



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON CENTRAL
BEFORE: EMPLOYMENT JUDGE ELLIOTT
MEMBERS: MR M REUBY
MR P DE CHAUMONT-RAMBERT

BETWEEN:

Mrs U A George

Claimant

AND

London Borough of Camden

Respondent

ON: 5, 6 and 7 July and 4 August 2022
(4 August 2022 In Chambers)

Appearances:

For the Claimant: In person

For the Respondent: Ms S Chan, counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the claim fails and is dismissed.

REASONS

1. By a claim form presented on 9 June 2021 the claimant Mrs Uloaku Anne George brings a claim for race discrimination.
2. The claimant is a social worker for the respondent Local Authority and her employment is continuing.

This remote hearing

3. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under Rule 46. The parties agreed to the hearing being conducted in this way.

4. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended.
5. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties of any substance.
6. The participants were told that it was an offence to record the proceedings.
7. The tribunal ensured that each of the witnesses, who were in different locations, had access to the relevant written materials. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.
8. This was listed as a four day hearing but there was insufficient judicial resource available for a four day hearing. It was decided by the Regional Judge that the hearing should commence and go part heard rather than it being sent away or postponed until the spring of 2023. Evidence and submissions were completed in 3 days so that the final day was for tribunal deliberation only.

The issues

9. The issues were identified at a Preliminary Hearing for case management on 26 November 2021 before Employment Judge Grewal and confirmed with the parties at the outset of this hearing.
10. The claim is for race discrimination and victimisation. The claimant describes herself as black African and says the person about whom she complains is white British being the person from HR who was dealing with her grievance.
11. The issues were identified as follows:
 - a. Whether the respondent failed to deal with or progress the claimant's grievance between June 2020 and June 2021 when she presented her claim. It was agreed at the start of the hearing that the matters relied upon which post-dated the ET1 would be included by way of amendment. This means that the issue for the tribunal was whether there was a failure to deal with or progress the grievance from 2 June 2020 to 24 December 2021.
 - b. Whether the claimant's grievance amounted to "a protected act" under section 27 Equality Act 2010. The respondent accepted that it was a protected act.
 - c. Whether the respondent failed to progress or deal with the grievance because of race and/or because it was a protected act.

- d. Whether the complaint was presented in time. The respondent accepted that it was a continuing issue of delay in terms of dealing with the grievance and no time point was pursued.
12. The respondent made the point that the claimant had included in evidence matters that arose after the presentation of the ET1 on 9 June 2021. The respondent had also covered these matters in their witness statements. It is well established that causes of action arising after the date of presentation of a claim can be made by way of amendment to that claim, avoiding the need for the claimant to issue fresh proceedings – see ***Prakash v Wolverhampton City Council EAT/0140/06***. The respondent did not oppose the claimant's application to have these matters included.

Witnesses and documents

13. The tribunal heard from (i) the claimant and (ii) Ms Pani Demetriou, a social worker employed by the respondent.
14. For the respondent the tribunal heard from three witnesses: (i) Ms Sabrina Mooney, HR Business Advisor; (ii) Mr James Owen, Portfolio Lead, Strategy Team and (iii) Ms Sheena Anyanwu, Head of Temporary Accommodation in the Housing Support Services Division.
15. There was an electronic bundle of 477 pages. We also had a cast list and a chronology from the respondent. On day 2 the grievance documentation for Ms Simmonds was introduced by the respondent at our request.
16. We heard written submissions from both parties to which they spoke. All submissions and any authorities referred to were fully considered, whether or not expressly referred to below.

Findings of fact

17. The claimant is a social worker with the respondent local authority. She describes herself as a black woman of African origin.
18. The team the claimant works in was formed in 2007. She says there were two other black male members of staff of African origin whom she said had left "*due to the culture of the team*". They were said to be E who left in 2018 and J who left in 2016. The claimant agreed in evidence that J left when he did not secure a promotion to a more senior role. The claimant accepted that the Head of the Looked After Children Service at the material time and since 2014 was Ms Sally Joseph who is Black British and worked for the respondent for 35 years.
19. We heard evidence from Ms Sabrina Mooney, HR Business Adviser, who said that she was not made aware of employee J's circumstances and to her knowledge there were serious performance concerns with employee

