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EMPLOYMENT TRIBUNALS

Claimant: Mr M Khan

Respondent: The Home Office

Heard at: London South Via CVP. **On:** 22-26 September 2025

Before: Employment Judge McLaren
Members Mrs. C Chaudhuri
Ms. S Khawaja

Representation

Claimant: Ms. D Van Den Berg, Counsel
Respondent: Mr. P Smith, Counsel

JUDGMENT

The unanimous decision of the employment tribunal is as follows: –

None of the complaints of indirect discrimination are well founded. They do not succeed.

REASONS

Background

1. The claimant has been employed by the respondent as a Senior Executive Officer (“SEO”) from 10 March 2003. He remains in their employ. ACAS early conciliation started on 1 August 2023 and ended on 31 August 2023. The claim form was presented on 27 September 2023. The claim is about indirect race discrimination. It revolves round not being appointed to a grade 7 role.
2. In brief, the claimant took part in a recruitment exercise in which a number of roles were put together. It is agreed that he was on the reserve list for a role and was in third place nationally. His complaint stems from the fact that grade 7 vacancies were not all filled from this reserve list, but that the respondent chose to appoint people to grade 7 roles in other ways.

Evidence

3. We were provided with written witness statements and heard evidence from the claimant on his own behalf and four witnesses on behalf of the

respondent. These were Emma Topp, Head of the Irregular Migration Intake Unit, John Hawkins, Director of Resettlement, Andrew Larter, Chief Operating Officer Asylum Support, Resettlement and Non-Detained Accommodation and Mary Lowe, Deputy Director Engagement, Communications and Change, Customer Operations Support Services.

4. We were provided with a bundle of 880 pages together with 2 supplemental bundles from each of the respondent and claimant of 8 and 68 pages respectively.
5. The findings of fact set out below were reached on a balance of probabilities, having considered all the evidence given by witnesses during the hearing, including the documents referred to by them, and considering the tribunal's assessment of the witness evidence.
6. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgment. It would not be necessary, and neither would it be proportionate, to determine each and every fact in dispute.

The Issues

7. The issues the Tribunal will decide were agreed at a previous preliminary hearing, subject to 2 matters to be completed. The parties confirmed that the final issues were agreed with the inclusion of these 2 matters and the addition of 2.4.10.

1. Time limits

1.1 Were the discrimination claims made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

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

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

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

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

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

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

1.2 The respondent states that any claim about things that happened before 2 May 2023 is out of time. The claimant relies on a course of conduct the last of which was in time.

1.3 The claimant states he was last denied a promotional opportunity on 13 July 2023 when his one-year period of being on the waiting list expired.

2. Indirect discrimination (Equality Act 2010 section 19)

2.1 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs

2.1.1 The practice of recruiting advertised permanent Grade 7 roles by way of ‘managed moves’ for ‘experience in the Grade; and

2.1.2 The practice of recruiting to Grade 7 Temporary Cover Allowance ‘TCA’) roles without advertisement using a pool of individual employees already in a Grade 7 TCA role

2.1.3 The practice of recruiting permanent Grade 7 roles via Temporary Cover Allowance (‘TCA’) expressions of interest (despite holding a Grade 7 reserve list for permanent Grade 7 roles).

2.2 Did the respondent apply the PCP to the claimant?

2.3 Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic, i.e. white employees or would it have done so?

2.4 Did the PCP put persons with whom the claimant shares the characteristic i.e British Asian/brown employees at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic i.e white employees, in that:

2.4.1. Published data confirms there are proportionately less individuals of Asian ethnicity and overall BAME/Non-White individuals in G7 grade roles within the Home Office (and have experience in this grade) compared to those of white ethnicity. The pool from where the persons selected for these Managed Moves was disadvantageous to BAME/Non-White persons.

2.4.2 The Home Office published Workforce Diversity Data for 2023 shows only 11.2% Asians and British Asians are working at a G7 level. In contrast, 80.5% of those in G7 level roles are of white ethnicity. (refers to paragraph 7.1)

2.4.3 Further, within Migration and Borders – Operational (NAIU sits within this business area) only 14.9% of individuals are working at a G7 level are of the BAME community, 85.5% of individuals working at a G7 level are of white ethnicity. (refers to paragraph 7.1)

2.4.4 The Claimant contends there were seven G7 NAIU TCA roles within the department’s G7 TCA pool, and all seven roles were filled by individuals of white ethnicity; the

pool consisted of 100% individuals of white ethnicity.

2.4.5 The Claimant contends that the Directorate held a reserve/merit list for permanent Grade 7 roles from a centrally administered Brigaded Campaign which was endorsed by the Home Office Race Action Plan, furthermore the campaign Leader confirmed that initial outcomes were better for BAME persons.

2.4.6 As a result of the PCPs listed above as of 06 June 2024, 16 out of 16 members (100%) of the NAIU's Grade 7s are of white ethnicity as compared to 80.5% across the overall Home Office

2.4.7 The claimant was denied permanent promotional opportunities, due to bypassing those, including the claimant, on the G7 Brigaded Campaign reserve/merit list for G7 vacancies where the permanent roles were advertised, including salary increase as a result; and

2.4.8 The claimant was not considered for temporary promotional opportunities.

2.4.9 The claimant was denied permanent promotional opportunities, due to bypassing those, including the claimant, on the G7 Brigaded Campaign reserve/merit list for G7 permanent vacancies, including salary increase as a result

2.4.10 Did any of the PCP's put the claimant at any of these disadvantages at the relevant time?

2.5 Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

2.5.1 To ensure G7 roles are filled efficiently and in response to evolving resourcing needs.(In the amended Grounds of resistance these are set out more fully as "the legitimate aims of ensuring that grade 7 roles are filled efficiently and in response to evolving resourcing needs, particularly where the skills and experience needed for such roles are more likely to be held by employees already working at grade 7 level rather than by those who are (or would be) new to that level.")

2.5.2 The Respondent denies applying the second or third PCP

2.5.3 If the tribunal finds that the PCP 2 and/or 3 were applied the respondent repeats the aim at 2.5.1

2.6 The Tribunal will decide in particular:

2.6.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

2.6.2 could something less discriminatory have been done

instead;

2.6.3 how should the needs of the claimant and the respondent be balanced?

3. Remedy for discrimination

3.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

3.2 What financial losses has the discrimination caused the claimant?

3.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

3.4 If not, for what period of loss should the claimant be compensated?

3.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

3.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

3.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

3.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.9 Did the respondent or the claimant unreasonably fail to comply with it by delaying in dealing with the grievance and failing to deal with the appeal impartially.

3.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

3.11 By what proportion, up to 25%?

3.12 Should interest be awarded? How much?

Finding of Facts

Credibility

8. Inevitably in any decision we have to consider how to address a conflict-of-evidence. In this case we have found the claimant to be a credible and straightforward witness. We accept that he passionately believes in the merits of the case he is putting forward and its underlying facts. In contrast, Mrs Topp and Mrs Lowe were less forthcoming in their answers, their witness statements did not cover all the relevant points and at times they both contradicted their written witness evidence in oral testimony. Where that occurred, we have preferred their oral testimony in answer to cross examination questions. Nonetheless, while we have found the claimant a more straightforward witness than either Mrs Topp or Mrs Lowe, a lot of the matters he raises are speculative. We have accepted that Mrs Topp and Mrs Lowe are in a better position to know the facts in relation to recruitment and what was in their mind at the time. We have therefore generally accepted their evidence on the background facts that relate to recruitment decisions.

