Case Numbers: 2219743/2024

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Miss A Epelle		**(1) Clyde & Co LLP** **(2) Clyde UK Services Company** **(3) Clyde & Co Europe LLP** **(4) Ms G Kenwright** **(5) Ms H Kirrane**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 3-5 October 2025; 8 October 2025 (in chambers)**

BEFORE: Employment Judge A M Snelson **MEMBERS: Ms G Carpenter, Dr V Weerasinghe**

On hearing the Claimant in person and Mr M Humphreys, counsel, on behalf of the Respondent, the Tribunal determines that:

(1) The Claimant's complaints of direct race discrimination are not well-founded.
(2) The Claimant's complaints of indirect discrimination are not well-founded.
(3) The Claimant's complaint of victimisation is not well-founded.
(4) To the extent that they relate to the applications made by the Claimant for training contracts in London in 2022 and Hamburg in 2023, the claims fail on the further ground that they were presented out of time and the Tribunal has no jurisdiction to consider them.
(5) Accordingly, the proceedings as a whole are dismissed.

REASONS

Introduction

1 The First Respondent ('Clyde & Co') is a substantial limited liability partnership with headquarters in London through which it runs an international legal practice. The Second Respondent is a service company through which Clyde & Co

employs UK-based staff, including trainee solicitors. The Third Respondent is the legal entity through which staff and members of the practice working in Europe are employed. The Fourth and Fifth Respondents (to whom we will refer by name) were employed by the Second Respondent in the capacities of member of the Early Careers Team and Early Careers Manager respectively[1].

2 The Claimant, a Nigerian woman resident in Nigeria, addressed three applications to Clyde & Co for training contracts at different offices, in May 2022 (London), May 2023 (Hamburg) and March 2024 (Bristol), all of which were unsuccessful. All communication (each way) was in writing.

3 By her claim form presented on 15 May 2024, which focussed largely on the Bristol application but referred to all three, the Claimant brought a variety of claims against eight Respondents, including Clyde & Co, Ms Kenwright and Ms Kirrane. The case has a somewhat involved case management history, which it is not necessary to recite in detail. It is sufficient to say that, at a hearing on 27 May 2025 before Employment Judge Segal KC, five of the original Respondents were deleted and the current Second and Third Respondents added, certain claims were struck out and it was recorded that the claims to proceed to trial were for direct discrimination in relation to the adverse decisions on all three applications and, in relation to the Bristol application, indirect discrimination and victimisation.

4 In amended grounds of resistance served pursuant to a direction of EJ Segal, the Respondents resisted all claims on their merits and those relating to the London and Hamburg applications on the further ground that they had been brought out of time.

5 The 'remote'[2] final hearing came before us on 3 October this year, with four sitting days allocated. The Claimant, who has been unrepresented throughout, presented her case ably, despite having no specialist employment law background or training. The Respondent had the advantage of being represented by Mr Humphreys, counsel. With the assistance of the Claimant and Mr Humphreys, we were able to complete the evidence and closing argument by the end of day three of the allocation. We then reserved judgment, devoting day four to our private deliberations.

6 The Tribunal regrets the delay in producing this judgment, which results from an unhappy combination of unprecedented pressure of work in the Tribunal and the judge's absence for substantial parts of October and November on leave, sitting in another jurisdiction and attending training courses.

Evidence and Materials

7 The Tribunal received oral evidence from the Claimant and, on behalf of the Respondents, Ms Kirraine (already mentioned) and Ms Susannah Renshaw, at all relevant times Senior Early Years Manager.

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[1] Between October 2022 and January 2024 Ms Kirrane held the position of Senior Adviser. She worked at all times in the Early Careers Team.

[2] This form of hearing had been agreed, partly at least in order to accommodate the Claimant's participation from her home in Lagos.

8 In addition to witness evidence, we read the documents to which we were referred in the bundle of over 500 pages.

9 We also had the benefit of an opening note of five pages from Mr Humphreys, dated 2 October 2025, and the Claimant's two documents summarising her arguments, one of 11 pages and dated 2 October 2025, the other of four pages and undated.

