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EMPLOYMENT TRIBUNALS

Claimants: (1) Mrs Jasvinder Virdi
(2) Mrs Mini Nair

Respondent: London Borough of Newham

Heard at: East London Hearing Centre

On: 23, 24, 25, 26 April and 21 May 2019

Before: Employment Judge Russell
Members: Mr P Quinn
Mrs P Alford

Representation
Claimants: In person
Respondent: Mr S Bishop (Counsel)

JUDGMENT

The Judgment of the Tribunal is that:-

1. The complaints of unfair dismissal brought by the First and Second Claimants both succeed.
2. The First Claimant's complaint of age discrimination, race and/or religious discrimination fail and are dismissed.
3. The Second Claimant's complaints of race and/or religious discrimination fail and are dismissed.
4. All complaints of disability discrimination and unauthorised deduction from wages are dismissed upon withdrawal.

REASONS

1 By claim forms presented on 24 November 2017 by the First Claimant and 29 November 2017 by the Second Claimant, the Claimants bring complaints of discrimination and unfair dismissal following their selection for redundancy and failure to secure alternative employment. The Respondent resists all claims. All claims of disability discrimination and unauthorised deduction from wages were withdrawn. There was no

dispute that there was a genuine redundancy situation.

2 A list of issues was agreed at a Preliminary Hearing on 1 May 2018 in respect of the claims brought by each of the Claimants. The issues to be decided are as follows:

Unfair Dismissal

- 2.1 Was each or either Claimant dismissed by reason of redundancy or was dismissal because she had not scored sufficiently highly in the recruitment interview for roles in the new structure at the Respondent's organisation?
- 2.2 Was this a substantial reason?
- 2.3 Was the Claimant dismissed because of her protected characteristic of race or religion or (for Mrs Virdi only) age?
- 2.4 Was the dismissal fair in all of the circumstances of the case? In particular:
 - 2.4.1 Did the Respondent conduct a fair consultation?
 - 2.4.2 Did the Respondent choose a fair selection criteria and apply it fairly? The Claimants assert that they were selected because of their race or religion or (for Mrs Virdi) age.
 - 2.4.3 At the time of dismissal were there suitable alternative vacancies that the Claimants could have been placed in?
 - 2.4.4 Did the Respondent meet the requirements to facilitate the Claimants' finding suitable alternative employment?
 - 2.4.5 Did the Claimants try to engage in the redeployment process?
 - 2.4.6 Did Mrs Virdi's suspension prevent her from engaging in the redeployment process?

Direct age discrimination

- 2.5 Mrs Virdi identifies her age as over 60 years old and compares herself with employees aged under 60 years in the redundancy exercise who were not dismissed.
- 2.6 Did the Respondent treat Mrs Virdi less favourably than someone not of her age in the following ways:
 - 2.6.1 Selecting her for redundancy.
 - 2.6.2 The manner in which it investigated the disciplinary allegations against her.
 - 2.6.3 The delay in investigating the disciplinary allegations against her.
 - 2.6.4 The way in which her suspension was handled.

Direct race discrimination

- 2.7 The Claimants are of Indian national origin. Did the Respondent treat the Claimants less favourably because of their race in selecting them for redundancy? The Claimants compare themselves with African employees

in the redundancy exercise who were not dismissed.

Direct discrimination on grounds of religion or belief

2.8 Mrs Virdi's religion is Sikh. Mrs Nair's religion is Hindu. Did the Respondent treat the Claimants less favourably than someone not of their religion or belief when selecting them for redundancy? The Claimants compare themselves with the Muslim employees in the redundancy exercise who were not dismissed.

3 We heard evidence from each of the Claimants on their own behalf. For the Respondent we heard evidence from Mr Chorwar Hussein (Resident Services Manager), Ms Victoria Babatunde (Leasehold Services Team Leader), Mr Russell Bryan (Strategic Commissioning Manager), Ms Donna Morelli (Commercial Development Executive), Mr Simon Letchford (Director of Strategic Commissioning), Ms Laura Barker (Head of Resident Engagement) and Mr Yusuf Okanlawon (Human Resources Officer). We were provided with an agreed bundle of documents and read those pages to which we were taken in evidence.

Findings of Fact

4 The Respondent is a local authority with a wide range of statutory duties including the management of housing stock and services within its area. Both Claimants were employed in the Housing Department, latterly as Income Collection Officers. Both had lengthy service, Mrs Virdi for 32 years and Mrs Nair for about 30 years.

5 In December 2016, the Respondent decided that the four internal business units delivering housing services (Housing Compliance and Tenancy Audit, Housing Income Recovery, Leasehold Services and Sheltered Housing) should be combined into a single multi-tenure resident services' management company. This involved deletion of 101.6 current posts, including all 19 Income Collection Officer jobs at grade SO1. There were similarly numerous deletions of the role of Leasehold Services Officer at grade SO2 and Housing Compliance Officer at grade PO1. In the original structure, the Income Collection Officers reported to an Income Collection Team Leader (a P03 Grade) and there were two Courts Officers (SO2 grade). These posts were also deleted in the restructure.

6 The new structure was more streamlined with 46 Resident Services Officer roles, 12 of which would report to the Resident Services Manager (Income). The Resident Services Officer roles were all at PO1 grade, covered the previous four specialist areas and were subject to a generic job description.

7 A consultation process with affected employees lasted from 24 January 2017 until 23 February 2017. The process started with a presentation given by Ms Morelli setting out the reasons for change and the process which would be followed. In her slides to support the presentation, Ms Morelli explained the Respondent's collectively agreed Procedure for Managing Change, including:

7.1 Slotting in - employees have a right to be slotted into a new post if it is a *75% match on duties and at the same grade* as their current post.

7.2 Ring-fenced selection – if slotting rights do not apply, ring-fencing rights

give priority consideration for appointments to vacancies at the *same grade or one grade higher/lower* in the new structure. A ring-fenced candidate may be asked to complete a supporting statement addressing the person specification and take part in a selection process.

- 7.3 Priority consideration for vacancies – displaced staff who are not slotted or ringfenced may apply for other vacancies for which they will be interviewed *before* the job is released for general application.
- 7.4 Redundancy – if not successful in securing a new position, employees would be given formal notice of redundancy. During the notice period the employee would have access to redeployment opportunities.

