



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant:** Ms N Harrington

**Respondent:** Vodafone Group Services Ltd

**Heard at:** in public by CVP

**On:** 21, 22, 23, 24, 25 October, 10, 12, 16 December 2024  
(17 & 18 December 2024 in chambers)

**Before:** Employment Judge Adkin  
Ms L Jones  
Mr D Scofield

## Appearances

For the claimant: Mr A Sendall, Counsel  
For the respondent: Mr J Chegwiddden, Counsel

# JUDGMENT

- (1) Claim for unfair dismissal pursuant to sections 94 and 98 of the Employment Rights Act 1996 is well founded.
- (2) Claim for victimisation pursuant to section 27 of the Equality Act 2010 is well founded in respect of two allegations:
  - a. Being placed on “garden leave” from 15 September 2022 (allegation 22);
  - b. Being dismissed (allegation 26).
- (3) All other allegations of victimisation are not well founded and are dismissed.

# REASONS

## Summary

1. The Claimant was dismissed with effect from 31 October 2022 and presented her claims to the Tribunal on 13 December 2022.
2. The complaints of age, race and sex discrimination were realistically withdrawn by the Claimant.
3. The Respondent realistically conceded the complaint of unfair dismissal, subject to arguments about *Polkey* (i.e. a reduction to reflect the chance of a fair dismissal having occurred in any event) and mitigation of loss.
4. This is a claim of victimisation brought by the Claimant arising from allegations of sex discrimination made by her in 2022, the year in which she was dismissed by the Respondent purportedly for redundancy.

## Evidence

5. The Tribunal had the benefit of an agreed 938 page bundle to which a number of documents were added during the hearing either at the request of the Tribunal or the parties.
6. We received witness statements from the Claimant and the following witnesses on behalf of the Respondent:
  - 6.1. Ms Ebru Ozguc, former Global Head of Brand & Reputation, and the Claimant's line manager from June 2022 until the Claimant's dismissal;
  - 6.2. Ms Joanne Gilfoy, Global Head of Commercial, Planning & Engagement, whose involvement was to hear the grievance by the Claimant;
  - 6.3. Ms Stephanie Twineham, Human Resources Business Partner. Ms Twineham did not give live evidence. Parts of her witness statement were confirmed by Ms Lara Alvarez Garcia, who provided a witness statement and attended to give oral evidence;
  - 6.4. Ms Amanda Jobbins, Business Marketing Director, the Claimant's second line manager and decision-maker about employees to be made redundant;
  - 6.5. Mr David Dunwoody, Senior ER Manager;
  - 6.6. Ms Emma Kelly, former Head of HR for the Respondent;
  - 6.7. Mr Mehul Kapadia, Head of MNC & Corporate Marketing, the Claimant's line manager until June 2022.

## Findings of fact

### Agreed chronology & findings on disputed matters

7. We are grateful to counsel for agreeing a chronology of key events. We have incorporated those agreed key events into these findings of fact, together with our findings on disputed matters which we have made on the balance of probabilities, based on our assessment of the written and oral evidence and in our judgement what is inherently probable.

### History

8. On 16 January 2017 the Claimant commenced employment with the Respondent as Analyst Relations Manager.
9. In approximately November 2018 the Claimant was promoted from Band F13 to F14 and became lead for the Analyst Relations ("AR") team.

### AR team

10. The AR Team was a small team of four individuals (three employees and one contractor) who dealt with external analysts.
11. The role of the AR team was to build trusted relationships with influential analysts, which are companies external to the Respondent organisation, and which offer advice to multinational and corporate purchases of the Respondent's services.

### Mehul Kapadia

12. In around December 2020 Mr Mehul Kapadia became the Claimant's line manager in his role as Head of MNC & Corporate Marketing. His role was responsibility for marketing initiatives of Vodafone Business at a Group Level for the customer segments of "multinational and corporate customers". He had responsibility for approximately 40 – 50 team members arranged in various teams of which the Claimant's Analyst Relations team was one.
13. The Claimant says that her relationship with Mr Kapadia was "fine" until the beginning of 2022.
14. Mr Kapadia was on holiday between 1-14 January 2022.
15. The Claimant says that there were no regular 1:1 meetings between herself Mr Kapadia from a date in January 2022 until 31 March 2022 when Mr Kapadia attempted to reinstate these meetings.

### Analyst Summit

16. On 9 February 2022 there was a meeting between Ms Amanda Jobbins, and Mr Kapadia regarding an upcoming Customer Summit at which an Analyst Summit also discussed. The Claimant was not invited, but Mr Kapadia included the Claimant in subsequent email chain following the meeting.

17. A few days later on 14 February 2022, the Claimant emailed a paper on converting the Analyst Summit to online to Mr Kapadia and Ms Jobbins, following on from a direct conversation between the Claimant and Ms Jobbins.
18. The Tribunal has seen email correspondence going back-and-forth on the topic of the format of the Analyst Summit. In short, the Claimant's view was that a proposed in-person analyst event "Summit" should not go ahead, the backdrop being the Covid-19 pandemic and the reluctance of some analysts to attend in person and some companies to allow it. The Claimant also had a concern about potentially communicating one thing about the format of the Analyst Summit to analysts than changing course.

Mr Kapadia resigns

19. On 28 February 2022 Mr Kapadia gave the Respondent three months' notice of his resignation from Vodafone to accept new offer of work at a different employer.
20. The Claimant was not however aware of this resignation until she was told at a later date.

Top performer

21. At some time around early March 2022 Mr Kapadia put the Claimant forward as a "Top Performer", denoting that she was in the top 20% percent of employees in relation to performance. By way of background, the Claimant had been put forward and designated as a Top Performer for four previous years consecutively (2017/18; 2018/19; 2019/20 and 2020/21).
22. For the year 2021/22 according to the Grounds of Resistance filed by the Respondent in response to the claim 21 individuals were assessed and 4 were awarded "top performer" (representing approximately 19%). By contrast the witness statement of Stephanie Twineham describes there being 8 F and E bands confirmed as Top Performer in 2022 from a total of 32 individuals at those grades (representing 25%).
23. Ms Jobbins admitted that figures might be wrong in oral evidence. The Tribunal did not get to the bottom of this discrepancy, nor did the Respondent produce any documentation that explained what had occurred, notwithstanding Ms Jobbins' evidence that HR ought to have the documentation.
24. There was a calibration meeting which took place at or around 22 March 2022 across various different departments. Each department would put forward their candidates for top performer so that an appropriate percentage across the organisation could be arrived at. The Claimant was put forward but not given a Top Performer for year 2021/22. She was not notified of this until a meeting in June.

AR team meeting

25. An AR meeting took place on 2 March 2022 at which Mr Kapadia, the Claimant and other members of the AR team were present.

26. In an email sent to the Respondent's CEO nearly five months later on 22 July 2022 the Claimant alleged that at this meeting team members said "he has a problem with you being a senior successful woman here" and raised with her the concern that Mr Kapadia was subjecting her to discrimination as he had a problem with her being a senior woman.
27. The Claimant's version was not supported by AR team member Lesley Homer in the internal investigation in August 2022 (after Mr Kapadia had left the organisation) who recalled that this was an awkward meeting where the objective was unclear. She attributed this to a breakdown of the relationship between Mr Kapadia and the Claimant following a disagreement about the Analyst Summit. She felt sorry for the Claimant but attributed the difficulties to a personality clash rather than discrimination.

#### G renewal email

28. On 9 March 2022 the Claimant emailed Mr Kapadia about communication in relation to renewal of a contract with G, an analyst organisation. The full name of this organisation is not relevant or necessary for the purpose of these reasons. The Claimant's underlying concern was that Mr Kapadia had been giving out inconsistent messages. Mr Kapadia had attended a dinner with G to which the Claimant was not invited. He had apparently employees of G the impression that the contract between G and the Respondent would be renewed "flat" for the following year, i.e. at the same value as the year before.
29. The Claimant says that Mr Kapadia then requested that the Claimant negotiate a reduction with the budget at G for the following year. The Claimant explains that the result was G's frustration at the inconsistency and her feeling this made her look incompetent.

#### Annual performance review

30. On 10 March 2022 there was a call between the Claimant and Mr Kapadia for her End of Year review, denoted within the Respondent "PD", meaning Performance Dialogue.
31. In the Claimant's annual PD, Mr Kapadia wrote as follows:

"Overall the AR team has delivered to the KPI's for the year. It has been a year in which we also made significant shifts in the way we run the AR programme and we are also now building a strategy document on how we will evolve the function going forward. Natalie will benefit by reflecting on the learning agility framework and especially the change agility and situational self-awareness areas."
32. This reference to needing to reflect on agility Mr Kapadia says related to a lack of flexibility that she demonstrated around on the question of whether to have an online or in-person conference with external analysts. He highlighted when interviewed as part of the internal grievance process that other senior leaders

had mentioned this issue about “change” in relation to the Claimant in at the Top Performer calibration meeting. The Claimant argues that it was unfair to characterise her as inflexible when it was she who suggested an online format and that was ultimately the format decided upon.

33. The Claimant felt generally that she was unfairly being given a very poor review in the meeting on 10 March 2022. It seems, based on a follow up email that she sent on 16 March 2022 that during the meeting on 10 March she raised a variety of criticisms of Mr Kapadia in response to what she perceived were criticisms made by him of her.

First alleged protected act

34. The Claimant says that during this conversation on 10 March 2022 she made a protected act which is the first alleged protected act in the chronology.
35. The Tribunal finds, based on the Claimant’s follow up email of 16 March 2022 that the Claimant did raise with Mr Kapadia on this meeting that Mr Kapadia had had meetings with David Rossiter and David Taylor and queried whether he had arranged meetings with Lesley Homer and Hannah Perry. We do not find that the Claimant went as far as stating in terms that Mr Kapadia ignored female members of the Industry Analyst Relations team and generally treated male colleagues more favourably than female ones; nor stating that Mr Kapadia had a problem with the Claimant as a senior female employee.
36. We find that the Claimant did have in her mind during this conversation that there was a disparity of treatment. We find however that she did not raise in terms that there had been discriminatory treatment. We accept Mr Kapadia’s evidence that he did not understand that an allegation of discrimination was being raised with him in this meeting. We found that he clearly did understand that complaints about him were being made by the Claimant, but not that those complaints included discrimination.

Follow up email 16 March

37. The Claimant followed up the meeting on 10 March with an email dated 16 March 2022.
38. The Tribunal received a version of an exchange of emails in colour, in which the Claimant’s original text appeared in black (16 March), Mr Kapadia’s subsequent comments in yellow (22 March 2022) and the Claimant’s further responses in red (30 March 2022).
39. This email was written in direct terms and was critical of Mr Kapadia and his treatment of the Claimant.
40. It was among other things disputed between the two of them whether or not Mr Kapadia had called her a liar in the meeting on 10 March. He denied it.
41. The 16 March email from the Claimant contained her response to feedback given by Mr Kapadia on 10 March which she felt was unfair.