The Legal Framework

Direct discrimination

10 The Equality Act 2010 ('the 2010 Act') protects employees and applicants for employment from discrimination and analogous torts. Chapter 2 lists a number of forms of 'prohibited conduct'. These include direct discrimination, which is defined by s13 in (so far as material) these terms:

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

'Protected characteristics' include race, which includes nationality and ethnic or national origins (s9(1)).

11 In *Nagarajan* v *London Regional Transport* [1999] IRLR 572 HL Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

> **If racial grounds … had a significant influence on the outcome, discrimination is made out.**

In line with *Onu v Akwiwu* [2014] ICR 571 CA, we proceed on the footing that introduction of the 'because of' formulation (which replaced 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effected no material change to the law.

Indirect discrimination

12 The 2010 Act, s19, concerned with indirect discrimination, includes:

> **(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.**
>
> **(2) For the purposes of subsection (1), a provision, criterion or practice[3] is discriminatory in relation to a relevant protected characteristic of B's if –**
>
> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
> **(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not**

[3] We adopt the convenient shorthand 'PCP' in our analysis below.

share it,
(c) it puts, or would put B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

13 In contrast with direct discrimination, which concerns *unequal* treatment, indirect discrimination prohibits, in certain circumstances, ostensibly *uniform* treatment which produces discriminatory consequences. As Baroness Hale JSC put it in *Homer v Chief Constable of West Yorkshire* [2012] ICR 704 SC (para 17):

> **The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic.**

As to justification under s19(2)(d), we remind ourselves that the burden is on the employer to show that measure in question corresponds to a real need and that the means used are appropriate to the objective and necessary (see *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293 *per* Mummery LJ, para 151).

Comparisons for the purposes of discrimination

14 s23(1) it is provided that:

> **(1) On a comparison of cases for the purposes of section 13 … or 19 there must be no material difference between the circumstances relating to each case.**

Victimisation

15 By the 2010 Act, s27, victimisation is defined thus:

> **(1) A person (A) victimises another person (B) if A subjects B to a detriment because –**
>
> **(a) B does a protected act, or**
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act –**
>
> **…**
> **(b) making an allegation (whether or not express) that A or another person has contravened this Act.**

16 When considering whether a claimant has been subjected to particular treatment 'because' he or she has done a protected act, the Tribunal must focus on 'the real reason, the core reason' for the treatment; a 'but for' causal test is not appropriate: *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065 HL, para 77 (*per* Lord Scott of Foscote). On the other hand, the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (*Nagarajan*, cited above).

Protection against discrimination and victimisation

17 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

> **(2) An employer (A) must not discriminate against an employee of A's (B) –**
>
> **(a) in the arrangements A makes for deciding to whom to offer employment;**
> **…**
> **(c) by not offering B employment.**

18 Parallel protection is provided against victimisation under s39(3)(a) and (c).

19 The 2010 Act, by s136, provides:

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

20 On the reversal of the burden of proof we have reminded ourselves of the case-law decided under the pre-2010 Act legislation (from which we do not understand that Act to depart in any material way), including *Igen Ltd v Wong* [2005] IRLR 258 CA, *Laing v Manchester City Council* [2006] IRLR 748 EAT, *Madarassy v Nomura International plc* [2007] IRLR 246 CA and *Hewage v Grampian Health Board* [2012] IRLR 870 SC. In the last of these, Lord Hope warned (as other distinguished judges had done before him) that it is possible to exaggerate the importance of the burden of proof provisions, observing (para 32) that they have 'nothing to offer' where the Tribunal is in a position to make positive findings on the evidence. In *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863, Lord Leggatt passed similar comments (para 41. But if and in so far as the burden of proof provisions have a part to play, we take as our principal guide the straightforward language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer's explanation relied upon at the hearing, must be considered.

21 By the 2010 Act, s123(1) it is provided that proceedings may not be brought after the end of the period of three months ending with the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. Under the Early Conciliation provisions, the limitation period is further extended by the time taken up by conciliation. 'Conduct extending over a period' is to be treated as done at the end of the period (s123(3)(a)). The 'just and equitable' discretion is a broad power but one to be used with restraint: its exercise is the exception, not the rule (*Robertson v Bexley Community Centre* [2003] IRLR 434 CA).

