals,

> "…must avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal's own findings.'

170. In this case the Tribunal was able to make positive findings on the evidence one way or the other. It was therefore not necessary to work mechanistically through the provisions of the law on the burden of proof. To put it another way, the Tribunal concentrated on the reason why the Respondent had acted as it had.

171. In respect of victimization, the Tribunal directed itself in line with *Nagarajan v London Regional Transport 1999 ICR 877, HL*, *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA*, and *Villalba v Merrill Lynch and Co Inc and ors 2007 ICR 469, EAT*. that the protected act does not need to be the only reason the Respondent acted

as it did - it has to be only a significant influence in the sense of a material and not trivial influence. Also see the Equality and Human Rights Commission's Code of Practice on Employment (2011) para 9.10.

172. The Respondent's original position was that all six putative protected acts fell within s27(2) EqA 2010, but it resiled from this in respect of the fifth protected act, being the 31 January 2021 meeting between Mr Mazda and the Claimant.

173. The Tribunal accepted that this meeting did amount to a protected act under s27(2)(c) and (d) because the tribunal had found that the Claimant raised race discrimination in this meeting.

174. The Tribunal grouped the allegations as follows.

175. 2.1.1 to 2.1.4 and 3 .1.1 to 3.1.4 in the List of Issues -the period between May 2016 and September 2022

> 2.1.1 In April 2021, the Respondent did not re-evaluate the Claimant's grade and the Claimant remained a grade C.
> 2.1.2 Between May 2016 and September 2022, the Respondent kept the Claimant on a series of fixed term contracts instead of giving him permanent employment status.
> 2.1.3 Between May 2016 to September 2022, the Respondent changed the role of the Claimant from (i) Ethiopian Curator to Metadata Quality Assurance Cataloguer Ethiopia to (ii) Ethiopic Collections Engagement Support Officer then finally to (iii) Curator for the Ethiopic and Ethiopian collection to keep the Claimant on a fixed term contract even though the role did not change.
> 2.1.4 In October 2019, the Respondent advertised the role of Ethiopia Collections Engagement Support Officer instead of allocating the role to the Claimant.

176. The tribunal considered issues 2.1.2 and 2.1.3 together as they dealt with the same or very similar facts.

177. The respondent investigated his employment status in February 2020 and applied a somewhat technical analysis with respect to the fixed term workers regulations but not did not state that he was permanent. The Claimant challenged this mentioning the disproportionate effect of fixed term contracts on ethnic minority employees. It was not until 26 May 2021 that the respondent made the assertion that the Claimant was now a permanent employee. Accordingly, the Claimant was not a permanent employer from May 2016 to May 2021.

178. The Tribunal accepted that the Claimant being employed in fixed term roles did result in a genuine detriment to him because for instance he missed out on opportunities for leadership programmes and involvement in research fellowships.

179. The Tribunal had difficulty establishing the motivation behind the funding decision for the Ethiopia curator position from May 2016 to June 2017. The decision was to use GIA funding but make it time limited. There was no sufficiently reliable evidence from the Respondent as to why. The Tribunal had found a reference in the voluminous investigations that the then Head of Middle East was unhappy that his manager had parachuted the claimant's role into his team. There was some evidence of antagonism between the two managers and references from least two people to the Head of Middle East making sexist or sexual comments against his manager. Further, after his manager left, the funding for the claimant's position was unclear.

180. However, the claimant had limited firsthand knowledge of this. The others involved were no longer with the respondent. The events occurred over eight years ago. The tribunal did not draw an adverse inference against the Respondent for the failure to explain the decision because the decision was made in 2016 and 2017. Essentially the Tribunal was unable to come to any evidence-based conclusions as to why the Ethiopian curator post was funded on a time limited basis.

181. The Claimant then moved to the Heritage Made Digital role. The Tribunal accepted the reason this post was time limited was that the HMD project was time limited. The effect was that the respondent took steps to keep the Claimant on as a Respondent employee. Until October 2022 the Respondent kept the claimant on as an employee. It did not simply let the Claimant come to the end of a fixed term contract and be exited from the Ethiopian department. There were a number of opportunities to do so. When the HMD role came to an end he moved to another role, community engagement.

182. The respondent's approach to the community engagement role had a number of unexplained aspects. Firstly, it did not fit with the respondent's approach to the Ethiopian collection. In October 2019 the Respondent was still keeping over 80% of its Ethiopian collection under extremely strict restrictions as to access. The claimant himself was not authorized to access the collection unless he was physically supervised by the Head of Middle East. It was hard to understand how the claimant could carry out truly effective community engagement in such circumstances. Although by November 2020 (after the community engagement role had come to an end) the respondent had started to think about the access issue, it was unclear what had come of this.

183. Further, the engagement role was advertised when Ms Mengoni said that the Claimant had been doing .3 FTE public engagement at the time, and she could not remember why the Respondent had not slotted the claimant into the role.

184. The Tribunal noted that Ms Mengoni put effort into fund raising for the Ethiopian curator in what was not an easy climate. Further, Ms Mengoni in contrast to the approach in November 2019, took the decision to keep the Claimant on during the first Covid lock down after March 2020 and in effect she patched together funding to tide the Claimant over until the new curatorial post started in October 2020.

185. The tribunal had found that, whilst these roles overlapped to some extent, there were also real differences. The tribunal was satisfied that there were sufficient differences so as the three roles did not amount to a role that did not change. The claimant himself accepted that

there were some differences in his duties. Further, the funding came from different sources and would on the balance of probabilities involve different priorities and focus.

