



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A E Madu

**Respondent:** Loughborough College

**Heard at:** Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE  
Hybrid hearing

**On:** 1, 2, 3 November 2021, 25 and 26 May 2022

**Before:** Employment Judge Adkinson sitting with  
Ms B Tidd  
Mr C Bhogaita

## Appearances

**For the claimant:** Mr L Ogilvy, consultant

**For the respondent:** Ms H Barney, Counsel 1 November 2021 and 25 and 26  
May 2022  
Ms B Bird, solicitor, 2 and 3 November 2021

## JUDGMENT

After hearing from the claimant and respondent, and after hearing the evidence of each party, and for the reasons set out below, the Tribunal unanimously concludes that

1. The claimant's claim that the respondent directly discriminated against him because of race by failing to respond adequately to his request for feedback on 13 November 2018, 25 November 2018 and 18 January 2019 is dismissed;
2. The claimant's claims that the respondent directly discriminated against him because of race by
  - 2.1. deciding not to move his interview time as he requested on 4 November 2018, and
  - 2.2. failing to appoint him to the post of lecturer in health and social care on 12 November 2018

were presented out of time. It is not just and equitable to extend time in relation to either or both claims. The Tribunal therefore lacks jurisdiction to consider them, and each claim is therefore dismissed.

## REASONS

1. Following Early Conciliation between 19 February 2019 and 19 March 2019, the Claimant presented the claims before us on 27 March 2019. The Claimant, Mr Madu, alleges 3 instances of direct race discrimination regarding his application for the job as a Lecturer in Health and Social Care at the respondent, a college of further education called Loughborough College.
2. The college denies that they have discriminated against Mr Madu either as alleged or at all. They also allege that any claim that occurred before 20 November 2018 is out of time.

### Hearing

3. At the hearing before us, Mr Ogilvy, consultant, represented Mr Madu and Ms H Barney, Counsel, represented the college except for the second and third day when the solicitor for the college, Ms B Bird, represented them. We are grateful to all of them for the help that they have given to the Tribunal.
4. The hearing has proceeded as a hybrid hearing. Everyone except the lay members attended the Tribunal personally. The lay members attended by Cloud Video Platform. The reasons are as follows: When the hearing began on 1 November 2021, restrictions on the number of people who could be present in the Tribunal room meant it was not possible to accommodate everyone. The fact that the Tribunal benches in the hearing centre were not big enough to accommodate the then requirement for social distancing of 2 metres also presented an obstacle. Therefore as was a standard practice in this region and as was done in many cases, the lay members attended remotely. When the hearing resumed in May 2022, those restrictions had ended. However the Tribunal concluded it was fair to all parties to continue the same format so that all witnesses were observed and interacted with in the same way to maintain consistency of circumstances in which the parties gave evidence and made submissions.
5. This was important in light of an issue Mr Madu raised on the first day. He suggested that it would be unfair for the case to proceed with the lay members attending remotely because they would not be able to perceive the demeanour of the witnesses in evaluating the evidence. The Tribunal considered the matter carefully but decided to continue. We accept it may not be ideal for part of the Tribunal to attend remotely and another part to be present. However the key is a fair hearing, not an ideal hearing. A fair hearing was still possible. There was nothing to suggest that it was going to be unfair in this case. The circumstances prevailing at the time meant that there was no alternative but for an adjournment of a duration whose length could not safely be predicted. The case was already quite old, and it was not fair to either party to delay further. Delay would also affect the quality of the memory of individuals, and this was a case where their own evidence would be important. Remote and hybrid hearings had worked in

many previous hearings and there was no reason to expect it to be different here. As the Privy Council noted in the **Attorney General of the Turk and Caicos Islands v Misick [2020] UKPC30** there is nothing innately unfair about remote hearings and they had made the point that for many years even before the Covid pandemic people had been giving evidence by video link for example in cases in the Crown Court where people were vulnerable witnesses. That has since extended to other Courts and Tribunals as well without issue. Therefore, fact finders were perceiving people remotely and had got used to perceiving demeanour that way to the extent that it was relevant to evaluating the evidence.

6. The hearing was originally listed for 3 days on 1, 2 and 3 November 2021. The Tribunal began the first day and in that first day heard the Claimant's evidence and the Claimant's case. Days 2 and 3 did not proceed as planned although the Tribunal did sit. The reason is as follows: Unfortunately, on the evening of Day 1 Ms Barney was involved in an accident, the consequences of which was she could not attend days 2 or 3. On those days, Ms Bird attended by telephone at very short notice to assist on discussing the way forward. We concluded that the case should be adjourned part heard. The Tribunal had notes of the claimant's evidence and case. It was desirable so far as possible to allow for continuity of advocate. We would have had to allow time for another advocate to be instructed and to be given time to familiarise themselves with the case. If for some reason Ms Barney was not able to resume the case, then instead an adjournment would allow time for the college to instruct an alternative advocate and for them to become familiar with what had been said so far.
7. Therefore, the case was adjourned part heard and was relisted to be heard on 25 and 26 May 2022 by the same panel. We also allocated as part of the relisting extra reading time which we used to re-read the evidence and notes of the claimant's case. Therefore we were able to restart from where we left off.
8. Nobody made an application for the case to be restarted afresh. The Tribunal did consider that option however and decided that it was disproportionate in all the circumstances. Firstly, the Tribunal has experience of dealing with cases that have gone part heard and resuming them, we accept it is not ideal, but it is something that Tribunals have dealt with before fairly and there was no reason to believe that it could not be fairly dealt with in a similar way in this case. Secondly, the Tribunal had allowed adequate time for it to become familiar again with the case and the matters raised. Thirdly, it was fair to the Claimant since he would not have to be cross examined again before a different panel. Fourthly, by adjourning it part heard it would allow the college's chosen Counsel an opportunity to recover and resume the hearing or it would allow sufficient time for the substitution of an alternative barrister or solicitor to take over the case. Balancing it all up the Tribunal decided that was the fair way forward. The Tribunal also considered that the delay was not going to be a significant disproportionate amount of time.
9. The Tribunal heard oral evidence from the following people which it has considered when making its findings