The Rival Cases

Last-minute adjustments

22 At the start of the hearing there was a discussion from which it became apparent that the Claimant was not in agreement with way in which Mr Humphreys

had characterised the dispute in his opening note. She raised three challenges to it. First, she wished to rely on her personal characteristic of national origins as well as that of nationality. Second, she wished to pursue indirect discrimination claims in relation to the London and Hamburg applications as well as the Bristol application. Third, she wished to rely on an email of 2 February 2024 as an additional protected act for the purposes of her victimisation claim.

23 Mr Humphreys responded. He took no issue with the Claimant's first point but objected to the second and third. Generally, he submitted that his note corresponded with EJ Segal's order of 27 May and it was now much too late for any change of direction. And the proposed new case on indirect discrimination, in particular, would cause real and obvious prejudice to the Respondents.

24 Having considered the matter carefully, we gave a ruling with brief oral reasons on the morning of day two. We granted the Claimant's (deemed) application to amend the claim in accordance with her first and third requests. In summary, we concluded that this course was in keeping with the overriding objective, favouring substance over process in circumstances where that did not lead to a real risk of prejudice to the advantaged (represented) party. On the second request we were just persuaded to grant the application in so far as it related to the London training contract, based on the 'PCP' of a requirement to hold the right to live and work permanently in the UK. We took the view that (as Mr Humphreys fairly accepted) the Respondent would be in a position to deal with the proposed indirect discrimination claim and that the Claimant had demonstrated respectable grounds for the lateness of the application (principally the fact that the documents which had prompted it had come into her possession only in August this year). But we refused permission to add an indirect discrimination claim in respect of the Hamburg training contract. Here, the Claimant had held all relevant documents since 2024 and we judged that she had failed to demonstrate that the overriding objective favoured permitting a radical amendment when the trial was already underway.

The Claimant's case

25 On direct discrimination, the Claimant submitted that her racial background was evident from her applications and that numerous unsatisfactory features of the way in which they had been addressed were amply sufficient to point to race as having been, at the very least, a material factor in the decisions to reject her. Accordingly, the burden was upon the Respondent to show that it did not discriminate. Its evidence fell well short of doing so.

26 Turning to indirect discrimination, the Claimant contended that the requirement for in-person attendance at the final stage of the Bristol selection process and the cap of £150 on reimbursement of candidates' travel expenses were clearly discriminatory to her and persons sharing her personal racial characteristics and could not be justified. Likewise, the requirement in relation to the London training contract of a right 'to permanently live and work in the UK'.

27 The Claimant ran her victimisation claim in parallel with the complaint of direct discrimination in relation to the Bristol training contract. There was no dispute that

she had committed protected acts. She submitted that, at the very least, the fact that she had done so had materially influenced the negative outcome.

28 On jurisdiction, the Claimant contended that there was a clear link between her three complaints and that the evidence demonstrated 'conduct extending over a period' for the purposes of s123(3)(a), with the consequence that all claims were within the primary limitation period. Alternatively, if the Tribunal did not accept that, this was a proper case for a 'just and equitable' extension (s123(1)), given all the circumstances and, in particular, the fact that it had taken her time to accumulate relevant evidence (some through the disclosure process, some through a DSAR application), her status as a litigant in person and certain mental health difficulties with which she had had to contend.

The Respondents' case

29 On direct discrimination, Mr Humphreys submitted that the Respondent had provided rational and plausible explanations for the adverse decisions of which the Claimant complains and there was no basis for inferring any proscribed motivation behind any of them.

30 In relation to indirect discrimination, Mr Humphreys did not dispute that the 'PCPs' relied upon, had an indirectly discriminatory effect. But he contended that the Respondents clearly demonstrated that they were justified as amounting to proportionate means of achieving legitimate aims. Moreover, his central argument was that the indirect discrimination claims necessarily fail before any question of justification arises. This, he said, is because no PCP put the Claimant at a particular (or any) disadvantage: she was disqualified on account of her A-Level grades and accordingly, regardless of the PCPs complained of, her applications to the London and Bristol competitions were doomed to fail.

