



EMPLOYMENT TRIBUNALS

Claimant: Ms J Chieke

Respondent: Savills Management Resources Limited

Heard at: London Central Employment Tribunal

On: 19, 20, 21, 22 June 2023

Before: Employment Judge Adkin
Mr S Pearlman
Mr D Clay

Representations

For the Claimant: Claimant in person

For the Respondent: Mr S Wyeth, Counsel

JUDGMENT

1. The claim of direct race discrimination brought pursuant to sections 13 and 39 of the Equality Act 2010:
 - 1.1 was withdrawn in part (allegations 2.2.8, 2.2.9, 2.2.12, 2.2.13, 2.2.14);
 - 1.2 the remaining allegations were not well founded and do not succeed.The claim is dismissed.

WRITTEN REASONS

Hearing

1. This was a hybrid hearing in which the Claimant, Respondent's counsel, the Employment Tribunal panel were physically in a hearing room in Victory House at all times. Several of the Respondent's witnesses gave evidence remotely by video (CVP) for practical reasons.

Evidence

2. The Tribunal received witness statements in support of the Claimant's case:
 - 2.1. The Claimant herself, with appendices.
 - 2.2. Mr Kazem Zergani, not challenged by Respondent and taken as read.
 - 2.3. Mr George Lordson Attabuatsi, not challenged by Respondent and taken as read.
 - 2.4. Marta Rusin, not challenged by Respondent and taken as read.
 - 2.5. Jamila Acheampong, not challenged by Respondent and taken as read.
3. The Tribunal received witness statements in support of the Respondent's case:
 - 3.1. Mrs Stacey Gill (formerly Ms Stacey Mason). We have tended to use "Ms Mason" in our fact finding in these reasons purely for consistency with the contemporaneous documents and to avoid confusion for the reader.
 - 3.2. Mr Mohammed Hamid.
 - 3.3. Mrs Carolyn Blair.
 - 3.4. Mr David Eden.
 - 3.5. Ms Georgina Kelly-Williams.
 - 3.6. Bobby Izzard, no longer employed by the Respondent and not called as a witness but a signed witness statement submitted
4. We received an agreed bundle of 360 pages to which a further nine pages were added by agreement during the course of the hearing.

5. The Respondent provided us with a chronology and the Claimant added her own additions to that chronology. That was not an agreed document but it was helpful to us and helped us to understand the Claimant's case.

The Complaints

6. The Claimant describes herself as Black British, of Nigerian descent. She brings a claim of direct race discrimination. The issues, which were substantially agreed at a hearing on 11 August 2021 are attached below. One additional allegation was added to the list of issues by way of an amendment to the which the Respondent pragmatically did not oppose.
7. A number of the allegations of race discrimination were withdrawn by the Claimant during the course of evidence e.g. relating to the grievance and grievance appeal. We make no criticism of the Claimant for doing this withdrawal, which was realistic and reasonable and arose from the Claimant thoughtfully reflecting on the evidence. She was not represented either at previous hearing or in the hearing before us. We recognise the difficulty of taking an objective view without the benefit of legal advice.
8. Early conciliation started on 18 January 2021 and ended on the same day.
9. The claim form was presented on **5 February 2021**.

Findings of fact

Pre-employment history

10. The Claimant said that she was made to feel uncomfortable while working as a temporary receptionist 101 St Martins Lane a site managed by Savills in 2013. She said that she was told by a fellow receptionist, who was apparently a permanent employee, that as a black woman she would never have her own site at Savills as they do not like black representation at their desks. This was not contained either in the claim form nor the list of issues, but it was alluded to in an email dated 27 October 2020.
11. The Claimant was and remains employed by the Respondent property company as a receptionist, which she has been since 30 June 2014.
12. She was originally employed by a company called Portico, and transferred by operation of TUPE 2006 to the employment of the Respondent on December 2018 with continuity employed preserved.
13. At the times material to this claim the Claimant was working as a receptionist in offices at One Stanhope Gate in Mayfair.

2016 review

14. After the Claimant had been working as a receptionist for 14 months and had been supervised by Mrs Stacey Gill (at that time Stacey Mason), a performance review was carried out on 9 September 2016.
15. In that the review the Claimant expressed an aspiration for career progression in the following terms:

Ideally I would be happy to stay on my current site for at least another year while I further develop my skills.

Eventually I would like a Managerial/Supervisory role so I would like to develop the mindset of a leader and gain leadership skills, I will use this time to work towards this goal.
16. Ms Mason wrote:

I have been managing Joyce for 4- 5 Months now and it has been a pleasure to have been working with her. Joyce has a positive attitude and maintains a professional approach to her work. Joyce has fantastic working relationships with her clients and occupiers and is a core point of contact within 1 Stanhope.

