



EMPLOYMENT TRIBUNALS

Claimant: Mrs Fatmata Binta Pokawa

Respondent: Home Office

Heard at: Watford Employment Tribunal
On: 13-16 January 2026

Before: Employment Judge Young
Non Legal Members: Mr A Scott
Mr R Clifton

Representation

Claimant: Litigant in person (assisted by her son Kaikura Pokawa)
Respondent: Ms Lulia Stinga (Counsel)

JUDGMENT

The Claimant's complaints are not well founded and are dismissed.

REASONS

Introduction

1. The Claimant has been employed by the Respondent since 27 July 1999. The Respondent is a department within the UK government. Early conciliation started on 1 August 2023 and ended on 12 September 2023. The claim form was presented on 12 October 2023.

Hearing and Evidence

2. The Employment Tribunal was provided with an agreed bundle of 1555 pages. There was also a supplemental bundle of 290 pages. The Employment Tribunal received witness statements and heard evidence from the witnesses. The Claimant gave evidence and the Claimant's witness, Ms Heather Joy Liversedge (former employee and member of the Claimant's ROM team). The Respondent's witnesses were Sharon Watson (Immigration Compliance and Enforcement ('ICE'), Reporting and Offender Management ('ROM')) of the East of England team as a ROM Higher Executive Officer ('HEO') from September 2020 until 5 October

2023, and Dominique Newbury (ROM HEO of East of England team from March-June 2024)

3. On day one (Monday 13 January 2026), the Respondent took issue with the admissibility of the Claimant's second witness statement and Ms Liversedge's third witness statement. The chronology and cast list from the Respondent were not agreed.
4. The Claimant made an application to admit further documentation to the bundle. Documentation was sent to the Respondent by the Claimant on 12 January 2026 (the day before), and the Claimant had hard copies of the documents that she wished to rely on. In particular, the Claimant wished to rely upon a copy of what she said was her grievance document. She said she emailed the Respondent on 10/04/25 her version of her grievance, but this email is not in the bundle. The Claimant emailed the Respondent the outcome of the grievance. The hard copy document amounted to 15 pages. It became clear that there was a grievance outcome at page 784, but there was no covering email indicating which version of the grievance outcome was included in the bundle or the original grievance received by the grievance decision maker. The Claimant said that her grievance document differed from that in the bundle and was her grievance document.
5. The Respondent stated that the version of the document in the bundle was the version sent on 16/01/24 from Donna Pickering (HR) to Tom Hughes. The Respondent pointed out that it did not match the hard copy version that the Claimant had produced that morning. The Respondent explained that the grievance documents in the bundle are the versions which the Claimant sent in April 2025. The Respondent explained that the version received by Ms Newbury on 16/01/24 did not include the tick in the ethnic origin box, nor did it contain the statement referring to diversity and colonialism. Initially, the Claimant said that she could not explain why there were 2 versions.
6. However, when the Claimant was asked by Employment Judge Young whether the hard copy version she presented to the Employment Tribunal today was the same version that Ms Newbury received from the HR (Ms Cotrell) and the version that the Claimant sent as her grievance, the Claimant admitted that the HR told her that she had not ticked the discrimination box and so she ticked it on appeal and that is the version that she now presented in hard copy to the Employment Tribunal which was dated 14 December 2023. It was agreed that the Respondent would obtain a copy of the original grievance, with the cover email sent to the decision maker, to compare with the Claimant's document and include this in the bundle.
7. The Claimant sought to admit documents attached to her email to the Respondent on 12 January 2026. The Respondent's position was that the documents were not relevant and that they were included only because they concerned the work the Claimant did in her role in the gender equality network. The first document concerned a newsletter stating that there would be a professional standards review into Border Force and ICE (the document did not refer to the date of the review into bullying and

harassment). The second document concerned recruitment guidance for menopausal women. The third document was an email with links to various websites. The fourth document was from the Quality Commission, Department of Health, regarding a review of black maternal health and deprivation by Baroness Casey. The fifth and final document is a copy of the Claimant's return to work interview in January 2024 at pages 787-789; it was the Claimant's email version of that document.