31 As to victimisation, Mr Humphreys repeated his case on direct discrimination, with necessary modifications. He accepted that the Claimant had demonstrated protected acts, but submitted that the decisions which she sought to challenge were shown to be attributable to factors which entirely excluded victimisation.

32 On jurisdiction, Mr Humphreys contended that the complaints in respect of the London and Hamburg applications were plainly out of time, there was no unlawful 'conduct extending over a period' and there was no valid reason for extending the primary three-month period.

The Primary Facts

33 We have had regard to all the evidence presented but it is not our function to recite the evidence or resolve every conflict. The facts essential to our decision are set out below.

Background

34 The Claimant was born and brought up in Nigeria. In 2003 she obtained A-Levels at grades C, D and E in Chemistry, Mathematics and Physics respectively.

She then took an undergraduate degree in Chemical Engineering at Leeds University, graduating with a 2:1 in 2007. This was followed by two years at the College of Law, from which she emerged with a Pass in the Graduate Diploma in Law (2009) and a Commendation in the Legal Practice Course (2010).

35 The Respondent's standard training contract recruitment practices have the following features. All candidates are expected to hold A-Levels at grade A, A, B or better, and an honours degree at class 2:1 or better. Application forms provide an opportunity for candidates who do not meet those requirements to set out mitigating circumstances to explain their objectively less satisfactory results. We were not told about how the freedom to take account of mitigation works in practice and there is no written policy on it. Ms Renshaw's evidence was that the gap between the Claimant's grades and those nominally required was so great that the mitigation which she put forward (that she had taken her A-Levels after only nine months of study and so had had neither the time nor the tools to immerse herself adequately in the syllabus) could not have lifted her into the class of eligible candidates. In her oral evidence, she said, 'We will not go below two grades down', which we took to mean C, C, D. We accept her evidence as fairly stating Clyde & Co's approach, although it was not suggested that the 'two grades down' principle had ever been solidified into a hard-and-fast rule. It is clear to us that the firm attaches real significance to A-Level results, notwithstanding the fact that these represent milestones passed four or five years before the applications which they are considering. Elsewhere in her evidence Ms Renshaw drew our attention to evidence pointing to an association between higher UCAS scores and stronger appraisal records of trainees during their training contracts.[4]

36 We also accept that Clyde & Co takes a somewhat more flexible approach to academic records of internal candidates, because, having seen their work over a period of time, it is able to evaluate their skills and potential with greater confidence than would be the case with any external candidate.

37 Applicants for training contracts have access to a considerable amount of information on the Clyde & Co Early Careers website. Not all recruitment programmes are the same, but they have common features. Applications are made on a form. A digital assessment follows, conducted by an external provider. That provider then scores and ranks the candidates. The top candidates (the number will vary according to the number of places on offer and other factors) are then screened manually for eligibility, which involves reviewing their academic records and their availability for the period of the training contract (which may include ascertaining their right to live and work in the country where the relevant office is located). From those remaining, an appropriate number (which will vary according to the number of places to be filled) are invited, prioritised according to their scores, to an assessment centre at which the final selection is made. In 2024 (and, no doubt, before) a 'hints and tips' page on the website appeared to say that assessment centres were conducted remotely. Many were, but some were, and are, held face to face (see further below). The misleading entry on the website has since been corrected as a consequence of concerns raised by the Claimant.

[4] Witness statement, para 18.