I agree with Joyce I feel she would hugely benefit from the opportunity to cross train on other contracts and would love to see Joyce do this within both the wider Lothbury group and a larger team contract.

Joyce will benefit from attending a number of management skill courses which we will look to book throughout 2016-2017.

Overall Joyce is a pleasure to work with and goes over and above within her role in terms of service delivery and being proactive within her role.
17. We have no basis to take this document other than entirely at face value. We find that the Claimant and Ms Mason's relationship had got off to a good start. This was a very positive review and seemed to augur well for the Claimant's future career prospects.
18. Unfortunately the promise of training never materialised.
19. We do not consider that there is evidence that this was anything more than an oversight, but it is a unfortunate that Ms Mason did not follow up on this promise of management skill courses and also a pity that the Claimant herself did not remind Ms Mason about the promise.
20. This may have contributed to the Claimant's subsequent frustration about her lack of progression and may explain a degree of confusion later on when she was dissuaded from taking the initiative and dealing with matters that went strictly beyond her role as a receptionist. Being proactive was something that she had been specifically praised for in her 2016 review.

21. We do not have much by way of contemporaneous documentation for the next few months but there is an email exchange in August 2017 between the two women which is in friendly and professional terms.

Client concern about coverage on reception – September 2017

22. A year after the review, the client at One Stanhope Gate raised a concern by email with Stacey Mason in fairly direct terms about coverage at the reception. The client was Julie Mann, the facilities manager. The client Ms Mann wrote:

[221] I was on site on 11th September and a member of reception was absent for a protracted length of time and it was not an official break-time. This leaves the other member of staff unassisted and unable to take a comfort break should it be necessary. I can find no valid reason for either member of the reception team to be absent from their duties for more than 10-15 minutes unless it is a scheduled break.

I need you to make it clear that protracted absence from the reception desk outside designated breaks will not be acceptable. Tenant communication should be either by telephone, or preferably email so we have an audit trail, there is no reason to run around the building all day. All issues need to be logged on the Helpdesk and the FM for the building should be copied in on any matters outside of the usual day to day operation of the building.

Should a tenant require the presence of a staff member for more than ten minutes this needs to be authorised and notified to the FM for the building, both receptionists need to be at their desks and equally engaged with tenants/visitors and contractors.

23. Ms Mason wrote to the receptionists using a generic email address for receptionists at that site asking for an explanation. This appears, on the basis of subsequent emails, to have been directed both to the Claimant and “Bernie”, Bernadett Sztojkovics, a white colleague on reception. Ms Mason mentioned that meetings that the Claimant had been attending with Barclays (the tenant of the building) were no longer necessary.
24. The Claimant responded the following day providing an explanation for some of the additional activities being carried out by receptionists. This was to explain why there was only one receptionist on the desk.
25. Six days later on 16 October 2017 Ms Mason wrote further to both receptionists to answer the points raised by the Claimant point by point and reiterated the concern of the client that the desk is “left unmanned on [seemingly] a regular basis”. She signed off with the comment “I would also like to point out that my client is your client”.
26. Later on 16 October 2017 the Claimant’s colleague on the reception, a cover receptionist Liana Efthymiadi wrote an email to the Claimant complimenting her on her training and her professional and calm demeanour and then providing a very detailed justification of what been going on in the building on a particularly busy day and the Claimant dealing with it in a professional manner. It seems to the

Tribunal likely that the Claimant and Ms Efthymiadi had discussed the content of this email in advance of it being sent.

27. The Claimant forwarded Ms Efthymiadi's email to Ms Mason on 17 October 2017. Ms Mason responded on the same day acknowledging that there were "issues" at the site, which seems to be an illusion to the building tenant having an expectation that receptionists should assist with matters which were in reality facilities management matters falling outside of their remit. In this email which is professional in tone, Ms Mason thanked both receptionists. She said that Julie Mann (the facilities management client) asked to be informed of any situation where receptionists were being asked to attend meetings by the tenant.
28. It seems to the Tribunal that the underlying cause of this situation was some confusion of expectations about the demarcation between receptionist duties and facilities management duties on the part of the tenant Barclays and a concern about reception coverage raised by the facilities management client which Ms Mason needed to address to meet that client's expectations. This is evident to us from the contemporaneous communication.
29. The Claimant unfortunately took this personally and interpreted this as Ms Mason seeking to "clip her wings". In the context of the praise received for showing initiative in her review the previous year and her aspiration to progress she felt upset and demoralised. Indeed the Claimant was still genuinely upset about it nearly six years later at the tribunal hearing before us.

Friction

30. Toward the end of October 2017 into early November some friction was developing between the Claimant and another receptionist colleague Ms Bernadett Sztojkovics.
31. The Claimant subsequently brought a grievance in relation to Ms Sztojkovics.