- 9.1. Mr Madu,
  - 9.2. Ms Bernadette Barker, the college's curriculum manager who interviewed the claimant,
  - 9.3. Ms Emma Kilby-Brooks, at the time human resources (HR) manager (now head of human resources) at the college,
  - 9.4. Ms Emma Clark, an HR officer at the college,
  - 9.5. Ms H Cousins, then an HR and recruitment administrator at the college, and
  - 9.6. Ms Sharon Geary, a college lecturer and co-interviewer with Ms Barker. Ms Barker is her senior.
10. There was a bundle before the Tribunal of about 185 pages and the Tribunal has considered those pages to which the parties have referred us.
  11. At the conclusion of the case each party made both written and oral submissions to the Tribunal and we have taken all of those into account.
  12. On the fifth day, but before submissions Mr Madu applied to recall Ms Geary to cross-examine her about some of the interview record forms that she had completed, in which it appears that she has in some of the sections written a number representing the score she gave to the candidate for that particular section, but had crossed it out and replaced it with another number.
  13. After hearing submissions from the parties, the Tribunal rejected the application for the following reasons:
    - 13.1. Mr Madu has had the bundles in good time for the final hearing and certainly since before day 1. He has had plenty of time to prepare and in particular to consider the line of cross-examination.
    - 13.2. He had been represented throughout and so had the benefit of advice and experience to decide in advance whether to pursue this line of enquiry in cross-examination well in advance.
    - 13.3. The documents were in the bundle and the crossings-out are plain to see. This was not something that had only arisen during the hearing or because of late disclosure.
    - 13.4. Mr Madu had had a fair, uninterrupted opportunity to cross examine Ms Geary. It was a feature that after cross-examination, questions from the Tribunal and often after re-examination, Mr Madu often asked if he could ask more questions. The respondent had not objected, and the Tribunal had let him do so (on the proviso the respondent would be afforded a final chance to re-examine, to which no objection was taken). This had happened with Ms Geary, so the claimant had already had a chance to re-open cross examination.
    - 13.5. There was no good explanation why it had not been raised in cross-examination the first time.

- 13.6. Mr Madu therefore had had a fair chance to put the questions and fairness did not require a third opportunity.
- 13.7. To recall the witness would risk lengthening the trial by a need for re-examination, examination-in-chief and possibly recalling Ms Barker who also interviewed Mr Madu and asking her about her knowledge of the alteration of the scores.
- 13.8. The parties had also attended prepared for closing submissions and this would potentially derail that preparation or require further preparation.
14. The claimant also raised an issue about disclosure mid-way during the hearing, while the college was presenting their case. He observed the college had not included in the bundle the job description for lecturer in health and social care or the advertisement for the role. We had no evidence to show that Mr Madu had requested these, and that the respondent had then declined to disclose them. We have no explanation why it was only part-way through the hearing of the respondent's case that Mr Madu raised the matter. We noted that he had requested various pieces of disclosure and information on 10 June 2019: None of the things requested included these documents. Mr Madu also did not explain why he did not have these documents, since he must have seen or had them at one point in order to know of the opportunity to make an application for the role of lecturer in health and social care. We declined to order their disclosure part-way through the hearing because it would introduce further delay and mean the case (or at least the evidence and submissions) could not be completed within the time allocated, Mr Madu had himself delayed in raising the issue before the Tribunal and there was no good reason for that delay it was not clear why they would form part of standard disclosure and moreover it was not clear why they were suddenly needed for the fair disposal of proceedings.
15. During the hearing only Ms Kilby-Brooks required an adjustment to take part effectively which was that people face her when speaking and that they speak clearly. Everyone else did this and Ms Kilby-Brooks reported no difficulties. The Tribunal noted her answers were apposite to the questions asked and has no reason to believe that she had any difficulty giving her best evidence.
16. No party has alleged to us that this has been an unfair hearing. The Tribunal has considered the matter and is quite satisfied that this has been a hearing that is fair to all parties.

## Issues

17. The college's skeleton argument identified what they believed were the issues in paragraph 2. The claimant agreed with that list. We agree it represents in summary what we have to decide. The issues therefore are:

### **Direct Race Discrimination – Equality Act 2010 section 13**

- 17.1. The Claimant describes his ethnicity as Black British of African descent.
- 17.2. Was the Claimant treated less favourably in respect of:

- 17.2.1. Decision not to move his interview time as requested on 4 November 2018 and communicated to him on 5 November 2018, as compared to candidate DW (White Irish)?
  - 17.2.2. The failure to appoint him to the post of Lecturer in Health and Social Care on 12 November 2018, as compared to candidate AB (White British) who was appointed?
  - 17.2.3. Alleged failure to respond adequately to the Claimant's requests for feedback/concerns on 13 November 2018, 25 November 2018 and 18 January 2019?
- 17.3. If so, was any such treatment done on the grounds of the Claimant's race?

**Time Limit – Equality Act 2010 section 123**

- 17.4. If the Tribunal finds any acts of discrimination it will need to consider:
- 17.4.1. Was the claim form presented within 3 months (accounting for the effects of ACAS early conciliation) of any act of discrimination? If not,
    - 17.4.1.1. Does the Claimant prove that there was conduct extending over a period, which is to be treated as done at the end of the period? Is such conduct accordingly in time?
    - 17.4.1.2. Was any complaint presented within such other period as the Employment Tribunal considers just and equitable?"

**Facts**

***Observations about the witnesses***

- 18. We first deal with our views of the witnesses.
- 19. The Tribunal concludes that each of the college's witnesses has done their best to assist the Tribunal to understand the facts of the case and they were straightforward in their answers to questions in both cross examination and from the Tribunal. They made appropriate concessions: e.g. Ms Kilby-Brooks conceded that she had failed to take minutes of meetings when she investigated Mr Madu's grievance, which she accepted it would have been an appropriate thing to do, describing it as "a learning point".
- 20. We also reflected on the fact that the interviewers
  - 20.1. were both experienced in the demands and needs of further education,
  - 20.2. both had experience of conducting job interviews,