The London application

38 The London recruitment exercise arose in unusual circumstances. In March 2022 the Head of the Early Careers Team belatedly became aware of a shortage of trainees for the current year and a decision was taken to recruit 10 to be added to the cohort already offered places to start the following September (normally recruitment happens two years in advance). Four were selected through an internal process. The remaining six were to be sourced externally, for which purposes it was decided that 10 would be invited to the assessment centre. The process was launched in May. The job description outlined the (standard) academic requirements and the selection procedure (see above). It also stipulated that candidates must have the right 'to permanently live and work in the UK'. The Claimant applied on 12 May. Her application gave details of her academic record, her nationality and place of residence and the fact that she would require a work permit to work in the UK. Following the digital assessment, the external provider ranked her in sixth place out of a field of 33. Mr Simran Kapoor, Early Careers Co-ordinator, carried out a screening exercise on or about 15 June, which resulted in a spreadsheet listing 24 applicants, out of whom the top-scoring 10 were invited to the assessment centre. The Claimant was one of the nine candidates who had been eliminated at the screening stage and so did not appear on that spreadsheet. A document in the bundle records that on 15 June the Claimant's candidate status was altered from 'Hold – [Early Careers] Screening' to 'Reject – Post [Early Careers] Screening'. Ms Renshaw told us without challenge, and we accept, that this classification applied to those found ineligible at the screening stage.

39 A document disclosed late by the Respondent was an email of 1 June 2022 from Ms Renshaw to Mr Afraz Akhtar, an Early Careers Co-ordinator, commenting that she understood that the requirement of the right to live and work in UK was necessitated by the fact that (given the late start of the recruitment exercise) there would not be sufficient time to arrange sponsorship of working visas before the start of the September 2022 training contracts.

40 Most regrettably, despite several emails asking for information, the Claimant was never formally notified of the result of her application. Indeed, it seems that none of her messages was even acknowledged.

The Hamburg application

41 Like the London competition, the Hamburg recruitment exercise was a 'one-off'. Its purpose was to recruit a single trainee with an English law qualification to work on Marine, Shipping and Energy matters. The format was similar to the London exercise, involving an application form, digital assessment, screening and a 'remote' assessment centre.

42 The Claimant applied on 16 January 2023. She disclosed her academic qualifications and put forward the same mitigation as before. Following the digital assessment, she was ranked in eighth place. A manual screening spreadsheet shows that, in the 'A-Levels' column, she is marked 'No CDE', highlighted in red. 'Nigeria' was entered in the 'Visa' column. The document lists 13 external candidates and one internal. The five candidates invited to the assessment centre (all shown in

green) include two external candidates whose scores following the digital assessment were lower than the Claimant's. Another document in the bundle records the Claimant's application being moved on 24 April 2023 from 'Hold [Early Careers] Screening to 'Reject at CappF Manual', which appears to be an error in wrongly attributing the rejection to a failure at the digital assessment stage (an error which, according to Ms Renshaw, was not uncommon). One of the candidates who advanced to the assessment centre is shown in the 'Visa' column as holding a 'Grad Visa Nigeria'.

43 On 3 May 2023 the Claimant was notified that her application had not been successful.

44 The Claimant placed reliance on two emails sent by Mr Kapoor to other members of the firm in February 2023 asking about the eligibility five candidates in light of their visa statuses. Among these were the Claimant, a resident of Spain and the holder of the 'Grad Visa Nigeria' already mentioned.

The Bristol application

45 The Bristol competition, which has been run annually, it seems, since 2022, is of a different kind from the other two which we have considered. It is practice-specific rather than rotational. It offers a single placement and the appointee remains in the Projects and Construction Team throughout the two-year term.

46 The application process largely follows a similar pattern to those already discussed. The academic requirements are the same. Candidates are scored by the external provider and screening is then applied by Clyde & Co. The next step is to identify four candidates or, as a bare minimum, three, to attend an in-person assessment centre, to be held at the Bristol office over two days. At the end of that process, the winning candidate is appointed.

47 This is the only route by which trainees are recruited to the Bristol Projects and Construction Team. An identical process applies to the Insurance, Financial and Professional Disputes Team, also located in Bristol.

48 The Claimant applied for the Bristol trainee contract on 13 October 2023. In her application she asked to be permitted to complete all her assessments 'virtually' because she was applying from Nigeria, did not have a visa permitting her to enter UK and in any event, if the request was not granted, would face substantial travel costs.

49 Following the digital assessment, the Claimant was ranked seventh by Clyde & Co's external provider. A spreadsheet listing the top 13 candidates was prepared.