- E. Ms Mooney's evidence was that neither of these employees raised complaints of racism. She accepted that it is difficult for employees to make the decision to raise such a complaint.
20. We had no first-hand evidence to support the reasons for J and E leaving the respondent's employment. We only had the claimant's assertion that it was because of race discrimination and we had Ms Mooney's evidence that in terms of E there were serious performance concerns. It did not appear to be in dispute that J left when he did not secure a promotion. Due to the lack of evidence, we were unable to make any findings as to the reasons why these two employees left.
21. Ms Mooney is the HR Business Adviser for the area in which the claimant works. She has been employed by the respondent since 2007. Ms Mooney's evidence was that there had been a clear difference in her role pre and post Covid with the increase in digital working and she said it was harder to stay in "*quick communications*".
22. In November 2019 Ms Mooney was contacted by Service Manager Mr James Owen and by the claimant's then line manager Ms Jannine Layhe as to performance issues with the claimant. The claimant's performance was not in issue for us in this hearing. Our finding is that the respondent had some concerns that it wished to raise.
23. The national lockdown due to the pandemic commenced on 23 March 2020. In early April 2020 the claimant very sadly lost her brother due to Covid. She was upset at the lack of condolence and support she said she received. The claimant said that in her experience the team collectively sent cards to staff to celebrate births, leaving employment, bereavements or moving house and this did not happen for her, despite working in the team for a decade.
24. Ms Mooney's evidence was that Ms Simmonds contacted her to inform her about the claimant's bereavement and to say that she wanted to treat the claimant in a sensitive way, including managing performance concerns in a sensitive way. Ms Simmonds offered the claimant bereavement leave, which the claimant declined as she preferred to take that leave at a later date.
25. It was put to the claimant that she did receive a condolence message from the Team Manager Ms Julia Simmonds when her brother died and she accepted in evidence that she did, but said that Ms Simmonds did not inform any other manager and she had to do so herself with her email of 4 May. The message from Ms Simmonds, a copy of which was introduced on day 2, said: "*Hi Anne, I'm so sorry for your loss. Sending you and your family strength and best wishes at this very difficult time. Please let me know if there's anything you need. May his memory be a blessing. I wish you long life. Take care, Julia xx*". It was sent on 7 April 2020. We find that Ms Simmonds did not fail to send a condolence message and that this was a kind and compassionate message.

26. On 4 May 2020 the claimant sent an email to senior managers saying “*I feel very hurt that after the death of my brother none of the managers except my managers was able to send their condolences. It shows lack of support from my managers despite the many years I invested in Camden. Is too late now.*” (page 197-198). The claimant received a reply within minutes from the Director of Children’s Safeguarding and Social Work, Ms Anne Turner, saying: “*I am so sorry to hear about the death of your brother. It is a terrible loss. I am sorry you have not felt valued by managers during this time. I am very aware of your long service and constant commitment to the children and young people of Camden. You are very much in my thoughts having heard your news.*” (page 197). The Service Manager Mr James Owen also received that email and sent his condolences. He said he considered the claimant a friend and he was sorry not to learn of the information earlier.
27. On 14 May 2020 the claimant was told by her line manager Ms Layhe she was going to be put under supervision for her work performance. It was an informal process.

The claimant’s grievance of 2 June 2020

28. On 2 June 2020 the claimant lodged a grievance saying that she was treated differently from her peers and felt that she had been discriminated against (page 98). The outline of the grievance was set out the claimant as follows, complaining about the Team Manager Ms Simmonds, who was her line manager’s manager.

-For over 10 years Julia has been discriminating against me.
-In 2008, Julia advised me not to be in her team and to join another black manager.
-Julia informed me that her team is not for me.
-Julia has been racist towards the Africans in her team.
-Julia caused another African social worker to be depressed and received counselling due to the racism he undergo from Julia.
-Julia told another African social worker that he will not get a senior post in her team. This Social Worker later left and he is now a team manager.
-I have been the only African Social worker in my team for many years and I feel intimidated by Julia’s behaviour towards me which could be unexplained.
-Julia has not called to send her condolences after my brother died of Covid 19.
-Julia is not supporting me with my bereavement.
-Julia advised my line manager that case I presented was confusing and this shows incapacity to the quality of my work while Julia has no up to date information on this case.
-Julia sent message that the senior managers are talking about me that I was rude in making my feelings known to them after my brother’s death of Covid 19.

-Julia advised my line manager that I should take bereavement leave and when I said that I will take this during the time of my brother's burial, Julia send my manager to advise me that I was rude for not taking the bereavement.

-Julia undermines my performance and brings my self-confidence very low.

-I feel very frightened thinking about work because of Julia's treatment towards me despite several years of working in the team.

-Julia looks for when I am vulnerable to pin me on the floor.

-My line manager is placing me on performance plan during my vulnerable period and shows no empathy towards my bereavement. They had a meeting with HR without me and without informing me of the reason for the meeting.

- I feel that I am treated differently from my white colleagues and this has to stop.

29. The Service Manager Mr Owen promptly acknowledged receipt of the grievance on 3 June and emailed Ms Mooney in HR, Ms Cynthia Walters HR Strategic Lead and the Head of Service Ms Joseph asking how it would be investigated.
30. The claimant said she raised the grievance due to the lack of support she felt she received when her brother sadly passed away in April 2020 due to Covid.
31. On 12 June 2020 the claimant raised a second grievance (116-122). This grievance complained about treatment by her immediate line manager Ms Layhe and said that she considered that Ms Simmonds was the cause of this.
32. From June 2020 until 21 September 2020 the claimant was off sick following the loss of her brother due to Covid. She was allocated a new line manager, Rob O'Grady, on her return to work and the claimant was also told that managers would not be continuing with her informal Performance Improvement Plan.