- 20.3. knew the procedures that were being employed in the interviewing process, and
- 20.4. had made notes alongside the scores to justify the scores that they had given.
21. We also reflected on the fact that each of the college's witnesses has had training in equality and diversity matters on a 3-year cycling basis and that they also had training on unconscious bias. This training was something that Ms Kilby-Brooks had instigated.
22. We found Mr Madu not to be a credible witness. He came across to us as fixed in his views that the only explanation for the things he complained of was racism. He was unable to concede obvious points. For example he was unable to accept that requesting an interview on a different day with flexibility about time was different to requesting the interview take place at a particular time. As a further example he was very keen to emphasise his numerous impressive medical qualifications and background in medicine. However he refused to accept that having practised as a Doctor of Medicine and taught other doctors or medical students from time to time does not mean that one is therefore going to be a good lecturer in health and social care in a college of further education, where the students are younger and not as qualified as medical students or fellow doctors.
23. He was also combative and argumentative in cross-examination. This also came across in his witness statement which he adopted as his evidence-in-chief. For example in paragraph 2 of his witness statement he says
- "It has been stated that those who preside over cases of race discrimination are more likely to recognise it if they had undergone race discrimination training. This is because those who are discriminated are becoming more and more sophisticated and smart in covering up their tracks. They rather pour mud on the Claimant and make him look like an evil person.
- "I state this for 2 reasons:
- "As stated earlier those who perpetrate racial discrimination do not admit it you will see it in their actions towards you, they treat you different compared to comparator(s) or their ideal person and mostly hide in the shadows and when challenged become obstructive, combative, defence and evasive.
- "In the eyes and lens of privileged and educated Caucasian professionals including Judges, racism is whitewashed as unconscious bias or camouflaged as error of judgment; bigotry as seen as being ignorant and private racist views are protected and defended as mischief."
24. We pause there and observe that
- 24.1. He is alluding to a conspiracy of which there is no single piece of evidence adduced,
- 24.2. He has not addressed the more obvious point that he was interviewed which somewhat undermines the allegation the college was against him,
- 24.3. He has not addressed the most obvious explanation that he simply was not the best candidate,

- 24.4. It appears he is setting the groundwork to explain that if the Tribunal finds against him it is either because of a lack of training on race discrimination or because it is racist, which we cannot help but feel is combative.
- 24.5. The words “obstructive, completive, defence and evasive” better describe Mr Madu than the college or its witnesses.
25. This sets the theme for the witness statement and the theme for the way in which Mr Madu gave his evidence.
26. He was not prepared in the course of evidence to countenance the fact that there might have some other explanation at the very heart of what happened. It appeared that he worked on the assumption that as a highly qualified and experienced doctor he must have been the best candidate for the role of lecturer. We also note that the suggestion of racism did not appear until later – it was not an allegation initially. For example, throughout his evidence he often talked about things being unfair and discriminatory. This is reflected also in his grievance, requests for feedback and complaints but of course unfair and discriminatory are not the same as race discrimination. He refused to accept that, however.
27. His evidence appeared to contradict itself. He also said at paragraph 11:  
“I left the interview very upset and frustrated that the whole recruitment process was very unfair, discriminatory, unjust and tailored for some special candidate the Respondent had in mind. There was no equal opportunity being implemented in reality and I honestly felt that I was invited for the interview simply to fulfil the Equality Opportunity Act 2010 [sic.] and there was indeed no chance of getting the job in reality”.
28. We note in passing he did not say this in his grievance. We also note that there is no explanation as to why the college would waste time interviewing him simply to go through the motions if they already had, in his words, “a special candidate in mind”.
29. However he was not prepared to accept the obvious difficulty with this allegation. If the Respondent had decided that there was a particular individual whom they wanted to recruit to the role (in this case AB) then the only credible reason on his own case that he did not get the job was that he was not AB. Whatever his race (or other protected characteristics or other qualities) he would never have succeeded. In our view it very clearly contradicted his case that there was any racism here. However he refused to accept this obvious contradiction.
30. We also observe that again it looks like an allegation of a conspiracy and that there is no evidence that the college had a “special candidate” in mind or was seeking to recruit only AB.
31. There are two other matters that we can deal with at this stage that are relevant to credibility.
- 31.1. The college’s curriculum manager (and who was Ms Barker’s predecessor) who wrote the interview questions has not been called to give evidence. However that particular curriculum manager had no involvement in the recruitment or interview



process, or the decisions as to whom the college should or should not offer employment. The question sheets are neutral in their wording, and so far as possible objective. As her involvement was passive we see no issue about the fact the college did not call her. She could not shed light on anything material to the issues and was not a witness one would expect the college to call.

- 31.2. Secondly Mr Madu made the point that the job description was not in the bundle. We set out the circumstances surrounding this above. We do not believe that the failure to include a document that no-one asked to be included is something which can be held against a party. There is no explanation why Mr Madu could not have provided it and included it in the bundle for example. It might have been helpful to have it, but the parties decided not to put it before us. That is their decision and we work with such evidence as we have.

***Findings of fact***

32. With all of that in mind we turn our minds now to making findings of fact on the balance of probabilities.

***About the claimant***

33. Mr Madu identifies himself as Black British of African descent. He was formerly a medical doctor. His past employment history shows he is highly qualified and experienced as a medical doctor. At the time of his application he lived in south-east London.

***About the college***

34. The college is a further education college in Loughborough, Leicestershire. It focuses on providing education to young people and adults ranging from A-levels and T-levels, HNCs and HNDs, apprenticeships and undergraduate level education for externally accredited degrees. Its focus appears to be on vocational education and on academic and technical training from the vocational perspective rather than non-vocational academic study. Many of the students are aged 16-18 and studying areas relevant to the vocation they want to go into.
35. In the college's health and social care department there are a number of people who self-identify as having non-white British ethnic backgrounds. 2 of those are Black African.
36. The college has 740 employees. It has its own internal HR team. Staff at the college undertake equality training every three years and training on countering unconscious bias.

***The application***

37. In August 2018 or thereabouts, the college advertised for candidates to apply for the post of part-time lecturer in health and social care. The role had been advertised once before. 14 people applied but the college had not found anyone suitable so readvertised it. The documents suggest that Mr Madu may have made an application in response to the first advertisement.

However that was not raised or explored in evidence, and it is not clear that he did. We find as a fact he did not, though since it was not raised or explored in evidence or in submissions, it makes no difference if in fact he did.

38. Mr Madu responded to that the second advertisement and applied for the post on about 5 September 2018. Two other candidates also applied, identified as AB, a white British person, and DW, a white Irish person.
39. The application form is completed online. To each application the college assigns an application identity number. The number conveys no information about the applicant themselves. The first section of the form is entitled "Personal Details". At the vetting stage when deciding who to list for interview, that section is obscured. There is also an equality monitoring form. That is kept and seen only by HR: Neither the vetters nor interviewers see it or know its contents.
40. The second section is entitled "Education and Training". Mr Madu's form sets out that he has many qualifications relating to health including a degree in medicine, diplomas in Education Psychology, Counselling Psychology and also has training in dealing with things like infection control in the healthcare settings and training in diabetes. It also set out that at the time of the application he was employed at the London College of Healthcare and Recruitment as a voluntary tutor. Mr Madu also set out the numerous previous medical posts he had held. They are significant in number.
41. The third section is entitled "Supporting Information". Much of it is a repeat of the above but also includes his publications.
42. Finally there is opportunity for a personal statement. In that he wrote a lot of detail, and he set out there again a number of details. In terms of previous experience, it was highlighted to us that he was a tutor and lecturer in medical conditions for access to nursing students. He repeatedly in these sections set out his full name.
43. He said he had been doing a post-graduate certificate in education (PGCE) part-time and doing medical teaching courses.
44. He also wrote in this statement:  
"currently doing voluntary occasional teaching of access to nursing teaching in Woolwich, London, United Kingdom from 2015 previous training experience in Nigeria since leaving secondary school".  
which might enable a reader if so inclined to make inferences about his ethnic or national origins.
45. In the personal statement he set out details of a previous criminal matter whose details are irrelevant to the case before us and we have no regard to when making our decision. We mention it only because what followed is a significant amount of writing in which Mr Madu made clear his strongly held views that he has been the victim of racism within the court system.
46. His full name and details of his past that would no doubt allow for jigsaw identification. There is no suggestion any jigsaw-identification was undertaken, and it was not put to the witnesses. The information would also