42. Further, there were eleven bullet points raising concerns raised by her in relation to 1:1s being cancelled and not rescheduled, excluded from meetings with partner organisations and given inconsistent messages, exclusion from a Analyst and Customer Summit call on 9 February, removal of the team member from the AR programme, removal of AR from the agenda of the meeting, complaints about emails, and in summary that she felt “avoided and consequently undermined”.
43. Of relevance to the second alleged protected act, the Claimant wrote:

Following the call with myself and the rest of the AR team on 15th February, and unbeknown to myself, you scheduled an individual call with David Rossiter on 18th February in my team to discuss AR strategy and discussed AR at Vodafone. As above and again unbeknown to myself you had a further individual meeting on fourth March with David Taylor from my AR. I asked you if calls are scheduled with Lesley and Hannah in my team or I to which you responded "no"

[183] I raised my concern that I felt I was being avoided and consequently undermined as Head of Industry Analyst Relations. This was underlined in front of my team in our in person meeting on 2nd March. I shared with you not only my concerns but concerns raised to me from the rest of the AR team regarding my treatment.

44. The complaint was that the Claimant was being sidelined and undermined as head of the AR team. That was a theme of the email generally. It was not expressed in terms of sex discrimination. We find that Mr Kapadia did not understand this to be a complaint of discrimination at this time.

#### Mr Kapadia's response

45. Mr Kapadia responded to the Claimant's email of 16 March 2022 expressing surprise:

"a lot of what is written below is not entirely true and / or out of context. I am not sure why this is the approach been [sic] taken by you."

46. Mr Kapadia emailed Ms Jobbins forwarding the Claimant's email, in which he acknowledged that Ms Jobbins had “clearly pointed out... .. Potential issues with Natalie”. He commented “clearly there is a lot on Natalie’s mind”. Ms Jobbins suggested that they discuss “live” with Ebru Ozguc.

#### “Just the men”

47. The Tribunal has seen an informal message exchange between Hannah Perry and Lesley Homer sent on 22 March 2022. This somewhat irreverent exchange was plainly not intended for a wider audience.

48. It seems from that exchange that their perception at that time was that the Claimant was away from her desk for quite lengthy periods of time. They also comment on Mr Kapadia not giving her a good review and the Claimant commenting Mr Kapadia was "not nice". One says

"I think she will hang on here as she has such a good life...  
Hahaha, but I'm not sure she'll get away with it forever..."

"Nat asked for both of us to have 121s as it wasn't fair that it was  
just the men lol"

49. The Tribunal has not had the benefit of hearing oral evidence from either Ms Perry or Ms Homer, and accordingly we should be cautious about ascribing precise motivations and thoughts. The exchange suggests that Ms Perry did see Mr Kapadia as undermining the Claimant and that she had expressed it to Ms Perry in terms of unfair treatment of female colleagues, but the "lol" (meaning presumably laugh out loud) suggests that Ms Perry at least perhaps did not take the suggestion of sex discrimination particularly seriously. Indeed, that was Ms Perry's position later on when interviewed in the internal investigation.

Amanda Jobbins

50. By a message sent to Michelle Sonna on 21 March 2022, the Claimant sought to bring forward a scheduled meeting with Ms Jobbins.
51. Ms Jobbins emailed Mr Kapadia in response to his email to her of 16 March 2022 suggesting that Ms Jobbins, Mr Kapadia and Ms Ozguc should discuss.

Ms Jobbins ignores Ms Harrington

52. On 23 March 2022 the Claimant Ms Harrington emailed Ms Jobbins seeking a meeting stating she wants to discuss "something urgent" but did not specify further what it was.
53. On 24 March 2022 the Claimant again emailed Ms Jobbins explaining that the reason she wanted to meet was because she was having a difficult time with Mr Kapadia and she wants to speak with Ms Jobbins before speaking to HR.
54. Ms Jobbins explained in her witness statement that she was travelling with the CEO did not have time to have a meeting with the Claimant, although she asked HR to make contact. She said that she was advised by HR not to make contact.
55. Stage 1 of the Respondent's grievance policy provides that contact should be had with an employee's manager's manager if a complaint related to the manager. Given this it was not unreasonable of the Claimant to approach Ms Jobbins as her second line manager. There was a missed opportunity at this stage for Ms Jobbins to have headed off some of the problems that subsequently occurred. The Claimant plainly felt ignored. This situation was probably exacerbated by the Claimant working remotely, since this precluded



the opportunity for a quick and informal conversation with Ms Jobbins or someone else which might have provided some reassurance or support.

56. On 24 March 2022 Ms Jobbins emailed Ms Kelly stating that her view which was fully in support of Mr Kapadia, having had one meeting with the Claimant which did not impress her, noting that "Ebru has also had concerns about her 'how' in the past" (i.e. the way she went about doing things). She asked for guidance from HR as to how to respond to the Claimant.

Proposal to change line management

57. Ms Jobbins wrote an email dated 28 March 2022 to Mr Kapadia, Ms Kelly and Ms Ozguc advising Mr Kapadia to engage with HR, notifying them of a plan to move the Claimant's team to Ms Ozguc's line management, as follows:

"One note Emma I plan to move Natalie's team to Ebru so this may be a change we want to do earlier as we may have an exit to manage potentially or certainly a **performance improvement plan**"

[emphasis added]

58. The Claimant is highly critical of this communication on the basis that there was no documented performance problem in relation to the Claimant who had very recently been nominated as a top performer and accordingly discussion of an exit was entirely precipitate.
59. In an email from Mr Kapadia to Ms Jobbins, Ms Kelly and Ms Ozguc he informed Ms Jobbins of planned meeting with the Claimant on 31 March 2022 and seeking a meeting with Ms Jobbins and Ms Kelly to "walk" Ms Jobbins through the details.
60. Ms Kelly emailed another colleague in HR Ms Kate Benaicha 28 March 2022 about Ms Jobbins's thinking:

"She might expedite plan to move report line to Ebru [Ozguc] - but I don't think she's impressed with Natalie's approach Mehul sent me the mail Natalie sent him it's quite assertive / aggressive..."

Claimant's further reply

61. On 30 March 2022 the Claimant responded in red to Mr Kapadia's comments on her 16 March 2022 email and declined his 1:1 invitation to meet with her.
62. Mr Kapadia emailed Ms Jobbins to inform her that the Claimant had declined to meet with him 1:1 to discuss the 16 March 2022 email.

31 March 2022 meeting

63. On 31 March 2022 a meeting took place by video between the Claimant, Mr Kapadia and Ms Kelly.

64. Mr Kapadia accepted in his oral evidence that there was discussion about not meeting female members of the team on one-to-ones whereas had had met male members. He did not accept that this was a valid criticism and did not understand that this was being raised expressly as sex discrimination at the time. We think it more likely than not that Ms Kelly as an experienced HR professional understood that there was a subtext of sex discrimination being suggested.

Post-meeting discussion with Ms Kelly (first protected act)

65. The Claimant spoke to Ms Kelly after the meeting involving Mr Kapadia. She informed the Claimant of Mr Kapadia's impending departure.
66. The Tribunal accepts that during this conversation the Claimant suggested to Ms Kelly that Mr Kapadia had a problem with her as a senior female employee. That this was only raised with Ms Kelly, not in the presence of Mr Kapadia is clear from the Claimant's subsequent grievance raised in July. This supports our conclusion that she did not say this directly to Mr Kapadia either at this stage or earlier.
67. There was an email from Ms Kelly to Ms Benaicha (Kate Benaicha) after this meeting:

"Mehul and I took executive decision for me to tell her that he was leaving Otherwise we would be heading for speak up / grievance for sure"

1 April 2022 email follow up (second protected act)

68. The following day, 1 April 2022 the Claimant emailed Ms Kelly about the previous day's meeting. She wrote:

"On our calls yesterday I shared details of my treatment, how my team has shared their concerns about my treatment by Mehul as him having an issue with me as a senior women here and the distress he has caused me over the last months.

We also discussed how I see communication from Mehul as broken, but also that our relationship is broken, given his treatment of me. I said I didn't see a solution to this as there is no trust."

69. The Respondent emphasises that the Claimant seemed content with Ms Kelly's approach. The email goes on:

"As I have said, I was comfortable and relieved with the meeting yesterday because you was in it as well. Moving forward, I can continue to join the LT meetings, until reporting lines are decided.

With the current situation regards Mehul not widely known, could Amanda could be my contact to discuss anything needed?

I look forward to speaking again, to discuss a plan, I understand not everything is set for June onwards."

AR team budget reduction

70. On 5 April 2022 were a series of back and forth emails between the Claimant and Mr Kapadia on the topic of the budget for the AR team, with others in copy including Michelle Wilson, Mr Kapadia's Personal Assistant, and later on Shelley Goldthwaite, Business Manager for Ms Jobbins. After some discussion of figures the Claimant complained that the Budget appears to be a reduction of £138k as compared with the budget for the previous year. Mr Kapadia acknowledged that there was a gap but stated that this had been consistently discussed from November, i.e. five or six months earlier.

Discussion with Ms Jobbins

71. On 6 April 2022 Ms Kelly of HR informed the Claimant that she would discuss the issues raised by the Claimant in the meeting on 31 March 2022 and in her email of 1 April 2022 with Ms Jobbins on 7 April 2022.
72. Ms Jobbins had been aware of the Claimant reporting a difficult time with Mr Kapadia since the Claimant's direct emails to her on 23 and 24 March 2022. Those emails did not refer to discrimination.
73. A discussion between Ms Kelly and Ms Jobbins took place on 7 April 2022. We find that at this meeting there would have been a discussion about the fact that the Claimant had raised allegations of sex discrimination. The extent to which that aspect might have been trailed to Ms Jobbins in advance by Ms Kelly is difficult for us to identify.

WhatsApp communication – absence of disclosure

74. Ms Kelly and Ms Jobbins would communicate by WhatsApp. The Tribunal has received no disclosure of this communication, a point put by Mr Sendall to Ms Kelly in cross examination.
75. In the internal grievance Ms Kelly explained that Ms Jobbins was "not email focused". Ms Kelly's oral evidence is that the WhatsApp communication was primarily used to get a response from Ms Jobbins and that the two of them would not use it for "serious", communication, which would be conducted by Microsoft Teams, with WhatsApp being used to set up a conversation.
76. It is unsatisfactory that the Tribunal has not been provided with disclosure of the WhatsApp communication, given the importance of this medium to Ms Jobbins and the direct communication between Ms Kelly and Ms Jobbins. We have not been provided with any explanation by the Respondent of a practical difficulty such as that this communication is not available.