The appointment of Ms Anyanwu as the grievance officer

33. On 7 July 2020 Ms Sheena Anyanwu, Head of Temporary Accommodation, was appointed as the grievance officer. Ms Anyanwu who, like the claimant described her ethnic origin as Black African (statement paragraph 3) was telephoned by Ms Joseph asking her to take this on. Ms Joseph told Ms Anyanwu that it was a sensitive race related grievance and they wanted someone who was experienced and outside the claimant's service. Ms Joseph also hoped that as Ms Anyanwu was of the same racial group as the claimant, it would give legitimacy to the outcome (Ms Anyanwu's statement paragraph 11).
34. Ms Anyanwu told Ms Joseph that she had concerns about her capacity to deal with this grievance but was told that as the claimant was currently

off sick and was not likely to return for a few weeks, there was no immediate need to start the investigation. Ms Anyanwu agreed to take this on with the condition that another grievance which she was anticipating, was given to another manager.

35. The respondent's grievance procedure at paragraph 3.4.1 (page 360) says that within 10 working days of receiving a grievance, they should convene a grievance hearing. Despite this, it took the respondent a month even to appoint someone to deal with the grievance and no explanation was offered for this.
36. On 8 July 2020 Mr Owen informed Ms Anyanwu and Ms Mooney that the claimant was off sick and he would let them know when she was due back (page 415). The claimant returned from sick leave on 21 September 2020.
37. On 5 October 2020 Ms Anyanwu phoned Mr Owen to say she was having problems contacting the claimant. Mr Owen gave her the claimant's mobile number and she made contact.
38. On 19 and 21 October 2020 the claimant chased up the progress of her grievance with Ms Anyanwu and with Mr Owen. On 10 November 2020 she sent another chaser to Mr Owen and HR (page 125) saying she was "*beginning to feel disturbed with the level of delay*".
39. Mr Owen replied on 13 November 2020 saying: "*I have today heard from Ronnie who is a senior HR staff member who is liaising with Sheena [Anyanwu] to set up meetings with yourself. I have told them that the process is taking far too long and that it needs to happen asap. I am really sorry about the delay*". (page 127).
40. This prompted Ms Anyanwu to send the claimant an invitation to an investigation meeting, sent on 16 November, offering a meeting on 19 November 2020. Ms Anyanwu apologised for the delay in scheduling this and progressing matters. She also acknowledged that the date did not give the claimant the "*prescribed 5 days notice*" so that if the claimant could not make the date, she would reschedule (page 147). The claimant accepted the date and the notes of the meeting were at page 149. Ms Anyanwu also met with Ms Simmonds around this time and told the claimant she would get back to her in December.
41. Ms Mooney agreed in oral evidence that at some point in November 2020 she had a conversation with the claimant in which the claimant asked for a new grievance officer. This did not happen for another 11 months.
42. In an email to Mr Owen on 16 November the claimant said: "*I wonder whether they would have consider this action a bit quicker if it was not me/ethnicity*." (page 128)

Grievance investigation meeting 19 November 2020

43. The grievance investigation meeting took place with the claimant and Ms Anyanwu on 19 November 2020 at 2:30pm. This was 5.5 months after the claimant had raised the grievance. Ms Mooney was present and the claimant was accompanied by her Unison representative, Ms Wallace.
44. On 8 December 2020 the claimant chased for an update (page 130)
45. The investigation meeting with Ms Simmonds took place over two dates, on 9 and 17 December 2020.
46. On 6 January 2021 the claimant chased Ms Anyanwu for an update, copying Ms Mooney (page 131) saying that she was getting frustrated waiting to hear. On 11 January 2021 Ms Mooney chased Ms Anyanwu for a response.

The scheduling of a grievance hearing on 5 February 2021

47. On 27 January 2021 Ms Mooney contacted the claimant (page 132) again apologising for the delay. On 29 January 2021 the claimant was offered a grievance hearing on 5 February 2021 (page 231). The claimant's union representative Ms Wallace confirmed that she could represent the claimant on that date (page 421) although it was not one of her normal Unison days. Arrangements were made for Ms Wallace's duties to be covered.
48. On 28 January Ms Mooney chased Ms Anyanwu to conclude matters (page 216).
49. The claimant chased on 4 and 5 February 2021 for the details of the grievance hearing which she had been told would take place on 5 February. No information was sent to her about this.
50. The grievance hearing did not happen on 5 February 2021. Ms Anyanwu could not recall why but expected that it was because she had not completed the investigation report. There was a regrettable failure to let the claimant know about this.
51. On 10 February 2021 Ms Mooney had a conversation with the claimant's union representative Ms Wallace about the delay and Ms Wallace emailed the claimant on that date to tell her about the conversation (page 136).
52. On 11 February 2021 the claimant commenced Early Conciliation. This ran until 10 March 2021 (page 11). The claimant did this as a last resort because she was having no success in seeking to move the grievance along.