allow a vetter to at least form the impression if they were so inclined that he was not white British and perhaps make inferences about his race from his name. However again that point was not put to the witnesses and there is no evidence it happened.

47. The vetters would also see that he has concerns and complaints about racial bias to which he alleges he has been subjected. They would also see his qualifications in that he has some experience of teaching and is undertaking a post-graduate Certificate in Education. Since they were aware of his qualifications and there was information that might lead to impressions about race, we believe the fact he was interviewed shows race played no part. We reject the suggestion he was interviewed to make up the numbers to justify the appointment of AB. There is no evidence AB was a “special candidate” to use Mr Madu's words. It is implausible the college would waste their own time interviewing someone who did not stand a chance of appointment – they have better things to do. Further the Tribunal notes it appears he had potentially relevant experience and so it is more plausible when he was invited for interview, it was because they considered there was a reasonable chance he was the person they were looking for.

***Invitation for interview***

48. On 24 October the recruitment team therefore sent Mr Madu an email inviting him to interview on 6 November 2018 at 1130 at the college in Loughborough.
49. On 4 November 2018, 2 days before the interview, Mr Madu emailed the Recruitment Team. He told them he would be travelling from south-east London and asked therefore if his interview slot could be moved to 1400 or later. This was because the cost of the trains to get there for 1130 would have required a more expensive railway ticket and required him to get up at 0530, whereas if he were interviewed in the afternoon, he would be able to use a super off-peak day return ticket that was much cheaper. He also assumed that the interviews were taking place all day. In fact that was not correct. He did not ask to be interviewed on a different day.
50. The college’s recruitment team responded the next day to say they were going to contact the hiring manager to see if they could accommodate his request. The recruitment team emailed Ms Barker. Ms Barker replied “Both myself and Sharon Geary the other interviewer have commitments in the afternoon so after 2.00pm is not possible”.
- Those commitments were teaching commitments. Because the nature of the vocational training and that students’ timetables are more like those of a university with seminars and lectures throughout the day with gaps for self-study or practical work in between, one cannot simply rearrange the timetable or arrange for a supply teacher or for cover, like in a school, say.
51. The Tribunal notes that Mr Madu did not say it was impossible for him to attend an 1130 interview – simply he would much prefer a later interview for understandable reasons.

52. On 5 November the recruitment team relayed Ms Barker's reply to him. He then confirmed that he was attending at that time and he would accept the invitation for the interview.
53. One of the other candidates, DW, had their interview rearranged however at DW's request. The circumstances are that on 31 October 2018, DW called the college to say that they could not make the interview on 6 November because they were running a medical clinic that day which could not be rearranged. DW said that they could do the next day or even the same day in another week. Ms Barker agreed to move the interview to 1 week later but still to take place in the morning.
54. Mr Madu suggests that since they were prepared to rearrange the date for DW they should have been prepared to rearrange the date for him. The Tribunal agrees but notes there is no suggestion the college was not prepared to rearrange the date for him. Mr Madu's complaint ignores the fact that he never asked for a change in the date of the interview but of the time only. To change the time was not possible because of commitments to students. That was the reason that DW's interview still had to take place in the morning, and did so. We are fortified in that conclusion because one of the date's DW suggested was rejected outright because of timetable commitments meant it could not be accommodated at all. Even if Mr Madu were interviewed on the same date as DW, then he would have still had the issue of the very early start and expensive rail fare. Therefore it is an irrelevance.
55. Mr Madu also suggests that since they were prepared to change the date for DW they should have invited him to attend on a different date. We disagree with that. He did not ask for a different date. Mr Madu was clearly an intelligent man capable of speaking up for himself and if he wanted to come on a different day then we can see no reason why he did not ask. In any case the fact is that, unlike DW, Mr Madu could do the date and time offered, but preferred a different time to save money and provide a more comfortable start to the day. We see no reason why it would be reasonable for the college to take it upon itself to suggest alternative dates when he has not asked for them.
56. Therefore we conclude as a fact that DW and Mr Madu's situations were not materially the same.
57. We note also that
- 57.1. In his own grievance Mr Madu did not raise race discrimination as an issue;
- 57.2. The college made enquiries to see if his request could be accommodated and had a good reason to refuse it.

***The interview***

58. The interview itself took place on 6 November 2018. It consisted of 2 parts: The first was a verbal interview with questions asked by a panel made up of Ms Barker and Ms Geary; The second was a presentation to the same panel using software called Microteach (the Microteach Presentation).

59. Each member of the panel had a pre-defined matrix of questions, a space for a mark (from 1 to 5) and a box for recording the answer as evidence to support the mark. Many questions had keywords, i.e. key concepts that the panel should look for in the answer. As the interviewee provided evidence of them, the interviewer could tick them. The sheets are the same for each candidate to maintain consistency so far as possible. They were written by Ms Barker's predecessor. They do not ask about qualifications because that was covered at the vetting stage. The focus now is for suitability as a lecturer.
60. Each interviewer would individually allocate marks on their score sheets and total them up without discussion with the other.
61. At the end of the process they would discuss their individual conclusions and scores. They would then discuss their results to reach a consensus on who was the best candidate.
62. If two candidates scored the same, there was a close match or a significant discrepancy, then the college could invite the candidates back for a second interview.
63. Ultimately, however, as Ms Barker accepted, she had the final say as curriculum manager.
64. The Tribunal notes the following questions that we believe are relevant to give a flavour of the topics covered, and the interview each candidate underwent.

"Question 1

"Please can you reflect on your session plan, how did you feel it went?"

And then to give an example of the sorts of key words that people should look for they then have in italics:

"Reflective Practitioner, Self-Critical, accurately identify strengths and areas for development.