Ms Kelly/Ms Jobbins – follow up email

77. In a follow-up email sent by Ms Kelly the day after the discussion on 7 April 2022, she wrote to Ms Jobbins regarding the Claimant, identifying three issues in relation to the Claimant's case,

“current dispute and breakdown of relationship the Claimant and Mr Kapadia, Behaviour/attitude issues and a possible redundancy in the future”

78. She went on:

"The redundancy we can put to one side as that isn't current we do have a good business justification for proposed changes. The first thing we need to deal with is the dispute and breakdown of trust in the relationship. I will speak to Natalie on Monday and tell her that we are not going to change the structure in the short term and we expect her to find a way to have a practical working relationship that allows her to perform her role until Mehul leaves. We don't believe this is unreasonable. If she refuses then I can suggest to her that this could lead to a disciplinary route. But intent will be to try to unblock the situation so we can move forward. We are really only talking about circa 6 weeks after Easter before Mehul goes in June on holiday before he leaves.

I talked about whether we should/could put a PIP in place. David's [Dunwoody] was that we need to resolve the current dispute first and that going to now run a significant risk of worsening the situation. Once we have switched lines to Ebru then I believe we can reset expectations fully and absolutely put formal processes in place if behaviours don't improve. Of course we can review this if Natalie chooses not to cooperate with our request to work with Mehul in the short term.

Temporary reporting line to Ms Jobbins suggestion

79. Ms Jobbins was informed of the Claimant's request to report to her, but Ms Jobbins considers not tenable option given her workload.
80. The evidence received by the Tribunal suggests that Ms Jobbins did have a senior role and a large team.
81. On 11 April 2022 Ms Kelly informed the Claimant that Ms Jobbins had declined the request to become the Claimant's interim manager.

“Ask Amanda” meeting

82. On 13 April 2022 a meeting took place, which was a forum for all marketing employees to ask questions of Ms Jobbins entitled “Ask Amanda”.

83. The Claimant's account of this meeting was that Ms Jobbins made a comment that she "wouldn't hesitate to remove those who weren't team players".
84. Ms Jobbins denies making these remarks and says that this not how she would express herself.
85. The Claimant has described this incident with reasonable consistency. It was first mentioned in her written grievance dated 22 July 2022. She mentioned it as part of the grievance investigation in a meeting on 4 September 2022. It appeared at paragraph 35 of the details of the claim and at paragraph 154 of her witness statement. Had those remarks been made by Ms Jobbins it would be understandable that this would stick in the Claimant's mind given how vulnerable she was feeling at this time when she was in conflict with her line manager and Ms Jobbins was essentially ignoring her.
86. On balance we accept that remark to this effect was made at this meeting.

Lunch with Ms Ozguc 26 May 2022

87. On 26 May 2022 Ms Ebru Ozguc, who was due to take over leadership of the a number of the teams that Mr Kapadia had been responsible for, including the HR team, had lunch with the Claimant and the rest of the AR team and discussed their prior work relationship with Mr Kapadia.
88. The Claimant suggested in her witness statement that she had raised concerns at this lunch about Mr Kapadia's discriminatory attitudes.
89. Ms Ozguc's recollection, consistent in both her written, oral evidence and answers in an interview as part of the internal grievance process was that there was a discussion about working with Mr Kapadia but that this was in the context of "relationship difficulties" more generally rather than a specific allegation of discrimination. In her oral evidence she was emphatic that discrimination had not been mentioned on this occasion, and had it been she would have raised this internally.
90. The Tribunal accepts Ms Ozguc's version of this event in preference to the Claimant's for several reasons.
91. First, the Claimant's own account on this point has varied. In her written grievance the Claimant stated that "my AR team shared the difficulties and discrimination treatment I went through because of MK". She went on to say it was humiliating for it to be raised by the team. In that version it is not the Claimant putting forward an allegation of discriminatory treatment, but rather team members. In the grievance investigation speaking to Jo Gilfoy the Claimant stated that Ms Ozguc asked how they worked with Mr Kapadia and "team raised their issues & made a bit of a joke about it saying "do you want to share Nat?" "Wasn't the only topic talked about but team shared how difficult it was". There is no reference to discrimination recorded in that note at all. In her witness statement at paragraph 157 the Claimant's account is that she herself was making an allegation of discrimination:

“I raised our concerns about Mr Kapadia’s discriminatory attitudes and the difficulties we have faced working with him”.

92. Second, AR team members Lesley Homer, David Taylor and Hannah Perry in the internal investigation did not recall a discussion about Mr Kapadia.
93. Third, we bear in mind that the context was the AR team getting to know a new manager. While a passing allusion to past difficulties is plausible, we find it would have been surprising for the Claimant in front of her team or indeed those team members in a team meeting to be stating in terms that the new manager’s predecessor discriminated against them.
94. Finally, had the team been stating that such discrimination had occurred, we think it more likely than not that Ms Ozguc would have taken the matter further in some way. We have not seen evidence that she did.

Claimant’s comparatively low pay rise

95. On 1 June 2022 Mr Kapadia wrote an email to Ms Ozguc:

“Should be no surprises to anyone except Natalie H on her rating. We all discussed this on our LT call about what she has that rating.”

96. The evidence of the relevant witnesses from the Respondent, including Mr Kapadia, is that the Claimant was at 107% of the compensation ratio meaning that she was already paid at the top end of her band and for that reason it was not appropriate to give her a more substantial pay rise.

Ms Ozguc meets with G

97. On 9 June 2022 Ms Ozguc met with an external partner company “G” who said something to the effect that he had understood that the Claimant and her team had a hard time recently. Ms Ozguc said that she took this with a pinch of salt at the time.

Opex challenge/budget review

98. At some time in early June 2022 the Business Marketing team under the responsibility of Amanda Jobbins was notified by the Respondent’s finance team of an “Opex challenge”. This was a requirement from the Finance team for the Business Marketing team to significantly reduce their operating expenditure.
99. Ms Jobbins’ evidence is that there were three phases at which her department’s operating costs were cut: October 2022, January 2023 and June 2023. There were eight redundancies within the business marketing team made in October 2022 followed by a further 10 across the two phases in 2023.

100. On 14 June 2022 a meeting took place to discuss the initial budget review for the following year and a discussion of how the Business Marketing team could make savings in response to the Finance's Opex challenge. Present at this meeting were Stephanie Twineham, HRBP; Matthew Grace, Finance Business Partner; Shelly Goldthwaite, the Business Manager for the Vodafone Business Marketing team. This meeting took place in advance of a meeting to take place two days later at which Ms Jobbins would be present.

Meeting 16 June 2022

101. Two days later on 16 June 2022 a budget & vacancy review meeting took place with Ms Twineham, Matthew Grace (finance), Shelly Goldthwaite present together with Ms Jobbins. According to Ms Jobbins at this meeting they looked at how many, and what roles might need to be reduced or removed to meet the Opex challenge.

Follow up email

102. Following the meeting on 16 June, Ms Twineham wrote to Ms Ozguc on the topic of budget savings:

"given Mehul and Natali's (sic) previous relationship, I think Amanda wants you to explore if there really is a need for this additional H band [graduate] role in her team, esp given that we are v tight on budget."

103. Querying the need for a new graduate role appears to be looking for a fairly small saving in the context of the savings being sought overall.

End of year review

104. On 17 June 2022 the Claimant attended an end of year reward review meeting with Ms Ozguc. It was at that meeting that her pay rise of 1.36% was communicated to her. The Claimant also found that for the first time that she was not going to be a "top performer".
105. There is a dispute about what was said in this meeting. The Claimant says she complained to Ms Ozguc that Mr Kapadia had "kicked me as he was going out of the door" and that Ms Ozguc had said "don't shoot the messenger".
106. Ms Ozguc denies that these comments were said.
107. These comments are however consistent with the content of the Claimant's grievance document on 26 July 2022.
108. Broadly we prefer the Claimant's account of this conversation. The Claimant was plainly unhappy at the (below inflationary) pay rise which Mr Kapadia had decided before his departure and said so to Ms Ozguc. It would not be at all surprising for Ms Ozguc to make clear she was communicating a decision in

relation to the Claimant's pay rise that was taken by her predecessor not by her. In that sense she was a messenger of someone else's decision.

109. There was some discussion within this meeting about the Claimant's profile or "visibility" amongst the Marketing Leadership Team.
110. The Claimant has made a point about her reward statement being sent to her after this meeting which was password protected and this document not being disclosed. It is true that page 215 of the bundle shows a password protected document, but we also note that the password appears to have been provided to her by Ms Ozguc at the time in an email at page 214 and there is no follow up email suggesting that the Claimant was not able to access this document with that password.

#### Marketing event

111. On 20 June 2022 the Claimant was notified by Maria Ester Fraile that she would not be delivering a presentation at a four day marketing event. Ms Fraile explained that

"We propose to slot for Amanda but she has requested to add something else. Sorry for not ment[ioning] to you, it was on Friday and I was busy the whole day.

The agenda keeps changing, if there's any news I let you know."

112. It is clear that Ms Jobbins made the decision that the Claimant would not present.
113. Ms Ozguc's evidence was that the proposed inclusion of the Claimant on the agenda at this marketing event was her suggestion to try to help the Claimant raise her profile. She explained however that this attempt was rather last-minute only 10 days before the event was due to take place.
114. Contemporaneous "chat" on Microsoft Teams shows that the Claimant was asked for a high quality profile picture. By her reply we can see that the Claimant already understood that she was now not speaking in this slot. This would tend to support Ms Ozguc's account that the Claimant's proposed involvement was something of a last minute suggestion.

#### Opex challenge confirmed

115. On 27 June 2022 the Chief Financial Officer Mr Kamath confirmed the Opex challenge to finance heads. A reduction in operating expenses of Euro 15 m was required for the Vodafone Business Group overall.

#### Graduate hire

116. On 27 June 2022 Ms Twineham emailed the Claimant regarding a proposed graduate hire being flagged by Ms Jobbins for review.



Departure of Mr Kapadia

117. On 30 June 2022 Mr Kapadia's resignation took effect.
118. The previous day, 29 June 2022 there was a Marketing Conference dinner, including a farewell to Mr Kapadia, in which Ms Jobbins publicly acknowledged his contribution to the business with gifts and kind words.

Claimant's name appears on risk of redundancy list

119. Emma Kelly's written and oral evidence is that the Claimant's name was on a list of those to potentially be made redundant as early as June 2022. We have not seen any documentary evidence which supports this. The first document which identifies the Claimant's role as being at risk of redundancy is dated 8 July 2022.