8 During the consultation period, the Claimants and their colleagues wrote an open letter with a proposal that the new roles be altered to a starting grade of SO2, progressing to PO1. The letter makes clear that the proposal is made to bring them within the “one up/one down” scope of phase 2 (ring-fenced selection) whereas otherwise they would only be considered at phase 3 (priority consideration). There was no suggestion that the affected employees should be slotted into the new roles within phase 1. The Respondent did not agree to the employees’ proposal. The Respondent assumed that the majority of affected employees would successfully apply for the new Resident Services Officer jobs but made clear that it would be following a competitive interview and test with a minimum benchmark score for appointment.

9 During evidence, the parties spent considerable time considering the detail of the job description for the PO1 Resident Services Officer role and whether and to what extent the Claimants were already doing some or all of those duties. The Tribunal has not considered it necessary to resolve this dispute as the “slotting” protection applied only where there was a 75% match **and** the jobs were at the same grade. It was not in dispute that there was some overlap in duties but that the Resident Services Officer job was two grades higher than the Claimant’s jobs as Income Protection Officers and involved at least some additional tasks not previously undertaken by the Claimants. In other words, even if there were a 75% job match, the slotting protection would not apply.

10 Both Claimants applied for the new Resident Services Officer job.

11 In preparation for the competitive interview process, the Respondent offered interested employees training in application writing and interview skills. Mrs Nair attended the course on 16 February 2017 and Mrs Viridi attended on 18 April 2017. The Respondent also made available manuals containing information relevant to the duties and skill set required for the new job and encouraged applicants to shadow managers in teams within which they had not worked. The Respondent did not make formal arrangements for shadowing, for example putting aside specific time or identifying suitable employees to observe. It was for the affected employees to make their own arrangements, including arranging for a colleague to cover their day to day work whilst they shadowed. The Tribunal infers that the Respondent appreciated that many employees with long service may not have recent experience of competitive interviews and provided some relevant support, whilst expecting the employees to decide how much or how little support they required and being responsible for the practical arrangements.

12 Mrs Viridi accepts that she was offered the ability to shadow and decided to do so

close to her interview on 23 June 2017. Mrs Virdi shadowed one manager who showed her relevant paperwork and gave her advice about courses she could attend. Mrs Virdi did some reading in preparation for her interview. Mrs Virdi was not able to undertake further shadowing due to the consequences of the unexpected Grenfell Tower fire on 14 June 2017 which required large numbers of employees in housing services to be absent from the office, visiting tower blocks and providing information to residents.

13 Mrs Nair gave evidence that she did not receive the offer of shadowing and was not aware that this was possible. Even it had been, her evidence was that she could not have availed herself of the opportunity due to the workload and the need to find her own cover. Mrs Virdi's evidence, however, was that she and Mrs Nair had discussed shadowing. Other employees in the same team undertook shadowing. The Claimants' evidence was that they worked very closely as a team. We do not consider it plausible that Mrs Nair was not aware that shadowing was possible. We find on balance that Mrs Nair did know that she could shadow in other teams but did not consider it practicable and so did not make arrangements to do it.

14 26 candidates were interviewed for 28 vacancies. The interviews took place on 19th, 20th, 22nd and 23rd June 2017. There were between four to eight interviews per day. In advance of the interview, candidates completed detailed written applications. Mrs Nair was interviewed on 19 June 2017. Mrs Virdi was interviewed on 23 June 2017. Mrs Virdi declined Mr Hussein's offer to adjourn the interview because of a recent family bereavement. The interviews on 23 June 2017 started later than scheduled due to urgent work required to assess the safety of tall blocks in the immediate aftermath of the Grenfell Tower fire. Even if there were an instruction by Ms Morelli to delay the interviews, and on balance we think that there was not and that paragraph 10 of Ms Babatunde's witness statement is poorly drafted as it refers to the talk of others at the time and not a direct instruction, we bear in mind that there were three candidates affected: Mrs Virdi, one black British African Christian the other mixed, no religion stated. The two other candidates were both successfully appointed following interview.

15 The interviews were conducted by Mr Hussein and Ms Babatunde. The Claimants did not object or express concern about the composition of the interview panel. Ms Babatunde was experienced in right to buy and home ownership, areas which fell within the new generic Resident Services Officer job description, but not income collection. Mr Hussein was the line manager of both Claimants. He had a particularly good working relationship with Mrs Virdi, both describing it as friendly and involving banter with each other. In her oral evidence, Mrs Virdi said that before he was appointed to the interview panels, Mr Hussein had told her that there was no way that Mrs Nair and two other Indian members of the team would be successful at interview but that she would be okay. Mrs Virdi's evidence was that she said that she was Indian too but Mr Hussein told her that she was different. Mrs Virdi says that she was upset by the comments and told colleagues what he had said.

16 The Claimant's case is that Mr Hussein favoured Muslims and Ms Babatunde black British African because they shared those protected characteristics themselves. As Mrs Virdi put it **"of course he would favour Muslims. You have a special feeling in your own religion, you just have this closeness. You are human at the end of the day. You would like to pick your own, it is a natural feeling of the human race. This is how you would feel"**.

17 Mr Hussein denies making any such comments to Mrs Virdi. In her evidence, Mrs

Nair made no reference to a discussion with Mrs Virdi about the alleged comments by Mr Hussein, despite being one of the potentially affected employees. Mrs Virdi raised no formal complaint at the time, did not object to Mr Hussein's presence on the interview panel and did not raise the allegation in the collective grievance or her appeal following her non-selection at interview. On balance, we found Mrs Virdi's evidence on this point to be unreliable and reflected her own belief that it is natural to favour one's own religion rather than anything said by Mr Hussein.

18 Mrs Virdi's evidence was that during a conversation with Mr Hussein in the tea room approximately a week before she was interviewed, he had asked her age and, when she told him that she was nearly 62 years old, he commented that at her age she no longer needed the job. Mr Hussein denies making any such comment. As with the alleged earlier comments, Mrs Virdi did not make any complaint at the time, did not object to Mr Hussein's presence on the interview panel and did not raise the allegation in the collective grievance or in her subsequent appeal. We find that Mrs Virdi's evidence was not credible on this point and prefer Mr Hussein's denial.

19 The interview comprised a test worth up to 10 marks in which the candidates were given 30 minutes to prioritise a number of tasks over the course of a working week. Mrs Virdi and some of the other candidates were provided with a blank table with columns for each day of the week and hours of the working day. Mrs Nair was not given the table. Nor were other candidates, for example Mr Siad Jeyte. Mr Jeyte's race is described as black British African and his religion as Muslim.