"Question 2

"Tell us about your experience of teaching Health and Social Care.

"Question 3

"What does outstanding Teaching Learning and Assessment look like to you?"

And then again as an illustration of the sorts of key words to look for there is in a list:

"Environment, engagement, learning, motivation, meets needs, support, stretch and challenge, enthusiasm, feedback, varied assessments, guidance, expectations, consistency, use of ILT and active learning.

"Question 4

"How do you ensure that students achieve the very best that they can?"

"Question 5

“Can you give us an example where you have motivated students to achieve excellent results?”

There is no Question 6.

“Question 7

“Students come to College from a range of backgrounds, can you tell us some of the issues that you might have to deal with as a teacher and how you might do this?”

“Question 8

“What do you think constitutes excellent teamwork and how do you know whether you have an effective team?”

“Question 9

“What might you do if you believe that a colleague is not effective in the team?”

“Question 10

“What does Equality and Diversity mean to you and your role as a teacher?”

“Question 11

“What skills and qualities will you be bringing to us?”

There is then an unnumbered question: -

“Please can you tell me your understanding of the safeguarding process and what it means to you”.

And finally,

“Please can you confirm your educational achievements (GCSE, Maths, English, A Level Degree)”

65. There were then ancillary questions about gaps in employment history, notice periods, questions the candidates may have etc.
66. We have the marksheets for Mr Madu, AB and DW. The marks were awarded as follows:
  - 66.1. Mr Madu:
    - 66.1.1. Ms Geary awarded him 25/45,
  67. Ms Barker also awarded him 25/45,
    - 67.1. AB:
      - 67.1.1. Ms Geary awarded them <sup>38</sup>/45,
      - 67.1.2. Ms Barker awarded them <sup>39</sup>/45,
    - 67.2. DW:
      - 67.2.1. Ms Geary awarded them <sup>32</sup>/45,
      - 67.2.2. Ms Barker awarded them <sup>32</sup>/45.
68. Mr Madu makes a number of criticisms about the interview, each which we reject

- 68.1. He complains that there were no interview questions directed at what qualifications he had and that, if there had been, he would have scored higher.
- 68.1.1. We do not know the qualifications of AB or DW so cannot say that would be so. However it seems perfectly reasonable to us to approach the exercise on the basis that all candidates have demonstrated their qualifications and instead to focus on questions demonstrating suitability to the post. Being a qualified doctor does not make one a suitable lecturer in further education on health and social care. It might but it is not automatic. Mr Madu falls in the trap that qualifications equate to automatically having the skills.
- 68.1.2. His focus on qualifications also ignores that AB was currently working in the Further Education field lecturing in the same topic and in interview was able to demonstrate more examples of practical experience in education.
- 68.1.3. Moreover though, this has nothing to do with race discrimination. Not asking the preferred questions cannot sensibly be linked to his race, any more than to any other characteristic. Plainly anyone with his qualifications but not of the same race would suffer the same disadvantage.
- 68.2. He criticises the scores. We also take into account that there was no cross examination on and no other evidence that the interview notes are in any way inaccurate or that the score awarded from the evidence recorded of answers given (like an award of maximum marks when there is no evidence recorded or indeed an award of minimum marks when plenty of supporting evidence for maximum marks instead).
- 68.3. As noted above, he alleges that the whole process was designed for the appointment of AB as the “special candidate the Respondent had in mind”.
- 68.3.1. There is absolutely no evidence to justify that conclusion at all. We are quite satisfied on the evidence and find as a fact that the interview was genuine and open, and that Mr Madu had a real chance of being appointed.
- 68.3.2. However, as we have already noted, if the college set out to appoint AB from the start, then clearly race played no part since anyone in Mr Madu’s position and background and performing as he did but of a different race would still fail because they are not AB. We note that there is of course no requirement to interview a number of people for a particular role.

- 68.4. Mr Madu points to similarities between the two supposedly 2 independent sets of marks that gives rise to the suspicion that they were working together and orchestrated their scores to make sure he was unsuccessful. Having heard the evidence, we reject this without hesitation. There is no evidence of orchestration beyond the similarity in marks. That the scores are broadly similar between the panel members is not suspicious but to be expected if they are objectively applying the same criteria and taking part in the same interview process. We would be more concerned if the marks were significantly different. We conclude that similarity in marks is not enough to raise suspicion in this case. We add that, although Mr Madu did not deal with this in closing, we do bear in mind the suggestion that the crossing out in Ms Geary's notes is something that is suspicious. We disagree. One crossing out results in the same mark being re-entered. It is evidence of a dynamic process and nothing more in our view.
69. The Microteach presentation required Mr Madu to deliver a teaching presentation. This too was marked by reference to a pre-determined scoring template similar in style to that for the interview in structure. The intended Microteach presentation scoring template anticipated that the interviewers would award candidates marks for quality of visual aids, use of equipment, resources, content quality, interest, quality of delivery, logical progression of the presentation and time keeping.
70. This time the scores were from 0 through to 6 and each interviewer added their comments as evidence to justify their particular mark.
71. Again no one has suggested that the comments are not genuine nor that the marks do not properly reflect what was recorded in the comments. Besides, having looked at them for ourselves, we can see nothing to suggest the comments are not honest or that the scores do not appear reasonably to reflect those comments.
72. When Mr Madu came to give his presentation there were technical problems that interfered with his ability to use the projection equipment, so he had to do the presentation from his laptop screen only. Those problems were not his fault.
73. AB also experienced the same problems.
74. Because of the technical difficulties, the panel decided that they would not mark anyone by reference to use of the equipment, resources or time keeping because that would put Mr Madu (and AB) at an unfair disadvantage (compared to DW). The result was that although Mr Madu suffered technical difficulties beyond his control, the alteration of the criteria eliminated any prejudice he might have suffered from those difficulties and so placed him on the same level as other candidates.

***Outcome of the interviews***

75. Overall, the candidates scored as follows:
- 75.1. AB scored



- 75.1.1. 30 in total for the Microteach assessment,
- 75.1.2. 77 in total for the interview,
- 75.1.3. so an overall score of 107 points.
- 75.2. Mr Madu scored
  - 75.2.1. 22 in total for the Microteach assessment,
  - 75.2.2. 50 in total for the interview
  - 75.2.3. so an overall score of 72 points.
- 75.3. DW scored
  - 75.3.1. 10 in total for the Microteach assessment,
  - 75.3.2. 58 in total for the interview
  - 75.3.3. so an overall score of 68 points.
- 76. We conclude that these scores undermine any suggestion that there is any racial discrimination. If Mr Madu were correct, then it would be counterintuitive that he came second and not third. Mr Madu suggested that this had been orchestrated to try and make it look more credible. There is not one iota of evidence that even begins to suggest that is the case and we unhesitatingly reject that allegation.
- 77. Thus, AB was offered and accepted the role. The college sent rejection letters to Mr Madu and DW.