Supervisor role

32. On 28 May 2018 there was an announcement of a Operations & Reception Supervisor role at 20 Rathbone, another site operated by Portico. The Claimant's case is that the Respondent had ensured that she was unable to progress into this supervisor role because of the queries raised in October 2017 about her being away from her desk.
33. The Tribunal does not accept that characterisation or interpretation of events. First we do not accept that the concerns raised were initiated by the Respondent. It is clear from the documentation that the actions of the Respondent were reactive. Ms Mason was reacting to the concerns raised by her client Ms Mann. Second, we do not accept that the actions taken were taken with the intention of stymying the Claimant's prospects of progression. The comments made by Ms Mason were directed to both receptionists, not simply to the Claimant. Ms Mason acknowledged that there were some difficulties at the site.
34. The Claimant did not apply for the Supervisor role.

35. We simply do not accept C's characterisation of a situation being engineered to prevent her from progressing.

TUPE

36. On 3 December 2018 the Claimant transferred to the Respondent business as a result of TUPE (Transfer of Undertakings (Protection of Employment) 2006).

Bernadette

37. On 12 December 2018 the Claimant was evidently upset that her colleague Bernadett had been promoted and submitted a grievance. She wrote about Bernadett in the following fairly trenchant terms:

"My site was uncovered due to her negligence and sheer incompetence, she would need to be accountable for her actions and take ownership for her errors.

She has failed in her duty to supervise this site and its deplorable that I interview and train her up with good intentions then am insulted that I should be made subordinate to someone who lacks a basic work ethic.

38. In the grievance investigation meeting she said about Bernadett:

"JC She manages me in an antagonistic way, messing up my site and the reputation of it.

...

JC Why is she a supervisor?

LF [Lucy Fudge HR advisor] She has obviously been appointed as a supervisor because they believe she is suitable for the role, it is not for you to question this.

...

JC She shouldn't be supervising me. I am not bitter. I want people to progress. I am happy for her.

I want to progress myself.

...

JC I don't want her to have her hands on my site, she messes things up and I have to deal with it. Security will leave site if there is no cover. She has done enough damage on this site. I was told when I transferred that she wouldn't have anything to do with my site.

39. It is evident that the Claimant did not have any respect for her new supervisor and regarded this site as “my site”.

Grievance outcome

40. In a grievance outcome sent by letter on 8 January 2019 Harvey Dixon, the Portfolio Operations Manager, did not uphold the Claimant’s grievance but recommended a mediation meeting to attempt to rebuild relationships.

Ina

41. On 2 February 2019 a new colleague Ina Vasileva, who was white, joined the business as a receptionist working alongside the Claimant.
42. On 22 February 2019 both the Claimant and Ina Vasileva signed an new job description. This document [122] contained the following:

Overall purpose/aim:

The main purpose of the role is to maintain presence on the front reception desk offering assistance to all that personnel visiting and utilising the building from daily visitors to permanent tenants. Sustain a professional outlook to delivering exceptional service and creating a lasting impression to all.

43. Various duties are set out in a little over twenty bullet points. The document ends as follows:

It is the nature of work of SMR that tasks and responsibilities are, in many circumstances, unpredictable and varied. All staff are, therefore, expected to work in a flexible way when the occasion arises where tasks are not specifically covered in the Job Description and have to be undertaken.

44. We accept the Claimant's evidence that both she and her white co-receptionist Ina Vasileva signed this agreement.
45. Ms Vasileva subsequently left working for the Respondent.

Diana Cazacu

46. In February 2020 Diana Cazacu started working with the Claimant on reception duties.
47. The Claimant reports that initially the two of them had a good relationship and Ms Cazacu bought her a lipstick as a present to thank her for training.
48. It is clear from the evidence that the relationship deteriorated. The Claimant attributes this to her line manager Mr Hamid “planting seeds of negativity” in Ms Cazacu. The Tribunal finds, based in part on Ms Cazacu’s “feed back” email of 1

April 2020 that she found the Claimant to be patronising, disrespectful and difficult to work with.

1 April 2020

49. Unfortunately the Claimant's relationship with Ms Cazacu deteriorated.
50. On 1 April 2020, a week or so into the first UK government Covid-19 pandemic lockdown, Ms Cazacu lost her temper with the Claimant in an incident in relation to some keys. That Ms Cazacu was shouting at the Claimant is supported by the witness statement of Mr Zergani. The Respondent's witness Mr Hamid confirmed that Mr Zergani had said as much to him.
51. Following on from this the Claimant appears to have written a long email to the generic reception email address admonishing Ms Cazacu.
52. Seven minutes later Ms Cazacu sent an email of nearly a page and a half of close type to Bobby Izzard and Mohammed Hamid. The Tribunal did not receive oral evidence on the question of timing, but given the length of the two respective emails and how close the "send" timing of the two emails were, it seems quite possible that the two women were both writing their respective emails about each other at the same time.
53. The Claimant complained that Ms Cazacu was shrieking at her and creating a scene in front of clients.
54. In her part Ms Cazacu reported more longer term frustrations working with the Claimant which included the following:

"I must confess that all this time , in my previous jobs I never had or made any complaint about absolutely any members of the team (I used to work in a team of 13 people). I am facing now the situation when unfortunately , i do have highlight to your attention Joyce Chieke's unprofessional attitude towards me .