186. In this act of discrimination, the claimant also to some extent relied on comparators. As the claimant was unrepresented, the tribunal viewed the comparators as potential actual comparators but also as potential *Shamoon* evidential comparators. In his final amended particulars of claim he listed five comparators, although none were referenced in the list of issues. The comparators were

a. Ms Marion De Haan, the Grade B, Africa curator, who was later appointed to the lead Africa curator role,
b. Mr Michael Erdman who was appointed to the role of Head of Middle Eastern and Central Asia
c. Ms Arani Ilankuberan, Head of South Asian Collections
d. Mr Daniel Lowe, curator of Arabic collections and
e. Cam Sharp-Jones, Curator, Visual Arts Collections

187. There was also reference to a Ms Harrison, curator in the Chinese collection.

188. In respect of fixed term versus indefinite contracts, the difficulty for the tribunal was that it had little information. Ms De Haan was on a fixed term contract until October 2022 when she was appointed the lead Africa curator, and therefore the tribunal understood on an open-ended contract. The tribunal considered Ms De Haan's permanent appointment below.

189. The Claimant in his witness statement which was not challenged stated that Mr Erdman had been on a permanent contract since 2015. However, the tribunal did not accept that Mr Erdman was an appropriate comparator because he was doing a different role in a different department, he was curator of Turkish and Turkic. It was not possible to accept that his material circumstances were the same. The tribunal had insufficient knowledge of the size, or needs or funding of the Turkish role.

190. The tribunal had insufficient material evidence in respect of Ms Arani Illankuberan, including as to her contractual status and there was no written evidence as to her ethnic origin. The tribunal could find no reference to her in the claimant's witness statement. The tribunal had insufficient evidence to draw any conclusions as to any comparison.

191. Mr Lowe was white. There was no reference to Mr Lowe in the Claimant's witness statement - save that he was one of the complainants in the October 2018 meeting. The Tribunal had no evidence as to his employment history or status. It was accordingly not possible for the tribunal to ascertain whether or not he would be an appropriate comparator. The same applied, with even more force to Ms Harrison. There was no reference whatsoever to her in the witness statements.

192. The Tribunal reminded itself that the claimant was unrepresented. It considered whether the claimant's failure to provide evidence in his witness statement or otherwise to the comparators might be due to his being overwhelmed or running out of time to prepare. The case was complex. However, the Tribunal noted that the parties were ordered in May 2024 to

exchange witness statements in late January 2025, four weeks prior to the hearing. There was a pattern at least of some late disclosures by the Respondent. However, the Claimant had provided the tribunal at the hearing with a 16-page document about disclosure and witness statements. This was evidence of the claimant having at least some time before the start of the hearing to devote to the case. Accordingly, the Tribunal could not make a finding that the Claimant was overwhelmed by the complex proceedings and had run out of time to complete his witness statement. But even if the tribunal was satisfied that this was the case and sought to level the playing field on this basis, there was still a gap where the necessary evidence of comparators should have been.

193. The Tribunal was faced with the fact that there was insufficient evidence that it would need to embark on an analysis of the appropriateness of otherwise of the comparators.

194. The only data available as to the racial breakdown of the respondent's staff was the Fryer investigation in February 2020 which found a clear disparity in the use of fixed term contracts in the AAC. Ethnic minority employees were notably more likely to be employed on fixed term contracts than white employees. The investigation accepted the respondent's explanation – that the department covered such a wide range of languages with relatively small collections in most languages. This made it impractical to engage a fixed term curator for each language or even group of languages.

195. The tribunal lacked the specialist knowledge as to the number of languages and documents in the AAC collection. It accepted that there would be a need for numerous languages in a department covering two large and diverse continents (or significant parts of continents). It was not in a position to doubt the respondent's evidence as to what might be termed the language:document ratio in the AAC as opposed to other departments. The respondent's explanation was logical and based in its knowledge of its own collections. Accordingly, the tribunal was unable to draw an adverse inference from the Fryer statistics.

196. Looking holistically at the Respondent's treatment of the Claimant, the pattern was mixed. The Respondent did expend effort at times to keep the Claimant employed and find work related to the collection. It would have been open to the Respondent when funding came to an end on a number of occasions to put him into the redundancy process. This did not happen until October 2022. There is a picture of the Respondent finding funding from a variety of sources to maintain a role relating to the Ethiopian collection.

197. There were, however, factors going the other way. The respondent did not prioritise the Ethiopian collection by appointing a permanent curator as it had in other areas, so funding was patchwork and confusing. The tribunal's conclusion was that the respondent did not engage in a long-term strategic way with the funding of the Ethiopian collection and the claimant was the victim of this. The respondent's conduct was consistent with it intermittently concentrating on the collection and trying to do something to support it and then there were periods of failing to engage. There was not a long-term plan or commitment to the funding of the collection.

198. There were serious shortcomings in the Respondent's treatment of the claimant individually. It did not slot him into the community engagement role until challenged by the union. It failed to make Claimant permanent when it could have done so. When he raised a

grievance, it still did not make him permanent on the illogical basis that he had not asked. The Respondent sent him an incorrect letter about his funding status and then corrected itself with no explanation. Further, when his two-year curatorial role came to an end in October 2022 it still failed to treat him as permanent and had to be challenged by the union to do so. The respondent delayed at least one of his grievances very significantly with little if any justification. There was a pattern over a number of years of undervaluing and overlooking the claimant.
199. These acts and omissions were made over a number of years by different people. Ms Mengoni and Mr Mazda were responsible for some decisions. Mr Baker, the former Head of Middle East, and his manager were probably responsible for some of the early funding decisions. We do not for instance know who in the Respondent decided that the Claimant was permanent in May 2021. It could have been the letter writer, but we do not know. Again, it is unclear who decided that the claimant had not asked to be made permanent when he raised a grievance about this. There was no indication that this was the same person. It appears very possible it was Ms Barlow who was responsible for failing to treat the claimant as permanent in October 2022, but, again, the tribunal does not know. The grievance failures can be attributed to the individual grievance officers, but it appears unlikely that they were only ones responsible.