Opex review

120. On 8 July 2022 there was an Opex Challenge review meeting and proposals for Marketing Program and Staff reductions composed; led to generation of a 'RAG' list of employees potentially at risk included.
121. The Red – Amber – Green ("RAG") chart had 18 roles on it against which there were three different colours according to whether there was a high risk, medium risk or low risk for the organisation were those roles to be made redundant. The 18 roles related to 21 individuals, since there were three employees in insight team offshore roles and two employees in the APAC field marketing team role.
122. Of those 18 roles, 10 fell within Ebru Ozguc's functional area, now she had taken over management responsibility for the AR team. Of the 18 roles, nine were green (11 employees), seven were Amber (8 employees) and three were red (3 employees).
123. The Claimant's role of UK AR lead was one of the seven roles identified as being Amber risk. Against her role under the heading "Risks / Why wouldn't you do it?" is written:
- "C suite relationship Leadership of AR Team / Knowledge loss"
124. In this and a later version of this document a 5% reduction in operating expenses (€1.3m) does not model the Claimant's role being made redundant, whereas a 10% reduction (€2.7m) is based on the Claimant's role being made redundant.
125. On 9 July 2022 Ms Jobbins approved suggested Opex savings proposal as 'great' but notes likelihood that they (finance) will 'ask for a couple of percentages more'.

Analyst rating

126. On 8 July 2022 Mr Kapadia emailed the Claimant congratulating the team for the rating from the analyst company G. It was the second highest rating and commensurate with technology businesses such as Apple, Google and Microsoft. Ms Jobbins replied echoing that praise acknowledging the great effort.

Claimant annual leave – July 2022

127. The Claimant was on annual leave in the period 8-20 July 2022.

Submission to CFO

128. On 11 July 2022 Shelley Goldthwaite emailed Matthew Grace with an updated version of the PowerPoint and Excel sheet 'to submit to CFO in relation to the proposed operational expenditure cuts.

Claimant's grievance to CEO (protected act)

129. On 22 July 2022, the day that she was due to be returning from annual leave the Claimant emailed the Respondent's CEO Vinod Kumar stating that she 'can no longer continue working for Vodafone' and requested his 'help to facilitate a smooth and amenable exit'.
130. The Claimant attached a 'chronology of events' and stated that 'for the avoidance of doubt I fully reserve my position'. The parties agree that this was a protected act. This document contained seven pages of close type in a small font with detailed allegations for the period January 2022 to 30 June 2022, including allegations of discrimination. There is significant overlap between the content of that grievance and the content of the present claim.
131. On 23 July 2022 Mr Kumar replied to the Claimant's email stating that he would investigate and come back to her. Mr Kumar, copying Yemez Pinar (HR Director) into email. Ms Pinar then forwarded to her direct report Ms Kelly and also David Dunwoody.

Query about resignation

132. On 25 July 2022 Mr Dunwoody wrote to the Claimant to enquire as to whether she was resigning.
133. On 26 July 2022 the Claimant confirmed by email that she was not resigning but stated she will be 'forced' to leave if her grievance is not upheld.
134. The Claimant stated that she was not resigning but rather reserved her position.
135. Mr Dunwoody and Ms Kelly's evidence to the Tribunal was that although the Claimant had not resigned, they interpreted the grievance as the Claimant positioning herself for a negotiation being conducted by her lawyers to exit the organisation under a settlement agreement.

Ms Ozguc's reaction to grievance

136. It was evident in particular from her oral evidence on the topic that Ms Ozguc regarded the Claimant submitting this grievance in her words as "a complete shock". It was described in a message on 25 July as such by Ms Kelly to Mr Dunwoody.
137. Ms Ozguc evidently felt that she had begun to build a rapport with the Claimant, in a relationship which she described as "good and transparent".
138. In her oral evidence Ms Ozguc candidly described the submission of this grievance to the CEO as being "stabbed in the back".

CFO seeking €1.3m

139. By an email sent on 27 July 2022 the CFO Sateesh Kamath notified Ms Jobbins and her team that he was seeking an overall saving of €15 million from operating expenditure in the Vodafone Business and specifically of relevance to Ms Jobbins in relation to the Marketing team:
- "Efficiencies suggested in response to the original request totalling €1.3 million, with no additional challenges."
140. This figure of €1.3 million corresponds to a 5% saving overall identified on page 231 which is comprised of €718,000 FTE (full-time equivalent) reduction in employee costs and €636,000 programme reduction, totalling €1,354,000. The former element represents a saving from the reduction in headcount, whereas the latter element represents a reduction in other operating expenses.

Claimant email to Mr Dunwoody

141. On 28 July 2022 the Claimant emailed Mr Dunwoody as follows:
- "Have you got an update on the investigation please?
- What is the process, how will this be investigated, what will the investigation involve?
- What is the timescale?
- Will the investigation look into other employee concerns, raised to HR, about Mehul as noted in my chronology?"

VIP planning call

142. On 28 July 2022 Ms Jobbins and Vinod Kumar, CEO, spoke to Vice-President of G regarding an event "VIP Day". Ms Ozguc was on the call.
143. We accept the Claimant's evidence that she was the Respondent's lead contact with G and that she would ordinarily be involved in such contact. That conclusion we find is evidenced by the Claimant's unchallenged evidence that she was called by G's account manager after the meeting.

144. Ms Ozguc's explanation for the exclusion is that it was a "top-to-top" strategy call, the Claimant had been away in July when it had been scheduled and furthermore she understood in any event that the Claimant was resigning so it did not seem appropriate to invite her.

Call Claimant/Ms Ozguc

145. On 29 July 2022 there was a call between the Claimant and Ms Ozguc. The Claimant asked for a debrief on the conversation that had taken place the previous day and told Ms Ozguc that she could not do her job if she was excluded from key meetings and activities for which she was the lead. She told Ms Ozguc that this was an embarrassment for her and looked as if she was being excluded.
146. Ms Ozguc asked the Claimant to maintain confidentiality internally and externally about her grievance. "Externally" was we find primarily a reference to the external analysts that it was the AR team's responsibility to liaise with.

"Some sort of leave"

147. Also on 29 July 2022 Ms Kelly messaged Mr Dunwoody stating:

'Also business are keen to try and get NH on some sort of leave - she is external facing to analysts and creating some noise - can we discuss?'

Claimant's chaser email 3 August 2022

148. On 3 August 2022 the Claimant emailed Mr Dunwoody, Pinar Yemez and Vinod Kumar regarding her grievance. She complained about the delay in progressing the grievance, mentioned that she had raised the problem with HR. She mentioned another female colleague whom she said had problems with Mr Kapadia. She mentioned that Ms Jobbins refused to meet with her, and stated:

"It is clear that I am being victimised for having raised my grievance."

149. This would on the face of it would be a protected act. The Claimant is relying upon this as background since this is essentially a reiteration of what had gone before.

Further annual leave

150. The Claimant took a further holiday in the period 2 August 2022 to 10 August 2022.
151. During her annual leave, on 4 August 2022 Mr Dunwoody emailed the Claimant to tell her that he would be able to confirm the grievance manager on the following Monday and asking her to complete a grievance form.

152. On 5 August 2022 the Claimant replied to Mr Dunwoody's request and referred to speaking to female witnesses.
153. The Claimant also forwarded this email to Yemez Pinar, Ms Kelly's line manager.

Grievance manager confirmed

154. On 8 August 2022 the Claimant was informed that Ms Joanne Gilfoy, Global Head of Commercial, Planning and Engagement would be handling her grievance.

Interview notes

155. On 10 August 2022 the Claimant emailed Ms Gilfoy regarding her companion at an interview and notes of interviews for grievance.
156. On 11 August 2022 Mr Dunwoody emailed the Claimant regarding the issue of companion and notes. He explained that investigation notes are confidential to the person being interviewed and the company and not automatically shared with anyone else including the complainant although witnesses may consent to sharing.

Investigation of grievance

157. On 12 August 2022 there was an initial meeting between the Claimant and Ms Joanne Gilfoy to discuss grievance.
158. Ms Gilfoy thereafter commenced interviews of 13 separate witnesses as part of her investigation of the Claimant's grievance.

15 August 2022 email exchange

159. On 15 August 2022 there was an email exchange between Ms Kelly and her line manager Pinar Yemez (Group HR Director). Ms Kelly noted:
- "Natalie is on the exit list for October – this was decided before the grievance"
160. She expressed intention to keep grievance 'separate...from the exit conversation' in order to mitigate the risk of a whistleblowing claim
161. Ms Yemez recommended discussion of a package for an early exit for the Claimant, noting that she believes 'that's what she wanted in the first place', which appears to be an allusion to content of the Claimant's email of 25 July 2022.
162. Ms Kelly replied
- "I have already discussed with David [Dunwoody] – his concern starting conversation about exit now without her initiating it would potentially at the risk of her making a whistleblowing claim. We

were hoping to conclude the grievance week Jo is back from leave and separate it from the exit conversation. **If she is part of the bigger exit exercise** which will be communicated in mid-Sept then we can more strongly demonstrate that the decision is part of a wider business rationale mitigate that whistleblowing claim. We did also say we would keep under review depending on how much noise is created through the process so I'll back up with him and see what he thinks".

[emphasis added]

163. The Claimant submits that this demonstrates that a conclusive decision had still not been taken at this stage and that Ms Kelly was making the case for adding in the Claimant's role to a redundancy exercise which she was not otherwise part. This communication could be read as suggesting that HR were trying to build a case that the Claimant was part of a wider redundancy exercise.
164. The reference to "noise" being created through the process is we find most likely a reference to the repercussions of the allegations being raised by the Claimant in her grievance of 22 July 2022.

#### Further grievance meetings

165. On 22 August 2022 there was a further grievance meeting between the Claimant and Ms Gilfoy (Ms Perry in attendance as companion).
166. On 26 August 2022 Ms Perry messaged Ms Gilfoy about whether it is appropriate for her to accompany the Claimant.
167. Ms Gilfoy emailed the Claimant regarding various queries on grievance, including commenting on the sharing of notes of witness interviews.
168. On 31 August 2022 there was further grievance meeting the Claimant and Ms Gilfoy (2.5 hours). Ms Perry declined to accompany the Claimant.
169. On 4 September 2022 Ms Gilfoy emailed the notes of meeting on 31 August 2022 to the Claimant.

#### List of proposed redundancies

170. On 31 August 2022 a list of proposed redundancies including the Claimant - from Peter Harris to Mr Dunwoody. The email contained this comment:
- "I'm expecting the list will change post the D&I analysis, which is due to be reviewed tomorrow"
171. The Claimant's name appears on this list of 77 names, among 7 names listed against Stephanie Twineham, the HRBP for the Business Marketing department. That is consistent with the 7 names in the PowerPoint document dated 27 September 2022 (below).
172. This email and attachment were only introduced at the request of the Tribunal and had not been included as part of the agreed bundle.