Improving Diversity

9. In July 2021, in response to the Windrush issues, the Home Office published a set of actions to increase Black, Asian and Minority ethnic staff ("BAME") at senior levels. It had established a strategic race board together with a race delivery board. In order to support diversity with recruitment a panel of BAME colleagues had been set up to sit on recruitment panels.
10. The recommended initiatives included keeping diversity statistics and these were provided for 2022/2023. These were at page 386 onwards. They indicated that Migration and Borders operations, which was the unit which included the department where the claimant worked, was the largest area of the Home Office by percentage of staff, employing some 79.3% of the total workforce.
11. In both 2022 and 2023, 20.4% of HEO/SEO staff were described as minority ethnic. Of these in 2022 14.9% identified as Asian or Asian British and in 2023 14.8% identified as Asian or Asian British. At grade 6 the percentage of Asian British staff grew from 6.8% in 2022 to 7.1% in 2023. In 2022 13.8% of minority ethnic staff were employed at grade 7 in this unit, by 2023 that percentage had increased to 14.9%, similarly there had been an increase in grade 6 from 7.1% to 7.6%.
12. It was accepted by Mrs Topp and Mrs Lowe that in broad terms the more senior the grade the less diverse the job holders. We accept, however, that matters were improving, albeit at a slower rate.
13. One of the tools that was used to assist increasing diversity was that of a brigaded campaign (details of what that amounts to are given below). The effectiveness of this tool was considered in September 2023 (page 534). That report showed that in July 2023 the existing representation of ethnic minority staff in customer services was 21.55% compared to the Home Office target of 24%. It concluded that brigaded recruitment positively impacted organisational diversity for race. It was felt generally to have a positive impact on diversity. 29.6% of candidates who were successful at interview were from an ethnic minority. A higher percentage of applications was received from ethnic minority candidates at lower grades.
14. It was not, however, as successful at the higher grades where attraction was lower. Applications and levels of success were higher for candidates with Asian backgrounds compared with those from black and mixed

- backgrounds. The report also concluded that it appeared ethnic minority colleagues were less likely to receive support from line managers or undertake preparation when applying for jobs. The report also identified that white colleagues appear to get more support from line management.
15. We were taken to 2 documents which appear to be information provided by ethnic minority colleagues as a result of being asked about their experience. Both suggested that there were senior positions that were not obtained through fair and open competition. Both appeared to leave the organisation because there was no avenue for promotion.
 16. In May 2023 the respondent revised its Race Action Plan. That committed to monitoring the impact of Expression of Interest and Temporary Cover Allowance opportunities (subject to operational needs) on the internal progression of ethnic minorities colleagues at grades SEO to G6.
 17. Mrs Lowe said that she was unaware that ethnic minority staff were leaving because of lack of promotion opportunities. She considered that the respondent was taking steps to address what she acknowledged was a comparative lack of diversity at senior grades.
 18. She told us that part of her role included responsibility for diversity and inclusion matters within customer services. She was involved in, or was aware of, at least two specific initiatives which were either aimed solely at ethnic minority colleagues, or which had a specific enhancement for such colleagues to provide support to progress careers. She also explained that it was not, in her view, a barrier to promotion having less line management support. Her experience is that line managers are too close to the role and that staff do better in applications if they have a mentor from outside their management line. She emphasised that there were a large number of mentoring schemes available.
 19. Despite the commitment in the Race Action Plan review she said that she was unaware that any figures were in fact being collected within customer services of the number of opportunities for progression which took place by way of EOI and/or TCA. While we were surprised at the lack of data being collected, we accept that it was not.
 20. Overall we conclude that as an organisation the respondent was attempting to improve career outcomes for many underrepresented groups including ethnic minority colleagues. It had taken a number of positive steps to do this but there was still progress that needed to be made, as the respondent's witnesses acknowledged. We would add that this includes actually collecting the data the organisation had committed to.
 21. We would also add that a positive step towards delivering the outcomes the respondent had committed to would be ensuring that senior managers were aware of these outcomes. We were troubled by the fact that Mrs Topp was very uncertain as to whether she had read the Windrush report or was aware of what the respondent was trying to do. We were equally troubled by the fact that Mrs Lowe did not appear to believe that the practice of lateral moves could have any impact on diversity. There appears to be no training in place for senior managers and little attempt by recruitment managers to understand hidden barriers. It appeared to be firmly the province of the HR department to identify these matters. Senior managers meanwhile could disregard policy and recruit as they wished.

Recruitment Policies and Practices

22. The claimant was aware of the Recruitment Principles Document. This document, dated April 2018, specified that selection for appointment to the civil service has to be made on merit on the basis of fair and open competition and that exceptions to that requirement could only be made where it is justified or necessary.
23. The policy then set out 10 examples of those exceptions where appointment would be made outside of fair and open competition. We note that this included temporary appointments where an individual could be appointed up for a maximum of two years. Where this exception was been used, the policy also allows those candidates to be converted to a permanent role after 12 months of the original appointment.
24. A further policy provided that a role could be filled without open recruitment in the case of restructuring, redeployment and redundancy (RRR). In order to retain colleagues and minimise job loss staff could be redeployed into vacant roles. It was also agreed that in the case of disability, where adjustments might be needed, similarly an individual could be moved into a role without any open recruitment process.
25. It was therefore agreed that while the general principle is that roles should be filled through a fair and open competition, that was not always the case. There were accepted reasons why exceptions might be made. As this included creating temporary appointments, we find that, despite the recruitment principles and it being stated that exceptions were exceptional, this provision in fact gave managers within the respondent organisation a very large degree of flexibility in determining not to advertise roles.

Recruitment methods

26. A lot of terminology is used by the parties in discussing the respondent's recruitment practices. We set out below our findings as to what these terms meant.

Brigaded campaign

27. The use of a brigaded campaign is a central part of the claimant's case. We find that the concept of a brigaded campaign was created in October 2021. The report reviewing these which was dated 13 September 2023 (page 534) identified that 20 such campaigns were run between October 2020 and 1 November 2022.
28. A brigaded campaign was a centrally administered campaign when multiple vacancies at a particular level were identified. Any applicant was applying through one application form for all the roles within that advert. Candidates were ranked in order and roles assigned on the basis of that order, overlaying location.

Managed Move

29. What is described as a Managed Move "for experience within the grade" is an essential element of PCP1. A Managed Move describes the situation where an individual is transferred laterally from one role to another at the same grade. We were directed to a Managed Move process (page 377) created by the Customer Services Group in November 2022.
30. This guidance document specifies that such a move should be used where disability adjustments are required. It should also be used where there has

been a breakdown in working relationships so that a change of team is required. It should not be used for colleagues seeking development opportunities. Despite this guidance, both Mrs Topp and Mrs Lowe confirmed that this practice was used for development opportunities, although Mrs Topp stated that this was before the guidance came in so only until November 2022.

31. While we accept that this is guidance and not a policy and applied only within the Customer Service directorate, we find that, as it sets out, a Managed Move is the process of moving a member of staff to another role outside of the full recruitment process. It can only apply to level transfer moves or voluntary downgrades.
32. We accept Mrs Topp's evidence on the time at which the prohibition was put in place. We find that this guidance applied only from November 2022 and only to units that were within the Customer Service Group. To the extent they were "Managed Moves" the prohibition on using this method for development opportunities did not therefore apply to the moves of Mr Wise, Ms Lambert, Ms Freeman or Mr Fraser.
33. Until November 2022 this description of a move was used by the respondent to cover multiple situations. This included providing development opportunities on a lateral basis, to accommodate reasonable adjustments and provide alternative roles for those at risk of redundancy. Thereafter its use was limited to specific situations.
34. In all cases, if it was a lateral move within a grade the move was to a permanent role. Individuals who are not at the grade of the role to be filled, could not be recruited into a permanent role in this way. That could only be achieved through an advertisement.

Talent moves

35. These were referred to by Mrs Lowe in her statement. Mrs Topp did not refer to them in her witness statement. There was no policy on these that was provided to us. Mrs Lowe told us that these occur when a substantive post-holder is moved laterally into a substantive post at the same grade. This is done as a result of a talent review process. She told us that individuals at senior grades are placed on a nine-part grid identifying talents and this is used to identify opportunities to develop those talents.
36. As Mrs Lowe herself acknowledged, the terminology that the respondent uses can be confused. In oral evidence she seemed uncertain as to how lateral moves were described. After November 2022 a distinction was made between talent moves and Managed Moves. It did not exist prior to that. Until that point both could be used for the same purpose as a developmental move. It is this type of move, whatever name is given to it, that the claimant considers to be a hidden barrier.

How frequently were either talent or Managed Moves for experience used ?

37. In her witness statement Mrs Topp confirmed that in her unit the practice of Managed Moves was applied to the role of the head of Croydon intake unit (Mr Wise) and to the role of head of finance and contracts Ms Bashir) i.e. on two occasions. Her statement specifies that she had provided evidence of other Managed Moves which demonstrated their widespread use. That evidence was not apparent to us. It was not clear whether she was including only those for development opportunities or for matters such as

reasonable adjustments.