53. On 24 February 2021 Ms Mooney sent an email to the claimant again apologising for the delay and asking Ms Anyanwu to agree a date in the next two weeks that Ms Wallace could also attend (page 243).
54. On 15 March 2021 Ms Joseph emailed the claimant saying “*I am very sorry for the delay, I will discuss this matter with Sabrina to see if we can resolve this issue*”.
55. On 31 March 2021 there was another apology from Ms Anyanwu for the delay in completing her investigation report and scheduling a hearing date.
56. In April 2021 Ms Simmonds was moved sideways into another service into a role in the Quality Assurance team. This decision was made by Ms Joseph.
57. 14 April 2021 Ms Mooney reported to senior managers her concerns about Ms Anyanwu not having completed the grievance (page 315).
58. Ms Anyanwu has a number of medical conditions. She had some intermittent time off sick in early 2021 and had a period off sick in April 2021 (referred to in Ms Walter’s email to Ms Mooney on 16 April 2021 - page 315).
59. On 5 May 2021 Mr Owen emailed Ms Walters, the Strategic HR Lead for the claimant’s service, with concerns about the delays. On 10 May Ms Walters replied saying she would have to consider escalating the matter (page 307).
60. On 10 May 2021 Ms Walters also emailed Ms Yesil the Strategic Lead for HR for Ms Anyanwu’s service, saying that she would have to consider escalating the matter.
61. On 12 May 2021 Ms Yesil emailed Ms Walters who is Mooney’s line manager, suggesting that the matter be referred to Mr Rhys Makinson the Director of Ms Anyanwu’s service (page 312) but this did not happen until 9 July.
62. On 1 July 2021 Ms Simmonds raised a grievance against Ms Anyanwu for the delay in concluding the claimant’s grievance as she also wanted a resolution to the matter. The delays in dealing with the claimant’s grievance was also impacting upon her.
63. On 9 July 2021 Ms Walters, Strategic Lead for HR emailed Ms Anyanwu with a copy to Mr Makinson expressing concern at not having received the grievance investigation report (page 449). Ms Walters said that the claimant had issued a claim in the Employment Tribunal and another employee, whom we find was Ms Simmonds, had raised a grievance against her, Ms Anyanwu.

64. Ms Anyanwu replied 10 days later on 19 July saying “*My apologies for not finalising this before now and for letting it get to this unfortunate stage. I am on leave from 19th July until 2nd August but I will complete the report whilst I am off (by 22nd July).*” (page 449). This did not happen despite Ms Mooney completing the report for her as far as she could, save for the overall findings (Ms Mooney’s email 13 July 2021 page 428).
65. On 3 August 2021 Ms Simmonds’ grievance against Ms Anyanwu was heard and the outcome was given on 27 August 2021 by Ms Rachel Bailey, Interim Head of Environment Services. Ms Anyanwu attended the grievance hearing on Ms Simmonds’ grievance on 3 August 2021 and undertook to complete the claimant’s grievance by 6 August 2021 as recommended within that grievance outcome. She was not able to do this and as a result, Ms Bailey’s outcome was that the matter would be shared with the appropriate Director to ensure that the issues that led to the delays were identified and appropriate action taken.
66. Ms Mooney was on leave from late August to mid-September 2021. On 4 October 2021 Ms Mooney emailed Ms Anyanwu to press her to complete the report and copied Mr Makinson (page 451). She suggested that Ms Anyanwu arrange a 30 minute meeting with the parties, but that if Ms Anyanwu could not conclude it, that they find another Head of Service to do this.

The appointment of a new grievance officer

67. As the matter had still not reached a conclusion by mid-October 2021 Ms Mooney approached two HR Strategic Leads, Ms Yesil and Ms Walters on 13 October to request a new Grievance Manager. As a result of this Mr Shaun Flook, Head of Housing Needs, Supporting Communities, was appointed as the new grievance manager.
68. In early November 2021 Mr Flook met separately with the claimant and Ms Simmonds.
69. On 24 December 2021 Mr Flook sent the grievance outcome. This was 18 months after the grievance was presented. The grievance was not upheld although informal advice was given to Ms Simmonds on work to be done going forward, to avoid grievances.
70. On 5 January 2022 Ms Mooney again apologised to the claimant for the length of time it had taken to conclude her grievance. She said (page 471):

“As per the outcome of the Grievance investigation meeting, concluded by Shaun Flook in December 2021, one of the outcomes was an action for myself and for which I am sending my apologies to you.

I would like to apologise for the time taken to resolve this matter. We would not expect people to wait such a considerable time for the

conclusion of such investigations, although at times delays occur, and the past 18 months have proved more difficult at time, this is still not acceptable. I apologise for any distress caused to you relating to the delays and I hope that now this matter is concluded some of this stress will ease.

My sincere apologies for the delay and where lack of communications created concern”.