20 The total possible score for the interview was 45 marks. Mr Hussein and Ms Babatunde were provided with ten suggested questions for candidates, assessing motivation, skills and experience, contributing to and improving efficiency, collaborative work in the four main service areas, dealing with a complex issue, how the applicant would work across the different services and liaise with colleagues in the generic roles, knowledge of general legislation, how they would identify and support vulnerable tenants, dealing with tasks and deadlines and asking the candidate to describe themselves in three words. Model answers were also provided. These were not prescriptive but identified phrases which might be used in answers to gain marks. The interviewers were allowed to use prompt questions to enable the candidate to give their best answer, although the greater the number and detail of prompts, the lower the candidate's mark was likely to be.

21 The threshold for appointment was 60% (33 marks out of a total of 55). Of the 26 candidates interviewed, 15 passed the threshold for appointment. One further person, Ms Da Silva, scored 59.09% and was also considered appointable.

22 Mr Hussein and Ms Babatunde independently completed their own marking sheet. It is not clear whether the marking was completed in separate rooms or in the same room. The Tribunal did not consider this relevant, each marked independently initially. Such confusion as existed is due to the ordinary frailty of human memory and the passage of time. Following the interview, their marks were combined and divided by two to give a final mark.

23 The bundle contained the interview marks and notes for each of the candidates for the post of Resident Services Officers. The interview assessment forms for all candidates contained handwritten comments. Ms Babatunde and Mr Hussein gave evidence that they made the notes during the interview to record the answers given but that they were

not verbatim.

24 The Claimants' evidence about the scores and notes taken in the interviews was confusing. They said more than once that it was not their case that they had been improperly marked down but at other times said that their answers had not been fully recorded in the notes and that they had not been marked properly. They maintained that the Black African and Muslim candidates' answers had been improperly marked up and that the notes taken by Mr Hussein and Ms Babatunde for the successful candidates had been fabricated in order to award more generous marks and ensure their appointment. The Claimants relied upon changes in marks made by the interviewers as evidence of impropriety in the process. We accepted as truthful the evidence of Mr Hussein and Ms Babatunde that they gave initial scores during the interview and only amended the score after the interview when discussing the notes of the candidate's answer by reference to the model answer scheme. The Tribunal does not find anything improper in this moderation exercise.

25 The Tribunal considered the notes and scores for the Claimants and the other candidates interviewed. Whilst there are changes to scores these apply equally to all candidates irrespective of race, religion and/or age. The notes are detailed and give the impression of being written contemporaneously; it is not plausible to suggest that they have been fabricated. We reject the Claimants' evidence that the interviewers fabricated answers for the desired candidates.

26 As for the marks, Mrs Nair was originally give a mark of "3" by Ms Babatunde for her answer to question 6. This was then amended to "2.5". Mrs Nair alleged that this was done to ensure that she did not meet the benchmark for appointment. Even if she had retained the original mark of "3", Mrs Nair would have scored a mark of 23.5 for her interview. Combined with her test, she would have a total score of 53.5%, below the threshold for appointment by about three marks.

27 A large number of other candidates also had their marks amended, some upwards and some downwards. Mrs Viridi had two of her marks amended upwards by Mr Hussein after the interview as he was aware that she was stressed. Mr Patel (Indian, Hindu, age 50-60) also had his one of his scores amended upwards. Successful candidates whose scores were amended downwards were of different races and religions and included Mr Shote (black British African, Christian, age 60-70), Ms Strasser-Williams (black British African, Christian, age 40-50), Ms Haq (Asian, Muslim, age 30-40), Ms Hammershoj (white, Christian, age 50-60) and Ms Jones (white, Christian, age 40-50). The Tribunal was satisfied that the downward amendment of marks applied to employees of all races and ages.

28 Another part of the Claimants' case was that their answers were not written fully down or that they were given lower marks for the same answers that others had provided. The Tribunal again considered each set of interview notes. The questions asked were not identical but were broadly the same. Even with the guidance provided in the model answers, there was no "correct" answer and the mark given therefore involved an inevitable degree of subjective assessment by Mr Hussein and Ms Babatunde. By way of example, the parties focused on the question which asked candidates to describe themselves in three words. The model answer listed possible words which may lead to a candidate getting marks but we accept the Respondent's case that it was not as simple as whether the candidate used the exact word, so much as the idea that it conveyed.

29 There were significant discrepancies between the scores of candidates using the same or broadly similar words. These discrepancies applied irrespective of race, age or religion. For example, Mr Obasa (black British African, Christian, age 50-60) and Mr Shote (black British African, age 60-70) were given different scores when each had used two out of three of the words on the model answer list. Mrs Virdi was given three marks for her response although she accepted in evidence that she should have scored only two marks if the model answer were applied properly. Mrs Nair was given four marks when only one of her words was on the list in the model answer. By comparison, Ms Hammershoj was given only three marks for one listed word whereas Ms Da Silva was given five marks for the same. The Tribunal considered this indicative of the subjective nature of the exercise but find that the Claimants benefited in the sense that they were more generously marked than the model answer would suggest and more generously marked than other employees of different race, religion and age. This is consistent with Mrs Virdi's position at Tribunal than the marking had been done improperly but to all candidates.

30 On balance, we find that the scores given by each of Mr Hussein and Ms Babatunde varied with discrepancies across the range of candidates, irrespective of race, age or religion. It was not possible to discern any common theme whereby Indian, Hindu or over 60-year-old candidates were scored unduly harshly or black African, Muslim or younger candidates unduly generously.

31 Mrs Virdi undoubtedly had a bad interview. The Tribunal accepted Mr Hussein's that Mrs Virdi was told at the beginning of the interview that it would last 45 minutes but it in fact lasted for over an hour. Mr Hussein and Ms Babatunde each awarded Mrs Virdi 19 marks for the interview. Mr Hussein's note records that Mrs Virdi required a lot of prompting, almost on every question. Ms Babatunde's notes record that Mrs Virdi had not demonstrated a clear understanding of the questions, was prompted several times, provided unrelated answers to some questions, went off point and gave insufficient or inaccurate answers to other questions. That is consistent with the manner in which Mrs Virdi gave evidence to this Employment Tribunal when she repeatedly deviated from the question and required prompting to maintain relevance. Mrs Virdi gave an incorrect answer on right to buy legislation. On balance, the Tribunal finds that the comments expressed in the notes of both Mr Hussein and Ms Babatunde reflected their genuinely held opinion of Mrs Virdi's performance in her interview. Mrs Virdi scored 45.45% overall and the Tribunal find this to be a fair reflection of her performance at interview.