Wider redundancy exercise

173. The Respondent's unchallenged witness evidence is that 76 of the individuals whose roles were being made redundant did not go through the Respondent's redundancy process, but rather, individual settlement agreements were entered into with each of them, with a lawyer advising them in each case. That was confirmed by Mr Dunwoody whose responsibility it was to reach these agreements.

Communication with the Claimant

174. On 5 September 2022 Ms Kelly emailed
- "Jo likely to be meeting NH [i.e. the Claimant] for outcome on Thursday 15th. Would we be okay to do a conversation on the following Monday from a consultation timeline perspective?"

Executive Committee decision

175. Ms Jobbins says that it was "around" 7 September 2022 that "Exco" (the Executive Committee) confirmed how deep the cut in operating expenses would need to be.
176. The oral evidence of Ms Jobbins was that the request had come to her which was "10%" or at later point in her oral evidence "10% or a little more". We have not seen any documentary evidence in support of this. It seems from the earlier documentation that either a 5% cut or a 10% cut were being modelled as potential savings. Based on the document at page 234 of the bundle the plan was that Claimant's role would be made redundant to achieve a 10% cut but not a 5% cut.
177. We have not seen the communication from Exco nor any documentary evidence of the Business Marketing team being asked to find a greater saving than the €1.3 million figure identified by the CFO on 27 July 2022, corresponding to a 5% saving.

Garden leave confirmed

178. On 7 September 2022 Ms Kelly messaged Mr Dunwoody, "Ms Ozguc happy with garden leave from Monday".

Grievance progress

179. On 8 September 2022 Ms Gilfoy completed the last interview with a witness (the thirteenth witness) as part of her investigation of the Claimant's grievance.
180. On the following day the Claimant emailed comments on Ms Gilfoy's notes of meeting on 31 August 2022. On 13 September 2022 the Claimant emailed Ms Gilfoy chasing a response to her email of 9 September 2022.

Redundancy process

181. On 13 September 2022 Mr Dunwoody completed an HR1 form (A *pro forma* Insolvency Service form) which notified the Secretary of State of proposed collective redundancies.
182. The document states that there are 58 possible redundancies at that establishment, which is the Paddington Office, London W2, out of the total 4,171 employees.
183. That document states that the Employee Consultative Committee consultation was due to start on 27 September 2022. In reality it was admitted by the Respondent witnesses, in particular Mr Dunwoody that no consultation at all took place.

Garden leave

184. In an email from Ms Kelly to Ms Jobbins, Ms Twineham, and copied to Ms Ozguc regarding the Claimant's garden leave, Ms Kelly wrote on 13 September 2022:

"I know you are keen to communicate to the team that she is on Garden Leave - however, **our position is that we are treating Natalie in essence no different** to any of the other people who would be placed at risk of redundancy in this round of conversations and that we want to be as consistent as possible in our treatment and communications"

[emphasis added]

185. The Claimant submits that this wording is highly suggestive of an artificial "positioning".

Discussion of dismissal 13.9.22

186. On 13 September 2022 there was a virtual meeting by Microsoft Teams between the Claimant, Ms Ozguc and Ms Kelly during which the Claimant was informed she is being placed on garden leave and would continue to be paid until her exit date.
187. The Claimant expressed surprise at being made redundant and explained that she directly connected this with raising a grievance. The transcript of the conversation records:

"Natalie [Claimant]

You're getting me out the door because I've raised a grievance. I've raised a grievance and now I've been what? Made redundant?

Emma [Kelly, HR]

And the two aren't connected Natalie. The function is under opex pressure and a number of difficult decisions that had to be made



across a number of teams. Which will lead to a number of difficult conversations over the next week or so.

Natalie

I've raised a grievance. And there's very serious concerns that have been raised in that grievance. And now I'm being made redundant."

[insertions in parentheses]

188. During that meeting the Claimant objected that she could not agree to go on gardening leave in the absence of an agreement.

Contractual provision relating to garden leave

189. The Claimant's contract of employment (page 73 of the agreed bundle) contained the following under the heading "Notice Period":

Should the Company need to give you notice of termination for any reason, a minimum of three months' or longer notice will be given. The Company reserves the right to make a payment in lieu of all or part of your notice period.

Once notice to terminate has been given by either party the Company may suspend you from performing your job and exclude you from entering any premises of the Company or its subsidiaries, provided that the Company shall continue to pay your salary and provide the contractual benefits due to you during the period of notice.

190. The employee handbook (page 819) contains different wording but to similar effect:

If we need to end your employment for any reason, we'll give you one month's notice or more, in line with what you're entitled to. Vodafone reserves the right to make a payment in lieu of all or part of your notice period.

During your notice period, we may ask you not to come to work or enter any of our premises. This doesn't affect your pay or contractual benefits.

Further grievance procedure progress

191. On 14 September 2022 a grievance outcome meeting scheduled for 15 September 2022 was cancelled.
192. Ms Gilfoy contacted witnesses interviewed during the grievance to seek their permission to share the evidence notes.

Handover of the Claimant's role

193. Also on 14 September 2022 the Claimant sent a handover note to Ms Ozguc and had a call with her to discuss handover.
194. The Claimant stated in this conversation:
- “I don't even know where I am. I've been dismissed because I'm not agreeing to the redundancy? Does anybody know?”
195. Ms Ozguc responded
- “I'm really sorry. This is the way this is happening. ...there's no other way and I am really sorry I cannot discuss”.
196. In this conversation the Claimant reiterated that she had not agreed to be placed on garden leave.
197. Notwithstanding her concerns and upset, the Claimant then went on to have a long conversation in which she provided a handover of the role to Ms Ozguc.

Garden leave implemented

198. On 15 September 2022 the Claimant was placed on garden leave and was told that:
- “for the duration of this Garden Leave your access to the IT systems is being suspended”

Grievance outcome

199. An outcome to the grievance dated 15 September 2022 was sent by post to the address held for the Claimant on the Respondent's system. The Claimant alleges this was not received by her because the address was out of date as she had not updated it on the Respondent's system.
200. One element of the grievance was upheld, in response the allegation that the Claimant had requested help from HR but no investigation or support have been offered, it was partially upheld and Ms Gilfoy accepted that an informal “check-in” would have been advantageous to help the Claimant get back to a normal working situation ready for her new manager, together with a referral to Employee Assistance or an informal chat with her HR business partner. This finding had a caveat that Emma Kelly had been stretched across several directorates following the departure of a colleague which was said to be unfortunate timing and led to a gap in HR support. Ms Gilfoy did not accept that an investigation should have started at this point or that it could be said that “no” support was offered.
201. Save for that partially upheld allegation, the remainder of the grievance was not upheld.
202. The Claimant was granted the right to appeal within 14 days.

Ms Gilfoy on holiday

203. Between 15 September 2022 to 22 September 2022 Ms Gilfoy was on annual leave.

“At risk” employees notified

204. On 22 September 2022 employees whose roles were “at risk” because of the redundancy (other than the Claimant) were notified of potential redundancy to take effect in October 2022.

Claimant chases grievance

205. The Claimant emails Mr Dunwoody and Ms Gilfoy to say she has not received grievance outcome and evidence notes.
206. On 26 September 2022 the Claimant made a data subject access request under the GDPR to the Respondent.

VGS Restructuring October 2022

207. The agreed bundle contains a document entitled “VGS Restructuring October 2022” which is a five page which explains that the restructuring would impact employees in October 2022 with some changes expected in November and December 2022. It contains details of 47 potential roles at risk on 30 October 2022 with a further 18 potential roles at risk in the finance function only in November/December 2022.
208. Of the 47 potential roles at risk of being made redundant on 30 October 2022, seven were in marketing. The restructure within marketing is described as follows:

“Due to OPEX challenges, VB Marketing are offshoring the Carrier Services Marketing support, reducing the number of roles dedicated to providing market insights and offshoring the work, removing a layer of management within the AR team and reducing Marketing support into the APAC region.”

Claimant continues to chase grievance outcome

209. On 4 October 2022 the Claimant emailed Mr Dunwoody to raise with him that she had still not received the grievance outcome or the notes.
210. Two days later, on 6 October 2022 the Claimant emailed Mr Dunwoody confirming receipt of grievance outcome posted to her lawyers and wrote that she would be appealing the outcome once her DSAR had been completed and she had received the notes.
211. The Claimant did not, ultimately, appeal the outcome of the grievance.

212. On 19 October 2022 the Respondent informed the Claimant that a response to her DSAR request was delayed because of the complexity of case.

Respondent's Redundancy policy

213. The Respondent's "Redeployment and Redundancy" policy dated 19 May 2021 contains the following:

**"Consultation process**

We'll treat everyone fairly and consistently at all stages of the redundancy process. We'll follow one of two standard consultation routes depending on the size of the group involved.

...

**Collective consultation**

If we predict more than 20 redundancies at the same location within 90 days, we'll consult employee representatives. We'll do this at least 30 days before the first redundancy takes effect or 45 days if we predict more than 100 redundancies.

We'll arrange the election of a sufficient number of employee representatives by organising a secret ballot from within the affected groups.

We'll consult the representatives about:

- the reasons for the redundancies
- the number of employees affected
- options for avoiding or reducing redundancies
- our selection criteria
- the method and timing for termination of contracts
- redundancy calculation details

We won't issue individual notices of redundancy until there's been meaningful consultation with employee representatives."

214. The first page of the policy contains the following:

"Compliance levels are monitored and reviewed by appropriate governance bodies. Any breach will be treated as a serious disciplinary offence and may be subject to disciplinary action."

215. Despite the fact that 48 employees were apparently at risk of redundancy at the Paddington Office establishment, it is not in dispute that no collective consultation process occurred at all and further that despite this breach of

process, no one was subject to investigation of any serious disciplinary offence or disciplinary action. In other words, the Respondent did not follow its own process nor even any minimal process which might satisfy statutory requirements and ACAS guidance.

**Termination of employment**

216. By a letter dated 27 October 2022 Mr Dunwoody on behalf of the Respondent headed wrote to the Claimant "Notice of Termination of Employment Due to Redundancy" which contained the following:

"Further to recent discussions with your manager I am writing to inform you that the Vodafone enhanced redundancy compensation, as outlined in the settlement agreement recently offered to you by the Company, will be withdrawn on 31 October 2022.

Should your signed settlement agreement and solicitor certificate not be received or DocuSign completed, your employment with Vodafone Group Services Ltd will be terminated by reason of redundancy of 31 October 2022, unless you are redeployed internally by this date.