200. In the view of the Tribunal what was behind the Claimant's treatment over this long period was the fact that the Respondent was choosing or believed itself required to prioritise other collections over the Ethiopian collection on Ms Mengoni's stated grounds that other collections had greater unmet needs and the respondent lacked resources to serve all its extensive collections as it would wish. The Ethiopian collection had something of the sense of an unfavoured child. The impression was that the respondent remembered the collection (and hence the clamant) on an intermittent basis and did something about it. It then withdrew its gaze again. The tribunal reminded itself that it could not know or judge if this applied to other respondent collections.

201. At least historically, there were what appeared to be inexplicable attitudes to the Ethiopian collection, in that access to scholars was restricted on political grounds (with a disproportionate adverse impact on black scholars) and the claimant being required to be overseen physically when accessing it. The respondent at late as least as 2020 did not seem to engage with the issues this raised.

202. However, the claimant did not rely on this as an act of discrimination and stated that his own access issues were resolved. It was predominantly the tribunal rather than the parties that drew out this issue. Whilst it was at the front of the claimant's witness statement, the parties engaged relatively little with this point compared to other parts of the evidence until the tribunal addressed it. The tribunal had to draw an inference that it was not the most important issue for the claimant and the most likely reason was that his own access had been resolved. The tribunal was of the view that it could not draw significant adverse inferences against the respondent in these circumstances.

203. The tribunal concluded that it was the respondent's attitude to the Ethiopian collection which was the over-arching motivation for its treatment of the claimant. The collection was simply not significant enough in the respondent's mind compared to the other collections. The tribunal has no grounds on which to challenge how the respondent prioritised funding its

collections. It has numerous calls on its limited funds. The tribunal could not know whether there were similar issues with other collections, although evidence indicated that at least some other collections enjoyed more stable and focused funding arrangements. The collection whilst globally significant was small by comparison with other collections.

204. Whatever the rights and wrongs, the fact was that the collection itself was not prioritized, and that affected the treatment of the claimant. There was not evidence to indicate that someone of a different ethnic origin to the Claimant would have been treated any differently in the same position. His treatment was tied to the treatment of the collection. Accordingly, the claimant had not established a prima facie case, and the burden did not shift under s136 Equality Act on the direct discrimination claim.

205. The Tribunal went on to consider victimisation under 3.1.2 and 3.1.3. All six acts relied upon amounted to protected acts under s27(2).

206. The Tribunal sought to identify any pattern between the protected acts and the detriments relied upon by the claimant. The first instance of the Claimant being employed on a series of short-term fixed term contracts, rather than a permanent role, occurred before the first protected act. The end of the first curatorial role, i.e. the first change, was in June 2017. The Claimant was established in a fixed term two-year role – community engagement – well before the first protected act in October 2018.

207. After protected act one - the October 2018 meeting with Ms Joly and Mr Spence – and protected act two – the claimant's first grievance on 20 September 2019 - the claimant moved onto a third short term contract, the curatorial role in October 2020 for about six months. The Tribunal was satisfied that the movement to a curatorial tole was an improvement for the Claimant but that the fact that this was not a permanent role was a detriment.

208. Tribunal had accepted Ms Mengoni's evidence that raising the funds for the curatorial role took time and accepted that her task was not straight forward. The Tribunal could find no indication of Ms Mengoni - or anyone else - stopping or hesitating in the fund raising, or preventing the Claimant being slotted into the role in October 2020. This was in circumstances where he raised a grievance which included Ms Mengoni the year before – the second protected act in September 2019 -, and she was implicated in the first protected act - the meeting in October 2018 - in that it related to her department. Ms Mengoni had extended funding for the claimant's community engagement role twice until October 2020.

209. Whilst the fact that Ms Mengoni and the respondent did not seek to extend the fund raising for the Ethiopian curatorial role beyond 2022 did not form part of issue 3.1.2 the tribunal saw it as interconnected and therefore relevant to issue 3.1.2. The claimant's case was that this decision formed part of a pattern with the earlier short-term contracts.

210. The picture, as under direct discrimination was mixed. However, the tribunal could see no pattern of Ms Mengoni or others treating the claimant less well because of the protected acts. One occasion when Ms Mengoni acted to keep the claimant in employment in the Ethiopian collection – the two extensions of his contract to take him to October 2020 so he could be slotted into the curator role, happened whilst the investigation of the claimant's

grievance, protected act 2, was ongoing. Another proactive step – the extension to the curatorial role in October 2021 - occurred after protected acts four and five, in November 2020 and January 2021.

211. Accordingly, as the claimant had not established sufficient facts from which in the absence of any other explanation pointed to a breach of the statute, the burden of proof did not shift to the respondent in respect of victimisation.

212. The Tribunal considered issue 2.1.4, the advert for the community engagement officer in 2019. The Tribunal was unable to draw adverse inferences from the Respondent's lack of explanation because of the time that had passed, over five years. The Claimant raised the matter at the time and the Respondent promptly withdrew the advert and slotted him in.