32 Part of Mrs Virdi's case is that Mr Hussein deviated significantly from the set questions during her interview. In one question, she said that Mr Hussein asked her about his past relationship with the Housing Benefits team and why they hated him. In oral evidence, she explained that the issue had been about amending the notes of an interview with a vulnerable tenant. Mr Hussein denied asking any such question, although in oral evidence, he accepted that when asking question 7 (work with vulnerable tenants), he did use a prompt in which he suggested that Mrs Virdi think of what they used to do when they worked together previously. On balance, we find that Mr Hussein did refer to their previous working relationship with Housing Benefit and referred to himself not being liked. This is consistent with his evidence recorded in the later disciplinary investigation. We accept that the reference to the previous working relationship disconcerted Mrs Virdi but we also accept that it was done with the intention of helping her to give her best answer to the question about work with vulnerable tenants.

33 Mrs Nair had a better interview, achieving a total of 52.27%. For the interview, Mr Hussein awarded Mrs Nair 22.5; Ms Babatunde awarded her 24 marks. Mr Hussein's notes support his evidence that he did not believe that Mrs Nair had provided sufficiently comprehensive answers, even after prompting, particularly when asked about demonstrating efficiency and action to ensure that the Respondent's work could be carried out collaboratively over the four main areas. Ms Babatunde's notes record her belief that Mrs Nair had not demonstrated an understanding of the questions asked, had required prompting several times, had provided a few good examples but some were irrelevant to the questions and had not demonstrated sufficient knowledge of right to buy legislation as she gave an incorrect answer. On balance, the Tribunal finds that the comments expressed in the notes of both Mr Hussein and Ms Babatunde reflected their genuinely held opinion of Mrs Nair's performance in her interview and that the score given was a fair reflection of her performance.

34 Mrs Nair accepted that perhaps she had been overly confident and she had expected to get a Resident Services Officer as there were sufficient vacancies. Her case was that even if they did not meet the required standard, they could have been appointed and given training for three to six months. Both seemed to the Tribunal consistent with an implicit acknowledgement that her interview performance had not been adequate rather than, as Mrs Nair also alleged, that her marks had been deliberately reduced to ensure that she did not meet the threshold.

35 The Claimants' case relied extensively on statistics identifying successful and unsuccessful candidates, giving their age, religion and race.

35.1 Of the 16 successful candidates: five were black British African, three were Muslim, two were Asian (one Indian, one Pakistani), one was Hindu, the others were white, mixed, Christian or detail were not known. As for age, six were aged between 30 and 40, two between 40 and 50, six between 50 and 60 and one was between 60 and 70.

35.2 Of the 10 unsuccessful candidates: three were white English, three were black British Caribbean, three were Asian British. As for age, one was aged 40 to 50, six aged 50 to 60 and three aged 60 to 70.

36 At the end of the interviews and marking process by Ms Babatunde and Mr Hussein, the latter produced a spreadsheet showing the candidates and their scores which was sent by email to Ms Morelli for consideration. Having read the email, the Tribunal finds that it confirms that Ms Morelli had the final decision on selection in two respects only: first, she confirmed the appointment of those for whom the marks given by Mr Hussein and Ms Babatunde exceeded the threshold; and second, she decided that the score of a borderline candidate, Ms Da Silva, should be rounded up from 59.09% to 60% so that she also met the threshold for appointment.

37 Mrs Virdi was unhappy after her interview, we find that this was because she knew that it had not gone well. A short while afterwards, Mrs Virdi was in the communal kitchen with colleagues when Mr Hussein entered the room. There then occurred a difficult interaction between them which we do not need to describe in any detail, suffice that Mr Hussein brought it to the attention of his manager, Ms Morelli. Ms Morelli decided that there should be an investigation into possible misconduct and Mrs Virdi was suspended

on 30 June 2017. Whilst Mrs Virdi strongly denies any wrongdoing, we find that there was a genuine potential gross misconduct issue to be investigated and that the nature of the allegations warranted suspension.

38 Sometime in early July 2017, the Claimants were informed that their applications for the job of Resident Services Officer had not been successful and that they were at risk of redundancy. The Claimants each appealed on grounds that the interview process had not been not correctly carried out, there was no independent HR officer on the panel, the slotting and ringfencing policy had not been amended to change the “one up/one down” limit and that alternatives to redundancy had not been explored.

39 Formal notice of redundancy was given by letter dated 25 July 2017. In the letter, the Claimants were reminded of their ability to access the Respondent’s redeployment register. Ordinarily, access is granted to the redeployment register once an employee is given notice of redundancy. In this restructure, however, Ms Morelli agreed to open access to the register from an earlier date.

40 The Procedure for Managing Change applied to this restructure. At paragraph 10, it provides that redeployment will be managed in line with the Redeployment Policy. A copy of this policy was included in the bundle. It envisages that there will be an introductory briefing session to discuss the support available. It requires employees to complete a generic application skills analysis form which can then be used by redeployment consultants to match redeployees against current vacancies and contact the recruiting manager. Whilst it notes the Respondent’s duty to find suitable alternative employment and the assistance provided by the redeployment consultant, employees are also responsible for accessing the portal and self-matching against vacancies. The matching form completed by the Claimants explicitly states that it will be used by the Redeployment Co-Ordinator to match employees to opportunities within the Respondent as well as allowing them to match themselves to possible vacancies.

41 On 31 March 2017, employees were sent details of the redeployment register and a web link enabling them to access it from any computer with an internet connection; there was no need to use a computer in the Respondent’s office to do so. The email explained how to apply for any vacancies for which they wished to be considered. The redeployment support officer said that he would be in touch to arrange workshops to help with writing applications and interviews. Employees were provided with a form to complete giving details of their experience and qualifications. The intended use of the form was to help the redeployment team match affected employees to potentially suitable vacancies.

42 There was no evidence before the Tribunal that there was any introductory briefing session for employees. The workshops on writing applications and interviews were attended by both Claimants in April 2017. In earlier restructures, as described by Mrs Nair, HR had sent weekly vacancy lists and telephoned affected employees to make them aware of vacancies which may be suitable. Mr Okanlawan stated in evidence, in this restructure the lists were not sent by email and, once they had the access link, it was the responsibility of the redeployee to make appropriate applications.

43 Mr Chana forwarded the redeployment email to Mrs Virdi on 4 April 2017. Mrs Virdi completed and returned her matching form on 11 April 2017. On 19 May 2017, Mrs Virdi was given her log-in details. She used these successfully to change her password

the same day and sent the link to her personal email address. Mrs Virdi did not apply for any vacancies listed on the register during the redeployment period, she says that this was because she was suspended and could not access the register or obtain required information. The Tribunal does not accept this explanation as Mrs Virdi could access the redeployment register from home via the link even whilst suspended. On 14 September 2017, a manager at the Respondent informed Mrs Virdi about vacancies for the post of Resident Engagement Officer and told her that she should apply. Mrs Virdi spoke with HR who agreed to extend the application deadline. Mrs Virdi did not apply as she felt that managers would not choose an employee who was currently suspended.