8. The Claimant accepted that the first document's relevance was about the good work that she did, and so she was withdrawing it as she accepted that it was not relevant. The second document was about ICE and Border Force, and it demonstrated that the grievance procedure was so bad that they had to ask for a review into the process. The Claimant said that she was saying that the grievance process is discriminatory; however, she accepted that this was not a complaint before the Employment Tribunal, and so it was not relevant, and she withdrew the document. The Claimant said that the third document was about menopausal women and was an example of the work she did for GEN. The Claimant stated that the other 2 documents were relevant as all the documents gave the Employment Tribunal a picture. The Claimant then withdrew her concessions regarding the documents and stated that she did want the Employment Tribunal to make a decision about the documents.
9. The Claimant disclosed Ms Liversedge's witness statement at the correct date for exchange and wished to rely on the statement. The Respondent objected. As they said that Ms Liversedge's statement was wholly irrelevant.
10. The Employment Tribunal decided that the documents sent by email on 12 January 2026 to the Respondent were irrelevant and were not included in the bundle. However, the Employment Tribunal allowed Ms Liversedge's witness statement to be admitted as it was in the interests of justice, as the statement was exchanged with the Respondent in accordance with the Employment Tribunal's orders.
11. However, at the end of day one, when the Claimant had already begun to give evidence, she asked whether she was required to bring emails to support the hard copy document she had produced as her grievance document. The Claimant was told that she only needed to bring proof if she was saying that the hard copy document was not her appeal document, but her original grievance.
12. On day 2 (Wednesday 14 January 2026), the Claimant was late due to an accident that caused traffic, and the Employment Tribunal did not start until 11:10. The Employment Tribunal added the hard copy Claimant's grievance document and the covering email to the bundle as 1556-1572. The Employment Tribunal received electronic copies of the Respondent's version of the Claimant's grievance document and the covering email and added those documents to the bundle as 1573- 1592.
- 13.
14. On day 3 (Thursday 15 January 2026), the Claimant sent some emails to the Respondent, which she said were copied to the Employment Tribunal,

that the Claimant said demonstrated the original agreement of facility time for the GEN between her and her line manager at the time, Emma Smith. Unfortunately, the Employment Tribunal did not receive the documents. However, when enquiring what the documents were, not only did the Employment Tribunal determine that the documents were not relevant, but the Respondent contested the addition of the documents, as the Claimant's case had closed, and the Claimant had neither mentioned nor referred to the documents before. The Employment Tribunal determined that they did not need to view the documents, as they were irrelevant and/or it was not in the interests of justice to allow them at that late stage.

15. We received written submissions from the Respondent and heard oral submissions from the parties. The Claimant said that she had not been able to open the Respondent's written submissions sent to her as an attachment to an email during the 1 hour lunch break at 13:33 before submissions were to be heard at 14:00. The Claimant was given a hard copy and asked if she wanted time to read the submissions. The Claimant was given an opportunity to read the submissions. The Claimant said that it was fine. The Respondent's submissions were consistent with the written submissions. The Claimant stated, in summary, that she was relying on the documents in the bundle and referred to in her oral evidence, as well as her witness statement, all the other statements, and her ET1. The Claimant said that she came to the Employment Tribunal because of her anxiety disability and mental health. She said that her anxiety kicked in. She said she was unable to sleep, which impacted her. She said for the first time that her neurodiversity, ADHD, impacted her, but she admitted that she had not been formally diagnosed. She said that she hyper-fixated on issues and kept asking questions in different ways. The Claimant says that her actions mirrored those of Ms Ainger; she said that she believed that she had ticked the ethnic origins box in her grievance. The Claimant said that she was the only black person in GEN with a secondary network and that the Respondent discriminated against her in an institutional way.

Reasonable adjustments

16. The Claimant asked for frequent breaks to deal with her anxiety. The Claimant indicated that breaks every 30 minutes or 15 minutes would be sufficient. The Employment Tribunal told the Claimant that she was to ask for a break when she needed a break.

Claims & Issues

17. The Claimant brought a claim of failure to make reasonable adjustments and direct race discrimination. However, by Employment Judge French's judgment dated 30 November 2024, the Claimant's disability discrimination complaint was dismissed. The Employment Tribunal was only considering the Claimant's claim for direct race discrimination.
18. The issues the Employment Tribunal had to decide are set out below:

1. Time limits

- 1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 2nd May 2023 may not have been brought in time.
- 1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2.2 If not, was there conduct extending over a period?
 - 1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

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

3.1 The claimant is black British, of African origin.

3.2 Did the respondent do the following things:

3.2.1 Fail to move the claimant into an alternative role, as recommended by the 7th February 2023 OH report

3.2.2 Remove her from her role as Co-Chair of the Gender and Equality Network on or around the 1st July 2023

3.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

3.4 If so, was it because of race?

5. Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the respondent take

steps to reduce any adverse effect on the claimant? What should it recommend?

5.2 What financial losses has the discrimination caused the claimant?

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

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

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

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

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

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

5.9 Did the respondent or the claimant unreasonably fail to comply with it by specify breach?

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

5.11 By what proportion, up to 25%?

5.12 Should interest be awarded? How much?

Findings of Fact

19. Only findings of fact relevant to the issues and those necessary for the Tribunal to determine have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.
20. The Claimant was evasive in answering questions and was unreliable, changing her evidence a number of times. We had regard to the equal treatment bench book and were cognisant that the Claimant said that she was not formally diagnosed with ADHD and took that into account, as well as the Claimant's anxiety. However, the Claimant's credibility was brought into question on both issues we had to decide which we set out in our findings. Ms Liversedge did not have any substantive evidence to provide, though we found her to be a truthful witness. The Respondent's witnesses were clear, honest and straightforward, and their evidence was consistent with the contemporaneous documentation.