Comparators

71. The claimant complained that during the period she was chasing up her grievance, two colleagues who are not of Black African ethnicity, raised grievances that were heard within 4 months. They were Ms Pani Demetriou who gave evidence to the tribunal and Ms CC whom we were told is of Bangladeshi origin. Their grievances took less time than hers.
72. Their grievances were dealt with by a new manager, Mr John Lawrence-Jones whose workload was slowly building up so, unlike Ms Anyanwu, he had some capacity to deal with these processes.
73. Ms Demetriou's evidence was that she lodged her grievance on 5 October 2020 and she received an outcome on 12 February 2021 which she considered a reasonable period.
74. We did not hear from Ms CC. Ms Mooney was able to assist us with her knowledge of this grievance, which was for disability and race discrimination and was against Ms Simmonds. Within a period of approximately two weeks, 3 other complainants came forward with complaints about Ms Simmonds management style plus complaints of bullying. The other 3 did not wish to proceed with a formal grievance so Mr Owen decided that all four complaints would be dealt with under a disciplinary process against Ms Simmonds. In terms of the ethnicity of the 4 complaints in that situation, we find on Ms Mooney's evidence that CC was of Bangladeshi origin, two were white and one was black.
75. Ms Mooney had read CC's grievance and the other 3 complaints and confirmed that none of the other 3 complained about discrimination. The process was completed within about 4 months and the outcome was that Ms Simmonds was given training and support on how to lead and moved to a different service for a period of 18 months to 2 years.
76. Ms Mooney was asked by the Judge whether she was aware of any other grievance process taking as long as the claimant's. Ms Mooney said that from speaking to other HR Business Advisers she understood that there were about 7 which took over 200 days.
77. Ms Anyanwu had 7 disciplinary/grievance or ET cases to deal with during the time she was the grievance officer for the claimant's grievance. She set out these cases in her witness statement and also gave oral evidence

about them. Three of these cases were from outside her own service. There were delays on all 7 cases as follows:

- Case 1 – This was a disciplinary case on which Ms Anyanwu received the papers in February 2020. The hearing was originally scheduled for October 2020 but has not yet been heard due to the availability of both the employee and Ms Anyanwu herself. Ms Anyanwu was appointed as the Chair and not the investigating manager. Some of the concerns in this case have already been mitigated because the employee is not at work.
- Case 2 – This was a grievance received June 2020 and concluded on 25 November 2021. Ms Anyanwu was both the investigating manager and chair. She was able to carry out the investigation meeting with all of the participants in November 2020 and she made recommendations to the service manager, did not conclude the grievance outcome until November 2021. This is a period of 17 months, one month less than the time it took to resolve the claimant's grievance.
- Case 3 – This was the preparation of a witness statement for Employment Tribunal proceedings. Ms Anyanwu received the papers in October 2020 but the witness statement was still not finalised as at April 2021 when claim was withdrawn from the tribunal. This is a period of 18 months but is a different situation as it was not an unresolved grievance.
- Case 4 – This was the claimant's grievance received by Ms Anyanwu in July 2020. When Ms Anyanwu received it she did not have the capacity to deal with it, but agreed to do it as she understood there was nobody else. We have set out separately Ms Anyanwu's explanation of the reasons why she did not bring this grievance to a conclusion.
- Case 5 – This was a sensitive grievance and for Ms Anyanwu the most challenging of the 7 cases. The grievance was submitted in early March 2020 and allocated to her in July 2020 by Mr Makinson. When she was asked to do this Ms Anyanwu said she did not have the capacity to deal with it and asked if it could be dealt with by one of her colleagues. Mr Makinson explained that it was sensitive, not race related, but had to be dealt with by someone experienced and it had to be herself. Ms Anyanwu said she did not have the capacity but was not given the choice. She did not receive the investigation paperwork until November 2020. The case concluded in May 2021. This is a period of 18 months.
- Case 6 – This was an employment review where Ms Anyanwu received the papers in September 2020 and concluded it in November 2020. This was a case that originated in Ms Anyanwu's service where there were implications for the employee's pay. The employee was experiencing significant financial hardship which could only be alleviated by a decision on the case so Ms Anyanwu fast tracked it.
- Case 7 – Ms Anyanwu received case in November 2020 and concluded it in April 2021. This was a case that originated in Ms Anyanwu's service with potential implications for the safeguarding of

vulnerable adults. She initially sought to have it dealt with by the service manager but due to the potential sanctions if gross misconduct was proven, it had to be heard at Head of Service level or above. Ms Anyanwu was the Chair.

78. Ms Anyanwu explained that cases 6 and 7 above were fast-tracked due to the pay implications for the employee on case 6 and the safeguarding issues on case 7.