44 On 19 April 2017, Mrs Nair informed Mr Okanlawon that she had not received the email about redeployment access. Mrs Nair gained access to the register on or around 21 April 2017 and returned her matching form on 2 May 2017. Mrs Nair applied for only one post, that of Resident Engagement Officer in September 2017. This was an SO2 grade and was broadly similar to her former role, although it was not office-based and included some different duties. As a redeployee, Mrs Nair was required to participate in a competitive interview process with a threshold score of 50% for appointment. Mrs Nair was not successful as she scored an overall total of 44%.

45 Ms Barker led four recruitment exercises to fill Resident Engagement Officer vacancies during the period from August 2017 until January 2019, and two for Senior Resident Engagement Officer in August 2017 and December 2018. The posts were created in response to the Grenfell Tower fire and focused on resident engagement and fire safety. The first Resident Engagement Officer recruitment exercise, in which Mrs Nair applied, was to fill seven posts each with a 12-month fixed term employment contract. The recruitment exercise secured only one contract appointment, another redeployee. The two following Resident Engagement Officer recruitment exercises were each for agency workers; the first sought to fill six 12-month assignments and the second sought to fill nine six-month assignments. These agency posts were solely for fire safety pre-inspections and did not include the more general resident engagement work included in the Resident Engagement Officer job for which Mrs Nair applied. The final exercise from December 2018 was to fill 10 permanent posts.

46 In paragraph 9 of her witness statement, Mrs Nair referred to the appointment of the daughters of Ms Morelli and Mr Letchford to the role of Resident Engagement Officer. Although not identified specifically in the list of issues, the Tribunal allowed Mrs Nair to rely upon this evidence as it was relevant to the issue of suitable alternative employment generally. Ms Morelli and Ms Letchford successfully applied for the six-month agency assignments in November 2017, starting on 1 December 2017 and 2 January 2018 respectively. This was after the termination of the Claimants' employment and unsuccessful efforts to fill the posts directly with employees. The Tribunal accepts as truthful Ms Barker's evidence that a different recruitment process applied for agency staff. Both women were interviewed and checked by Adecco, the agency, and had only a short telephone conversation with Ms Barker to demonstrate appropriate knowledge and relevant transferable skills. The Tribunal also accepts Ms Barker's evidence that neither Ms Morelli nor Mr Letchford were involved in the selection for recruitment of their daughters.

47 Although Mrs Virdi was suspended on 30 June 2017, Mr Russell Bryan was not appointed Investigating Officer until 24 July 2017 and he did not contact Mrs Virdi until 4 August 2017. By this time, Mrs Virdi was signed off sick due to work related stress.

Between 28 July 2017 and 5 September 2017, Mr Bryan conducted interviews with witnesses to the incident and obtained Occupational Health advice about Mrs Virdi's fitness to attend a meeting. That meeting took place on 15 September 2017 and Mrs Virdi was accompanied by a trade union representative. Mrs Virdi told Mr Bryan that before the interview she had told Mr Hussein that a Muslim colleague, whom she referred to as Mr Hussein's friend, would get the job and had told Mr Hussein to "keep up with his Indian policy". This is inconsistent with her evidence to the Tribunal that it was Mr Hussein who volunteered the comments and is consistent instead with our finding that the comments now alleged reflect her own belief that it is natural to favour one's own religion rather than anything said by Mr Hussein.

48 As a result of information provided by the Claimant, Mr Bryan conducted further interviews with relevant witnesses on 22 September 2017.

49 The investigation report was produced on 26 September 2017. It contains a detailed and careful analysis of the evidence in support of the allegation and Mr Virdi's case that nothing untoward had happened. Mr Bryan took account of Mr Hussein's statement that he felt guilty about what had happened, its effect on Mrs Virdi, and that he was not seeking any sanction. Mr Bryan found that there was insufficient evidence to support disciplinary action on some of the allegations but that there was a case to answer on others. The Claimant appeared unable to appreciate this distinction during the course of the evidence, repeatedly revisiting alleged conduct which Mr Bryan had found was not sufficiently evidenced. Bearing in mind the level of detail and care expended by Mr Bryan in his investigation and subsequent report, we find that the delay in the investigation following his appointment was not unduly long.

50 Whilst the disciplinary investigation continued, the two Claimants and Mr Chana submitted a group grievance on 14 September 2017 against Mr Hussein and Mrs Babatunde arising from their failure to be selected for the new Resident Services Officer post. The grievance complained that the selection process was unfair because: (i) there was no HR person on the panel meaning that policies were not followed and there was no independent oversight; (ii) the interviews had not run according to the scheduled times; (iii) successful candidates were Muslim and African, as were Mr Hussein and Ms Babatunde, whereas they did not belong to either group; (iv) they had extensive service with the council and had not been given feedback; (v) there had been no training or support provided before interview to help staff adjust to the new post and it was not reasonable simply to give them material to read in their own time when they were so short-staffed and had to keep up with their own workload; and (vi) they should have been considered at phase 2 (ring fenced selection) of the policy. The remedy requested was that they be appointed to the Resident Services Officer post.

51 Mrs Virdi's appeal hearing took place on 21 September 2017. Mrs Virdi explained that she had found the questions confusing and unrelated to the interview (including the inappropriate question by Mr Hussein about the Housing Benefit team), no training and insufficient shadowing opportunity had been provided, that some people had been interviewed by a panel of three people and the process had been delayed. Mrs Virdi confirmed that she did not pursue a complaint that there had been no HR presence on the interview panel. Ms Babatunde attended the hearing to explain the restructure process, training and shadowing opportunities and marks awarded.

52 Mrs Nair's appeal hearing took place on 28 September 2017. Mrs Nair's

confirmation that Mr Hussein told her at the start of the interview that it would last 45 minutes is consistent with our finding that Mrs Viridi was similarly informed. During the appeal hearing, Mrs Nair accepted that she had been prompted on two occasions during the interview. She thought that the questions were fair but the marks were not, citing the change to her mark on question 6. Mrs Nair expressed concern that the two interviewers had written different answers, that there had only been two people on the panel with no HR presence, no-one in HR had helped her with the process and the restructure process had been delayed. Again, Ms Babatunde attended the hearing to explain the marks given and the process adopted. At the outset of the hearing, Mrs Nair said that she had been told by Mrs Viridi that Mr Hussein had said that no part timers would get the job. She did not refer to any alleged comments by Mr Hussein relevant to age and/or race, as Mrs Viridi now alleges he made. We relied upon this inconsistency in our earlier finding that no such comments had been made to Mrs Viridi by Mr Hussein. It is inconceivable that if such comments relating to race had been made, Mrs Viridi would not have told Mrs Nair about them at the same time as the alleged part-time comments.