21. In 2015, the Claimant was in a diversity and equality role. However, following the announcement of a reorganisation, the Claimant was transferred to another role in the Reporting and Offender Management Team (ROM team). The Claimant's evidence was that Lois Ainger, without warning, transferred the Claimant to the Reporting and Offender Management Team (ROM team) and that the Respondent's policy regarding transfers applied. When the Claimant was initially asked about this in evidence, she said that Ms Ainger (who she said was a manager in the strategy enforcement team) told her there was an opportunity and that, because she was black, she should be moved into the Executive Officer role in the ROM team. When challenged, the Claimant corrected herself and explained that it was not Ms Ainger who told her that she was transferred because she was black, but that is what she thought. However, in an email to the Claimant dated 16 October 2015 from Ms Ainger, she states, *"In light of Central Operations disbanding and the new focus for the team there is not sufficient work for you to do in NICT."* [1356] And then added *"you are not the only person to leave the team in light of the restructure..."* [1357].
22. The Claimant said in evidence that she did not believe this reason, as set out in Ms Ainger's email, for her transfer. The Claimant's evidence was that the move was carried out in a clever, but discriminating fashion, which she now believed was designed to relegate, disenfranchise and downgrade her expertise in her field. She believed this was done because she was not afraid to raise issues affecting the department, then suggested how they could improve. However, we note from an email response from the Claimant dated 18 November 2015 to further emails from Ms Ainger that the Claimant stated at the time that she understood the decision to transfer her. [1354] We find that the Claimant's race had nothing to do with the Claimant's transfer in 2015 and that the Claimant was not the only person transferred at the time. At the time, the Claimant was stated in an email dated 26 October 2015 that she did not object and neither did she have difficulties with her team or line manager [1356]. However, it was only subsequently that the Claimant did feel that she was not being developed in the ROM team, and she did not want to be in the team. The Claimant applied repeatedly for a number of job roles over the years, more commensurate with her qualifications in diversity and equality, to no avail.
23. On 7 February 2023, the Claimant attended Occupational Health having been referred by her previous manager, Ms Smith, prior to December 2022. The Claimant had been off work due to workplace stress from 15 August- 15 December 2022.
24. OH advisor Gillian Gladwell reported on 7 February 2023, that the Claimant alleged that *"She has been the subject of a deliberate attempt to side-line her within the business due to her outspokenness. She stated she had previously undertaken work which was the subject of high praise, but this had included allegations of unfair bias, so she had been moved from her previous role to her current role in immigration. This is a role where she feels her expertise is not needed and she is of the opinion it was a deliberate move. She stated she raised a grievance regarding this in January 2020, and this has still not been heard"* [234] As a result of this

the Claimant experienced stress which led to *“high levels of anxiety, poor sleep, poor appetite, emotiveness, cognition, concentration and memory problems and low mood. This was the main cause of her absence.”* [235] However, Ms Gladwell also advised that *“In my clinical opinion, Ms Pokawa continues to suffer from a reduction in her psychological resilience, and this is unlikely to improve until her grievance, which she stated has not been investigated for over 2 years, has been investigated and the outcome reached. Although this situation has impacted on Ms Pokawa’s psychological wellbeing, it is more a management issue than one which can be resolved by Occupational Health.”* [233]

25. OH recommended that *“A Managed Move to a different department, especially if it is within her HR speciality would be helpful for her to start to regain her self-confidence and self-esteem.”* [233]
26. Sharon Watson gave evidence that on taking over the Claimant’s line management from Ms Emma Smith on 26 February 2023, she was keen to deal with the Claimant’s OH report as a priority, we accept Sharon Watson evidence on this point as Sharon Watson gave evidence that she received the OH report a few days after she became the Claimant’s manager on 26 February 2023 and reviewed the report before inviting the Claimant to attend a meeting on 8 March 2023 which we find to be a short timescale. Sharon Watson explained that she had a discussion with the Respondent’s HR, Catherine Merrywest, who advised that the policy under which the Claimant was seeking a move was the Workplace Reasonable Adjustments Guidance (*“the policy”*), [1028]. Sharon Watson’s evidence was that her understanding was that, firstly, a managed move is not referred to in the policy and does not exist as a specific process. Secondly, the policy provided for moves between roles in circumstances where a person’s current role was no longer available, and they needed to be moved because of that, or the adjustments required in the existing role meant that the person could no longer perform the duties in the existing role. Ms Newbury gave evidence it was her understanding that an employee with a disability may be redeployed into a different role if there were no reasonable adjustments available that could enable them to perform their role.
27. The Claimant accepted in evidence that the applicable policy was Workplace Reasonable Adjustments Guidance, which was applied to her. The Claimant did not dispute that this was the incorrect policy in her evidence.
28. We find that Sharon Watson’s email dated 28 April 2023, forwarding the Claimant a possible role that the Claimant could apply for, was evidence that she would have moved the Claimant to an alternative role if it was within her power to do so. The Claimant’s response to this email is indicative as she says, *“wow thank you for sharing this with me it is way up my street”*. [343] Sharon Watson gave evidence that she did prioritise the Claimant’s health and referred to the 28 April 2023 email as her trying to resolve the Claimant’s issue. We find that the email shows that Sharon Watson did have concern for the Claimant and her self-esteem & confidence in encouraging her to find a role that best suited her. To the extent that the Claimant’s self-esteem was part of her psychological