38. Mrs Topp also referred to talent moves in answer to cross examination questions. She had stated in her written evidence that the department needed to take all necessary measures to fill business critical roles rapidly. When she was asked about this, she stated that it was not unheard of to move people for experience or succession planning. She also went on to say it is common practice for the respondent to use lateral moves to fulfil business requirements.
39. In her written evidence Mrs Lowe told us that talent moves were rare. When she discussed practice, she talked about moving people around for example in her own team on a talent basis. Her answers were also confused between talent moves and Managed Moves. She was asked whether people moved because of business need and specified that the respondent moves people around the grade as needed "a lot". That is how the respondent manages its business. She also accepted that all policies can be bypassed if there was a business reason for a lateral move.
40. Both Mrs Topp and Mrs Lowe told us that it is in effect common practice to move people laterally on the basis of business needs. We find therefore that whether you call this a Managed Move or a talent move, there is a widespread general practice of providing grade 7 staff further experience within the grade rather than advertise the role as a promotion opportunity.
41. However, Mrs Lowe also told us that when what she called talent moves, or we are considering to be either talent moves or Managed Moves for experience occur, this sets off a chain reaction. Mrs Lowe told us that recruiting to a vacancy requires director-general approval. That has been delegated to a board which meets once a month to discuss and agree whether vacancies can be recruited. She explained that if a vacancy arises within a team and the manager decides to move staff across laterally to fill that gap it is only the last role in that chain that is considered vacant. It is only that last vacancy which is subject to the approval of the board. In effect neither the talent moves, or the Managed Moves are subject to the need for authority before they are made. In both cases this is a management decision. This seems somewhat surprising for an organisation attempting to improve its diversity.
42. On Mrs Lowe's account there is always a vacancy at the end of that chain. That of course won't be the case where an individual is moved to avoid redundancy, but the claimant accepted the need to make moves for this purpose was legitimate. His complaint is that a promotion is denied. That promotion opportunity could only arise if a role became vacant or a new role was added. In other words it could only apply where the pool of Grade 7 staff were fewer than the roles.
43. This was not challenged and as a matter of evidence and logic we find on the balance of probabilities that where an individual is moved for experience in grade the first move would be necessitated by a vacancy. We find that what occurs by using lateral moves for experience in grade is moving that vacancy around the teams and departments. The ultimate recruitment gap can be in a very different part of the organisation to the area where the vacancy first arose. That will result in a promotion opportunity at the end of that chain.

Expressions of interest (EOI)

44. We were also taken to the guidance provided to those seeking to recruit

staff (page 807 onwards). That confirmed that there could sometimes be a need to employ staff on a non-permanent basis. That could be achieved through an expression of interest which was described as an internal recruitment process where roles were advertised within directorates to cover a short-term resourcing gap quickly. Posts should normally be advertised on a level transfer or TCA period of up to 12 months.

45. We were referred to the expression of interest process guidance (page 856) published in October 2022. This explained that this process is an informal light-touch recruitment process to meet a temporary requirement needed urgently. It can be used for cover for short to medium term absences up to 12 months, for covering an interim vacancy where a recruitment campaign is ongoing, for talent planning as part of a structured development programme, and for redeployment. They must not be used where roles need be filled on a permanent basis. These 4 reasons give a large degree of freedom to management to determine to fill a vacancy on a temporary basis rather than advertise for a permanent replacement immediately.

Temporary Cover Allowance

46. The claimant also refers to a temporary cover allowance role which is a key part of PCP2. The allowance referred to in the name means the additional financial compensation that is given in the circumstances where the individual who is moved goes to a higher paid role. The allowance is not paid where the transfer is at the same salary level.
47. The guidance for those recruiting makes reference to TCAs within the expression of interest section. We find that they are therefore part of an EOI process and are in place only for temporary recruitment. They would therefore always be advertised.
48. The claimant believes that the respondent maintains a pool of those already in grade 7 who can be moved and does not advertise TCA roles. We have found that talent moves do happen without advertisement. It is only the last move in a chain that may ever come up for scrutiny and potential advertisement. Talent moves are not the same as TCA moves.
49. We find that all TCA roles are always advertised using an expression of interest. There is no evidence that there was any pool for such temporary moves. We have found that reserve lists are not generally kept for those who do not succeed in getting a temporary role. The respondent's practice is to do this only for permanent roles where more people pass than there are vacancies.

Expansion of the claimant's unit

50. The claimant is a long-term employee of the respondent. He started with them on 10 March 2003. He is currently working as a Senior Executive Officer within the Croydon Asylum Intake Unit. This was formerly part of the National Asylum Intake Unit/Irregular Migration Intake Unit (IMIU). The majority of the time that events relevant to this claim occurred, the IMIU sat within the Customer Services Group division of the Migration Border System in the Home Office. It then moved to a different unit from around April/May 2023.
51. The IMIU had a role processing asylum claimants. In 2021 when the

number of asylum seekers crossing the English Channel by small boats began to increase, this unit was one of those tasked with responding to this. It is agreed that it was one of the front-line units responding particularly to the small boat arrivals. On 15 September 2020 Emma Topp was appointed the Deputy Director. The claimant therefore worked within the unit for which she was ultimately responsible.

52. It was accepted that during 2021 - 2022 the Customer Services Group as a whole was growing considerably because of the increasing demands on the asylum system. It was agreed that in an 18-month period the IMIU underwent significant growth, expanding its workforce from 150 staff to 850. A large proportion of the increased staff were focused in Kent, given that is the point of entry for those arriving by small boats across the channel.

Expression of interest for roles October 2021 – January 2022

53. As part of this expansion a number of roles were advertised. On 14 October 2021 and 18 October 2021 the claimant applied for two grade 7 roles. One was for operational delivery and the other for people and planning. While he was shortlisted and invited to interview, he was not successful, and he was not offered either role.
54. The claimant applied again for a further grade 7 operational temporary role on 10 January 2022. On 28 January was told that he had passed the threshold and the application would be retained on file in case they had a need for or were able to draw other positions from this campaign. This did not in fact happen. Mrs Topp was clear that keeping a merit list from an EOI was not usual practice. She was very surprised to see that this had been suggested and she was aware it was not done. We accept that this is the case.
55. On 10 February 2022 an email was sent to the Department confirming that following this EOI exercise Paul Fraser was a successful candidate. The email went on to say that although the initial EOI covered one post, by the completion of the sift it was recognised that further capacity at Grade 7 was required. The decision was therefore taken to draw further roles from the campaign, owing to the business-critical need, with the view that these G7 posts would be substantively filled through the brigaded campaign which was due to go live at the end of February 2022.
56. Jonathan Barnett was therefore appointed. The email also announced that Sophie Able Hewitt would be given a role because of the strength of her application in the EOI process. This was by way of a temporary cover allowance (TCA).
57. While the claimant complains that three individuals were selected for the role but only one role had been identified in the advertisement, the reasons for this were set out in the email. We find that the three individuals were appointed following an open EOI exercise and that they therefore performed better than the claimant did in that exercise. Had the claimant's performance been even stronger, he could have benefited from this.
58. The claimant confirmed that he had not applied for any other roles via an EOI after this date. The last time that he entered such a process was therefore 10 January 2022. He suggested this was because he was being kept on file. He understood by 23 August 2022 (p365) that this did not mean his application was being referred to for other EOI roles. On the balance of probabilities we find that the claimant did not have a reasonable

expectation that he did not need to apply for other EOI roles as they came up and this was the case from January 2022.

59. The subsequent role in which Mr Barnett ended up forms part of the complaint at PCP3.

Brigaded Campaign in 2022

60. On 22 March 2022 a brigaded campaign was launched for assistant directors to fill generic leadership positions across all business areas within Asylum and Protection which therefore included IMIU. It consisted of inclusive job descriptions. It is agreed that there was BAME representation on the interview panels and that the initiative was linked to the Home Office Race Action plan.
61. The claimant applied via this brigaded campaign. Its terms are set out at page 126. At the point it was advertised it included 27 roles. There were six roles listed as available in the IMIU. These were a people lead role, Kent intake unit, Manston operational role, Manston logistics cell role, Midlands intake unit and Intake response Unit.
62. Candidates were told that a reserve list might be created for other similar roles for a period of 12 months. Selection from the reserve list would be in merit order to fill the same role, or similar role with closely matching essential criteria and success profile elements, without further assessments. Offers would be made on merit order based on business needs, geographical location and the role the individual had expressed an interest in.
63. We were referred to the brigaded campaign posting principles (page 495). Mrs Lowe confirmed that applicants should be posted considering the indicated interest in roles in merit order. The principles specify that where possible, those who had scored above the line of posts available who are currently on TCA would be made an offer for their TCA role to avoid churning the business and retain expertise. However, that offer could only be made once all candidates above that individual had been made a suitable offer. Merit order had to be maintained.
64. Mrs Lowe gave evidence that 20 colleagues were offered roles immediately, 30 others who achieved the pass mark were kept on a merit list. These candidates were ranked according to their scores, and it is Home Office standard that the merit list is kept for a year. She explained that there are multiple merit lists maintained by HR following any recruitment exercise in which successful candidates exceed the number of available posts.
65. Ms Lowe explained that the expectation is that other vacancy managers would approach HR if they wished to recruit. The HR department would then look at the new job role and compare the skills and behaviours required to the merit lists. If any of the retained merit lists had a 75% match with the success profile behaviours that the new vacancy needed, the next candidate on the merit list would be passed on. It was her evidence that over that 12-month period the merit list from the claimant's campaign was used to make eight additional offers to candidates.
66. Mrs Lowe indicated that candidates would be offered the roles in merit order regardless of the geographical location that they had put down. It was agreed the claimant was third on the merits list, if eight candidates were offered roles then he should have been offered one on that basis. On the balance of probabilities we conclude that in fact a merit list was

operated with the geographical overlay.