Ms Anyanwu's reasons for the delay in dealing with the claimant's grievance

79. Ms Anyanwu explained both in her witness statement and in oral evidence the reasons for her delay in dealing with the claimant's grievance. The period of delay with Ms Anyanwu was from 7 July 2020 when she was appointed as the grievance officer to 13 October 2021 when Mr Flook was appointed to conclude it. This is a period of 1 year and 3 months and the bulk of the 18 month duration of the grievance process.
80. Ms Anyanwu's evidence was that it was solely based on her workload over that period. Her evidence was that it was not in any way related to the claimant being black African or as a result of the grievance itself being about race discrimination. The claimant herself noted that she and Ms Anyanwu were from the same racial group.
81. From late 2020 until March 2021, Ms Anyanwu was involved in "*decanting*", as she described it, a 157-bed family hostel where the respondent had to hand back the building with vacant possession. This project carried high financial risk as failure to meet the deadline of 8 March 2021 could result in a cost to the council of £5.7 million over three years.
82. From July 2020 the respondent started to prepare its buildings for the post-lockdown return of staff which involved comprehensive risk assessment of all places of work as well as individual risk assessments for each member of staff. Ms Anyanwu's service was responsible for the premises risk assessments of all hostel sites within her portfolio and the individual risk assessments for staff. This was a challenging piece of work which concluded in September 2020. It also involved the difficulties of delivering services with staff working in "bubbles" to avoid infection risk.
83. From September 2020 Ms Anyanwu was heavily involved in making arrangements to procure a suitable building for use in a supported housing scheme for single vulnerable people. This was a time-sensitive project as it was in part funded by a Government grant with conditions attached including around the timeline.
84. From October 2020 she was involved in planning for the second wave of Covid and the risk of a further lockdown. It is a matter of public record

that a second lockdown was announced on 31 October 2020 until early December 2020 and then Tier 4 restrictions were introduced in London on 21 December 2020.

85. In December 2020 there was a change of strategy in relation to the 157-bed hostel which still had 30 families in residence. Ms Anyanwu was told by her manager that this had to be her priority because of the financial risks involved. Ms Anyanwu cancelled her annual leave for December 2020 and worked throughout that period.
86. As set out above Ms Anyanwu had some intermittent time off sick in early 2021 and had a period off sick in April 2021. This was referred to in Ms Walters' email to Ms Mooney on 16 April 2021 (page 315).
87. In March 2021 Ms Anyanwu was required to deal with the "*decanting*" of another 120-bed hostel where vulnerable residents had to be vacated and re-accommodated by 30 April 2021.
88. When Ms Anyanwu agreed, as part of the outcome of Ms Simmons grievance, to complete the claimant's grievance by 6 August 2021, she was unaware of the scale and pace at which the Afghan crisis would impact on her service and herself personally. The respondent had to house 1,850 people amounting to 51% of London's Afghan refugees in temporary accommodation. Ms Anyanwu created 3 teams to deliver a 7-day per week service to support the refugees including children. Her evidence which we did not doubt and we find that she worked 10 hours a day for 11 consecutive days before she had a day off. This unfortunately meant that the claimant's grievance did not receive her attention.
89. The claimant asked Ms Anyanwu in terms of the financial risks on one of her projects, what was more important, finances or life? Ms Anyanwu was clear that "*life will always trump money*" but there was no indication to her that the claimant's life was in jeopardy.
90. It also was put to Ms Anyanwu that she considered the claimant had sufficient support so it was not necessary to progress her grievance. Ms Anyanwu denied this, saying that this was the first time during her employment at the respondent and she is now in her 25th year, that she had not been able to conclude a case of this nature. She has been a manager since the year 2000.
91. Ms Anyanwu accepted that the claimant must have felt undervalued, that the organisation did not take her grievance seriously and that they did not care and she apologised for the delay saying that she knew it may sound glib, but it was "*the most pressured of times*".
92. Ms Anyanwu expressed considerable praise for the support she received from Ms Mooney. She could not recall ever having had such a degree of support from any other HR Business Adviser. She acknowledged that

Ms Mooney went to the lengths of drafting the investigation report for her and typing up the meeting notes and gave frequent apologies on her behalf. We find that Ms Mooney gave Ms Anyanwu all the support she could and went the extra mile to give her more support than expected. On Ms Anyanwu's own admission, we find the delay during the period June 2020 to October 2021 was down to herself and not Ms Mooney.

93. Ms Anyanwu generally worked in the office during the pandemic rather than from home. Prior to the pandemic her involvement in day to day operations was far less than during Covid due to the impact on resources, social distancing and the ability of other staff to come into work. If cover was needed she would provide cover in a way she would not have done pre-pandemic. It also made communications more difficult because she could no longer just go up and down stairs to see colleagues to clarify things.
94. Mr Owen said that it was the "*phrase of the time*" that these were "*unprecedented times*". He agreed that the length of time it took was not satisfactory and he also apologised to the claimant for this in evidence.