53 It is not in dispute that a third person had been on the panel for some of the early interviews. When that person was unable to continue for personal reasons, his marks on those interviews were disregarded. The Tribunal accepts that the scores for all candidates were decided by Mr Hussein and Ms Babatunde alone. After considering the Claimants' points and Ms Babatunde's explanations, Mr Letchford dismissed the appeals by letters dated 4 and 5 October 2017. He provided detailed reasons for his decisions, including his findings that Ms Morelli had not influenced the individual scores but had agreed that the score of a borderline candidate could be rounded up to meet the threshold. This accords with the Tribunal's own finding about the extent of Ms Morelli's involvement.

54 Mr Letchford heard the collective grievance on 2 October 2017 at a hearing attended by Mrs Viridi, Mrs Nair and Mr Chana. A central allegation in the grievance was that some candidates had been successful because of their race and/or religion. Extensive reliance was placed upon the statistical breakdown of successful and unsuccessful candidates by race and religion. During the hearing, Mrs Viridi described a good working relationship with Mr Hussein and a conversation before the interview in which he told her that she "will be ok" and "should receive good news". Mrs Viridi did not tell Mr Letchford, as she told this Tribunal, that Mr Hussein had said that Mrs Nair and two other Indian members of the team would not be successful (one of whom was in fact successfully appointed). Again, the Tribunal considers it inconceivable that Mrs Viridi would not have told Mr Letchford the additional comments and we relied upon this in reaching our earlier finding that the alleged comments were not made.

55 By letter dated 5 October 2017, Mr Letchford rejected the collective grievance.

56 The Claimants' last working day at the Respondent was 3 October 2017. The Respondent decided that it would not proceed with a disciplinary hearing of the allegations against Mrs Viridi as her employment was due to end imminently. Mrs Viridi was unhappy with this decision as she believes that it deprived her of an opportunity to refute the allegations made against her.

57 On the final day of the Tribunal hearing, the Claimants sought for the first time to argue that they ought automatically to have been slotted into three roles now identified by them. It was a new and substantive issue which arose at a very late stage and so had not

been put to any of the Respondent's witnesses. Those witnesses would have needed to be recalled and further oral evidence heard if the Claimants were allowed to advance the automatic slotting point. This would have required the case to go part-heard, causing significant additional delay and expense. The claims were issued in November 2017. The list of potential vacancies containing the three roles now identified was provided to the Claimants in or around June or July 2018. There is no good reason why the point was not identified previously and we did not consider it just that the Claimants be allowed to raise it now at such a late stage. This evidence may however be relevant to remedy.

Law

Unfair Dismissal

58 It is for the employer to show the reason for dismissal and to satisfy the tribunal that it is a potentially fair reason, section 98(1) Employment Rights Act 1996 ('ERA'). Redundancy is a potentially fair reason for dismissal, section 98(2)(c) ERA.

59 Section 139 ERA states that:

- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:
 - (a) The fact that his employer has ceased or intends to cease-
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed or,
 - (b) The fact that the requirements of that business-
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.”

60 In **Williams –v- Compair Maxam Ltd** [1982] IRLR 83, the EAT set out guidelines for considering the fairness of a dismissal by reason of redundancy. We remind ourselves that these are guidelines only and are not principles of law. The guidelines provide *inter alia* that there should be: (i) selection criteria which are objective and fairly applied; (ii) as much warning as possible and (iii) consultation about ways of avoiding redundancy, such as the possibility of alternative employment.

61 A Tribunal will not subject the marking of employees to undue scrutiny, so long as the employer has chosen a good system of selection which was fairly administered, see **British Aerospace plc v Green** [1995] IRLR 433, CA.

62 In **Look Ahead Housing & Care Ltd v Odili** UKEAT/0437/07, the EAT summarised the relevant legal principles to be applied in a redundancy case where existing posts were deleted and replaced with new jobs at a higher grade with appointment following an interview process. As set out at paragraph 58, the issue was whether the employer acted reasonably in refusing to offer the alternative employment to the claimants. Given that the new posts were two grades higher, it was reasonable for the employer to seek to test the ability of the claimants by requiring them to pass a threshold

in tests. The Tribunal was not entitled to find that the jobs were so similar that any reasonable employer would have had regard to past performance, it should not have conducted its own marking of the claimants' answers at interview and in concluding that the claimants could have carried out the job with training, it had substituted its view for that of the employer.

Discrimination

63 Section 13 Equality Act 2010 provides that a person discriminates against another if, because of a protected characteristic, he treats that other less favourably than he treats or would treat others. Race, religion and age are each a protected characteristic. Conscious motivation is not a requirement for direct discrimination, it being enough that the protected characteristic had a significant influence on the outcome. The crucial question is why the complainant was treated in the way in which they were, particularly in cases where there are no actual comparators identified, **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285.

64 In considering the burden of proof, we referred to s.136 Equality Act 2010 and the guidance set out in the case of **Igen Ltd v Wong** [2005] IRLR 258, CA as approved in **Madarassy v Nomura International Plc** [2007] IRLR 246, CA. This guidance reminds us that it is for the Claimant to prove facts from which the Tribunal could conclude, in the absence of adequate explanation, that the employer has committed an act of unlawful discrimination. The outcome at this stage of the analysis will usually depend upon what inferences it is proper to draw from the primary facts found by the Tribunal. Where the Claimant has proved such facts, the burden of proof moves and it is necessary for the employer to prove on the balance of probabilities that the treatment was in no sense whatsoever on the prohibited ground. If the Respondent cannot provide such an explanation, the Tribunal must infer discrimination.

65 The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination; they are not, without more, sufficient material from which we could conclude that there had been discrimination, **Madarassy** at paragraphs 54-57. The protected characteristic must be an effective cause of any less favourable treatment. We must take care to distinguish between unfair or unreasonable treatment and discriminatory treatment as the two are not the same.

66 Where a discrimination claim is based upon multiple allegations, it is necessary for the Tribunal to consider each allegation individually and also to adopt a holistic approach to consider the explanations given by the Respondent. We should avoid a fragmented approach which risks diminishing the eloquence of the cumulative effect of primary facts and the inferences which may be drawn, for example see **X v Y** [2013] UKEAT/0322/12. We must consider the totality of the evidence and decide the reason why the Claimant received any less favourable treatment.