67. We find that the claimant had a reasonable expectation that in the 12-month period after he was put on the reserve list he would be offered any role that was similar to the 27 included on the brigaded campaign. It was not limited to the 27 roles advertised in the campaign. This would have been until 13 July 2023. It included any roles where there was a 75% match between the skill set required for the new role and the skill set that he had been required to demonstrate in order to pass the brigaded campaign. There would, however, also be a geographical overlay in line with the policy.
68. Mrs Topp agreed with Ms Lowe's description of how the merit list would be used, she emphasised that it would not be used where jobs had a specialist element. There would not be a 75% overlap in these cases. Further, once her department left the Customer Service Group, that is from April or May 2022, she no longer used the brigaded campaign information. In effect the claimant's time on the merit list was ended earlier than the 12-month period he was led to expect.

Roles removed from the brigaded campaign

69. It was Mrs Topp's evidence that 2 roles that were originally within the brigaded campaign were removed. One role was being considered for inclusion but was not added. In addition, the Midlands intake unit role was filled by a candidate from another campaign. In the end 3 roles from the original 6 were available and filled by candidates from the brigaded campaign. The claimant considers that one further role was removed, this is the head of learning and development role which we address below.
70. The roles that Mrs Topp said were removed were as follows.

Assistant director for the intake response team

71. Mrs Topp told us that this role was removed from the campaign after that campaign had finished. This was because the role was merged with another which was taken from the campaign to make sure that there was an appropriate span of control for a person at that grade. It was essentially removed because the role was not necessary. This was not challenged and we accept that was the reason.

Assistant director people lead

72. Mrs Topp similarly told us that this was withdrawn from the campaign. This was because customer services group introduced a centralised approach for this work, and they were instructed not to recruit at individual unit level for this post.
73. This was not challenged and we accept that was the reason.

Phil Wise (Croydon Asylum Intake Unit)

74. The role Mrs Topp told us she considered including and then did not was the Croydon Intake Unit. On 22 June 2022 (p 326) it was announced that Phil Wise was joining to take over from Lubna Bashir. Mrs Topp confirmed that Lubna Bashir was carrying out this role from early 2022 by way of a secondment from her home unit, Border Force. In early March 2022 the

intention was that she fill this role on a permanent basis via way of a Managed Move for Ms Lubna. Things then changed and on 9 March the decision was taken to put this role onto the brigaded campaign. Ms Bashir confirmed that she would stay in post until the end of the recruitment process to allow a handover.

75. By May, Mrs Topp believed that the position had changed. On her evidence Ms Bashir was due to have an operation involving a recovery period during which would not be able to travel to Croydon. Ms Bashir was already unhappy about the length of her commute.
76. In an email of 19 May Mrs Topp sets out that she is thinking that she would prefer to bring somebody in before Lubna leaves in order to obtain an effective handover. She did not want there to be a period when there was no G7 leadership as the Croydon team needed strong and visible leadership.
77. She had therefore reached out to a very experienced G7 she had worked with before. He had been a G7 for some 13 years. She also understood that his role might be coming to an end soon, in other words he might need to be redeployed to avoid redundancy. She explained that she was in possession of this information as a possibility, but that Mr Wise would not have known, and it is possible that his line manager was also unaware.
78. Ms Topp asked that she could bring this individual in and remove the role from the brigaded campaign before it was advertised as there would still be other G7 roles open to competition for those who had applied. The email correspondence shows that this was agreed. The role was therefore removed from the brigaded recruitment campaign and filled while the recruitment process was in progress on 22 June 2022.
79. Mr Wise was transferred into this role laterally, having had significant years of experience at this level, in order to refresh his operational leadership skills and to provide strong and visible leadership. We find that while it is possible that there was a future redundancy, this was not a 3R's move it was given to Mr Wise as a Managed Move as a development opportunity for an existing grade 7.
80. We find that it was Mrs Topp's decision to use a Managed Move that meant that this opportunity was not available to any of the candidates on the brigaded campaign for which the claimant successfully applied.
81. While it was Mrs Topp's evidence that she believed that she needed to bring in somebody urgently to avoid a gap in leadership, we do not accept that Mr Wise met this criteria. Given she brought him in to develop those skills it cannot be the case that he could fill that gap on an urgent basis. While we accept that Mrs Topp was able to use talent / managed moves to rotate staff around, we have found that her choice of candidate did not fully meet that need.
82. If Mr Wise's home role was made redundant then this would be clearly within policy, and the claimant would have no complaint. We also find that if his home role was not removed then his transfer created a vacancy elsewhere. In bringing in Mr Wise Mrs Topp deprived the claimant of a particular opportunity and moved that vacancy/ promotion opportunity elsewhere.

Roles advertised outside the campaign

83. Mrs Topp confirmed that to her recollection another six assistant director roles were recruited for outside of the brigaded campaign. We set out the

details of these roles below. They were initially advertised on a temporary basis and subsequently on a permanent basis. They were not all recruited for on a permanent basis immediately. Some were advertised prior to the start of the brigaded campaign. Mrs Topp considered them all to require specialist skill sets which could not be filled through generic recruitment campaign.

84. She stated that all six roles were advertised through the civil service jobs website and anyone who met the requisite criteria, including the claimant could have applied. We have found that the claimant did not have a legitimate expectation that he was on a waiting list for other EOI roles and therefore if he was interested in any of these roles where there were advertised on a temporary basis, he should have applied. These roles are discussed below.

Vicky Lambert (Head Of Learning And Development/Professional Standards Training)

85. This role was not in scope for the brigaded campaign when it was advertised in March. On 29 April 2022 (p 312/3) the Department was told that Ms Lambert was going to take this role. This was before the brigaded campaign interviews. She started on 9 May 2022. In an email of 10 June 2022 a request was made to add it (p336) to the brigaded campaign. On 6 July this was then removed as it had been filled.
86. The means by which Ms Lambert was appointed was the subject of some confusion. On 10 June 2022 there is an email from Sally Walton stating that the role has been filled by an EOI process. On 6 July Ms Walton explains that it was as a result of a Managed Move. During the investigation of the claimant's grievance, when Ms Walton was interviewed, she confirmed that Ms Lambert's appointment into the role had been by way of an EOI. The investigator accepted this position and concluded that professional standards training was filled as a result of an EOI.
87. However, Ms Topp explained that the EOI for this role was in early 2022. Ms Lambert had moved into it on a temporary basis as a result of that EOI exercise. She was an existing grade 7 before she succeeded in this exercise. At some point, and the date was unclear but presumably it was before 6 July, Mrs Topp confirmed that Ms Lambert was now remaining in the role as a Managed Move. We accept that at the point that Ms Lambert was managed moved into the role following her temporary appointment, that role was no longer available to anyone as a promotion opportunity. It had been permanently filled by the incumbent of the temporary role as, in effect, a lateral transfer from Ms Lambert's home role. Once this occurred it is logical to conclude that her previous permanent Grade 7 role was then vacant.
88. Ms Lambert remained in the role until at least 9 May 2023. At that point we were told that she had decided to leave. As far as the claimant was concerned this was still within the timeframe of the merit list. Nonetheless a further EOI was launched to fill the role on a temporary basis. This was because Ms Lambert left comparatively quickly, and the respondent considered it needed someone in that role until permanent recruitment could occur. The claimant did not apply for any of the EOI calls for this role. Eileen Buckley was the successful candidate.
89. The role was then advertised to be filled on a permanent basis on the 31 October 2023. At this point the reserve list had expired. Mrs Topp's best

- recollection, given that she was not the decision-maker in relation to this role, was that this was a specialist role. The job details for the permanent role were provided to us (p 579). The job title appears to have evolved somewhat. Nonetheless, we were told by Mrs Topp that this was the same role that Ms Lambert had filled. This was not disputed and we accept that.
90. We find that the permanent role that was advertised could be described as specialist. It requires specific qualifications in the L&D space. It also requires very particular experience. On the balance of probabilities we find that this role required such experience and qualifications from the start when it was created in early 2022.
91. We also find that it was created on a temporary basis on two occasions for good reasons. The first occasion was because the respondent needed to understand whether the role was required. The second occasion was to bridge a departure before permanent recruitment could occur.
92. We find that it was reasonable for the respondent not to go to the brigaded campaign list for this role on any of occasions when it was advertised. It was a specialist role. The claimant had passed a generalist list. To be considered for this role he would expressly need to apply. We also find that even though this was a Managed Move at one point in its history, the claimant would not have been eligible for this role as he did not have the specialist qualifications. Further any managed Move would have created a promotion opportunity in another area.

Kelly Freeman (Business Development Lead.)