health, we find that Sharon Watson did prioritise the Claimant's health in this way. However, we find that the OH's advice makes it clear that it is the Claimant's outstanding grievance that was causing the Claimant's mental health issues not the Claimant's role and so we find therefore that it was not reasonable for the Respondent to have found the Claimant an alternative role when in fact it would have not improved the Claimant's symptoms and had any meaningful effect of the Claimant's health to the extent that would have for example improved the Claimant's attendance at work.

29. On 16 February 2023, the Claimant applied for the role of Co-Chair of the GEN. The Claimant informed her line manager at the time, Ms Emma Smith, about her application.

30. As part of her handover with Emma Smith regarding the Claimant's line management, Sharon Watson gave evidence that she was told the Claimant had an arrangement agreed with Ms Smith that she would carry out work for the Gender Equality Network (GEN), a staff network created to promote equality and diversity within the staff cohort for 50% of her time. This GEN work was entirely voluntary, and whilst important, we do not accept the Claimant's evidence that it was business critical like her ROM role. For the remaining 50% of the Claimant's work, the Claimant would carry out her work in the ROM team. Sharon Watson's evidence was that she was informed by Ms Smith that the Claimant was currently permitted to spend 50% of her contracted hours doing work for the GEN rather than her business-critical day job in the ROM team, and that, linked to this she was also seeking to take up a role as a co-chair of the GEN. Emma also told her that the Claimant had spoken to her about this co-chair role, but that she, Emma, had not sought confirmation that the ROM team would support the Claimant as co-chair of the GEN role. We accept Sharon Watson's evidence on this point.

31. The Claimant claimed in evidence that there was a written agreement of the 50/50 split of work between ROM and GEN and that she did not disclose this to the Respondent because she thought that it was not relevant to her case. When asked about the agreement, the Claimant stated that it was an instant message conversation between the Claimant and Ms Smith on Skype but when the Claimant was asked for more detail of the document the Claimant could not say how many pages the conversation was, neither could she say when the conversation took place, she just stated that it took place before 16 February 2023. She said that in relation to her GEN work before she applied to become Co-Chair, there was an email, but she could not find it. The Claimant could not state what the terms of the agreement were but did say that it was not time-limited, but was reviewed every year in her annual appraisal, although she was unable to tell us why she believed that these things other than it was her belief. She said that she believed that Ms Smith would have passed the written document to Ms Watson, and in October 2023, to Ms Newbury when she became the Claimant's line manager. We find that the Claimant was not telling the truth that she had any written record of the terms of the arrangement.

32. On 8 March 2023, Sharon Watson had a meeting with the Claimant about

her OH report and a number of other issues, including asking the Claimant what work she did for GEN and how her time would change now that she was Co-Chair of GEN.

33. Sharon Watson confirmed the contents of the meeting in her email dated 14 March 2023 [320-321]. In that email, Sharon Watson explained to the Claimant that she could not move the Claimant to an alternative role because *"The concept of a 'managed move' is one that could exist if you needed a move to accommodate reasonable adjustments. As things stand this would not be something we could pursue as you are able to perform the ROM duties with no reasonable or other adjustments."* [321] Sharon Watson also confirmed in the email that at the meeting, the Claimant told her that GEN may have an opportunity for a role that would take 100% of the Claimant's time. Sharon Watson told the Claimant that she left it with her to make contact with GEN to explore it. [321]
34. By email dated 23 March 2023 [289], the Claimant provided details of what her GEN Co-Chair role entailed and told Sharon Watson her Co-Chair role would start on 1 April 2023. However, the Claimant did not provide details of how much time the GEN work would take, in addition to her other GEN work and ROM work.
35. The Claimant stated in evidence that there was a conversation with Sharon Watson on 8 March 2023, where she was informed that she was not to be moved to an alternative role. We note that the Claimant did not object to that decision in the meeting. Furthermore, neither did the Claimant object when she received the email on 14 March 2023 telling her in writing that she would not be moved. However, in response to an email on 23 March when the Claimant was invited to attend a attendance management meeting for 11 April 2023 [324] (because she had been off work until December 2022), the Claimant raised for the first time in an email dated 3 April 2022, the OH report *"clearly identifies 'managed move' as the answer"* [323] We find that the OH report did not conclude that a managed move was the answer to manging the Claimant's attendance as she seems to be suggesting in her email.
36. As the Claimant's union representative was not available on 11 April 2023 [323], the attendance management meeting was held on 14 April 2023 [331]. At the meeting, Sharon Watson discussed the Claimant's GEN role with the Claimant. The Claimant was asked in the meeting about whether there was a 100% GEN role available; the Claimant admitted in the meeting that it was a funding issue. Sharon Watson asked for details so that she could forward the proposal to Cheryl Daldry, who was the assistant director of ICE, and Sharon Watson's manager's line manager, and gave evidence that she did forward that information. It was not in her gift to make funding decisions.
37. Sharon Watson reiterated in the meeting on 14 April 2023 that the Claimant could not be moved under a managed move because the Claimant didn't have a reasonable adjustment that meant that she could not do the role as she was doing the role. [334] The Claimant's response was that she felt that she was not reaching her potential. The Claimant did not state that it was affecting her health. In evidence, the Claimant