Findings as to the reason for the failure to deal with the grievance for 18 months

95. We found Ms Anyanwu to be a credible witness who was genuinely sorry that she had not been able to deal with the claimant's grievance. She expressed as much to the claimant in evidence. Ms Anyanwu is a long serving senior manager who during the period in question was called upon to deal with high risk urgent pieces of work involving vulnerable individuals. We find that Ms Anyanwu was overloaded with work from outside her primary role because she was regarded as someone highly experienced and capable. This unfortunately meant that she was given more than she had the capacity to deal with. This is illustrated by the seven disciplinary/grievance/tribunal matters outlined above.
96. Ms Anyanwu raised a flag at the very outset when Ms Joseph asked her to deal with the claimant's grievance, as to her concern about her lack of capacity to deal with it. She was persuaded to take it on because the claimant was off sick and there was no need to start the investigation immediately. There was also a trade-off in terms of being released from a grievance she was expecting to have to deal with, although ultimately it did not materialise. In addition the respondent had faith in Ms Anyanwu's experience and good judgment and they were keen that she should be the person to deal with it.
97. With the projects that Ms Anyanwu was called upon to deal with in her role as Head of Temporary Accommodation, the urgency and importance of these matters and with her own health difficulties, we find that she was right to flag up at the outset that she may not have the capacity to deal with the claimant's grievance. She was right about this.

98. Of the seven cases she was dealing with in the same time frame, Case 2 took her 17 months, one month less than she had conduct of the claimant's grievance. She was unable to deal with the preparation of a witness statement for a tribunal case over a period of 18 months (Case 3). Cases 6 and 7 were fast-tracked for reasons of pay and safeguarding as set out above and in Case 7, Ms Anyanwu had again flagged her concerns about her lack of capacity to deal with it.
99. We have considered the cases of the claimant's comparators Ms Demetriou and Ms CC. The material difference with their grievance time-lines is that they were not dealt with by Ms Anyanwu but by Mr Lawrence-Jones who was a new manager who had the capacity to deal with those processes. In addition CC's grievance was ultimately not dealt with as a grievance but was pooled with three other complaints – from both black and white members of staff – and handled as a disciplinary issue.
100. We have considered whether the reason for the delay in dealing with the claimant's grievance was because of her race or because her grievance was a protected act having raised a complaint of race discrimination. We find that it was not. On our finding the reason for Ms Anyanwu's delays in dealing with the grievance was because of her own workload in challenging times such that she lacked the capacity to give the necessary attention to the grievance. We accept and find that the reasons which she gave for failing to deal with the grievance were genuine. She was a credible witness whom we consider was held in high regard by the respondent, which was the reason they wanted her to deal with this sensitive grievance in the first place.
101. We find that the reason for the delay of 15 months from July 2020 to October 2021 when Mr Flook was appointed, was not because of the claimant's racial group or because she had done a protected act but because Ms Anyanwu did not have the capacity to deal with it during the challenging circumstances that she was dealing with.
102. Whilst we do not consider it right that the claimant's grievance was left unresolved for a year and a half – and we say more on this in our conclusions below - we find that the reason for failing to progress or deal with the grievance was not because of race or a protected act. The respondent has given a non-discriminatory explanation for the delay which we accept as genuine.

The Grievance Policy and Procedure

103. The Grievance Policy at page 352 set out Manager's responsibilities which included "*to seek to resolve work concerns promptly without unreasonable delays as close to their source as possible, using an informal approach*" and "*to keep the employee informed of progress through out the process*".
104. Under the Grievance Procedure at page 360 it states "*Within 10 working days of receiving the formal grievance, the manager will convene a*

grievance hearing” and “As a guide, the grievant and respondent(s) should be notified of the decision within 10 working days of after the hearing.”

105. The respondent accepted that it did not comply with the timescales in the Grievance Procedure, save for Mr Owen’s initial acknowledgement of the grievance.

The relevant law

Direct race discrimination

106. Direct discrimination is defined in section 13 of the Equality Act 2010 which provides that 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.
107. Section 23 of the Act provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.
108. Bad treatment per se is not discriminatory; what needs to be shown is worse treatment than that given to a comparator - ***Bahl v Law Society 2004 IRLR 799 (CA)***. Unreasonable behaviour alone cannot found an inference of discrimination but if there is no explanation for the unreasonableness, the absence of explanation may give rise to this inference of discrimination. The Court of Appeal said that proof of equally unreasonable treatment of all is one way of avoiding an inference of unlawful discrimination, but it is not the only way. At paragraph 101 Gibson LJ said, quoting from Elias J in the EAT in the same case: *“The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made.”*

Victimisation

109. Section 27 Equality Act provides that a person victimises another person if they subject that person to a detriment because the person has done a protected act or because they believe that the person may do a protected act.
110. Each of the following is a protected act:
- (a) *bringing proceedings under this Act;*
 - (b) *giving evidence or information in connection with proceedings under this Act;*
 - (c) *doing any other thing for the purposes of or in connection with this Act;*

(d) *making an allegation (whether or not express) that A or another person has contravened this Act.*