213. The tribunal had found that community engagement officer a somewhat confusing role, considering the restrictions on access. However, the claimant did not appear to consider this a specific issue. The tribunal considered the context. Ms Mengoni, presumably with departmental support then started fund raising for an Ethiopian curator. She later extended the claimant's contract from March 2020 to June and then Autumn, and then he was slotted into the new curator role. This was not behaviour consistent with an animus against keeping the claimant in employment. Further, the tribunal had found that it was the collection, rather than the claimant, that was not prioritised.

214. In these circumstances, the claimant had not established the facts necessary to shift the burden of proof to the respondent in respect of direct discrimination.

215. The tribunal went onto consider victimisation 3.1.4. It did not make sense to the tribunal that if either Ms Mengoni or others at the respondent were biased against the claimant because of the two protected acts, so that the claimant was not slotted into the community engagement role, she presumably with support from others at the respondent, should then proactively fundraise for a role which the claimant was likely to fill and extend the claimant's employment twice in order that he might be slotted in. The tribunal was bolstered in this by the fact that the claimant had committed the third protected act – signing the Emergency letter – in June 2020, during the fund raising and before the claimant was appointed.

216. The Tribunal could not find that there was sufficient evidence to shift the burden as to victimisation when there was evidence overall of the Respondent seeking to keep the Claimant employed.

217. The Tribunal considered the next chronological act at 2 and 3.1.1 - in April 2021 the Respondent did not re-evaluate the Claimant's grade and the Claimant remained at grade C.

218. The Claimant had asked his line manager, Ms Wallace, Head of Africa for support and but she would not support his application. The Tribunal accepted that it in general it would be much less difficult to obtain a regrade with a line manager's support.

219. Part of the claimant's case for re-grading was that he was performing duties above grade C and more commensurate with grade B. The Tribunal accepted the Respondent's case that

regrading was based on the duties of the post rather than the fact that the postholder was going above and beyond those duties. There was an obvious risk that permitting a postholder to go above and beyond their duties and thereby obtain a re-grade would permit staff to essentially promote themselves. There was a financial and operation downside for the Respondent.

220. The Tribunal accepted that in general terms, organizations tend to have an inbuilt resistance to upgrading existing posts and thereby increasing their staff costs. The Tribunal accepted that this was a money pressed environment. Further, the timing of the request was not ideal. The Africa department was already expanding its costs by creating a new role – the Africa B post.

221. The Tribunal had difficulty in ascertaining evidence as to whether the roles were comparable. Whilst there was bundle evidence as to how the Respondent went about grading roles, there was no direct evidence of the Respondent or the Claimant applying this methodology to either the Africa B or the Ethiopia C roles. The tribunal could not draw an adverse inference against the Respondent in this regard as Ms Wallace the lead Africa curator, was no longer employed and because this allegation was four years old by the time of the hearing.

222. In the witness statement, the Claimant asserted that the Ethiopia curator role was comparable to the Grade B Africa curator position. There was no comparison of the duties. The Tribunal did not have sight of either job description. Further, there were difficulties with the Claimant's case on the grading of his role. In his appeal against the non-renewal of the Ethiopia Grade C role, at page 500, he stated the role was comparable to both grades B and A. But the Tribunal had evidence that the Ethiopia curator role was in fact not comparable to Grade A because the claimant accepted that he did not have staff management experience which was a prerequisite of a Grade A role.

223. The Tribunal did not find that there was sufficient evidence to shift the burden of proof to the respondent. The Claimant's primary reason for the regrading was not that his job description was inaccurate, but that he was carrying out tasks beyond his job description.

224. In respect of victimisation, the second protected act, the grievance of 27 September 2019, included wide ranging complaints, including against Ms Wallace. The grievance outcome had found that the behaviour of some managers (Mr Baker but not Ms Wallace was named) in the AAC had fallen short of the ideal and was not wholly in line with respondent values, although there was no race discrimination. By the time of the re-grading discussion, the claimant had committed the third protected act, signing the Emergency letter and the fourth protected act - his appeal against his grievance outcome on 18 November 2020. This appeal referred to Ms Wallace. In December 2020 the appeal upheld the findings against Mr Baker but made no reference to Ms Wallace. It required the respondent to implement the Appleyard findings, recommended a relationship-building program in the department and that development of a team culture should be a priority.

225. Accordingly, as to timeline, Ms Wallace would have been aware in April 2021 that although she had not been criticised in the outcomes, the claimant was unhappy with her

management and that there were ongoing efforts by the respondent from December 2020 to improve matters.

226. As to causation, the tribunal did not hear from Ms Wallace and could not draw adverse inferences from this. The tribunal concluded that it was very unlikely that Ms Wallace welcomed the claimant's complaints. It was impossible for the tribunal to know how she reacted to the rejection of the complaints against her or to the respondent's team-building efforts in early 2021. She could plausibly have found the latter troublesome or helpful.

227. There was therefore reason for Ms Wallace to be unhappy with the claimant. However, the Tribunal had found free-standing reasons why the Respondent would be reluctant to regrade in any event. In the circumstances, the tribunal found that there were ample reasons why the re-grading might have been rejected, there was a lack of evidence as to Ms Wallace's motivation, and therefore the burden did not shift.