admitted that she was told that she would not be moved. The Claimant admitted that Sharon Watson was trying her best and her approach was reasonable. She accepted that by 14 April 2023, she knew that she would not be provided with an alternative role. The Claimant accepted that she did not contact ACAS until 1 August 2023, which was more than 3 months after she knew she would not be moved. The Claimant refused to accept that she had provided no evidence in her witness statement to explain why she had not presented her claim within 3 months of the decision not to move her. She said that she couldn't remember the preliminary hearing, and that Judge Reed told her she would have to provide evidence explaining why she had not presented her claim in time. The Claimant said for the first time that the reason she did not present the claim earlier was because she didn't think it was the final decision and she was not in the right frame of mind she was not well enough to present her claim. However, we find that the Claimant contacted ACAS whilst she was off sick. The Claimant contacted ACAS on 1 August 2024 when she had a sick certificate covering sickness from 5 July 2023-5 August 2023 [442]. Furthermore, we find that the Claimant provided no evidence in her witness statement of why she delayed presenting her claim, and we do not accept the Claimant's evidence of why she did not present her claim on time. The Claimant was not off sick in April 2023 when she knew of the decision that she would not be moved to another role.

38. On 13 June 2023 [384], Sharon Watson sent an email to everyone in her team, including the Claimant, explaining that she had told them in May 2023 (3 weeks before the date of the email) that everyone would need to pitch in to clear the ROM work, cancelling any flexible leave or time off. By email directly to the Claimant from Sharon Watson dated 23 June 2023 [415]. Sharon Watson told the Claimant she needed the Claimant to do at least 50% ROM work.
39. Sharon Watson's evidence was that the Claimant was needed back in the ROM team to help reduce the backlog of failure to report ('FTR') work, which the Claimant was very good at doing. Sharon Watson gave evidence that the Claimant was in a business critical role and the Claimant had received awards because she was very good at this work. The Claimant challenged Sharon Watson's evidence and alleged that the backlog work that she was being asked to contribute to had been completed, as she received a letter thanking her, although she gave no evidence on this point. In cross examination the Claimant accepted that there was a backlog. Sharon Watson's evidence was that the backlog work was never completed whilst she was an HEO in ROM, and she left the role in November 2023. We accept Sharon Watson's evidence on the backlog and find that the backlog was ongoing in June-July 2023, and the Claimant was needed to assist in reducing this backlog.
40. The Claimant's timesheets in June-July 2023 demonstrate that the Claimant was not doing any ROM work in June-July 2023 [583]. The Claimant stated in evidence that she did not always put ROM work on her timesheet even though she was doing ROM work at the time. However, we find that the Claimant was not telling the truth about the reason why there was no ROM work on her timesheet in this period, in prior periods before the Claimant became Co-Chair [580], the Claimant had written

down her ROM work on her timesheet. We find that the Claimant was not doing any ROM work in the period June-July 2023.