The burden of proof

111. Section 136 of the Equality Act deals with the burden of proof and provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
112. One of the leading authorities on the burden of proof in discrimination cases is ***Igen v Wong 2005 IRLR 258***. That case makes clear that at the first stage the Tribunal is to assume that there is no explanation for the facts proved by the claimant. Where such facts are proved, the burden passes to the respondent to prove that it did not discriminate.
113. Lord Nicholls in ***Shamoon v Chief Constable of the RUC 2003 IRLR 285*** said that sometimes the less favourable treatment issues cannot be resolved without at the same time deciding the reason-why issue. He suggested that Tribunals might avoid arid and confusing disputes about identification of the appropriate comparator by concentrating on why the claimant was treated as he was, and postponing the less favourable treatment question until after they have decided why the treatment was afforded.
114. In ***Madarassy v Nomura International plc 2007 IRLR 246*** it was held that the burden does not shift to the respondent simply on the claimant establishing a difference in status and a difference in treatment. Such acts only indicate the possibility of discrimination. The phrase “*could conclude*” means that “*a reasonable tribunal could properly conclude from all the evidence before it that there may have been discrimination*”.
115. In ***Hewage v Grampian Health Board 2012 IRLR 870*** the Supreme Court endorsed the approach of the Court of Appeal in ***Igen Ltd v Wong*** and ***Madarassy v Nomura International plc***. The judgment of Lord Hope in ***Hewage*** shows that it is important not to make too much of the role of the burden of proof provisions. They require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.
116. The courts have given guidance on the drawing of inferences in discrimination cases. The Court of Appeal in ***Igen v Wong*** approved the principles set out by the EAT in ***Barton v Investec Securities Ltd 2003 IRLR 332*** and that approach was further endorsed by the Supreme Court in ***Hewage***. The guidance includes the principle that it is important to bear in mind in deciding whether the claimant has proved facts necessary to establish a prima facie case of discrimination, that it is unusual to find direct evidence of discrimination.

117. More recently in *Efobi v Royal Mail Group Ltd 2021 IRLR 811* the Supreme Court confirmed the approach in *Igen v Wong* and *Madarassy*.

Conclusions

118. We have considered whether as an act of direct race discrimination or victimisation the respondent failed to deal with or progress the claimant's grievance between 2 June 2020 to 24 December 2021. Our finding of fact above is that the failure to deal with the grievance or progress it during that period was not because of the claimant's race or because she did a protected act. No time point was pursued by the respondent.
119. To the extent that the claimant complained against Ms Mooney about the delays, our finding above is that it was Ms Anyanwu who, as the grievance officer, was responsible for the bulk of the delays – 15 out of the 18 months. We find that Ms Mooney did as much as she could in her job role as HR Business Adviser. HR can only provide advice and assistance to the grievance officer. Ms Mooney could not deal with and provide the outcome herself. Neither was she of sufficient seniority to remove Ms Anyanwu as the grievance officer or impose another solution. This was for her superiors along with other senior service managers.
120. The tribunal accepts and agrees with the claimant that it was a big step for her to lodge a grievance and that the delays were unacceptable.
121. The claimant's treatment by Ms Simmonds was not in issue in these proceedings. The issue was the handling of the grievance about Ms Simmonds. The issues were identified at the Case Management Hearing on 26 November 2021 before Judge Grewal and confirmed with the parties at the outset of this hearing.
122. The respondent did not hide from the fact that this grievance took too long and on our finding it took far too long. In evidence and submissions the claimant said that bringing these proceedings was extremely difficult for her after so many dedicated years of service with the respondent. It was a last resort for her when she felt she had no other option and at a time when she was dealing with difficult circumstances in her personal life.
123. Our finding above is that the reason for the delay was not race or because the claimant had done a protected act. At the same time, we have sympathy for the claimant who was left with a grievance unresolved for a year and a half which has had an adverse impact upon her. The respondent employs HR professionals and a legal team and is aware of the ACAS Code on Disciplinary and Grievance Procedures which says at paragraph 4: "*Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions*". Good employment practice and good industrial relations require that grievances are dealt with promptly to ensure good working relations and to avoid the stress and upset of the sort that the claimant has experienced.

124. The claimant made the point during the hearing that the respondent did not take the step of using external help to deal with her grievance. If the respondent found that they could not deal with the grievance in any reasonable timescale, whi
125. ch was the case here, we are of the view that it was incumbent upon them to find a solution. This could have been to bring in a manager from another part of the Council who had capacity or to consider engaging an external consultant. Instead they took 16 months, from June 2020 to October 2021 to find a manager who could deal with it and another two months to conclude it. Ms Anyanwu had a number of other grievance/disciplinary issues that were long overdue. Ms Mooney's evidence was that she was aware of about 7 grievances that had taken over 200 days. This tribunal encourages the respondent to take steps to rectify these delays.
126. For the reasons given above the claim fails and is dismissed.

Employment Judge Elliott
Date: 4 August 2022

Judgment sent to the parties and entered in the Register on: 05/08/2022

For the Tribunal