Conclusions

Unfair dismissal

67 The Respondent deleted all of the Income Collection Officer posts as a result a genuine restructure of its housing services function. Following the restructure, the Respondent no longer required work of that particular kind. The new posts overlapped to

some extent with the Income Collection Officer posts but were not the same as they covered all of the previous four specialist areas and were subject to a generic job description which could require work which was not previously part of the Claimants' jobs. As a result, there was a redundancy situation with s.139(1)(b) Employment Rights Act 1996. The Claimants' case that there was no redundancy situation as there were sufficient available posts as Resident Services Officer is misconceived. The new posts were possible alternative employment to avoid redundancy, they are not of sufficient similarity to avoid the conclusion that the employer had a diminished requirement for work of a particular kind.

68 There was sufficient warning about the redundancies and the consultation process was fair. Affected employees were made aware of the risk on 24 January 2017 and notice of redundancy was not given until 25 July 2017. The formal consultation period lasted for a month, it involved a presentation of relevant information and an adequate opportunity for employees to make representations and request further information. The consultation was meaningful even if the Respondent did not agree to the proposal to re-grade the 46 Resident Services Officer jobs to enable the 19 Income Collection Officers to come within the ring-fencing phase of the Procedure for Managing Change.

69 As for selection, the Tribunal accepts that it was within the range of reasonable decisions for the Respondent to decide that a competitive interview with a minimum threshold was required to ensure appointment to the new, higher graded role. A key part of the Claimants' case was that the Respondent should have taken into account their past performance over a long period of time and the fact that they could have been trained to reach the requirements of the new role. As in Look Ahead, the Tribunal accepts that it was reasonable for the Respondent to decide to look forward to the skills required rather than backwards at the performance in the original role. It was equally reasonable to look at the skills demonstrated at interview rather than the skills which might be demonstrated after training. It was not unfair for the Respondent not to include experience and training as criteria for selection. The criteria which were chosen (see paragraph 20 above for the areas tested at interview) were appropriate in the circumstances of the case.

70 Indeed, the Claimants' case was not really that the criteria chosen were improper, rather the way in which they were applied was inconsistent, subjective and unfair. The Tribunal has not accepted that Mr Hussein or Ms Babatunde were not appropriate managers to conduct the interviews. Whilst Mrs Babatunde had no experience in income collection, she was experienced in right to buy and home ownership which were important parts of the generic Resident Services Officer post. Mr Hussein brought to the panel his specific expertise in rents/incomes. It was a balanced panel, not least as it was recruiting for 46 posts of which only 12 would report to the Resident Services Manager (Income). Nor do we accept the Claimants' criticisms of Mr Hussein by reference to the undoubted pressure that he was working in the aftermath of the Grenfell Tower fire. The Tribunal has not accepted that there was an instruction to suspend the interviews and nor does it consider that the failure to do so was such that the interview process was rendered unfair. Indeed, Mrs Viridi was offered and refused the opportunity to postpone her interview. As with much of the Claimants' case, we consider this a criticism raised in hindsight as a justification for not being appointed rather than a genuine concern at the time.

71 As for the application of the criteria, the Tribunal has found that the model answers were not prescriptive. This left a significant degree of subjectivity in the marking scheme. As set out in our findings of fact, there were examples of applicants have their

marks amended after the interview, some upwards and some downwards. There were significant discrepancies in the marks awarded for what, on the face of it, seemed the same or broadly similar words in the answer. We have found that the discrepancies applied across the range of candidates, irrespective of race, age or religion and even that Mrs Virdi benefited from the discrepancy in marking on the “three-word” question.

72 The Tribunal took into account that it is within the range of reasonable interviews and marking process for there to be some subjectivity and even discrepancy in marking. Perfection is not to be expected. It is not the Tribunal’s role to re-mark the interview as this would involve undue scrutiny and risk a substitution mindset, rather to consider whether the system selected by the Respondent was fairly administered. On the facts of this case, we concluded that the extent of the discrepancies across the range of candidates meant that it was not. The marking may fairly be described as erratic. As each mark was worth about 2%, Mrs Nair was only three marks from achieving the threshold. Had the marking process been applied consistently, it may be that her overall mark would have increased and she would have been appointed. It may equally have been that her mark would have stayed the same or even decreased. That is for consideration at a remedy hearing but it demonstrates the need of a reasonable employer to take sufficient steps to ensure consistency, transparency and fairness in the administration of a marking system where long-standing employees risk losing their job otherwise. As Mrs Virdi herself said, the marking was done improperly for all candidates; it fell outside of the range of reasonableness. For the avoidance of doubt, however, we reject the Claimants’ case that the failings in the administration of the selection criteria were deliberate or designed to secure their dismissal.

73 For the reasons given in our findings of fact, the Tribunal does not agree with the Claimants’ case that the Resident Engagement Officer recruitment exercise was a sham process. Ms Letchford and Ms Morelli were appointed after the Claimants’ dismissal, as agency workers and after a different recruitment process because the internal process had not secured the required number of employee appointments. The Tribunal understands Mrs Nair’s frustration that after 30 years of loyal service with the Respondent she was not appointed following competitive interview because she did not meet the threshold, yet inexperienced agency staff were appointed after a less stringent recruitment process very shortly thereafter. Even if it may have been morally right for the Respondent to contact Mrs Nair in November 2017 to ask whether she would be prepared to do the job as an agency worker, there was no legal obligation upon the Respondent to do so.

74 The Resident Engagement Officer job was merely one example of alternative employment which was potentially available. In considering whether this was a fair dismissal, we also had regard to the steps taken by the Respondent to find other alternative employment to avoid dismissal. In this restructure, the Respondent considered it sufficient to provide the link to the redeployment register and thereafter regarded it as entirely the responsibility of the employee to make appropriate applications. In a previous restructure some years earlier, Mrs Nair had received proactive HR support with vacancy lists and telephone calls to discuss potentially suitable jobs. The Respondent’s redeployment policy envisaged a partnership approach, with a duty on the employer as well as a responsibility for the employee. It provided that there would be an introductory briefing session to discuss support and active involvement thereafter of the redeployment consultants in matching redeployees against vacancies and contacting the recruiting manager. The matching form completed by the Claimants also expressly envisaged an active role for the redeployment co-ordinator in finding potential opportunities for the

affected employees.