41. Ms Liversedge, who was in the Claimant's ROM team, gave evidence that she left the Respondent in November 2022. Sharon Watson gave evidence that there were staff shortages in the team, and although the Claimant gave evidence that she was not told by Sharon Watson that there were staff shortages, the Claimant did not challenge Sharon Watson's evidence that two other people had left the ROM team. One person had retired, and the other had left to pursue opportunities in the MOD. The Claimant gave evidence that she didn't know who was in the team, as some were based elsewhere in Felixstowe, and she was not close to Ms Liversedge and did not know when she left. We do not accept the Claimant's evidence that she did not know there were staff shortages. The Claimant had been in team meetings, and she knew Ms Liversedge enough to ask her to be a witness for her. We find that there was a shortage of staff in the ROM team in June -July 2023.
42. On 1 July 2023 [438] Sharon Watson wrote to the Claimant to inform her, *"As you know, we are short of staff in the ROM team and we have therefore reviewed this arrangement and find that it does not meet our business needs. We need resource in the ROM team and it is intended that you return full time to ROM, effective from Monday 17/07/23"* [440]. We find that the Claimant was not removed from the GEN Co-Chair post on 1 July 2023, but it would have been effective on 17 July 2023.
43. We noted that in June 2022, before Sharon Watson was the Claimant's line manager, she sent the Claimant an email forwarding her a role regarding equality and diversity [221]. The Claimant's response to that email was to say " Thank you for thinking of me" and *"I think you and Emma will be really suited for this role, you should be our Race Ambassadors"* [221]. We find that the email indicates that in June 2022, the Claimant did not consider that Sharon Watson was institutionally racist but actually supportive of race issues.
44. The Claimant did not ask Sharon Watson whether she made the decision to remove the Claimant from the Co-Chair GEN role because of the Claimant's race and did not challenge Sharon Watson's evidence that race had no influence on the decisions she took in respect of the Claimant. Sharon Watson's evidence was that she did not see her email on 1 July as making a decision specifically on the GEN co-chair role. She was still intending to support the Claimant on any firm commitments that she might have had towards GEN, which may have included the GEN co-chair role. This was why Sharon Watson asked the Claimant to let her know what firm commitments she had for the GEN team so that we could take these into account. The Claimant accepted in her evidence that it was reasonable for Sharon Watson to ask her to come back to the ROM full time. We find that the reason why Sharon Watson removed the Claimant from the GEN Co Chair role was because there was a shortage of staff in the ROM team, there was a backlog, and the Claimant was needed in a business critical role. We find that she was not removed on 1 July but on 17 July 2023, when Sharon Watson stated her decision would take effect. We do not accept that Sharon Watson's decision to ask the Claimant to

return to the ROM team was not effectively removing the Claimant from her leadership role as Co-Chair because it was.

45. However, the Claimant went off sick from 5 July 2023 and on 3 August 2023, the Claimant submitted a grievance document about the decision not to move her to an alternative role and remove her from her GEN leadership role. [1557-1572]. The Claimant also mentioned that she went to have a meeting with ACAS, the union and other legal sources on 13 July 2023. The Claimant did not mention the claim about her removal from the GEN co-chair role in her claim form, but mentioned it in her further and better particulars, which formed part of the Claimant's witness evidence. The Claimant's further and better particulars were sent to the Employment Tribunal and Respondent on 5 February 2024. However, the decision to allow the complaint as an amendment was made on 12 July 2024 [109]. We find, despite the Claimant's assertion in evidence that she did not know there were discrimination time limits, we do not accept that. The Claimant gave evidence that she has a master's degree in equality, diversity and HR law. Furthermore, the Claimant had an opportunity to enquire about time limits in July 2023 when she was consulting with ACAS, the union and legal sources whilst off sick and therefore not work related.

The Relevant Law

Time limits

46. Section 123 Equality Act 2010 ('EQA') sets out the time limits in respect of discrimination claims brought under the EQA. Section 123 EQA says:

“(1) [Subject to [[section 140B]]] 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.
(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
a) when P does an act inconsistent with doing it, or
b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

47. When exercising their discretion to allow out-of-time claims to proceed under section 123 EQA, Tribunals may also have regard to the checklist contained in Section 33 of the Limitation Act 1980 (as adapted by the Employment Appeal Tribunal ('EAT') in British Coal Corporation v Keeble and ors [1997] IRLR 336.

48. Keeble takes the Section 33 factors listed as: considering the prejudice that each party would suffer if the claim were allowed or not, and to have regard to all the circumstances of the case — in particular, (a). the length of, and reasons for, the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued as cooperated with any requests for information; (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
49. In Department of Constitutional Affairs v Jones [2008] IRLR 128, the Court of Appeal ('CA') emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case.
50. Although a tribunal is not obliged to go through every factor in the Keeble list, a tribunal will make an error of law if a significant factor is left out of account: London Borough of Southwark v Afolabi [2003] ICR 800, CA.
51. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the Claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the Respondent on the one hand and to the Claimant on the other.
52. In the more recent decision of Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, the Court of Appeal warned tribunals not to take the Keeble factors as the starting point for the tribunal's approach to the just & equitable extension. The best approach for a tribunal in exercising the discretion is to assess all the factors in the particular case that it considers relevant, including in particular the length of and the reasons for the delay.
53. The EAT in South Western Ambulance Service NHS Foundation Trust v King IRLR 168 EAT, establishes that where a Claimant wishes to assert that there is a continuing act or an act extending over a period of time, there must be findings made that there had been discriminatory acts committed by the Respondent in order to form part of an act extending over a period of time or a continuing state of affairs,
54. Aziz v FDA [2010] EWCA Civ 304, CA: In deciding whether separate incidents constitute part of a continuous act, "one has regard to whether the same individuals or different individuals were involved. This is a relevant factor but not conclusive" [see paragraph 43, per Jackson LJ]

Burden of Proof provisions

55. Section 136 of EQA states:

“(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 sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to – (a) An Employment Tribunal.”