217. This letter was received by the Claimant on 31 October 2022, i.e. the date on which it was due to take effect.

**Other redundancies**

218. Other than the Claimant 76 redundancies took effect on 31 October 2022, including 7 others in the Marketing Team.
219. There were further redundancies from the Marketing Team. In March 2023 there were a further eight roles made redundant and then in June 2023 a further two roles were made redundant.
220. The unchallenged oral evidence of Respondent witnesses was that following on from her dismissal the Claimant's role never returned to the team nor was anyone recruited to perform that role.
221. From 1 August 2024 onward Ms Ozguc began working for a different organisation.

**Employment tribunal claim**

222. Between 4 and 7 November 2022 there was a period of Early Conciliation under ACAS.
223. The claim was presented on 13 December 2022.

224. On 6 March 2023 the Claimant withdrew claims of direct sex, age and race discrimination, and harassment.
225. On 7 July 2023 liability for unfair dismissal was conceded (sensibly and realistically in the view of the Tribunal given the lack of a fair process).

## Submissions

226. We are grateful to both counsel for their helpful written and pithy oral submissions.

## The Law

### Legislation

227. The Equality Act 2010 contains the following provisions:

#### 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— ...

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

[emphasis added]

#### 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.

### Protected acts

228. The Tribunal has had reference to the decision of Langstaff P in **Durrani v London Borough of Ealing** UKEAT/0454/2012 and HHJ McMullen QC in **Fullah v Medical Research Council** UKEAT 0586/2012.

229. To fall within section 27 a protected act does not necessary require an employee to go as far stating in terms that there is contravention of the Equality Act, nor expressly that discrimination relating to a protected act has occurred. If not express it would need to be implied. Nevertheless a person on the receiving end of a complaint of victimisation ought to be able to identify what protected characteristic it is in respect of (**Fullah**).
230. The Respondent highlights the decision of the Employment Appeal Tribunal in the case of **Chalmers v Airpoint Ltd** EAT 0031/19 in support of two propositions relevant to whether or not a protected act has been made:
- 230.1. Context is important, including an employee's level of articulacy and ability to phrase allegations in a legally clear and express manner.
- 230.2. Qualifications within a statement are relevant to interpretation as to whether an allegation is or is not being made (in **Chalmers**, "may" in that case indicated sufficient uncertainty).

#### Causation

231. Something is done 'because' of a protected act for the purposes of s.27 if the protected act was a "significant influence" on the employer's decision-making: **Nagarajan v London Regional Transport** 1999 ICR 877, HL.
232. 'Significant' will be an influence that is more than trivial: **Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases** [2005] ICR 931, CA 2005 ICR 931, CA. This is guidance in relation to legislation which predated the Equality Act 2010, but is nevertheless treated as good law.

#### Burden of proof

233. We have considered **Nagarajan, Madarassy v Nomura International plc** [2007] IRLR 246 CA, **Ayodele v Citylink Ltd** [2017] EWCA Civ 1913. In **Hewage v Grampian Health Board** [2012] ICR 1054, Lord Hope endorsed the following guidance given by Underhill P in **Martin v Devonshires Solicitors** 2011 ICR 352, EAT:

"the burden of proof provisions in discrimination cases... are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation... they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'.

## Conclusions

### PROTECTED ACTS

#### Admitted protected act

234. The Claimant's grievance to Mr Kumar dated **22 July 2022**, along with the subsequent meetings and emails relating to that process are admitted by the Respondent to have been a protected acts by the Respondent for the purposes of s. 27 EqA 2010.

#### First alleged protected act ("PA1")

235. In the Claimant's oral statements at the meeting on **10 March 2022** between the Claimant and Mr Kapadia, we did not find that the Claimant went as far as stating that Mr Kapadia ignored female members of the Industry Analyst Relations team and generally treated male colleagues more favourably than female ones nor that Mr Kapadia had a problem with the Claimant as a senior female employee.
236. We have borne in mind the guidance in **Chalmers**. We find that the Claimant was and is articulate. It seems that the meeting was one which she did not shy away from making direct criticisms of Mr Kapadia.
237. With specific regard to allegations of discrimination, based largely on the follow up email of 16 March, the Claimant did not go as far as making either an explicit allegation of discrimination, nor was discrimination implied with any clarity. Our finding is that she had mentioned to Mr Kapadia that he had held meetings with David Taylor and David Rossiter and asked him the question whether he had meetings scheduled with Lesley Homer, Hannah Perry or herself. The conversation was exploratory in relation to Mr Kapadia's meetings. The discussion was couched in terms of the Claimant being sidelined and undermined as a team manager.
238. We find that she did not raise discrimination either in terms or by implication. We do not find that what was said by the Claimant amounted to an allegation of a contravention of the Equality Act 2010.
239. As set out above we accept that the Claimant already had forming in her own mind that there was possible discriminatory disparity of treatment.

#### PA2

240. The next alleged protected disclosure is the Claimant's email to Mr Kapadia dated 16 March 2022 in which the Claimant referred to the concerns she had raised during their meeting on 10 March 2022. This email from the Claimant was extremely direct and critical of Mr Kapadia in relation to a whole of management matters, both defending herself from his criticisms and making criticisms of her own.
241. Nevertheless with regard specifically to the question of discrimination the Claimant recorded the discussion that had taken place on 10 March 2022. She



recorded asked whether calls were scheduled with Lesley, Hannah and herself. This was exploratory, although she made it clear felt avoided and undermined as head of the AR team. This email, critical in relation to other matters fell short of expressly alleging discrimination or implying it with any clarity. Again and for similar reasons as appeared to the 10 March discussion we find that was couched in terms of being undermined.

242. We do not find that this amounted to an allegation of a contravention of the Equality Act.

PA3

243. The Claimant's oral statements at the meeting on 31 March 2022 between the Claimant, Mr Kapadia (present for part of the meeting only) and Ms Kelly we find that her comments about meeting male members but not female members of the team did enough to make out an allegation of discriminatory treatment.
244. The context of this meeting was different. A member of the HR team was present. By contrast with the conversation on 10 March the Claimant was in this meeting not exploratory. She was expressly asserting a difference of treatment and clearly suggesting that female team members were ignored. This was by implication we find an allegation of discriminatory treatment. **This was a protected act.**
245. The Claimant's statement to Ms Kelly in the later discussion on 31 March 2022 after Mr Kapadia had departed that he had a problem with the Claimant as a senior female employee was also an allegation of discriminatory treatment and **was also a protected act.**
246. We find that by the conclusion of the two discussions on 31 March 2022 Ms Kelly understood that the Claimant was making complaints of sex discrimination.

PA4

247. The Claimant's oral statements to Ms Kelly during a telephone call on 1 April 2022. Ms Kelly says that this telephone conversation was predominantly dispute about the level of contact between the Claimant and Mr Kapadia.
248. It seems, looking at the Claimant's email sent on 1 April 2022 at 16:10 in which she refers to a call earlier (presumably that day) and to the calls the previous day (i.e. 31 March) that it was in the calls the previous day that the Claimant raised the discriminatory matters.
249. We do not find that the Claimant has proven that there was a separate oral protected act on 1 April 2022.

PA5

250. The Claimant's email to Ms Kelly on 1 April 2022 in which the Claimant refers to their earlier call and the meeting on the previous day and how Mr Kapadia

has "an issue with me as a senior woman here and the distress he has caused me over the last months".

251. This was written restatement of the oral allegations of sex discrimination which had taken place the previous day. **We find that this was a protected act.**

PA6

252. The Claimant's oral statements at the meeting on 26 May 2022 between the Claimant and Ms Ozguc at which other members of the Industry Analyst Relations team were also present, in which the Claimant says that complained about Mr Kapadia's discriminatory attitudes.
253. For reasons given above, we did not accept the Claimant's version of this discussion.
254. We did not find that the Claimant claim performed a protected act in this meeting.

PA7

255. The Claimant's oral statements at the meeting on 17 June 2022 between the Claimant and Ms Ozguc, in which the Claimant complained about Mr Kapadia's discriminatory behaviour towards her and alleging that he had been allowed "to kick [her] as he was going out of the door" by downgrading her performance rating.
256. Although we generally prefer the Claimant's version of what occurred in in preference to that of Ms Ozguc, we do not find that the Claimant has proven that this was a protected act. Complaining to Ms Ozguc about the level of the pay rise did not amount to a protected act either expressly or by implication.

PA8

257. The Claimant's email to Mr Dunwoody dated 28 July 2022 in which she asks whether the other females who raised concerns about Mr Kapadia's [discriminatory behaviour] will be spoken to as part of the investigation into the Claimant's grievance.
258. The way that this alleged protected act is framed in the list of issues does not reflect what the Claimant's email of 28 July 2022 actually said. There was no reference to other females and the investigation, nor a reference to discriminatory behaviour.
259. We did not find that this amounted to a further protected act.

PA9-PA19

260. These disclosures were relied upon by the Claimant as background evidence, and evidence of the Respondent's knowledge of the protected acts but not relied upon as "fresh" protected acts.

### SUMMARY OF PROTECTED ACTS

261. We find that there were protected acts on 31 March 2022 and 1 April 2022 and the grievance submitted on 22 July 2022.
262. We do not understand that the claim is being put forward on the basis of detrimental treatment in anticipation of a future protected act. It follows that any detrimental treatment before 31 March 2022 cannot succeed as an allegation of victimisation.

### ALLEGED DETRIMENTAL TREATMENT

Did any of the conduct on the part of the Respondent which is set out below occur in the matter alleged?

#### Allegation (1) General lack of support

263. General lack of support from Mr Kapadia and Ms Jobbins to the Claimant.
264. To the extent that this was an allegation preceding 31 March 2022 it cannot succeed as an allegation of victimisation.
265. The Tribunal found that “general lack of support” was a vague allegation, although we acknowledge that Ms Jobbins did make herself unavailable to the Claimant, which we deal with further as allegation (6) below. Ms Jobbins acknowledged during cross examination that potentially she should have taken more time to find out from the Claimant what was going on.

#### Allegation (2) Set up for failure re: AR budget

266. The alleged detriment was the Claimant being set up for failure by Mr Kapadia including in relation to him failing to communicate to the Claimant the reduction to the AR budget in a timely manner.
267. The contemporaneous email exchange around 5 April 2022 shows that the Claimant did complain about a reduction in the AR budget. Mr Kapadia responded however that this had been discussed from November onward, i.e. five or six months earlier. That contemporaneous evidence which predates the present claim undermined the Claimant’s contention that this was somehow being sprung on her late. While the Claimant was undoubtedly unhappy that there was a reduction in the budget for her team, it is not clear to the Tribunal that there was a deliberate failure to communicate in a timely manner, nor that this was motivated by the protected acts.
268. The Respondent submits that this was “pedestrian”. Without necessarily adopting that description, the back-and-forth in relation to budgets and also that this is sometimes done tardily strikes us as being part of the usual business of management.