***Mr Madu's complaints***

- 78. As is apparent, this was happening in November 2018 and in the run up to Christmas.
- 79. Ms Clarke told us that at that time of year HR is very busy. Important tasks included processing the payroll so that people would be paid as usual during the Christmas vacation and dealing with other administrative matters before the Christmas vacation began that they would be unable to deal with in the vacation and which could not wait. In addition the college was investigating the possibility of redundancies because of financial pressures and investigating the potential merger with another college in North-West Leicestershire. Ms Kilby-Brooks was leading on those latter 2 matters.
- 80. On 12 November 2018 the college wrote to Mr Madu to say he had been unsuccessful. The letter added that if he required feedback he was to contact Ms Barker at her email address.
- 81. Mr Madu emailed Ms Barker on 13 November 2018. He wrote:
  - “I have been advised by HR to contact you for a feedback, please I would like to have a feedback for the following reasons:
  - “1. To help me to prepare for the future interview and improve myself, very important.
  - “2. Please kindly permit me to add the following:

“Few days before the interview, I had contacted authorities and asked for my 11:30 interview slot be moved to afternoon. That was declined by the authorities and I had NO issues about it whatsoever but rather to wake up at very early in the morning to attend on time, as I usually do.

“However, on the day of the interview, I discovered that another candidate did not want to come on the 6 November 2018 (date of the interview) but the following day and her request was granted. I was a bit concerned about this. Also the post has been advertised a while ago and then re-advertised and on the two occasions the post was advertised, I had applied but was shortlisted sometime after the second advert.

“The topic for interview was how to avoid stereotyping in the Healthcare sector (including Healthcare Education), this in my humble view means ‘how to avoid being unfair’ and ‘how to be Inclusive’.

“As a British citizen I was a bit left with the impression the whole process ‘tailored’ to waiting for a ‘favoured’ candidate, which in my humbly view is unfair.

“This is NOT [sic.] a complaint.”

82. Mr Madu suggested to the Tribunal that the words

“the topic for interview was, ‘How to avoid Stereotyping in a Healthcare Sector including Healthcare Education’ this in my humble view means how to avoid being unfair and how to being inclusive.”

are words that are clearly conveyed to Ms Barker that he was complaining of discrimination. We do not accept that. A reasonable reader would read those words, apply their everyday meaning and look at them in context. However we cannot see any way that a reasonable reader aware of the context would ever read that as a complaint of discrimination. It is on any sensible reading no more than Mr Madu stating how he had interpreted the topic of the talk. This is emphasised in our view by the words

“this is NOT [sic.] a complaint.”

If he meant it to be an allegation of discrimination, then he should and could have said so.

83. Ms Barker did not reply. There is no evidence to suggest her failure to reply was for malevolent reasons.

84. On 25 November 2018 Mr Madu sent an email to the recruitment team, copying in Ms Barker. It said:

“I humbly refer you to my communication of 13 November 2018 asking for feedback but have not received any reply. I therefore ask you to treat my communication as complaint I repeat the complaint below for your attention, regards”,

He then included the original email to Ms Barker which we quoted above. Again, even with the fact it is now a complaint, we do not see how it would change the circumstances to mean this was a complaint of discrimination.

85. Ms Clarke responded on 28 November 2018. She said she would pass on the request for feedback and added:

"I will look into the communication that you received regarding the rearrangement of interview. Our usual interview process is that we are provided an interview date by the manager that the panel are free. If candidates are unable to attend this date, we then try to get this rearranged however this is not always possible due to the amount of people that are involved in an interview day.

"I appreciate the feedback regarding the task to prepare and I will pass this feedback onto the managers."

86. On 12 December 2018 Ms Clarke had received feedback from Ms Barker. Ms Clarke put the feedback into an email and sent it to Mr Madu, writing:

"Apologies in the delay getting the feedback to you, we are very busy at the minute.

"The feedback I have received from the hiring manager is as follows:

"In the presentation, whilst the information contained in the presentation was valid and appropriate, next time I would try looking at putting practical examples or links to sector specific situations.

"In the interview, you showed that you had a wide range of subject knowledge but when answering the questions there was not enough examples of [further education] teaching experience which is needed in this role and I would also look at giving more example of monitoring and tracking methods for learners.

"Hope this helps and good luck with your future."

87. On our reading this appears to tally with the evidence recorded on the interview forms.

88. Mr Madu replied on 12 December 2018 to that saying only:

"Thank you for your email, however this did not address my concerns, complaint I had raised".

89. The Tribunal disagrees. He sought feedback and received it. It was constructive. He raised issues about the rearrangement and the college addressed it. He did not complain about discrimination on any reasonable reading of his correspondence and so cannot be critical that it was not addressed.

90. Mr Madu has not shown us circumstantial evidence anywhere in this case that points to the suggestion that Ms Clarke acted as she did for a reason related to race, or that she would have acted differently if he were of a different race. Mr Madu has not shown us any circumstantial evidence that Ms Barker's failure to provide feedback initially was in any way connected to his race.

### ***The grievance***

91. On 18 January 2019, Mr Madu raised a grievance about the interview process. At paragraph 3 he repeated how that he had interpreted the topic for the presentation as "How to avoid being unfair and how to be inclusive".

92. He said he had no issues in paragraph 5 about the fact that the time couldn't have been changed at the time. He then wrote in paragraph 9,

“I left the interview frustrated that the whole interview process was very unfair, and tailored for some special person the recruiter had in mind. There was NO [sic.] equal opportunity exercised.”