56. Pre- Equality Act 2010 House of Lords decision of Igen v Wong [2005] IRLR 258 set out a two stage test that tribunals must apply when deciding discrimination claims. This two stage approach was discussed in the Court of Appeal decision of Madarassy v Normura International plc [2007] EWCA 33, with guidance being provided by Mummery LJ. Since the Equality Act 2010 (although the burden of proof provisions differs in wording from the test set out in Igen), the Appellant Courts and EAT have repeatedly approved the application of the guidance set out by Mummery LJ in Madrassy. In summary, the first stage is where the burden of proof first lies with the Claimant, who must prove on a balance of probabilities facts from which a Tribunal could conclude, in the absence of any other (non-discriminatory) explanation, that the Respondent had discriminated against him. If the Claimant meets the burden and establishes a prima facie case (which will require the Tribunal to hear evidence from the Claimant and the Respondent, to see what proper inferences may be drawn), then the burden shifts and the Respondent must prove that it did not commit the act disproving the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The Respondent will have to show a non-discriminatory reason for the difference in treatment.

57. Tribunals must be careful, and the burden of proof provisions should not be applied in an overly mechanistic manner: see Khan v The Home Office [2008] EWCA Civ 578 (per Maurice Kay LJ at paragraph 12).

58. The approach laid down by section 136 EQA requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but where the Tribunal is able to make positive findings on the evidence one way or another, the provisions of section 136 does not come into the equation: see Martin v Devonshires Solicitors [2011] ICR 352 (per Underhill J at paragraph 39), approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 (per Lord Hope at paragraph 32).

59. It is, however, not necessary in every case for the Tribunal to specifically identify a two-stage process. There is nothing wrong in principle with the Tribunal focusing on the issue of the reason why. As the Employment

Appeal Tribunal ("EAT") pointed out in Laing v Manchester City Council [2006] IRLR 748, *"If the tribunal acts on the principle that the burden of proof may have shifted and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever"*.

60. If an Employment Tribunal can make clear positive findings as to an employer's motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT.

Direct discrimination

61. Section 13 EQA 2010 sets out the statutory position in respect of claims for direct discrimination because of race.

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

62. Section 39 (2) applies to employers and states:

*"An employer (A) must not discriminate against and employee of (A)'s (B)...
(d) by subjecting B to any other detriment."*

63. When determining questions of direct discrimination, there are, in essence, three questions that a Tribunal must consider: (a) Was there less favourable treatment? (b) The comparator question, and (c) Was the treatment 'because of' a protected characteristic?

64. The test for unfavourable treatment was formulated in the case of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 in that case the House of Lords as it was then, said that unfavourable treatment arises where a reasonable worker would or might take the view that they had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.

65. Lord Hope's judgment in Shamoon clarifies that a sense of grievance which is not justified will not be sufficient to constitute a detriment.

66. Section 23 EQA deals with comparators and states that:

"There must be no material difference between the circumstances relating to each case."

67. Shamoon held that the relevant circumstances must not be materially different between the Claimant and the comparators, so the comparator must be in the same position as the Claimant, save in relation to the protected characteristic.

68. As exact comparators within the meaning of section 23 EQA are exceptional, it may be appropriate for a Tribunal to draw inferences from the actual treatment of a near-comparator to decide how an employer would have treated a hypothetical comparator: see CP Regents Park Two Ltd v Ilyas [2015] All ER

69. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.
70. Tribunals should not reach findings of discrimination as a form of punishment because they consider that the employer's procedures or practices are unsatisfactory, or that their commitment to equality is poor; Seldon v Clarkson, Wright & Jakes [2009] IRLR 267.

Analysis & Conclusions

71. The Claimant's race is black British of African origin. However, Sharon Watson is also of African Origin. The Claimant was not able to provide any evidence that the reason for any of the treatment she complained of was because of her race. Indeed, in her submissions, she admitted that she did not know that Sharon Watson was of African origin and could be considered black. The Claimant relied upon what she called institutional racism; however, probing into what this meant was the Claimant's belief that she had been subjected to racism historically, matters that were not before the Employment Tribunal as claims and when presented as amendments by the Claimant were ruled as not allowed. The Claimant had mentioned these matters in her written witness evidence; however, the Claimant's written witness evidence did not provide any evidence other than her opinion that she was being subjected to race discrimination. The Claimant failed to shift the burden and provide any prima facie evidence that would lead the Employment Tribunal to infer that the reason for the Claimant's treatment was because of her race.