50 On 25 January 2024 Ms Kenwright (the Fourth Respondent, already mentioned) wrote to the Claimant noting that she had not identified a UK address, pointing out that any assessment centre would be held at Bristol and that the firm would be keen to know her 'motivations specifically for Bristol'. The message ended with, 'Please let us know if you would like to withdraw your application or if you would like to be kept in mind for an assessment centre.' The Claimant replied the same

day, saying that she was indeed motivated to work in Bristol as part of the Projects and Construction Team, repeating her request to be permitted to participate in the competition remotely and drawing attention to the reference on 'hints and tips' page of the website to a 'virtual assessment day'. Ms Kenwright wrote back on 29 January saying that the website was incorrect and that the maximum sum payable by way of reimbursement for travel expenses was £150. Would the Claimant, she asked, still wish to be considered for the assessment centre? The Claimant then proposed that her application be treated as for a training contract which did not involve an in-person assessment, but Ms Kenwright replied that there was no such competition planned for the current year. Could the application be shared with Dubai? No, said Ms Kenwright, as the requisition underway there had closed. Accordingly, the Claimant must state her intentions. To this the Claimant responded in a message of 30 January, copied to other members of the Early Careers Team, complaining that she had been treated in a disrespectful and discourteous way and unreasonably pressured to remove herself from the recruitment process.

51 Ms Kirrane wrote to the Claimant on 2 February 2024 apologising for any misunderstanding and explaining that she was not being required to withdraw her application and that she could be contacted about the screening stage shortly. Further correspondence followed in which the Claimant made unambiguous allegations of race discrimination.

52 On 7 March 2024 Ms Kirrane wrote to advise the Claimant that she had not been selected for invitation to the assessment centre because four candidates who had scored higher than her had received and accepted invitations to attend. The message went on to say that she had performed very well in the process and Clyde & Co would be delighted to receive an application from her in the future.

Secondary Findings, Analysis and Conclusions

The London application – direct discrimination

53 We are not helped by the fact that Mr Kapoor was not produced as a witness (we were told without challenge that he and all other members of the Early Career Team at the relevant time have left Clyde & Co). In any event, we are able to make reasonably confident findings on the basis of the material before us. It seems to us much more likely than not that the Respondent's case on direct discrimination is correct. The Claimant did not satisfy two key requirements: A-Levels at A, A, B grades and possession of the right to live and work in UK. The documents show that she was judged ineligible by Mr Kapoor on screening on 15 June 2022. It is highly likely, we think, that he moved her to the 'reject' category because, on those grounds, he genuinely considered her ineligible. Those grounds exclude direct race discrimination.

The London application – indirect discrimination

54 The Claimant fails also on indirect discrimination. The PCP was certainly indirectly discriminatory, whether or not one disregards as an aberration the stipulation of a right to live and work *permanently* in the UK. The crux here is justification. It was common ground before us that, ordinarily, overseas applicants

are not excluded on account of their immigration status, since sponsorship is available. But we find that the Respondent succeeds in showing that the narrow interval between the launch of the selection process and the start of the trainee contracts (spanning the summer break) would have made it exceedingly problematical, if not impossible, to secure sponsorship of any required work visas in the time available. In the circumstances, we take the view that specifying the need for candidates to have the right to live and work in UK was, in respect of the 'one-off' 2022 recruitment, a proportionate means of ensuring a clear, fair and orderly competition in the interests of all candidates.

55 Even if we are mistaken in the view just expressed, the indirect discrimination claim fails because the relevant PCP did not put the Claimant at any 'particular disadvantage'. We agree with Mr Humphreys that she was disqualified under the A-Levels criterion in any event: there was no prospect of Clyde & Co appointing her given her grades. Accordingly, any application of the immigration status criterion did not operate to exclude her. The point is a short and obvious one, and it will not help for us to develop it at any length apart from stating that the Claimant's new line in her closing submissions, that the A-Levels requirement was itself indirectly discriminatory, cannot be entertained. That is not the case before us.