228. The Tribunal then considered the set of allegations which revolved around the Claimant's role as a curator coming to an end in October 2022 at 2.1 (direct discrimination) and 3.1 (victimisation): -

> 2.1.5 On 17 August 2022, the Respondent was informed his application for the role of Curator for Africa Collections in the Department of Asia and Africa was unsuccessful.
>
> 2.1.6 In or around August 2022 the Respondent's Head of Department of Asia and Africa delayed putting the Claimant on re-deployment period until after the Claimant was rejected for the role of Curator for Africa Collections so that the Claimant would not be given preferential consideration for that role.
>
> 2.1.7 On 13 September 2022, the Respondent terminated the Claimant's role as Curator for the Ethiopic and Ethiopian Collection.
>
> 2.1.8 In September/October 2022, the Respondent treated the Claimant like a fixed term employee instead of a permanent employee.
>
> 2.1.9 From August to October 2022 the Respondent did not follow its Restructure, Redeployment and Redundancy Policy, engage in meaningful consultation, explore all options to avoid the termination of the Claimant's curator role or make reasonable efforts to find suitable alternative employment.
>
> 2.1.10 On 21 October 2022, the Respondent did not acknowledge the claimant in writing the exhibition book, Alexander the Great: The Making of a Myth.

229. On 17 August 2022 the Respondent informed the Claimant that he had not been successful in his lead Africa curator application. The tribunal considered if this was an act of direct race discrimination at 2.1.5.

230. The Tribunal accepted that Ms De Haan was an appropriate comparator because she was the successful applicant. The Tribunal faced the obvious difficulties and sensitivity in making findings about the ethnic origins or identity of a person who was not before them and who did not give evidence. The respondent in oral evidence told the tribunal that she was East African or Tanzanian, but that did not tell the Tribunal what her ethnic origin might be. The tribunal found on the balance of probabilities that she did not identify as black. If she had, it would have been surprising if the respondent did not rely on this fact.

231. The Tribunal accepted the Respondent's submission that it had a robust and professional application and recruitment process. There was nothing exceptional about the way that the recruitment for the lead Africa position was dealt with. The respondent had an accurate job description, an open advert, and a panel consisting of relevant internal staff together with a suitably qualified external specialist. The panel carried out shortlisting separately and then came together to make its final shortlisting decision. The Claimant passed the shortlisting stage. The Respondent asked the same questions of all the candidates. The Claimant received a mixture of scores - some good and some not so good. The Tribunal had been unable to identify any obvious under-marking or inappropriate marking. The interviewers produced grades which were broadly consistent, without being identical.

232. The Claimant, having not given evidence in his witness statement about the external interviewer, sought to suggest in cross examination that they had taken no effective part in the scoring. The tribunal accepted the Respondent's account to the contrary. The specialist having full voting rights was well evidenced and in any event was a very common practice.

233. Further, notwithstanding the mechanics of the selection process, the tribunal did not find the selection of Ms de Haan obviously concerning or surprising. She worked at a higher curatorial grade in the Africa curator role than the Claimant did in the Ethiopian curator role. The Claimant's role whilst it related to the majority of the Africa manuscript holdings, only related to one country whereas Ms De Haan's role related to the rest of the African continent. Accordingly, whilst he might be stronger in respect of the collection, she might be seen as stronger in respect of the majority of the Lead Africa role.

234. In those circumstances the Claimant has not established a prima facie case, and the burden did not shift.

235. In respect of victimisation at 3.1.5, by the time of this recruitment, there had been a fifth protected act, the meeting with Mr Mazda in April 2021. The tribunal found on the balance of probabilities that Mr Mazda had at least some awareness of the claimant's employment history and that he had brought grievances concerning race discrimination. However, the tribunal found that his knowledge would not be specific. Ms Mengoni had her knowledge of the previous four protected acts. The tribunal on the balance of probabilities found that Mr Mazda would have provided her with at least a broad-brush indication of the claimant's concerns in the meeting in April 2021. The tribunal accepted that the external panel member was very unlikely to know about any protected act.

236. The Respondent had carried out an unremarkable recruitment process and the evidence indicated that a qualified candidate had been successful. Whilst two panel members knew of the protected acts, and one had been the subject of considerable criticism by the claimant, there was no indication that the three sets of scores were noticeably inconsistent. The claimant's suggestion that the scoring from the external expert should have been or was disregarded indicated that he realised the implications of this as to motivation.

237. The evidence before the tribunal was that two candidates within the Africa department applied for the lead role and the one at the higher grade was successful where the other was not. The scores by the panel member who was unaware of the protected acts were within range of those who were aware of the acts. The Tribunal could not find that these facts shifted the burden in respect of victimisation.

238. The tribunal considered 2/3.1.6 and 7 together: that in or around August 2022, the Respondent's Head of Department of Africa and Asia Ms Mengoni delayed putting the Claimant on redeployment until after the Claimant was rejected for the Lead Africa Curator role so he would not be given preferential consideration for the role.

239. The Tribunal was satisfied that the Head of AAC had no such power to do this. The Claimant automatically entered redeployment as a result of chronology. The respondent's policy determined when a member of staff on a fixed term contract entered the redeployment period and gained certain rights in internal recruitments.

240. However, as the Claimant was unrepresented and there was no prejudice to the Respondent, the Tribunal applied the overriding objective that it must avoid formality where practicable, and interpreted this allegation as follows: - that the Respondent engineered the processes so that the Claimant was rejected for the Lead Africa role before he entered redeployment. The respondent had sought to avoid his having preferential consideration for the Lead Africa role.