Issue 3.2.1 Did the Respondent fail to move the Claimant into an alternative role, as recommended by the 7th February 2023 OH report

72. The Respondent sought to persuade the Employment Tribunal that the Respondent did not fail in moving the Claimant into an alternative role as recommended by OH because the Respondent was applying the correct process and therefore there was no failure. We found that Sharon Watson did apply the correct process to the Claimant, a process that requires the Respondent to move employees. We accepted that the only options available to the Respondent was to move the Claimant if it was a reasonable adjustment, or to apply a reasonable adjustment that could not be applied, consequently resulting in the employee being unable to do the role they were employed to do. In those circumstances, the Respondent would have to find them another role.
73. We also found that none of these options applied to the Claimant during February- October 2023, when she presented her claim. However, we accepted that the OH recommendation was about the Claimant's psychological health, and so by not moving the Claimant to another role, we conclude that it was a failure by the Respondent. However, it is also the case that a recommendation is not a requirement, and so there was no requirement of the Respondent to move the Claimant just because it would have improved her psychological health. The OH was clear that the extent of any improvement was limited, as the real issue for the Claimant was her outstanding grievance. We found moving the Claimant to

an alternative role at that time would not have had any meaningful effect on the Claimant's health to the extent that would have, for example, improved the Claimant's attendance at work. Whilst the Claimant wanted a move and it would have improved her self-esteem, objectively it was not less favourable treatment, the Claimant's sense of grievance is not justified, and so we consider that Shamoon applies. We consider that it was no less favourable treatment. Furthermore, we accepted the Respondent's reason for not providing the Claimant with an alternative role, and we found that Sharon Watson was concerned and did prioritise the Claimant's health. All this evidence pointed to the fact that Sharon Watson was not motivated by the Claimant's race in deciding not to move her to an alternative role. Not least because Sharon Watson's June 2022 email demonstrated that she wanted the Claimant to find a role that suited her, and the Claimant considered that Sharon Watson was suited to be a race ambassador. We did not find any evidence or any finding that the position for the Claimant changed by July 2023. A hypothetical comparator would have been treated the same way. The Claimant's complaint is therefore not well founded and is dismissed.

Issue 3.2.2 Remove her from her role as Co-Chair of the Gender and Equality Network on or around July 2023

74. We found that the decision to remove the Claimant from her role as Co-Chair was made by Sharon Watson on 17 July, as contained in her email dated 1 July to the Claimant. However, we also found that Sharon Watson was willing to permit the Claimant to continue to carry out GEN work if she had prior commitments, and so the Claimant was not actually removed from the GEN on 1 July 2023. Notwithstanding, even if we conclude that the Claimant was removed from GEN work on 1 July 2023, we would have found that this was less favourable treatment. The work the Claimant did had value to the Respondent and was in accordance with the Claimant's qualifications and training, in those circumstances the Claimant had a justified sense of grievance in not being able to continue that work to the extent that she had previously, however we would have concluded that the reason for the Claimant's removal from the GEN role was not because of the Claimant's race. The Claimant's case made no sense to the Employment Tribunal. If the reason for the Claimant being removed from the GEN Co Chair role was race, why would Sharon Watson have waited until July, requested evidence of the Claimant's time spent on GEN and permitted the Claimant to do GEN for 4 months? If race were a factor, the Claimant would have been removed soon after Sharon Watson became her manager. We accepted the Respondent's reason for removing the Claimant from her Co-Chair GEN work as the backlog of the ROM work that the Claimant was actually employed to do, and the shortage of staff. Ms Liversedge, who was in the Claimant's ROM team, left the Respondent in November 2022, and there was no evidence from the Claimant that there was any replacement or others to do the ROM work. The Claimant did not challenge Sharon Watson's evidence that there was 2 others who had left the ROM team. We therefore conclude that the reason why the Claimant was removed from her role as Co-Chair of GEN was because the business needed the Claimant. Race had nothing to do with the Claimant being removed from the GEN role, and a hypothetical comparator in the same role as the Claimant who was not black British of African origin would have been treated in exactly the same way as the Claimant, and she was needed to carry out her business critical role. The Claimant's complaint is therefore not well founded and is dismissed.

Time

75. We have concluded that there was no race discrimination, notwithstanding that

we conclude that the Claimant's complaints are out of time. The decision not to move the Claimant was made on 8 March 2023, and the Claimant did not present her claim until 12 October 2023 and contacted ACAS on 1 August 2023. The Claimant was approximately 2 months out of time before contacting ACAS. Furthermore, the Claimant presented her claim form in October 2023 and did not provide any reason why she could not have put her GEN complaint in her claim form, particularly when she mentioned it in her grievance. That complaint is therefore out of time by approximately 9 months. We consider that it is not just and equitable to extend time as the Claimant was able to contact ACAS and write a grievance whilst off sick, therefore we did not accept the reason the Claimant put forward as to why she did not present her claim, which was essentially due to her not being in the right frame of mind. The Claimant's complaints are out of time.

Approved by:

Employment Judge Young

Dated: 25 February 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON

10 March 2026

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing will not be provided in writing unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded, you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced, it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>