The Hamburg application – direct discrimination

56 This part of the case turns on a simple question of fact. We are satisfied that the decision to reject the Claimant's application at the screening stage was taken on the ground that she was ineligible, owing to her A-Level grades. We have been given no reason to doubt that straightforward explanation. The fact that Mr Kapoor asked questions about visa status in relation to a number of candidates including the Claimant does not give us any cause whatsoever to think that his decision-making was tainted by direct race discrimination as she suspects. The favourable outcome in the case of another candidate with Nigerian origins, descent or connections tends to argue to the contrary.

The Bristol application – direct discrimination

57 We are satisfied that Ms Kirrane's message to the Claimant of 7 March 2024 was true in stating that four other candidates had been offered and accepted places at the assessment centre, each of whom had scored higher than her. We have been shown no evidence which calls the scoring outcomes (produced by the external providers), or the statement that four higher-scoring candidates had accepted invitations to attend the assessment centre, into question. It is also clear that the selection of those four was in accordance with the Respondents' system of selection for Bristol training contracts. In the circumstances, we can see no basis for thinking that the exclusion of the Claimant, and the other unsuccessful candidates, entailed discrimination on racial grounds (or any other).

The Bristol application – indirect discrimination

58 EJ Segal identified the relevant PCPs as (a) the requirement for attendance in person at any assessment centre and (b) the limit of £150 on the reimbursement of travel expenses offered to candidates attending assessment centres.

59 Mr Humphreys rightly accepted that these requirements were liable to have a discriminatory effect on persons in the same circumstances and having the same racial characteristics as the Claimant, but submitted that they were reasonable and justified as representing a proportionate means of achieving a legitimate aim. Essentially, his argument adopted the Respondents' pleaded case (amended grounds of resistance, para 43). In short, the competition was designed to find one individual to serve a two-year training contract in a small and specialised team and necessarily placed great importance on inter-personal and teamworking skills, which are much better assessed face to face rather than remotely; and the £150 cap was proportionate and struck a fair balance between the interests of candidates and the firm. Further, Mr Humphreys repeated the submission made in relation to the London application that, in any event, the PCPs did not 'put' the Claimant at any disadvantage because, on account of her A-Level grades, she would have been rejected as ineligible for appointment in any event.

60 The Claimant contended that the requirement for in-person attendance was outdated and, given the strongly discriminatory effect disadvantaging overseas applicants, clearly unjustified. The same went for the travel expenses cap (which would leave UK-resident candidates more or less subsidised and those applying from abroad bearing the lion's share of their travel costs).

61 We agree with Mr Humphreys on both of his points. And since we accept the second (as to which our reasoning in relation to the London application is repeated, *mutatis mutandis*), the first (where we found the competing arguments quite finely balanced) is strictly academic. But as to that, in summary, we are persuaded that the firm is justified in insisting on an in-person assessment centre, given the special importance of teamworking and personal dynamics in the Projects and Construction Team, and we bear in mind that setting the cap on travel reimbursement is a matter for broad assessment which needs to start from the fact that the firm has no obligation to cover *any* travel expenses.

62 Moreover, it seems to us that the Claimant faces an initial logical difficulty in relation to indirect discrimination which was not in play in the London competition. Here, it is quite clear that the rejection of her application on 7 March 2024 was based entirely on the scores. The Respondent had not formally carried out the screening exercise by that date (although the A-Level grades had been noted). In these circumstances, the first requirement of the legislation, that the employer 'applies' a (relevant) PCP to the employee (s19(1)) is not, we think, met. There was certainly correspondence about the requirement of in-person attendance at the assessment centre and about the travel expenses reimbursement cap, but the discussion, so far as the Claimant was concerned, was hypothetical, since those matters could not bear on her interests unless and until she was invited to attend the assessment centre. That did not happen. Indeed, nothing legally significant happened before 7 March 2024, when her candidature ended.

63 For all of these reasons we hold that: (a) the Respondent did not 'apply' the relevant PCPs (or either of them) to the Claimant; (b) in the alternative, in so far as the PCPs were applied to her, they did not 'put' her at a particular (or any) disadvantage, because her A-Level grades meant that there was no possibility of

her being appointed; and (c) in any event, the Respondents have shown that the PCPs were a proportionate means of achieving a legitimate aim.