93. However the grievance does not once allege that his race or racism more generally played a part in what happened. Paragraph 9 as we have just quoted the last sentence makes it very clear that he believes the whole process was a sham to simply justify the recruitment of a particular candidate presumably AB. We think if the Claimant genuinely perceived that he had a complaint such as race discrimination he would have put it in his letter at this time and if he had any evidence of it, he would have mentioned it.
94. Ms Kilby-Brooks was responsible for investigating the grievance. She spoke to some of the people involved including Ms Barker and Ms Geary. She did not however make notes of her conversation. She described this as a “learning point”. She also sent some emails to them to get their views on the matters that had been raised. We have seen the emails and none of them raise any suspicion that race played any part in what happened, either when read alone or looked at in the context of the case as a whole. We find as a fact that nothing was said to Ms Kilby-Brooks that might raise a suspicion. Firstly the claimant had not alleged race discrimination, which suggests even he did not think his race had any relevance. Secondly it would be incongruous that what was said did not match the tenor of what was written. Thirdly we are satisfied that Ms Kilby-Brooks takes her role seriously and is alert to discrimination issues. This is based not only on her training but introduction of training against sub-conscious bias. Fourthly all staff receive regular equality training. Though we have not seen training records, nor have we seen anything to call the assertion into question or to suggest it was ineffective or superficial. We see no reason not to take it at face value.
95. Ms Kilby-Brooks replied on 11 March 2019. She structured her reply to deal with each paragraph one by one in turn.
- 95.1. In relation to paragraph 3 (which is the paragraph where the Claimant set out his interpretation of the topic on which he had to give a presentation) she simply recorded that this is a factual statement, and this does not require any comment. Mr Madu suggested that in cross examination that this is clear that he is alleging race discrimination. We repeat what we have said above and reject that. We add that the grievance does not mention race discrimination which further supports the case no reasonable person would read this as an allegation of race discrimination.
- 95.2. In relation to the interview time, Ms Kilby-Brooks concluded that while other dates were available, the latest time slot on any particular date was 11.30am.
- 95.3. She conceded that there had been delays in dealing with his request for feedback.
- 95.4. She offered him an opportunity to appeal, which he did not do.

95.5. She concluded that overall the treatment he received was not unfair.

***Claims potentially out of time and, if so, reasons for that***

96. Mr Madu has not put before us any evidence, explanation or submission that explains why he might not have been able to bring the claim in time or why it might otherwise be just and equitable to extend time. We have only our assumption that he believes he has claims with a reasonable prospect and this alone justifies an extension if required.

**Law**

97. The parties have referred us to various cases. We set out only the cases we believe are necessary to explain our decision.

98. The **Equality Act 2010 section 39** prohibits an employer from discriminating against an employee. Discrimination could include dismissal.

99. The **Equality Act 2010 section 13** provides as follows (so far as relevant):  
“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

“...”

100. Whether treatment is less favourable is to be assessed objectively: **Burrett v West Birmingham Health Authority [1994] IRLR 7 EAT**.

101. The section contemplates a comparator. In **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 33 UKHL** Lord Scott explained that this means that:

“the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class.”

Where there is no real comparator, the Tribunal must consider how a hypothetical comparator should be treated (**Balamoody v United Kingdom Central Council for Nursing, Midwifery and Health Visiting [2002] ICR 646 CA**) unless the reason for the treatment is plain: **Stockton on Tees Borough Council v Aylott [2010] ICR 1278 CA**.

102. The protected characteristic need not be only reason. Provided it has a “significant influence on the outcome, discrimination is made out’.

see **Nagarajan v London Regional Transport [1999] ICR 877 UKHL**. The Equality and Human Rights Employment Code (the Code) [3.11] says

“the [protected] characteristic needs to be a cause of the less favourable treatment, but does not need to be the only or even the main cause”

103. When analysing whether the difference in treatment is because of race the Tribunal is entitled to take into account if the reason is inherently discriminatory (by asking “What were the facts that the discriminator considered to be determinative when making the relevant decision?”) or, where the reason is not immediately apparent, to look at why it happened

analysing the conscious or sub-conscious mental processes of the discriminator: **R(E) v Governing Body of JFS aors [2010] 2 AC 728 UKSC**.

104. Motive is irrelevant: The code [3.14] and **JFS**.
105. We have taken into account the guidance that discriminators tend not to advertise the fact (**Glasgow City Council v Zafar [1998] IRLR 36 UKHL**), people may be unwilling to admit to themselves they are discriminatory (**Nagarajan**), we should take a holistic approach to the evidence rather than focus on each allegation in isolation (**Rihal v Ealing LBC [2004] IRLR 642 CA**) and that discrimination can be based on innocent or well-intentioned motives even (**King v Great Britain-China Centre [1991] IRLR 513 CA; Amnesty International v Ahmed [2009] ICR 1450 EAT**).
106. The Equality Act 2010 section 136 sets out the way that the burden of proof operates in claims under the legislation, and was explained in **Igen Ltd aors v Wong aors [2005] IRLR 258 CA; Efobi v Royal Mail Group Ltd [2019] 2 All ER 917 CA; [2021] 1 WLR 3863 UKSC; Hewage v Grampian Health Board [2012] ICR 1054 UKSC** and **Madarassy v Nomura International plc [2007] ICR 867 CA**.
107. At the first stage, the Tribunal must consider whether the claimant has proved facts on the balance of probabilities from which the Tribunal could properly conclude that the respondent has committed an unlawful act of discrimination or harassment. The Tribunal presumes there is an absence of an adequate explanation for the respondent at this stage, but it can take into account the respondent's evidence is assessing if the claimant has discharged the burden of proof. At this stage it is irrelevant that the respondent has not adduced an explanation.
108. It is not enough for a claimant to prove bare facts of a difference in status and a difference in treatment. They only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that the respondent had committed an unlawful act of discrimination or harassment: **Madarassy at [56]; Efobi UKSC at [46]**. There must instead be some evidential basis on which the Tribunal could properly infer that the protected characteristic either consciously or subconsciously was the course of the treatment.
109. The Tribunal may look at the circumstances and, in appropriate cases, draw inferences from breaches of, for example, codes of practice or policies.
110. If the claimant succeeds in showing that there is, on the face of it, unlawful discrimination or harassment, then the Tribunal must uphold the claim unless the respondent proves that it did not commit or was not to be treated as having committed the alleged act. The standard of proof is the balance of probabilities. It does not matter if the conduct was unreasonable or not sensible: The question is if the conduct was discriminatory.
111. In **Efobi UKSC** and **Hewage** the Court said it is important not to make too much of the role of the burden of proof provisions. As Lord Hope said at para [32]:

112. “They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”
113. As for time limits the **Equality Act 2010 section 123** requires a claim to be presented within 3 months of the act complained of, or such other period as the Tribunal thinks just and equitable.
114. The best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular, “the length of, and the reasons for, the delay” (**Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**) as is the prejudice to the respondent if a claim that is out of time is allowed to proceed: **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA**. We remind ourselves that there is a public interest in enforcing time limits.
115. The best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular, “the length of, and the reasons for, the delay” (**Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**) as is the prejudice to the respondent if a claim that is out of time is allowed to proceed: **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA**. We remind ourselves that there is a public interest in enforcing time limits.