241. The Tribunal therefore considered whether in some way Ms Mengoni had failed to delay the recruitment or fixed the timing so as to avoid the Claimant being in redeployment during the recruitment. There was nothing at first sight surprising or suspicious about the timeline. The previous postholder had left in April 2022 leaving the post vacant and the advert went out in July 2022. The respondent would likely have had warning before April, in that the post holder would have given notice, or retired. There was, if anything, perhaps an unexplained delay as to the advert not going out till July. However, if the post had been advertised earlier, it would have been likely to close earlier, and therefore the claimant would have been less likely to be in redeployment during the recruitment. There would need to be an otherwise unexplained speeding up of the recruitment to fit with the claimant's timeline and this, the tribunal did not identify.

242. The claimant in his witness statement stated that in or around March 2023 an existing Project Curator Mr Majumdar received preferential consideration for a curator role thanks to Ms Mengoni. The tribunal had accepted the respondent's oral evidence that the Urdu position was advertised externally and internally. A panel recruitment involving interviews with a number of candidates was carried out. No one was slotted in. In the circumstances, Ms

Majumdar was not an actual comparator, and neither was she an evidential comparator. Her circumstances were very different from those of the claimant.

243. Further and more importantly, the Tribunal was not persuaded that the Claimant would have enjoyed any benefit had he been in the redeployment process at the material time. In the view of the Tribunal, it was unlikely that the Claimant would either have been slotted in or accepted as meeting the essential criteria. The roles of Ethiopian curator and Lead Africa curator was not comparable. There was a two grade difference. It was telling that the Claimant's scores in the interview questions relating to more managerial functions were in general lower than his scores in what be described as technical expertise. This indicated that he had not gained the requisite managerial experience in his existing role. The Tribunal was thus satisfied that he would not have met the essential criteria.

244. Further, the view of the Tribunal, the Respondent might have been concerned at the reaction of the Africa B curator if it had slotted the Claimant into the Head of Africa role. The other curator might legitimately have complained that she had been prevented from applying for a role for which she was, on the face of it, at least as well qualified as the Claimant and was employed at a higher grade.

245. Accordingly, in the circumstances the Tribunal did not find that the Claimant had established a prima facie case of race discrimination.

246. As to victimisation under 3.1.6, at the time the recruitment was in hand, the claimant had committed five protected acts as set out above. Ms Mengoni was well aware of most of them. She knew that the claimant had continued to raise at least some of these matters with Mr Mazda as recently as January 2022, a few months before the lead role became vacant. Again, there were good reasons to think that Ms Mengoni would be unhappy at the claimant's repeated criticisms of and allegations against her. There was, accordingly, a potential motivation for her wishing to ensure the claimant was exited.

247. However, the tribunal found, for the same reasons as under the direct discrimination claim, that there was no evidence that Ms Mengoni had manipulated the lead Africa recruitment in order to avoid the claimant's having preferential treatment. The timeline did not fit. The tribunal was satisfied that, even if the claimant had been in redeployment at the material time, he was not entitled to preferential treatment. The evidence did not indicate that the dates had been manipulated or that there was any reason to manipulate the dates. Accordingly, the burden of proof did not shift to the respondent.

248. Act 2.1.17 was on 13 September 2022 the respondent terminated the role of curator for the Ethiopian collection. The Tribunal made a finding that the reason that this role came to an end was that external funding had come to an end. The reason for this was that the Tribunal accepted that the Respondent's documents reflected the true picture. The Tribunal had accepted that the Respondent – unfairly and unfortunately - gave the Claimant incorrect information at the beginning of this role. However, the respondent documents showed that this was always an externally funded and time limited role, not a grant in aid funded role.

249. The Tribunal went on to consider the Claimant's argument that even if the funding had run out, the Respondent should have found alternative funding. Firstly, the claimant argued that the respondent should have used funding from another source to continue the role. The Claimant was not arguing that the funding made available by the newly vacant Africa curator grade B position should have been used to keep the Ethiopian curator role alive. His evidence was essentially a vague suggestion that funding was available because of a government announcement of more funding for the cultural sector. The Tribunal did not see any evidence to suggest that this had any impact on the Respondent. The Tribunal had Ms Mengoni's internal explanation as seen in the respondent's contemporaneous documents that, while the Ethiopian collection was important, it was not justifiable to give it priority over other collections.

250. Even if the tribunal accepted that the respondent could have done more to fund raise externally for the curator position, this did not indicate that this was related to race discrimination against the claimant. There was insufficient evidence to make such a finding. The tribunal was not in a position to second guess the respondent's funding strategies. But if there was a failing by the respondent, the evidence indicated - as set out above - that this was because of what respondent's counsel referred to (but did not accept) as the "Cinderella" position of the Ethiopian collection. It was a small collection by respondent standards and the respondent had other larger collections which had greater unmet needs. As found by the tribunal, the fate of the claimant was inextricably linked to the fate of the collection and not to the race of the person occupying a curatorial position as to the collection.

251. The tribunal considered the comparators relied on by the claimant. In respect of Mr Erdman, we were told that prior to his applying for the Asia role, he was employed on a permanent contract. There was no suggestion that his role had come to an end or of any redundancy situation. Therefore, he was not an appropriate comparator.

252. There was no material evidence in respect of Ms Arani Ilankuberan, Head of South Asian Collections, Mr Daniel Lowe curator of Arabic collections, and Ms/r Sharp Jones curator visual arts collections. The claimant did not address these matters in his witness statement. The Tribunal was again in the position of being without any reliable evidence to establish whether or not these persons were appropriate comparators, either by virtue of being in the same circumstances or as evidential comparators. It appeared agreed that Mr Lowe and Ms Illankuberan were white. The tribunal heard nothing about Mr/s Sharp Jones. Beyond this, there was no information. The tribunal was not, for instance, told whether or not any post was coming to an end.