Allegation (3) Not part of Marketing Leadership Team

269. The Claimant not being part of the Marketing Leadership Team meetings. The Claimant's case on this point is somewhat unclear in particular in relations to timing. She appears to be referring back to being part of the Leadership Team under Ms Jobbins' predecessor as Chief Marketing Officers. Ms Jobbins started her role in 2021, which pre-dated the making of any protected acts.
270. Paragraph 163 of the Claimant's witness statement reads:
- "I had previously been a member of the Marketing LT that had been established by Ms Jobbins' predecessor but was removed without any explanation by Ms Jobbins on or around March 2022"
271. Paragraph 380 of the Claimant's witness statement:
- "380 In terms of me not attending the LT meetings this was because Ms Jobbins had excluded me from these. Ms Ozguc confirms "EO commented that NH hadn't been to the LT in the past year whereas other teams had been". Ms Ozguc knew I had been a member of the Marketing LT under the previous CMO and had not raised it with anyone."
272. We accepted Ms Jobbins' evidence that it was not her routine practice to have non-direct reports on the Leadership Team.
273. This allegation is not made out.

Allegation (4) Called a liar by Mr Kapadia during their meeting on 10 March 2022.

274. Following our finding that the first protected act was 31 March 2022, this allegation cannot succeed.

Allegation (5) Mr Kapadia not scheduling or cancelling any one-to-one meetings with the Claimant on or after 10 March 2022 (bar one).

275. Following our finding that the first protected act was 31 March 2022, this allegation cannot succeed.

Allegation (6) Ms Jobbins ignoring Claimant

276. There are multiple parts to this allegation.

(i) Ms Jobbins was ignoring the Claimant including her requests for an urgent meeting in March 2022

277. Following our finding that the first protected act was 31 March 2022, this allegation cannot succeed.

(ii) ignoring the Claimant's emails of 23 and 24 March 2022

278. Ms Jobbins rightly acknowledged in cross examination that she could have taken steps to communicate directly with the Claimant. In circumstances in

which the Respondent's grievance policy provides for employees to speak to the second line manager to resolve difficulties with line manager, and in any event good management would suggest this is a course of action. Ms Jobbins might at the very least have provided some reassurance, which might have prevented the matter escalating in the way that it subsequently did.

279. Following our finding that the first protected act was 31 March 2022, this allegation cannot succeed before that date. It was clear to the Tribunal that Ms Jobbins had already taken Mr Kapadia's side following the fallout from the 10 March 2022 meeting, i.e. pre-dating the protected act.

280. Based on the evidence we have (noting the absence of disclosure of WhatsApp communication), our finding is that Ms Jobbins was certainly aware of the allegations of discrimination by 7 April 2022, the date on which she discussed matters with Ms Kelly. We did consider whether at this stage Ms Jobbins ought to have then make direct contact with the Claimant, such that failing to do so was a detrimental omission. The reality is however that by this stage Ms Jobbins had taken a decision to involve Ms Kelly in trying to resolve the deteriorating relationship between the Claimant and Mr Kapadia rather than becoming involved herself, and this was two weeks after the communications from the Claimant.

281. We find that this allegation does not succeed.

(iib) cancelling all monthly one-to-one meetings with the Claimant from March 2022

282. The Claimant has not established that there were one-to-one meetings between herself and Ms Jobbins. The factual premise of this allegation is not made out and therefore this allegation does not succeed.

(iii) not letting the Claimant know she could not participate in the Unplugged analyst briefings in a timely manner and such response coming from her PA

283. This allegation was withdrawn.

(iv) actions in relation to the new graduate hire

284. The Tribunal is satisfied on the evidence that Ms Jobbins was being asked to find significant cost savings. Suspension of recruitment was an obvious potential cost saving which might obviate the need for later redundancies. We do not find that this was targeted in any way at the Claimant.

285. This allegation does not succeed.

(v) refusing to be the Claimant's interim manager

286. The Tribunal found that Ms Jobbins was a senior manager and accept her evidence that she was extremely busy with other direct reports and that it simply would not have been tenable to take over interim management of the Claimant given her workload.

(vi) excluding the Claimant 'Coffee with Amanda' sessions on 9 August 2022 and 6 September 2022.

287. The Claimant alleges that on 9 August 2022 (and 6 September 2022) she became aware that the 'Coffee with Amanda' sessions were cancelled. She says that she had not made aware that they were taking place or invited to attend although the rest of her team had been invited. That this occurred is supported by an entry in the chronology she submitted during the grievance process (page 616).
288. Ms Jobbins' evidence is that this was organised by her business manager (Shelly Goldthwaite) she was not aware that the Claimant had been excluded, and she would not have omitted the Claimant.
289. The Tribunal has not heard evidence from Ms Goldthwaite.
290. We have been unable to make sufficiently precise findings on this allegation to determine whether this is a separate detriment. Although it seems on the face of it that these events have been cancelled, and that the Claimant was excluded from the events, we do not have evidence of when they were set up. Ultimately we have concluded that this apparent exclusion is on the balance of probabilities linked to the Claimant's role being made redundant.
291. The Claimant's role appeared on a list of those potentially at risk on 8 July (category Amber) and then was confirmed on the list dated 31 August 2022 (subject to a D&I review which we have seen no evidence of).
292. We have not concluded based on the evidence that this exclusion from the "Coffee with Amanda" were separate acts of victimisation. It does seem, however likely on the balance of probabilities that the Claimant was not invited to the coffee meetings because she was known to be on the list of redundancies. In other words, this is a consequence of that decision rather than a separate act of victimisation. Our reasoning in relation to the dismissal is dealt with at allegation 26 below.

Allegation (7) Mr Kapadia's responses to the Claimant's emails of 16 and 21 March 2022.

293. This allegation was withdrawn.

Allegation (8) Ms Kelly attempting to force the Claimant to have weekly, one hour, one-to-one meetings with Mr Kapadia following the meeting on 31 March 2022. –

294. This allegation was withdrawn.

Allegation (9) Not Top Performer

295. The Claimant not being awarded Top Performer (and the rating given) and the corresponding impact on the award of shares and the Claimant's bonus occurred most likely on 22 March 2022 which pre-dates the protected acts and accordingly this allegation cannot succeed.

Allegation (10) the Claimant being given the lowest pay rise in the AR team i.e. a 1.36% increase.

296. The Tribunal accepted the Respondent's case that the Claimant was already earning 107% of the compensation ratio, meaning that she was earning above the maximum expected salary for the role. The Respondent's evidence was that another employee had a lower compensation ratio received a higher increase. That this was related to the "comp ratio" is documented in a note from Ms Kelly on 25 August 2022, albeit that this is not contemporaneous.
297. Although the Respondent's documentation in relation to this allegation is not particularly full, on balance we have accepted the Respondent's case about the compensation ratio.

Allegation (11)

298. This allegation was not pursued.

Allegation (12) The Claimant being unable to present at the Vodafone Business Marketing Conference.

299. The Tribunal found it significant that the initial conversation about the Claimant's potential participation in this conference had only happened approximately 10 days before. In other words, this was not a long-standing commitment, but rather a rather last-minute and opportunistic approach by Ms Ozguc motivated by the desire to help the Claimant.
300. The contemporaneous evidence suggests that the agenda was still changing and in flux the week before the marketing conference was due to take place.
301. On balance we accepted that this was a last-minute attempt by Ms Ozguc to attempt to raise the Claimant's profile, but which did not ultimately end up in her being on the final agenda. We did not find that this was victimisation.

Allegation (13) The delays in dealing with the Claimant's grievance.

302. Taking account of the fact that the grievance was being investigated during the summertime, that the Claimant herself was away on annual leave for part of this period, and the number of individuals that were interviewed (13), we did not find that the happen delay in dealing with the grievance. On the contrary we found this grievance was dealt with in a reasonable timescale. Accordingly, we do not find that there was detriment, and this allegation does not succeed.

Allegation (14) the Claimant being excluded from the call on 28 July 2022 to discuss the G VIP day and being debriefed following the call on 28 July 2022 to discuss the G VIP day.

303. Ms Ozguc explained that the Claimant had been on annual leave for the first three weeks of July when the call had been planned and further that she believed that the Claimant had resigned, or at least it was unclear.

304. Although the Claimant had clarified to Mr Dunwoody on 26 July 2022 that she was not resigning, there is no evidence that Mr Dunwoody had notified Ms Ozguc of that fact as of 28 July 2022.

305. On balance, we accept Ms Ozguc's explanation.

Allegations (15)-(16)-(17)-(18)

306. These allegations were not pursued.

Allegation (19) The Claimant not being supported during the grievance process.

307. We note that Mr Dunwoody offered his telephone number 25 July 2022 and offered advice and also that the grievance manager Ms Gilfoy met with the Claimant three times. We accept the submission that she corresponded promptly.

308. The Tribunal found that this allegation was vague and was ultimately did not conclude that lack of support amounted to an omission because of a protected act being raised. This allegation did not succeed.

Allegation (20) The continual refusal to provide the Claimant with notes of the meetings with those interviewed as part of her grievance.

309. There is clear evidence in the bundle that Mr Dunwoody was seeking to obtain consent in order to release notes of interviews carried out in the investigation of the Claimant's grievance. He gave the Claimant guidance on 11 August 2022 that she could make a subject access request.

310. We find that the obtaining of consent was understandable and appropriate and not concluded that the refusal to provide notes of meetings was detrimental treatment because of a protected act.

311. Ultimately, we accepted Mr Dunwoody's evidence that has that he has dealt with many grievances that he dealt with this one no differently to any other.

Allegation (21) The Claimant being ambushed on the call of 13 September 2022 between her, Ms Ozguc and Ms Kelly.

312. This allegation was not pursued.

Allegation (22) The Claimant being put on 'garden leave' from 15 September 2022.

313. The Tribunal notes that the Claimant was the only one of the 77 people being made redundant that was placed on garden leave. In other words, this was an approach only taken in her case.

314. The suggestion of "leave" to be imposed by the Respondent was first made in the documentary evidence on 29 July 2022, i.e. seven days after the Claimant's grievance of 22 July 2022 to the CEO, which was a protected act. That note suggested that she was "external facing to analysts and creating some noise". It is submitted on behalf of the Claimant that the only "noise" was internal, i.e.



the grievance/protected act and further that the enforced garden leave amounted to a breach of contract.