93. Mrs Topp told us that the role was advertised before the brigaded campaign started. The successful candidate came from another government department, and they had been subject to some months of vetting. It was for that reason that she was announced on 29 April 2022, while the brigaded campaign was still live, to start on 9 May 2022.
94. We accept Mrs Topp's evidence on this point. We find therefore that this role was advertised and indeed filled prior to the brigaded campaign starting. It was not therefore a role that the claimant could have been given as part of that process. If he considered he was able to do the role the claimant could have applied for it when it was advertised, and Ms Freeman was successful.

Paul Fraser (MIU operations role – Midlands intake unit)

95. Mr Fraser had, as set out above, been the successful SEO candidate following the January 2022 temporary operational role EOI which had been announced on 10 February 2022. He was on a TCA at this point. As this was a temporary appointment, the permanent role that Mr Fraser was occupying on a temporary basis was part of the brigaded campaign for which the claimant applied. This role of Midlands intake unit was, however, withdrawn from the campaign on 22 June 2022, a day before the claimant's interview.
96. It is the respondent's position that in the autumn of 2021 Mr Fraser had applied for a role in a campaign that was run to find candidates for roles in RASI. These had been subject to a sift on 18 October 2021. On 9 April 2022 Mr Fraser was notified that he had been successful in that campaign. He was therefore due to be given a role in RASI (p331). He was therefore

- appointed in effect to a grade 7 role.
97. In correspondence Mrs Topp requested that instead of taking a grade 7 role in RASI he stay in her team and take on the role in the Midlands intake unit on a permanent basis. Mrs Topp explained that she felt he was doing a very good job and therefore it was better that he continue to do that. Mr Fraser was effectively given the grade 7 role in her department taking on the job he was doing temporarily on a permanent basis instead of taking on a role in RASI.
98. It was agreed that this role was advertised as part of the brigaded campaign. It was also agreed that Mr Fraser had not passed the G7 brigaded campaign.
99. Again, there was some confusion as to how and why Mr Fraser had been appointed. The claimant pointed to an email from Sally Walton of 11 July 2022 which suggests that Mr Fraser had been successful in a previous EOI. We accept Mrs Topp's evidence that Mr Fraser had been successfully appointed as a grade 7 level in a previous permanent recruitment exercise. She did not view this as a Managed Move but merely a candidate taking a role in a different area from the one that he had been given.
100. The posting principles that apply to a brigaded campaign do indicate that where possible an individual who is successful should be given the role they are occupying as a TCA on a permanent basis. This can happen only where candidates ahead of them have succeeded in getting roles.
101. It is arguable that in succeeding in a previous campaign Mr Fraser was ahead of the claimant who was on the reserve list for a later brigaded campaign. The respondent was giving Mr Fraser his TCA role to preserve continuity, treating him as in effect higher up the list than the claimant.
102. We accept that technically this is not a Managed Move. We also accept that in taking this action one role was removed from the brigaded campaign. There was no additional role put in to make up for this. While it is not a Managed Move, it is an example of an individual on a TCA who then gets the role that he is covering temporarily on a permanent basis. Unusually this occurs not following his success in the campaign for which the role was advertised, but because he took preference from a previous success list.

James Kennett (customer experience)/ (Kane Dempster)

103. On 5 November 2021 after a successful EOI (p 103) Mr Kennett was appointed joint head of operations for delivery and was given a TCA posting to a grade 7. It is the claimant's case that he was still doing this role on 3 June 2022 and on 5 November 2022 was given a new temporary role until May 2023. It is the claimant's position that the TCA should not have been extended but the role advertised.
104. Mrs Topp's evidence was that Mr Kennett was doing a particular role in a high-pressure environment which needed to be completed. Another individual, Kane Dempster was appointed to the customer experience role as a successful candidate from the brigaded campaign, but some part of the duties from that role were temporarily excluded. Instead, Mr Kennett continued to run the project that he had been involved in until it was completed.
105. The claimant considered that an EOI should have been in place for this temporary role as a fresh pair of eyes could have dealt with it more

effectively. Mrs Topp took the view that she wanted continuity and the task to be finished as it was an important task, so she chose to retain the person carrying out the task.

106. We find that as the completion of this particular project was a subset of the role that Mr Kennett had been doing under the EOI on which he had been appointed on a temporary basis, a fresh EOI exercise should have been launched. The claimant would not have been given this role as it was temporary and the reserve list operates only for permanent roles. He had of course not been appointed to the permanent role from which these duties were a subset taken out for a few months only.
107. We also consider, however, that in choosing not to issue a fresh temporary recruitment exercise and simply to extend an existing role, Mrs Topp was responding to evolving resourcing needs and ensuring that roles were filled efficiently. She could properly be satisfied that the skills and experience needed for this project completion were held by Mr Kennett.

Daniel Drinkwater (chief of staff/head of Secretariat)

108. Mr Drinkwater was appointed chief of staff on 16 September 2021 via an EOI as a TCA. He was still in role on 1 July 2022 with his email signature confirmed that he was chief of staff. The claimant says that his email signature changed on 23 August 2022 to Head of Secretariat and he remained on this new G7 TCA role for an extensive period.
109. Mrs Topp's evidence was that Mr Drinkwater was indeed appointed as chief of staff, however, she asked him to set up a Secretariat as part of his role. This was a department that was growing very quickly, and she considered that she needed a Secretariat function. It was not a change of role. Chief of staff/Secretariat are in her mind interchangeable titles and functions. We agree. We find that this was one and the same role. The change in signature did not denote any change in role.
110. Mrs Topp confirmed that a TCA was intended to be only for 12 months but that Mr Drinkwater had in fact occupied the role on the TCA basis for almost 2 years. We are given no direct evidence as to the date on which the TCA was renewed without further advertisement. We find that on the balance of probabilities it would have occurred after the first 12 months, that is in September 2022. She explained that this was because the customer services group were carrying out a review of private office, chief of staff Secretariat roles that took a while. That was to determine what a Secretariat would look like and once the review was concluded the job was then to be advertised on a permanent basis.
111. Once the review was concluded and the decision was taken to maintain Secretariats, the role was then advertised permanently. Mr Drinkwater was not the successful candidate originally but the individual who was first offered that role withdrew during vetting. Mr Drinkwater was given the role as he was the reserve. The role description for the job as it was advertised in August 2023 was included in the bundle. On the balance of probabilities we take the view that, while the role evolved, it was in all essentials broadly the same as the role from which Mr Drinkwater originally succeeded on the EOI in September 2021.
112. We find that this role requires specialist skills and experience. In particular the role would require Parliamentary engagement, liaising with press office and ministerial private offices. We conclude that the role was a

specialist one and was not suitable for inclusion in the brigaded campaign. Further we find that the role was properly a temporary one when it was first created. Further, it was reasonable to extend the temporary role after 12 months while a decision was taken on whether the role would continue and in what form. It would not have been suitable for inclusion on the brigaded campaign for that reason either.

113. It is the case that Mr Drinkwater benefited by having his TCA extended. He was also ultimately the successful candidate for the permanent role. The claimant could, however, have applied for the initial EOI in 2021, or for the permanent role in August 2023 but he did not.

Head of project management (Benjamin Knott)

114. This role was advertised on 12 June 2023 as an EOI. (p450). Prior to this Mr French had occupied the role (p103). Mrs Topp said that he left at short notice and therefore needed an EOI at this point while they worked on permanent recruitment. The claimant believes this is an example of the respondent recruiting a permanent role via TCA expression of interest. We accept Mrs Topp's evidence that the role was to be recruited permanently, but that she needed to act quickly and have a temporary arrangement in place. We therefore accept that it was legitimate to advertise the role on a temporary basis pending that final recruitment.
115. Mrs Topp said that she would not have used the reserve list in June 2023 to fill the temporary role, or indeed the subsequent permanent one. This is for two reasons. Firstly she believed this was a specialist role which required programme management experience and a project management qualification. Secondly, as she was no longer within the customer services group the brigaded campaign did not apply. Benjamin Knott was announced as the successful candidate on 4 August 2023.
116. We accept this was a specialist role. The brigaded campaign had been looking for general skills. This was not a role that the reserve list would apply to. We also accept that it was legitimately a temporary role at the relevant point. The claimant was free to apply via the EOI if he considered he met the brief which would not have been tested in the brigaded campaign.

Jonathan Barnett (Head Of Operational Standards)

117. The respondent issued an EOI (p703) on 29 July 2022. The trawl happened two weeks after the G-7 brigaded campaign results were released. Mr Barnett had not passed that exercise. Mrs Topp stated that she would not have used the reserve list because this was a specialist role. We accept that it required someone who had or was prepared to work for a formal accreditation. It also required a strong understanding of health and safety issues. We accept this was a specialist role. It was not one that was suitable to be put into brigaded campaign. It was not one that the claimant had a right to be considered for because he was on the reserve list.
118. In February 2023 the role was filled on a permanent basis. Mrs Topp explained that was not possible to make it a permanent role in July 2022 as they were testing whether or not they required the role at all.
119. We accept Mrs Topp's evidence as to the reason why it was originally a temporary role and why it became permanent. The claimant was free to

apply on either occasion if he felt that he had the relevant skill set and experience.