## Conclusions

116. In coming to our conclusions we have taken account of the whole of the evidence and looked at events overall.

### ***Alleged failure to respond adequately to the Claimant’s requests for feedback/concerns on 13 November 2018, 25 November 2018 and 18 January 2019***

#### *Who is the comparator?*

117. We conclude the comparator is someone had the same experiences as Mr Madu in the process from start to finish (including requests to change the time of the interview and the interview itself) and who had written, received and replied to the same correspondence, but otherwise was not of his race.

#### *Was he treated less favourably than that comparator?*

118. No. The circumstances applicable at the time (preparation for Christmas vacation, potential redundancies and possible merger, work commitments) would have affected any request for feedback of concerns that he raised.
119. His allegations that his concerns of racism were not investigated do not stand up to scrutiny. As we set out in our findings of fact, the fact is he did not raise any or at least did not raise anything that could sensibly be read as concerns of racism.

120. The facts show that the process would have the same delays, pitfalls and outcome whatever the race of the complainant.

*Was it because of race?*

121. There is nothing anywhere in the case that suggests his race played any part in what happened. On the other hand there is plenty that suggest it did not. This is a summary drawing on our findings of fact:

- 121.1. His application was vetted and, while the personal details section was anonymised, his form contained sufficient information to allow his identification and that might lead to speculation about his ethnicity and nationality. He was still invited to interview which undermines the idea that his race played a part;
- 121.2. The college's staff are trained on equality and how to combat unconscious bias;
- 121.3. The department has an ethnically diverse workforce;
- 121.4. The interview was adjusted to reflect the technical difficulties he had with the Microteach process so that he did not lose marks because of the problems that caused to him.
- 121.5. Mr Madu does not mention race in his own grievance or complaints. In fact he contradicts his own case that race played a part with his repeated allegation that the process was simply devised to appoint a "special candidate", AB. For what it is worth we see no evidence to support that allegation either;
- 121.6. The interview forms support the scores given and they are consistent;
- 121.7. The marking criteria for the presentation were adjusted to accommodate the claimant's technical difficulties;
- 121.8. He finished ahead of DW which undermines his allegation of racism;
- 121.9. The explanations of why there was a delay giving feedback are credible and again, there is not one iota of evidence his race played a part;
- 121.10. The grievance process has not one iota of evidence of racism;
- 121.11. Taking a step back, there is no evidence anywhere that his race played a part in anything that happened.

*Conclusions*

122. This claim is dismissed.

***Both (i) the decision not to move his interview time as requested on 4 November 2018 and communicated to him on 5 November 2018, as compared to candidate DW (White Irish), and (ii) the failure to appoint him to the post of Lecturer in Health and Social Care on 12 November 2018, as compared to candidate AB (White British) who was appointed***

123. Because the latest claim was dismissed there is no continuing act whose latest date is in time.



124. These claims are therefore out of time since the time limit would have expired on 11 February 2019. Mr Madu has presented no evidence to show why he did not present them in time or sought to persuade us we should extend time. We accept that if we do not extend time then the claims will be dismissed for want of jurisdiction and not on their merits.
125. However the claimant bears the burden of persuading us to extend time. Parliament has set short time limits, and we should not readily undermine them. It is not fair to the respondent to deprive it of the defence that the Tribunal lacks jurisdiction if the claimant has no good reason for missing the deadline. We note also he was capable of raising complaints and of lodging a grievance.
126. Balancing everything up, it is not just and equitable to extend time. Therefore we dismiss these claims for want of jurisdiction because they were presented too late.

*Was the Claimant treated less favourably because of race in respect of the decision not to move his interview time as requested on 4 November 2018 and communicated to him on 5 November 2018, as compared to candidate DW (White Irish).*

127. Even if we had had to consider this allegation on the merits, it would have been dismissed for the following reasons:
- 127.1. We are not satisfied that DW is an appropriate comparator. They asked for the interview to take place on a different day and were unable to attend the interview originally scheduled. Mr Madu on the other hand could attend the interview as originally scheduled (albeit it required him to get up earlier than might be comfortable and pay for a more expensive rail ticket) on the date originally scheduled. He was also requesting the interview at a later time not a different day.
- 127.2. The comparator must be someone whose attendance at the scheduled interview is possible but who has asked for a later interview time to accommodate the otherwise early start that would be required and the potential saving on rail fare, but who otherwise is not of Mr Madu's race.
- 127.3. If DW is in fact the appropriate comparator, we conclude he was not treated less favourably. He did not request a different date but a different time. The time could not be accommodated because of the interview panel's teaching commitments. While a different day could be accommodated, again the times available to DW were likewise restricted because of the panel's teaching commitments. He did not ask for a different date. There can be no criticism for not offering him what he did not ask for.
- 127.4. Having considered the facts, and noting the lack of any evidence anywhere in these proceedings that his race played a part in what happened, we are satisfied that the hypothetical comparator would have been treated the same way. The fact is that the panel's other commitments would have made it not possible to hold the interviews at a later time.

- 127.5. Besides there is no evidence anywhere that race played any part in what happened. There is plenty of evidence it did not. We repeat what we said above in paragraph 121 above.

*Was the claimant treated less favourably because of race by the failure to appoint him to the post of Lecturer in Health and Social Care on 12 November 2018, as compared to candidate AB (White British) who was appointed.*

128. Even if we had had to consider this allegation on the merits, it would have been dismissed for the following reasons:

128.1. AB and the claimant were both interviewed for the post. They were asked the same questions and had to undertake the same task (i.e. the same Microteach presentation). They both encountered technical difficulties. The marking criteria were altered for all to reflect these difficulties and remove any prejudice. They were marked against the same criteria independently by each panel member before they discussed their scores.

128.2. The scores appear to reflect well the evidence collated for all candidates.

128.3. Besides there is no evidence that race played any part in the process. There is plenty of evidence it did not. We repeat what we said previously. However we also add that Mr Madu was not the lowest scorer and Mr Madu himself said that he thought the process was devised to appoint a "special candidate", AB. As noted, that clearly undermines any suggestion race played a part. Overall there is no evidence his race had any effect on what happened.

### Summary

129. All claims fail for the reasons set out above.
130. We were left with the distinct impression in this case that Mr Madu believes he should have been appointed almost as of right because of his qualifications and cannot accept that others might be better suited to the role. We note even he does not allege racism at the start but appears to latch onto it as an explanation later for some reason.
131. The reality in this case is that he was not the best candidate and that would have been the case whatever his race.

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Employment Judge Adkinson

Date: 25 June 2022

**Case Number: 2600593/2019**

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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