75 Given that there was no introductory briefing session to explain the process, it was reasonable for the Claimants as long-serving employees with no recent experience of such a process to expect greater support in seeking redeployment (based upon previous experience and the contents of the policy/matching form). The Claimants role in self matching may bring more focus but it does not excuse the Respondent from the need to look; a shared responsibility is clearly prescribed by the redeployment policy. Whilst the Respondent had offered shadowing for the Resident Services Officer job, it did not make the time available to employees to benefit from that shadowing. There was no offer of shadowing or other support for preparing applications for vacancies on the redeployment register. In circumstances where the Respondent has taken a decision to delete existing posts and restructure in such a way as to require long-serving employees to be re-interviewed for a post which significantly overlapped with their existing job or to find a new role altogether, the Tribunal considered that a reasonable employer would be expected to provide meaningful support. This is consistent with the duty stated in the Respondent's own Procedure for Managing Change Procedure.

76 The Tribunal is aware that the duty to find alternative employment is not absolute or a counsel of perfection. Nor is it our role to substitute our view for that of the employer. In some cases, perhaps where the responsibility of the redeployee is expressed more clearly or where the affected employees do not have the same reasonable expectation of assistance, it may fall within the range of reasonable responses simply to provide a link to the register and leave the responsibility thereafter entirely upon the employee. However, having regard to the circumstances of this restructure, the size of the employer and the equity of this case as set out in paragraphs 74 and 75, we consider that the limited steps taken by the Respondent in this specific case fell outside of the range of responses of a reasonable employer.

77 Having reached the conclusion that the dismissals were unfair, the following will be relevant when the Tribunal's considers remedy:

77.1 The Tribunal do not accept that the suspension of Mrs Virdi was relevant. She continued to have access to the register whilst at home and, whatever her view of the effect of ongoing disciplinary investigation on her prospects, the Tribunal has accepted that the investigation was necessary and was not unduly delayed.

77.2 Even if the Respondent had been more proactive in its redeployment support, there is a chance that the Claimants would not have secured alternative employment in any event.

77.3 The Claimants had access to the redeployment register and did not identify any jobs which they considered suitable at the time. This may have been due to oversight or because they did not genuinely consider that the jobs now identified, very late in the claim, were indeed appropriate.

77.4 The Claimants limited engagement with the redeployment process and apparent passivity may amount to conduct of a kind susceptible to a contributory fault reduction.

Discrimination

78 For the reasons given in our findings of fact, the Tribunal found that the marks given at interview involved discrepancies and the statistics at face value tend to show that no black British African candidates were selected for redundancy and no Asian British candidates (the race given for the Claimants on the statistics) were selected for appointment to the new post of Resident Services Officer. The Tribunal considered that these were primary facts from which we could conclude that there had been discrimination. The burden of proof passed to the Respondent to provide an adequate explanation.

79 The Tribunal has accepted the evidence of Mr Hussein and Ms Babatunde that the Claimants received marks that were a fair reflection of their performance at interview. This is supported by contemporaneous and genuine notes of the interviews. Closer analysis of the discrepancies and the age, race and religion of successful and unsuccessful candidates led us to find that the discrepancies applied across the range of candidates. It was not possible to discern any common theme whereby Indian, Hindu or over 60-year old candidates were scored unduly harshly or black African, Muslim or younger candidates unduly generously. The Tribunal accepts the Respondent's explanation that selection was based upon performance in the competitive selection process by the individual candidate. There was no less favourable treatment because of race, religion or age in the selection of the Claimants for redundancy.

80 In addition to selection, Mrs Virdi's case is that the manner of the investigation, delay in the investigation and the handling of her suspension were all in some material way because of her age. The Tribunal accepts Mr Bishop's submission that this was no more than a bare assertion of discrimination. No actual comparator was relied upon and Mrs Virdi did not put forward any reason to find that a hypothetical comparator would have been treated more favourably. The Tribunal appreciates the strength of Mrs Virdi's feeling that she did not commit any act of misconduct and has been deprived of a disciplinary hearing at which she could seek to refute the allegations. Nevertheless, we have found that there was a genuine potential gross misconduct issue to be investigated and that the nature of the allegations warranted suspension. There was initial delay in the appointment of Mr Bryan but no evidence from which we could conclude that an investigator would have been appointed more swiftly had Mrs Virdi been younger. The suspension was lengthy but this was necessary because the investigation by Mr Bryan was thorough and careful, in the circumstances the delay was not unduly long. Mrs Virdi has failed to prove primary findings from which we could conclude that there had been discrimination. Indeed, we have accepted the Respondent's evidence and found that there were genuine reasons not related to age for its decision to suspend and investigate Mrs Virdi's conduct.

81 The decision not to hold a disciplinary hearing was not an issue before the Tribunal. For the avoidance of doubt, however, we do not share Mrs Virdi's criticism of that decision. As it stands, no act of gross misconduct has been proven against her and it was not the reason for dismissal. If gross misconduct had been established, Mrs Virdi would not have received her redundancy payment. If gross misconduct had not been established, Mrs Virdi would still have been dismissed by reason of redundancy. In such circumstances, it was reasonable for the Respondent to decide that there was nothing to be gained in holding a disciplinary hearing.

82 At Tribunal, Mrs Virdi went so far as to suggest that the disciplinary allegations

were intended by Mr Hussein to exclude her from looking for alternative work and ensure her dismissal. The Tribunal rejected this as far-fetched and inconsistent with the contemporaneous documents. Whilst Mr Hussein did bring the alleged misconduct to the attention of his line manager, it was Ms Morelli who decided that there needed to be a disciplinary investigation and Mr Bryan who decided that there needed to be a disciplinary hearing of some of the allegations. Mr Hussein was not involved in these decisions. Further, Mrs Viridi's case is inconsistent with Mr Hussein's interview with Mr Bryan when he made clear that he did not want action taken against Mrs Viridi.

83 For all of these reasons, the claims of discrimination because of race, religion and/or age all fail and are dismissed.

Next Steps

84 As we have upheld the claims of unfair dismissal, there will need to be a remedy hearing. The parties are kindly asked to provide dates to avoid for a hearing in the next three months. In advance of the remedy hearing the following directions will apply:

- 84.1 Two weeks from the date of this Judgment, the Claimants must send the Respondents an updated schedule of loss setting out the compensation claimed.
- 84.2 Four weeks before the remedy hearing, the parties must exchange documents relevant to remedy, including the jobs identified by the Claimants on the final day of the hearing.
- 84.3 Two weeks before the remedy hearing, the parties must exchange witness statements including their evidence relevant to the losses claimed, the chances of securing alternative employment if the dismissal had been fair, the Claimants' engagement or lack of engagement in the redeployment process and attempts to find new employment after dismissal.

Employment Judge Russell
04.10.2019