Head of Annualised Hours working (Kay Prescod)

120. This role was advertised with an application date cut-off of 22 August 2022. (P 358). The essential criteria included demonstrable experience with similar work on annualised hours working. We find that this role required a form of specialist knowledge which was not something that was tested in the brigaded campaign.
121. Mrs Topp told us that the role was brought in on a temporary basis because she simply wanted someone to look at what was happening and design an appropriate system. The individual who got the role, Ms Prescod, came in for that short period. The role did not become a permanent one.
122. We accept her evidence that this was always a temporary role and that it ended. It is not a role that should have been included in the brigaded campaign both because the specialist nature and because it was by its nature temporary whereas that campaign was for permanent roles.
123. The claimant was free to apply for this temporary role if he had chosen to do so but did not.

Other roles advertised using the EOI process from 20 September 2021 to 13 July 2023.

124. In his witness statement para 98 the claimant set out 13 names of individuals that he said had obtained a role through an EOI and in total he listed 15 opportunities. As he gave evidence, we understood his complaint to be that roles that should be permanent were advertised on a temporary basis. That therefore avoids the use of the brigaded campaign merit list.
125. We find the position for those the claimant lists to be as follows: –
Daniel Drinkwater is on the list twice. As we have already found was initially appointed to the role that he ultimately took on a permanent basis via an EOI. We have found that it was both a specialist role and legitimately temporary at the time of his initial appointment. When the role was advertised on a permanent basis, he was not the first successful candidate. The claimant did not apply for the role at any time. This is not an example of the practice that the claimant complains about.
Nicola Heuston was appointed to a people and planning lead role. This was in November 2021. We were given no information as to whether this was a permanent or temporary appointment. It is unclear whether or not this relates to the assistant director people and planning role which was ultimately removed from the brigaded campaign. On the balance of probabilities we find this was the same role and we are satisfied from an analysis of the advert that it is a specialist role.
We were not given any evidence from either party as to whether this was properly a temporary role. On the balance of probabilities, as we have found that where we have had evidence about roles that are advertised on a temporary basis appropriately being temporary, we find it more likely than not the same applied here. We can also say that it would have made no difference to the claimant in relation to the

brigaded campaign if we are wrong on that as it predates it and it is a specialist role. We therefore find it is not an example of the practice of the claimant complains about.

Jamie Kennett/Lubna Bashir were both appointed as joint head of ops delivery in November 2021 (page 103). Again, we were given no information as to why this was a temporary role at the time. We know that Lubna Bashir did not end up doing this role on a permanent basis. We also know that Jamie Kennett did not keep this role on a permanent basis. Again, we have had to look at this on the balance of probabilities and therefore find that the role was legitimately temporary at the time. Again it would have made no difference to the claimant in relation to the brigaded campaign if we are wrong on that as it predates it. We therefore find it is not an example of the practice of the claimant complains about.

Sophie Able Hewitt/Jonathan Barnett and Paul Fraser are all successful following expression of interest in January 2022. (Page 112) This is the EOI the claimant took part in and was not successful. When this is announced it is explained that Sophie Able Hewitt will be taking on a role to cover for an colleague's temporary absence. That is legitimately a temporary role. It is also explained that these roles are to be filled until they form part of the brigaded campaign. This is not therefore an example of the respondent creating a temporary vacancy to avoid a permanent vacancy for which individuals from the brigaded campaign would be eligible. Paul Fraser is ultimately given the operations role as a swap from the RASI role. This is an example of a permanent role being given to a TCA holder of that role bypassing the brigaded merit list.

Kane Dempster/ Chris Walker. Mr Dempster was appointed to a permanent role as a result of the brigaded campaign into the customer experience role. Prior to that he had been appointed jointly via an EOI on 30 June 2022 with Chris Walker leading the Manston logistics cell. The Manston logistics cell role was filled on a permanent basis through the brigaded campaign. This is not therefore an example of the respondent avoiding the brigaded campaign list by creating a temporary vacancy when matters should in fact be permanent.

Jonathan Barnett was appointed to the operational standards role. We have accepted that this was a specialist role. We have also accepted that it was legitimately a temporary role in July 2022. It is potentially example of the respondent advertising what becomes a permanent role on a temporary basis, but we have found that there were appropriate reasons for that. It is not an avoidance of the brigaded campaign reserve list. Further the claimant would not been eligible for that role in any event.

Jamie Kennett legitimately obtained a project role via an EOI in November 2021. We have found that he was given a new temporary role on 5 November 2022. This was, however, legitimately a temporary role. We have found that the respondent did not follow its own processes by not advertising this it is not, however, an example of the respondent advertising a permanent role on a temporary basis which is what is complained of.

Kay Prescod filled the role of annualised hours. This was a temporary role. We accept that it was for a particular project which came to an end. This is not a role that the claimant would have been eligible for

from the brigaded campaign list as it was both legitimately temporary and required specialist skills. This is not an example of the respondent advertising on a temporary basis role that should be permanent.

Benjamin Knott was successful in obtaining a project role via an EOI advertised in June 2023. This is potentially an example of the respondent advertising a role in a temporary basis which could have been permanent as it subsequently became a permanent role. We have found, however, that it was a specialist role and would not have been suitable for a candidate from the brigaded campaign merit list in any event even if the timing had been different and it had been advertised permanently earlier.

Eileen Buckley was appointed training lead on 4 August 2023 after an EOI (p456). That is said to be from a trawl on 13 June 2023 so as far as the claimant was concerned during the life of the reserve list. We have found this to be a specialist role so not suitable to be filled from the reserve list. Paragraph 97 of the claimant's witness statement which deal with this complains that it was not legitimately a temporary role in June 2023, and this was done to avoid the reserve list. We have accepted Mrs Topps' evidence as to why it was a temporary appointment. As we have found it was a specialist role if it should have been permanent at an earlier point this would not have helped the claimant.

126. While we have gone through all the names the claimant has listed, his complaint under this heading is more specifically set out at paragraph 97.1, 97.2 and 97.3 of his witness statement. He is highlighting that three roles, learning development, project management and operational standards and safety were advertised and filled despite them being permanent grade 7 roles at the time the department had the reserve list.
127. As already set out, we have accepted that these three roles were ultimately permanent but at the time the decision was taken to advertise them as a temporary position that was legitimate. In any event these three roles would not have been given to the claimant from the reserve list as they were all specialist.
128. We accept that the respondent uses temporary appointments for roles that have been and later become permanent. We have found that in relation to all the examples the claimant gives the respondent's approach to advertise these on a temporary basis was entirely legitimate. Further, the claimant does not apply for most of these temporary roles. He was able to do so. We have not accepted that he expecting to be given them because he was on an EOI waiting list.
129. We have found that the examples the claimant gives are not evidence of a practice by the respondent of advertising roles on a temporary basis when it knows at the time it issues an EOI that they should be permanent.

The grievance and delay

130. The claimant was extremely unhappy about not being provided with a role from the brigaded campaign, what he saw as roles being excluded from that campaign and the practice of advertising roles on a temporary basis. He submitted a grievance on 28 February 2023.
131. He complains that there was an unreasonable unexplained delay in

dealing with both the grievance and the appeal process. For the grievance the terms of reference were not put in place until May 2023. It was suggested that this delay was because informal discussions were taking place in an attempt to resolve the matter. There was no evidence given of that. We find that this delay was unreasonable.

132. The investigation report was produced on 31 August 2023. The grievance hearing took place on 26 September with the outcome being delivered on 10 October 2023. The claimant states that the short outcome does not grapple with the issues and it was not reasonable for an outcome of that quality to take over two weeks to produce. The policy requires an outcome should normally be delivered within five working days.
133. We conclude that there was delay. We accept, however, this was a complex matter and do not find the delay in dealing with the grievance once it had been heard unreasonable. It was unreasonable to take so long to start it.
134. Similar concerns were raised about the length of time the appeal took. It was lodged on 16 October 2023. The appeal hearing took place four weeks later on 13 November 2023 and not within the five days required by the policy. The outcome was delivered on 9 January 2024 which is two months after the hearing.
135. We understand that this was a complicated matter and required thought. We consider that it was highly unlikely that it could ever been heard within five days of the appeal being lodged with an outcome being delivered five days after the hearing. However, we consider that overall the delay was unreasonable.