253. Accordingly, the burden did not shift because the Claimant had not established a prima facia case on direct discrimination.

254. As to the victimisation claim, the same analysis applied as to the respondent's knowledge and motivation as had applied under act 3.1.6 – the manipulation of the recruitment. It could be argued that there could be a potential motivation to exit the claimant in October 2022. However, there was a more plausible explanation for the claimant's termination, in that the fixed term funding had expired and the Respondent did not prioritise the Ethiopian collection over other collections. Accordingly, the burden did not shift.

255. Allegation 2/3.1.8 was that in December 2022 the Respondent treated the Claimant like a fixed term employee instead of a permanent employee.

256. The Tribunal found that this had occurred and amounted to another example of the Respondent failing to treat the Claimant as it should. This was a significant HR failure. The respondent did not explain in terms how this arose. Ms Barlow's statement implied that she had a significant role in the ending of the claimant's fixed term contract. At the very least, she failed to spot the error. The respondent did not run a case that it commonly made such errors in its employees' status and redundancy process. The first refence to her in the claimant's statement was in respect of the redundancy. Ms Barlow's statement made no reference to her involvement with the claimant before this time. The tribunal could not therefore attribute the respondent's previous HR's failings in respect of the claimant to her, save to the extent that she was a senior employee with overall responsibility during the relevant time period. There was a simple lack of evidence indicating that race might be a factor in Ms Barlow or HR's error. The claimant's employment history was long and complex, and the tribunal accepted that errors could easily have been made due to confusion.

257. A possible contributory factor was that there was no one "looking out for" the Claimant at the time. It was unclear who was the lead Africa curator – and hence the claimant's immediate head of department - at the time. It was unclear if Ms De Haan had started in post. The Tribunal was satisfied that either there was no lead Africa curator or Ms De Haan had only started in post recently. Essentially there was no one fighting the Claimant's corner at this point. Ms Mengoni was also responsible, but she had a large department to manage. When the Claimant raised the point, Mr Spence fixed the respondent's error.

258. Accordingly, in circumstances where there was no indication that the most likely (but not certain) decision maker was motivated in any way by race and there was an alternative reason for the treatment, the Tribunal did not accept the Claimant had made a prima facie case that this related to race.

259. In respect of victimisation, 3.1.8, there was no link between Ms Barlow and HR and any of the five protected acts, save that HR would have had to manage the grievances and appeals. The tribunal accepted that it was theoretically possible that Ms Barlow or others in HR were ill disposed to the claimant as he had taken up their time by reason of the grievances. However, there was no evidence that this was the case and still less that this had somehow fed into the error about his employment status, which the tribunal had found, was confusing.

260. Allegation 2/3.1.9 was that from August to October 2022 the Respondent did not follow its Restructure, Redeployment and Redundancy Policy, engage in meaningful consultation, explore all options to avoid the termination of the Claimant's curator role or make reasonable efforts to find suitable alternative employment.

261. The Tribunal found that this allegation was not made out because the Respondent did follow its RRR. The union was involved. Consideration was given as set out in the RRR as to whether there might be alternative savings by cutting down on overtime or the use of agency were considered. Ms Barlow wrote to recruiting managers trying to see if an alternative post

could be found for the Claimant. The Tribunal could not see any other way in which the Respondent had failed to follow its policy and accordingly this act had not occurred. The only options identified by the claimant as to alternative employment are dealt with separately below.

262. Accordingly, the burden as to direct discrimination and victimisation did not shift to the respondent.

263. The next act - 2.1.10 - was that on 21 October 2022 the Respondent did not acknowledge the Claimant in writing the exhibition book Alexander the Great. The Tribunal found there was insufficient evidence on this matter. The Tribunal did not know what text the Claimant had provided, and it did not know what text his comparator Ms Tahran (who was white Jewish) had provided. It did not know what if any changes had been made to either in the final draft, and therefore whether the claimant was treated differently from the comparator. It could not therefore find that the comparator's circumstances were materially the same or different to those of the claimant.

264. Further, there was insufficient evidence to establish motivation as to why the claimant's text was treated as it was. The tribunal did take into account that there was no material evidence that any of the other alleged discriminators were involved in this treatment. Accordingly, for this act to be made out, there would have to be at least one, or perhaps more than one further person racially motivated (consciously or unconsciously) against the claimant. In his witness statement he did not say who had made the relevant decisions.

265. Documents in the bundle established there were three curators. The tribunal saw email exchanges between one of the curators, Mr Toth curator of ancient and medieval manuscripts, and the claimant relating to the relevant text for the exhibition. The emails were respectful and engaged. There were further emails between the claimant and another curator Ms Sims Williams in August 2021. Ms Sims Williams did correct the claimant on unrelated matters but also expressed excitement in the claimant's contribution.

266. Accordingly, the tribunal found that the claimant had not established sufficient facts to shift the burden of proof that the treatment of the claimant was in any way motivated by race.

267. This act was not relied on as an act of victimisation and therefore 3.1.10 was not considered.

268. The final three allegations 2/3.1.11 to 13 related to the Claimant's applications for roles after his role as Ethiopian curator came to an end in October 2022: -

> 2.1.11 On 14 November 2022 the Respondent informed the Claimant that his application for the role of Head of Middle Eastern and Central Asian Collection was unsuccessful.
>
> 2.1.12 On 3 April 2023 the Respondent confirmed that the Claimant's application for the role of Lead Curator Black Studies was unsuccessful.