315. The Claimant's contract of employment provides for garden leave once notice to terminate has been given. The Employee Handbook has similar wording. As at the meeting on 13 September 2022 when she was told she was being placed on garden leave the Claimant had not been given notice of termination and indeed expressed surprise in that meeting redundancy was being suggested. No written notice of termination had been given at this stage. The Notice of Termination letter was provided on 27 October 2022.
316. The Respondent's case is that the decision to put the Claimant on garden leave was purely management of reputational risk given concerns by the Claimant and the Claimant's role in which she was in communication with external analysts.
317. The Tribunal accepts that management of reputational risk was part of the Respondent's motivation in imposing garden leave. There was the background of the conversation reported by Ms Ozguc on 9 June 2022 in which it was said that the Claimant and her team had had a hard time recently, which Ms Ozguc says that she took with a pinch of salt at the time. On 29 July 2022 the Claimant had complained to Ms Ozguc about being excluded from a key meeting, following on from the Claimant's conversation with G's account manager in which he told her of the call which had taken place the previous day. Those are reasons to support the Respondent's case that the reputational risk motivated the garden leave.
318. We bear in mind however the strength of Ms Ozguc's reaction to the grievance, which she characterised as being "stabbed in the back". That combined with the fact that garden leave was exceptionally applied in the Claimant's case (as compared to others facing redundancy) and at a time even before there had been notice of termination or any agreement about termination, has lead us to the conclusion that the grievance of 22 July 2022 (the protected act) was more than trivially a cause of the decision to place the Claimant on garden leave.
319. If we are wrong about that, in any event we conclude that the garden leave flowed from the decision to make the Claimant redundant which was, for reasons given below, an act of victimisation.

Allegations (23) and (24)

320. These allegations were not pursued.

Allegation (25) the Claimant not being expressly told that she was being dismissed and the purported reason for her dismissal until on or around 31 October 2022.

321. The Tribunal finds that the Claimant understood from the conversations on 13 and 14 October 2022 that she was being made redundant. We do not find that the factual basis for this allegation is made out.

Allegation (26) being dismissed.

322. In relation to the dismissal we find that there is room for doubt as to the facts in relation to the Respondent's motivation and accordingly we have paid careful attention to the operation of the burden of proof under section 136 of the Equality Act.

Prima facie case

323. Has the Claimant shown a *prima facie* case of victimisation?
324. At this stage we are considering whether a Tribunal could reasonably conclude that victimisation had occurred, absent an explanation.
325. We find that the Claimant has established a *prima facie* case of victimisation detriment in relation to the decision to dismiss her for the following reasons:
- 325.1. Emma Kelly's email of 8 April 2022 to Ms Jobbins following the meeting the previous day a week after the protected acts of 31 March and 1 April 2022 demonstrated the Respondent was considering three different potential tracks which might lead to dismissal of the Claimant, namely disciplinary, redundancy or performance (PIP) (although that latter option had been mentioned earlier by Ms Jobbins on 28 March). This was for an individual who had hitherto been regarded as a high performing employee who had for several consecutive years been a "top performer", the top 20%. Top performer status had been considered as recently as 22 March 2022 according to the Respondent. There was no performance issue with her team generally at this time. This was an abrupt change in the attitude of management to the Claimant following on from the protected acts.
- 325.2. Ms Jobbins's comment on 13 April 2022 that she "wouldn't hesitate to remove those who weren't team players" less than two weeks after the Claimant's protected disclosures.
- 325.3. The language of Emma Kelly's email of 15 August 2022 suggests doubt as to whether the Claimant was part of the wider redundancy exercise at all. This email could be read as a degree of "positioning" the Claimant as part of the redundancy exercise.
- 325.4. The timing and treatment of the Claimant were different to the other individuals whose roles were part of the redundancy exercise which her redundancy role was allegedly part of. She was the only person of 77 at risk of redundancy placed on garden leave, and the business was looking to do this from 29 July 2022 onward.
- 325.5. The strong reaction of Ebru Ozguc who was absolutely candid that she felt betrayed by the Claimant's grievance (protected act) of 22 July 2022. In her oral evidence she said that felt that she had been stabbed in the back.
- 325.6. The absence of disclosure in relation to certain matters. The documents of 31 August 2022 only came as a result of questions from the

Tribunal. There has been no disclosure of WhatsApp exchanges between Ms Kelly and Ms Jobbins. There is no documentation demonstrating the final decision on the cut to operating expenses being made to the marketing team.

326. Could a Tribunal reasonably conclude, based on this evidence (and absent the Respondent's explanation) that an act of victimisation had occurred? We find that for those reasons it could. An inference could reasonable be drawn from the timing of these matters that someone who had previously had a successful career with the Respondent was being regarded as someone that management no longer wanted to be in the business because of raising an allegation of sex discrimination.

Burden on Respondent

327. In view of those findings the burden shifts to the Respondent to show that in no sense whatever the protected acts lead to the dismissal.
328. We find that the Respondent has failed to discharge that burden for the following reasons.
329. We accept the Claimant's submission that the Opex challenge and subsequent redundancy exercise are opaque through lack of disclosure.
330. According to Emma Kelly, the Claimant's name was on a list in June 2022. We have not seen that list.
331. The Claimant's role appears among 18 roles (representing 21 individuals) in a document based on 8 July 2022. That appears to have been based on a discussion between Shelley Goldthwaite (Ms Jobbins' business manager), Matthew Grace, Stephanie Twineham. The Tribunal has received a witness statement but heard no live evidence from Ms Twineham and no evidence at all from Ms Goldthwaite and Mr Grace. In short, it has not been possible through cross examination to properly scrutinise why and how the Claimant's role came to be on that list at all.
332. The Claimant's name appeared on a list of redundancies on 31 August 2021. It appears that the Respondent had failed to disclose this list, or at least it was not in the agreed bundle. The list and covering email were only produced, following a request from the Tribunal, and added into the bundle at pages 396A-F. The process leading to the Claimant's name appearing on this list is opaque to us. It is unclear precisely how and why her name appeared on this list. The Claimant herself was not involved in a consultation about it.
333. According to the covering email from Peter Harris, he was expecting the list to change "post the D&I analysis". We presume this means diversity and inclusion have not received any evidence of it nor any changes made.
334. The next stage in the process appears to have been the Executive Committee confirming a final figure for the saving that they were requiring of the Marketing Team and when this occurred. These are important details. This would confirm

exactly where the knife fell in this exercise as to who was being made redundant, who was not and when this communication was made. We have not seen documentary evidence of this. Ms Jobbins was vague and inconsistent about the precise percentage. In her oral evidence she said, “I believe it was 10%” then later on “I think it was 10% or a bit more”. As to when this confirmation occurred her witness statement says at paragraph 27:

“The final decision on how deep we would have to go would have come from Exco on or around 7 September 2022.

335. The phrase “would have come” and “on or around” represent a very surprising degree of imprecision about such an important communication. The practical reality is that the Tribunal cannot scrutinise what the communication was, when it was given, and whether or not it meant that the Claimant’s role needed to be made redundant based on the 5% and 10% reductions that had been modelled in July 2022.
336. The only documented communication from the Respondent’s senior level of management is Mr Kamath’s email of 27 July 2022 refers to a reduction of €1.3m “with no further challenges”. That figure corresponds on the documents we have been taken to (pages 231 and 234) to a 5% reduction in operating expenditure. In those documents it does not model the Claimant’s role being made redundant. While the Tribunal is alive to the possibility that these documents did not represent the “last word” on the actual redundancy exercise that was implemented based on a communication from the Executive Committee, the absence of subsequent documentation means that we are not satisfied that the Respondent has through contemporaneous documentary demonstrated what occurred.
337. In our view these points are sufficient to lead to our conclusion that the Respondent has failed to satisfy the burden on it.
338. Additionally, however the Tribunal draws an inference from the failure to disclose WhatsApp communications between Ms Kelly and Ms Jobbins. These would plainly be relevant. Ms Kelly has stated the importance of that means of communication to Ms Jobbins. The Respondent has an internal lawyer, a firm of solicitors and counsel acting for it. It cannot, corporately, be in doubt of its disclosure obligations. The absence of disclosure was, appropriately, canvassed in cross examination by Mr Sendall on behalf of the Claimant. It has not been suggested that this communication no longer exists. Our inference is that that WhatsApp communication contains some content which would have been unhelpful for the Respondent. This fortifies our conclusion that the Respondent has failed to discharge the burden of proof.
339. Our conclusion is that the decision to dismiss in this case was at least more than to a trivial extent due to the making of protected act by the Claimant. This part of the claim therefore succeeds.

The reason why

340. In case the Tribunal was wrong in our approach to considering the two stage burden of proof in this way, in any event, taking a step back and assessing the entirety of the evidence, we find that the Claimant's protected acts of raising sex discrimination were part of the reason why she was made redundant. That is for all of the matters set out above, but in particular the following.
341. The Tribunal has in mind the harsh options being considered on 8 April 2022 in the email from Ms Kelly to Ms Jobbins for someone who had hitherto been a high performer. We are unconvinced by the Respondent's explanations why the Claimant was suddenly being treated as a case of poor performance or misconduct. In fact, neither of those transpired, but instead she was made redundant, which was the third option mentioned in that email. On balance it seems likely to the Tribunal that the Claimant's fate was already sealed at this point in respect of the redundancy that was coming up in the summer.
342. We also take account of the extreme reaction of Ms Ozguc who candidly admitted having felt stabbed in the back by the grievance submitted on 22 July 2022 which led on to a discussion of "leave", which ultimately transpired to be garden leave pending dismissal.
343. The inadequacies of disclosure by the Respondent have left communications and processes opaque.

**Polkey/Chagger**

344. The Tribunal received some submissions in principle on reductions to a compensatory award. We did not receive submissions on the quantum of the appropriate reduction or reductions, which is not a criticism of counsel at all but practically it is difficult to place a percentage in the abstract, without understanding the findings of the Tribunal.
345. There is the **Chagger** question of whether there should be a reduction in compensation to reflect the chance that there might have been a dismissal in any event in October 2022 even absent the unlawful victimisation.
346. There is a **Polkey** question of whether there should be a reduction in compensation to reflect a chance of there being a fair dismissal in October 2022.
347. We anticipate a possible submission from the Respondent to the effect that there was a chance that subsequent rounds of redundancies might have applied to the Claimant.
348. We did consider whether we should press ahead and attempt to quantify reductions, but on the basis that a remedy hearing is necessary in any event, we decided that we would benefit from further submissions from counsel on these points, and in particular in the circumstances of this case where an unfair dismissal is rightly conceded, the extent to which the Chagger and Polkey questions are overlapping or distinct.

349. We will invite submissions on how Polkey/Chagger should apply, the quantum of any reduction and reasons for it.

**Case management hearing**

350. Parties are always encouraged to consider settlement once liability has been decided.
351. A short (30 minute) case management hearing has been listed by CVP (video) at **4pm on 20 March 2025**.
352. The Claimant's representatives are requested to provide a draft list of remedy issues to the Respondent by **11 March 2025** for the Respondent to offer comments on and ideally agree and file with the tribunal by **18 March 2025**.

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Employment Judge Adkin

Date 28 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 March 2025

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FOR THE TRIBUNAL OFFICE