The appeal bias

136. Mr Larter was the appeal chair. He had attended university with Mr Wise, and their children attended the same school. He confirmed that they were not friends. He had not knowingly had a conversation with Mr Wise at university. The extent of any outside work communication was limited to saying hello at, for example, the school's summer fair.
137. The claimant considered that the appeal hearing was biased because the chair had a relationship with Mr Wise and, because he did not identify that Mr Wise was a beneficiary of the practices about which the claimant was raising his grievance.
138. Mr Larter had considered whether somebody else should deal with the appeal because of his knowledge of Mr Wise. He concluded that he was not biased by this. He also considered that it was appropriate for him to deal with the matter because the complaints were about the respondent's processes and not about any wrongdoing by Mr Wise.
139. He did not feel it necessary to expressly state during the appeal that Mr Wise was a beneficiary of the process being complained about because it was self-evident from the nature of the appeal that this was the case.
140. We accept his position. We do not think that the limited relationship and prior knowledge of the two had of each other was sufficient to make Mr Larter biased, particularly when he was aware of and alive to the point. We do not see that there is any bias issue that arises because he did not expressly state something that we accept was self-evident from the nature of the appeal. We find that there is no question of bias in Mr Larter chairing this hearing.

Are the complaints brought in time?

141. The claim form was presented on 27 September 2023. The claimant relies on the PCPs as continuing acts. In the alternative the claimant states that it be just and equitable to extend the time limit in all the circumstances.
142. The claimant has found it difficult to identify the date on which the application of the various PCPs caused him disadvantage. We have found that he had no legitimate expectation that he did not need to apply for other roles via an expression of interest following the last one he applied for in January 2022. He himself had recognised this by August 2022.
143. We accept that he made considerable efforts to resolve the matter internally by lodging a grievance and an appeal. We also accept that he was unwell from March 2023. We note, however, that while he was unwell, he was still able to pursue his grievance. We also note that he was assisted by his trade union to do so.

The claimant acting as a litigant in person

144. This appeared to be a matter of dispute between the parties and is potentially relevant to consideration of how we should read the PCPs. On that basis we set out what we find to be the position.
145. When the claimant filed his claim form with the employment it identified that his trade union were representing him.
146. By 9 May 2024 the claimant had legal representation who were dealing with the list of issues. The PCPs which now form PCP one and two were being discussed. There was then a preliminary hearing on 7 May 2025 at which the claimant acted for himself. PCPs one and two were included in the form that his lawyer had accepted.

Submissions / Relevant Law

147. We set out the law to which we were directed or considered below.

Time limits Equality Act 2010 ("EA")

148. Section 123 EA provides:
- (1) Proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
 - ...
 - (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
149. The limitation period in discrimination claims runs from 'the date of the act to which the complaint relates'. In the context of indirect discrimination, ascertaining that date can be difficult. In most cases the PCP will be applied by the employer at a specific point in time. In such circumstances

the act complained of will be the application of the PCP. The picture, however, is more complicated if the PCP is part of an ongoing policy or practice amounting to a continuing act of discrimination.

150. The key question in determining whether there was conduct extending over a period is whether there was an ongoing situation or continuing state of affairs which amounted to discrimination (*Hendricks v Metropolitan Police Commissioner* [2002] IRLR 96). The claimant bears the burden of proving, by direct evidence or inference, that numerous alleged incidents of discrimination are linked to each other so as to amount to a continuing discriminatory state of affairs.
151. In *Jones v Secretary of State for Health and Social Care* [2024] EAT 2 the EAT held reviewed the authorities relating to just and equitable extensions and confirmed that tribunals should have a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere.
152. The relevant factors will vary from case to case. The Court of Appeal in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] IRLR 1050 observed that “factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reason for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claims while matters were fresh).”
153. Reviewing the authorities, the learned editors of *Harvey’s* set out a non-exhaustive list of factors that may prove helpful in assessing individual case:
- a. the presence or absence of any prejudice to the respondent if the claim is allowed to proceed
 - b. the presence or absence of any other remedy for the claimant if the claim is not allowed to proceed;
 - c. the conduct of the respondent subsequent to the act of which complaint is made, up to the date of the application;
 - d. the conduct of the claimant over the same period. the length of time by which the application is out of time;
 - f. the medical condition of the claimant, taking into account, in particular, any reason why this should have prevented or inhibited the making of the claim;
 - g. the extent to which professional advice on making a claim was sought and, if it was sought, the content of any advice given.

Indirect discrimination

154. S.19(1) of the EqA states that indirect discrimination occurs when a person (A) applies to another (B) a provision, criterion or practice (PCP) that is discriminatory in relation to a relevant protected characteristic of B’s.
155. A PCP has this effect if the following four criteria are met:

- A applies, or would apply, the PCP to persons with whom B does not share the relevant protected characteristic

(S.19(2)(a))

- the PCP puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share the characteristic (S.19(2)(b))
- the PCP puts, or would put, B at that disadvantage (S.19(2)(c)),
- A cannot show that the PCP is a proportionate means of achieving a legitimate aim (S.19(2)(d)).

156. All four conditions must be met before a successful claim can be established. The claimant must show prima facie evidence from which the tribunal could conclude, in the absence of any other explanation, that an employer has committed an act of discrimination. If the claimant does this in relation to the first three elements of an indirect discrimination claim, then the employer must justify the provision, criterion or practice. The burden is then on the employer to provide both explanation and justification.

157. In *Essop and ors v Home Office (UK Border Agency)* and another case 2017 ICR 640, SC Baroness Hale stressed that the key element in indirect discrimination claims is the causal link between the PCP and the particular disadvantage suffered by the group and the individual. Indirect discrimination aims to achieve a level playing field where the requirements imposed cannot be justified.

158. The PCP must be defined. It is clear from the wording of the legislation that the PCP must actually have been applied to the claimant. The claimant must also identify the time when the PCP was applied because he or she must show its application caused him or her to suffer a particular disadvantage.

159. As legislation requires the claimant to show the PCP applies or would apply equally to persons with whom he or she does not share the relevant protected characteristics that a comparator group, then it is important that the appropriate pool is identified.

160. The current definition of indirect discrimination does not use language which was found previously. It does not therefore have language about the degree of disparate impact having to be considerably larger or smaller. The EHCR employment code states that when deciding whether protected groups experiences a particular disadvantage in comparison with others whether a difference is significant will depend on the context including the size of the pool and the numbers behind the proportions. There is no benchmark laid down. It will depend on the facts and circumstances of the case. Statistics therefore remain a useful tool in establishing indirect discrimination.

161. Counsel for the claimant directed us to the case of *McCausland v Dungannon District Council* as the appropriate approach in considering how to use statistics. The PCP in question (that the candidate would be someone already employed in local government) was such that 1.5 per cent of Roman Catholics in the working population could comply, compared with 2.1 per cent of Protestants. At first sight a difference of 0.6 per cent may seem negligible. However, the Northern Ireland Court of Appeal then compared the percentages — 1.5 per cent and 2.1 per cent — with each other. This showed that 1.5 is 71 per cent of 2.1, with the result that the success rate for Catholics was 29 per cent less than that for

- Protestants. It was accordingly held that a considerably smaller proportion of Roman Catholics than Protestants could comply with the requirement.
162. Counsel for the respondent directed us to the House of Lords in *R v Secretary of State for Employment ex parte Seymour-Smith and anor* (No.2) 2000 ICR 244, HL which warned that the extent of considerable should not be exaggerated. In this case the House of Lords found a disparity of less than 8.5% to be insufficient.
163. While considering that case we also note that in *Harvest Town Circle Ltd v Rutherford* 2001 IRLR 599, EAT, Mr Justice Lindsay held that it would be a mistake to conclude that anything that was merely not 'trivial or de minimis' is sufficient. He also said that 'those seeking a simple and universal touchstone' as to what could be regarded as a considerable or substantial disparity must be disabused, and that 'it would be a mistake... to think that any disparity of less than 8.5 per cent [which the European Court of Justice and House of Lords thought insufficient in the *Seymour-Smith* case] must necessarily be found not substantial or not considerable
164. We conclude that it is important for the tribunal to look behind actual percentage differences to understand the picture. In a small comparator group whether the disadvantage is there can be determined by the circumstances of a few individuals.

Conclusion.

165. We have applied the relevant law as set out above to the findings of fact that we have made and have reached the following conclusions on the issues that we were asked to determine.

PCP1 "a practice of recruiting advertised permanent grade 7 roles by way of Managed Moves for experience in the grade."