2.1.13 On 4 December 2023 the Respondent confirmed that the Claimant's application for the role of Lead Curator Black Studies was unsuccessful.

269. As to 2.1.11, the recruitment for the Head of Middle East and Central Asian collection, the tribunal found the reason that the claimant was not appointed was that he did not meet the essential criteria. He did not have the necessary language. The Claimant was a skilled and impressive linguist and therefore had a considerably higher than average ability to learn a new language, but he had according to his own witness statement only basic reading Arabic and Hebrew. The comparator Mr Erdman, the person appointed was in post as Turkish and Turkic curator and there was no suggestion that he did not have the necessary language for either role. He was not in materially the same circumstances as the claimant.

270. The tribunal was uncertain if the claimant was alleging that the Respondent had deliberately manipulated the move of the Ethiopian collection from the Middle East to Africa. Thereby removing the Claimant's languages and experience from the Middle Eastern department so that he could not fulfil an essential criterion for the Middle Eastern and Central Asian collection role. For the avoidance, of doubt, the Tribunal had accepted Ms Mengoni's account as to the reason. There was no evidence that this was done with any motivation to stop the Claimant later on taking on a role in the Middle Eastern department.

271. Accordingly, there was no prima facie case, and the burden did not shift.

272. As to victimisation under 3.1.11, and there was a good explanation why the Claimant did not obtain the role, other than victimisation. He was not qualified. The burden did not shift.

273. On 4 December 2023 the Respondent confirmed the Claimant's application for the role of lead curator black studies was unsuccessful, allegation 2.1.12. Again, the Tribunal took into account the robust and professional nature of the Respondent's recruitment process. As with the Africa B role, the tribunal accepted that there was an external panel member with relevant expertise. (The tribunal had not accepted the claimant's evidence in his witness statement, from which he resiled at hearing, as to the people involved in the recruitment.)

274. Further, there was no evidence pointing to the other panel member, Ms Foss knowing of or having any connection to the six protected acts. By this time, the tribunal was satisfied that Mr Mazda knew of the sixth protected act, the appeal against the decision not to renew the fixed term contract in Autumn 2022. There was therefore a logical potential for Mr Mazda to be further ill-disposed to the claimant because he was continuing with his allegations of race discrimination and other matters, although the sixth protected act did not refer to Mr Mazda.

275. The tribunal had found that the scores of the two panel members who did not know of the protected acts and Mr Mazda who did were within the same range. The claimant scored 29 as opposed to the successful candidate's score of 42. The tribunal found it in line with good recruitment practice that the panel did not take into account the claimant's replies in one area in another area or take into account his work at the respondent. The Tribunal accepted the respondent's evidence that the successful applicant was black. This was contained in the witness statement and the tribunal found it plausible. In these circumstances, the tribunal found that the burden did not shift in respect of direct race discrimination.

276. The fact that the successful candidate was black did not necessarily mean that the respondent had not victimized the claimant following the protected acts as per 3.1.12. However, there was good evidence that the reason that the claimant was not appointed was that he did not score as well as the successful candidate in interview. Only one of the three-person panel, Mr Mazda, was aware of the protected acts and the tribunal found that his scores were in the same range as the other two. There was no evidence that the successful candidate was inappropriate or unqualified.

277. In the circumstances, the burden of proof as to victimisation did not shift to the respondent.

278. The final act 2.1.13 was on 4 December 2023 - the Respondent confirmed that the Claimant's application for the role of lead curator black studies was unsuccessful.

279. This second recruitment was also an unremarkable and professional recruitment process. The Respondent had changed its recruitment system by this date for reasons unconnected with the claimant. It was no longer a question of a CV with a cover letter, but a competency-based application. Therefore, it was at first sight possible that the same candidate might score differently when it came to short listing. The panel was unchanged from the previous recruitment when the claimant had been short listed. Whilst the fact that the tribunal had found that the first decision of the panel was not racially motivated, did not determine the motivation of the second decision of the panel, it was a relevant factor. There was no reason why the panel should racially discriminate in the second recruitment when it had not done so the first time.

280. The tribunal could not find any element of the scoring of the claimant which was at first sight surprising or confusing. (The Claimant was only assessed on paper, not interviewed.) The tribunal accepted the respondent's evidence that the successful applicant was black, as the claimant, whose employment overlapped with her, did not challenge this.

281. In effect the claimant had not established facts sufficient to shift the burden of proof from the Claimant to the Respondent in respect of direct race discrimination.

282. The Tribunal went onto consider victimisation, 3.1.13. The tribunal did not find evidence to shift the burden of proof to the respondent. The tribunal relied on the same findings as it had made in respect of direct discrimination. This was an apparently robust and professional process. The tribunal had sight of the claimant's application and there was nothing surprising or unexplainable in how he had been scored in respect of his competencies. There was no suggestion that the successful candidate was unqualified or inappropriate. There was no suggestion that the other two panel members had become aware of any of the protected acts between the two recruitments. There was no reason why when the panel had not victimized the claimant following the protected acts in the first recruitment, it should do so on the second recruitment.

283. Accordingly, whilst the Tribunal had concerns about how the claimant had been treated by the respondent at times during his employment, and there were matters particularly in HR

practice which the respondent might wish to review, the tribunal did not find that the burden of proof shifted from the claimant to the respondent in respect of any of the claimant's claims. Therefore, all the claims must be dismissed.

Approved by Employment Judge Nash

Dated: 2 June 2025

Sent to the parties on:

4 June 2025

For the Tribunal Office