The Bristol application – victimisation

64 It is common ground that the Claimant's emails to the Early Careers Team of 31 January, 2 February, 12 February and 16 February 2024, in which she made clear allegations of race discrimination, amounted to protected acts. The detriment relied on is the decision not to invite her to the assessment centre. Was that decision taken 'because of' the protected act? We are satisfied that it was not. As we have already found, the decision was because of the fact that Clyde & Co, following its standard practice, selected the four-person cohort to attend the assessment centre from the highest-scoring available candidates, taking them in descending order of scores. That process excluded the Claimant. There is no evidence that the Claimant's protected acts played any part in the decision.

Discrimination and victimisation – overall conclusions on the merits

65 We have reviewed our findings in relation to each element of the case individually and revisited them collectively, mindful of the need to have an eye to the bigger picture and to avoid an unduly fragmented approach. Having done so, we are satisfied that our conclusions are correct and that all claims before us fail on their merits.

66 In acquitting the Respondents of unlawful conduct under the 2010 Act, we should not be taken to imply a favourable view of their administration of the Claimant's applications. We will return to this subject below.

Time

67 Naturally enough, the Claimant relied on s123(3)(a) to argue that her complaint was about 'conduct extending over a period' and that accordingly time ran from the last relevant event. But we have now found that no claim is well-founded. There was no relevant (*ie* unlawful) conduct. So s123(3)(a) is inapplicable. That leaves the discretion under s123(1) to substitute a longer period than the 'default' three months, but it would plainly be idle even to consider exercising that power to bring within time claims which have already failed on their merits. It follows that the late claims, namely those based on the London and Hamburg applications, fall outside the Tribunal's jurisdiction.

Outcome and Postscript

68 For the reasons given, all claims are dismissed.

69 We have reached our conclusions without resort to the burden of proof provisions, judging that the evidence is sufficient to enable us to reach clear findings on all relevant matters. But, for the avoidance of doubt, had we applied them, the result would have been the same. We would have held that the evidence put forward by the Claimant was not sufficient to establish a *prima facie* case and that, even if the burden had shifted to the Respondents, they had clearly discharged it by

providing rational, plausible explanations for their actions which excluded discrimination and victimisation.

70 Although the Respondents have succeeded in this litigation, we consider that they would do well to learn some important lessons from it. Their protestations about their 'passionate' commitment to inclusion and diversity do not at all times sit comfortably with our findings concerning their management of the Claimant's applications, certainly in relation to the Bristol and London training contracts. We make the following points. (a) The style and tone of Ms Kenwright's messages struck us as at very best remarkably gauche and inept and we can well understand why the Claimant was offended to find herself apparently being encouraged to abandon her application. Although, as EJ Segal held, the messages did not amount to acts of harassment (s26 sets the bar very high), an organisation genuinely passionate about inclusion and diversity would not normally be expected to countenance messages of that sort being sent in its name. (b) As Ms Kirrane acknowledged (witness statement, para 37) entirely avoidable misunderstandings occurred which appear to be directly attributable to a failure properly to train and supervise Ms Kenwright to ensure that she had a clear understanding of the system she was charged with administering. (c) It seems to us that thought might also usefully be given to revising the system. In particular, it is not clear to us why time and trouble are spent on scoring candidates before the organisation ascertains whether, having regard to academic attainment and/or availability, they are even theoretically appointable. (d) Mixed messages should be avoided (as should muddled thinking). We struggle to understand Ms Kirrane's encouragement to the Claimant to apply in future competitions given the Respondents' case that her A-Level grades make her ineligible for any appointment. (e) It ought not to be difficult for a well-run organisation to ensure that information for potential recruits on its website was carefully checked and updated for accuracy and clarity. (f) The extraordinary failure to convey to the Claimant the outcome of her application to the London competition represented another deeply regrettable lapse, for which no explanation has been provided.

Employment Judge Snelson

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Date: 29 December 2025

Judgment entered in the Register and copies sent to the parties on 29 December 2025

..... for Office of the Tribunals