166. The first step is that there must be a PCP which the respondent applies or would apply. We have found that Managed Moves in a defined sense was set out in a policy only from November 2022. We've also found that both of the respondent's witnesses who were asked about the practice of moving staff around a grade for development, whatever name they gave it, confirmed that this was and in fact remains common. We also accepted the respondent's evidence that they effectively bypass policy.
167. We accept that the claimant was legally represented at the time the PCP1 was set out. There is little leeway to imply words in order to rewrite these descriptions. Nevertheless we find that the clear evil addressed here is that of laterally moving staff around, who have already achieved a particular level in the organisation, at the same level to provide them with more skills or experience. We are satisfied that it is a common practice to move people around for experience in the grade even if the term Managed Move is not always used and we consider we should understand that term more widely. On that basis there is a PCP. We note that the respondent has conceded that there is a practice.
168. If we were wrong on that and managed moves must be read more narrowly only into those circumstances which the respondent describes as such, then we have found there were only two managed moves. That is insufficient to form a practice. There would be no PCP on that analysis.
169. As we have found a PCP that leads us on to the question of the

appropriate pool. We understand that the prohibition of indirect discrimination is to deal with hidden barriers. We also accept that the pool can only include people who have an interest in the advantage or disadvantage in question.

170. We were asked to find the way that the PCP was written meant that it could only apply to those already within the pool of grade 7 roles and therefore there could be no disadvantage as all those in that grade had the same opportunity.

171. We find that the appropriate analysis is to identify the hurdle and then to consider the range of people affected by it. In this case clearly shuffling the deck potentially removes promotion opportunities which must impact the next level down. We find that the logical suitable pool to test the discrimination complained of is to look at all staff at HEO/SEO level compared to all staff at grade 7. We accept the pool as the claimant identified it in submissions.

172. On the basis of that pool, the practice applies to all staff at HEO/SEO level. We have considered that not all staff of the level below grade 7 would wish to be promoted. We are conscious of the decision in Rutherford that indirect discrimination cannot be shown by bringing into the equation people who have no interest in the advantage or disadvantage in question. In this instance we consider that the question is not whether they would wish to be promoted but whether the practice would make them ineligible. Looked at this way all those in the pool below grade 7 are ineligible to apply for a role at the next grade up if vacancies are avoided by the use of the practice of moving staff laterally.

173. The next step is to consider whether the practice put British Asians at a particular disadvantage compared to other staff. It is here that we feel the analysis stops. On our findings of fact the practice of moving staff around simply moves the vacancies from one place to another but ultimately results in a gap. The practice could mean that promotion opportunity falls anywhere within the organisation. That is random. It does mean that for the claimant a vacancy that he could have applied for is effectively moved into an area for which he does not have experience. That may benefit others.

174. On this basis there is no group disadvantage when the respondent organisation is looked at as a whole. There is certainly then no disadvantage to the claimant because of this practice. In fact it could have worked to his favour had the shuffling of more senior staff placed a vacancy in his area. This did not happen in the time period that is relevant to this claim, but that does not mean that it was not and is not possible.

175. We find that there is no hidden barrier in this practice. The claim of indirect discrimination on PCP 1 does not succeed.

PCP 2 “the practice of recruiting to grade 7 temporary cover allowance roles without advertisement using a pool of individual employees already in a grade 7 TCA role.”

176. We have accepted that the claimant had legal representation at the time PCP 2 was written. We feel that we must therefore construe it as it is written.

177. Having said that we now need to construe what we think is written. There are a number of possibilities. The claimant may be saying that an individual who already has a grade 7 TCA role is then recruited into

another one without advertisement. To the extent the complaint is about lack of advertisement we find as a matter of fact that is not the case. We are satisfied that EOI/TCA roles are always advertised at least on the first time that somebody is appointed. If that is what is relied on there is no PCP.

178. The claimant may be complaining about in effect an extension of the TCA role as that may not be advertised. We note that the recruitment principles allow a temporary role to be extended for up to 2 years.
179. While we have found no evidence at all that there is no advertisement on the first occasion that a temporary role becomes available, there is some evidence that extensions are not always advertised and in effect the extension is given to the person already in that temporary post.
180. The claimant relies on two examples of this, Mr Kennett and Mr Drinkwater. We have found that Mr Drinkwater's temporary role was extended without re-advertisement. We've also found that Mr Kennett was allowed to continue some part of his pre-existing temporary role without that project being advertised.
181. We conclude that two examples are not sufficient to evidence the practice. On the contrary, we were given evidence of many roles that were advertised on a temporary basis and not extended. We therefore find there is no PCP. The claim does not succeed on this basis.

PCP 3 "the practice of recruiting permanent grade seven roles via temporary cover allowance expressions of interest (despite holding a grade 7 reserve list for permanent grade 7 roles)"

182. There was a debate about the meaning of this PCP and what the claimant intended to complain about. Counsel for the claimant accepted that words would need to be read in to represent the issue the claimant intended to bring. On her submissions this should be read as the practice of recruiting what should have been permanent grade 7 roles via temporary cover allowance EOI despite holding a grade 7 reserve list.
183. The respondent objected on the basis that the claimant had been legally represented at the relevant time and that this was an amendment.
184. The respondent has addressed the case on the basis of the way it was put. We consider that the PCP needs to be considered as it is written without the addition of further words. The respondent understood this to be a complaint that the respondent recruited to permanent roles via an EOI. On the three examples the claimant gave of this practice, the role of learning and development, project management and operational standards and safety it was the claimant's own evidence that when these roles would become permanent they were re-advertised as such. We find that even on his own case, reading the PCP as the respondent has, there is an open recruitment process. Individuals who may have been carrying out the role on a temporary basis are not just given that role. There is always a recruitment process.
185. We find there is one exception to this and that is Paul Fraser. We have found that Paul Fraser was also given the role he was fulfilling via TCA on a permanent basis. This was via a swap from his success on a recruitment exercise for an entirely different role. This is an example of an individual being given the permanent role without any transparent process. That is the only example of this practice and we therefore conclude that one

example is insufficient to constitute a PCP that permanent roles were given to those who have an EOI/TCA without any further steps.

186. If we had accepted the claimant's position that we should read this PCP as a practice that roles that should have been permanent were recruited on a temporary basis, we would nonetheless find that there was no such practice.
187. In our findings of fact we identified all the roles the claimant stated were temporary when he suggested they should have been recruited on a permanent basis. We found that all but one were legitimately recruited for a temporary basis. That one role, Mr Knott, was a specialist role. We further found that a substantial number of these temporary roles were also specialist ones. The claimant would not have been eligible for those even had they been advertised on a permanent basis. He would have had to apply and not be taken from the brigade campaign reserve list.
188. On the basis of one role, Mr Knott potentially being recruited on a temporary basis when it could have been permanent, we find there is no practice of this occurring. We are satisfied that the respondent legitimately advertises temporary roles when there are good reasons for them to be temporary. It is not done to avoid the brigaded campaign merits list.

Time issues

189. Given our findings of facts and application of the relevant legal principles to those, we have concluded that the claims do not succeed on their own merits. Nonetheless, we have gone on to consider whether the tribunal had jurisdiction to hear these claims or whether they were out of time, and if so that it would be just and equitable to extend that time.
190. Based on our findings we have determined that there is a widespread practice as described in PCP 1. This is a continuing state of affairs. On that basis the claimant does not have to point to the last incident of which he was aware the policy was applied. We accept that it was a continuing state of affairs. The claimant has therefore brought this claim within time, and the tribunal has jurisdiction to hear it.
191. We have found that PCP2 was not a practice. The complaint it relates to 2 individuals. We have found that Mr Drinkwater's TCA was extended in September 2022 and Mr Kennett's on 5 November 2022. The first complaint would need to be brought in January 2023 and the second in February 2023. The claim form was not presented until September 2023 and therefore on the face of it the tribunal does not have jurisdiction to hear these claims.
192. We were addressed on the question of whether it would be appropriate to grant a just and equitable extension. We have found that while the claimant did not have a lawyer representing when he started, he had been advised by his union. He was able to put in a grievance. While it is laudable that he sought to resolve matters internally first. We conclude that he was in a position to know and understand employment tribunal deadlines. We conclude that it would not be just and equitable to extend the deadline.
193. The relevant date for PCP3 is more complex to determine. As we have found there is no practice of doing as the claimant suggests, we have taken the dates the claimant says was the trawl date for the roles that he complains of in his witness statement. Of those on the claimant's long list only two, Mr Knott and Ms Buckley occur after 2 May 2023. The claimant

gives the trawl dates for these 2 as 13 June 2023. We would have jurisdiction to hear these two complaints. We would not have jurisdiction to hear complaints relating to positions that were trolled before that date.

194. On the same basis we conclude it would not be just and equitable to extend time to permit complaints about appointments that occurred before 2 May 2023.

195. In summary we would have jurisdiction to hear claims about PCP1, not for PCP2 and only for some parts of PCP3.

Employment Judge McLaren

Date 5 October 2025

RESERVED JUDGMENT & REASONS SENT TO THE
PARTIES ON
13 October 2025

FOR EMPLOYMENT TRIBUNALS

P Wing