She's a lovely lady, but sometimes, i might have to admit , can be really difficult colleague and a person to work with.

...

Tuesday 10/03/2020 12:10 pm

On my early days when i have just started the job,Joyce constantly keep using disrespectful remarks towards my person as " I know English it's not your first language so it must be very difficult for you to understand everything " , or remarks like "sometimes I'm using my English way, which I'm not sure you'll understand it " , or on asking her about the functionality of the garage parking spaces , she raise her voice telling me that "sometimes you need to use your brain " .

Her language, behavior, and actions are very disrespectful,and i find myself really anxious, stressed and completely psychologically

abused, as i found it almost impossible to focus on work and sleep in nights” [sic]

55. It is clear from subsequent events that the Claimant’s manager Mr Mohammed Hamid felt that the Claimant was at fault in the breakdown of her relationship with Ms Cazacu.

17 July 2020

56. Subsequently Ms Cazacu left the Respondent’s employment. Her last day was 17 July 2020.
57. On that day there was a conversation between the Claimant and Mr Hamid, in which the latter blamed the former for high staff turn over and swore, using the “c” word. He asked her why it had not worked out between her and Diana. Although the Claimant says that Mr Hamid was heated and unprofessional, she also acknowledged in the grievance process that he was trying to get to the bottom of the situation. That was an explanation freely given by her. She says that he encouraged her to raise a grievance against him.

Complaint

58. The following week the Claimant wrote a long e-mail of complaint.
59. In that e-mail of complaint she complained that Ms Mason had carried out “feral attacks” on her character.
60. In respect of Mr Hamid she complained that he had told members of staff that she was hard to work with and characterised him as being inept as a facilities manager who tried to get her to do his job, when this was in breach of what she had been told by Ms Mason, i.e. not to be away from the reception desk for more than 10 minutes.

Grievance investigation

61. As part of the grievance investigation there was a conference call investigation meeting which took place on 13 August 2020, carried out by Carolyn Blair. In that meeting the Claimant stated that her colleague Diana was not competent with the English language and had not been progressing “in the right way” in the role. She complained that they were working separately and just emailed each other.
62. Mr Bobby Izzard was interviewed as part of the grievance process. He was by this stage the Claimant’s line manager. He described the Claimant as a “tricky person, by the book but not by the book”. He pointed out that Diana Cazacu had believed that the Claimant was racist towards her and had said “you wouldn’t understand” as Diana’s first language was not English given that she was Romanian.
63. Mr Izzard said that he personally struggled with the Claimant and stated his opinion that she has an “unhealthy relationship” with tenants and contractors alike, which he described as being “quite full on”. He gave the example of her taking one of the contractors to the Christmas party with her. His evidence was that both Ina and

Diana had told him that the Claimant was the reason why they left their roles working with her. He made the suggestion that the Claimant would be better suited to a one person site working on her own.

Email to Bobby Izzard

64. In an email sent on 20 August 2020 headed “catch up” Mr Izzard tried to encourage the Claimant to show initiative, in relation to a lift service problem and suggested that the team could be more proactive.
65. The Claimant replied a few minutes later and told Mr Izzard that she had been told by director Stacy Mason that she should under no circumstances interact via email directly regarding maintenance works. She highlighted that she had been rebuked in the past for taking the initiative and so she could not put herself in a situation where instead of being thanked for being proactive, she was chided and asked why she was getting above her station.

Grievance outcome

66. By a letter dated 25 August 2020 Ms Blair provided an outcome to the grievance. She found that the “C word” had been used by Mr Hamid. She accepted his evidence that the context was Mr Hamid saying that if he thinks someone is a “c**t” he will tell them this. She did not accept that he had been deliberately telling members of staff that she was hard to work with. She recorded Mr Hamid's position that the Claimant got heated when he asked her to do things and so he would ask Diana instead as she was more willing to do these tasks.
67. Importantly Ms Blair did acknowledge that there was confusion about what the Claimant should or should not be doing and she suggested that this be rectified immediately to avoid further confusion. She suggested a meeting between the Claimant and Mr Hamid chaired by Bobby Izzard to set expectations of everyone's role and for the Claimant to accept what was a “reasonable request”, with examples to be given.

Grievance appeal

68. In an e-mail dated 28 August 2020 the Claimant appealed against the outcome of the grievance. She maintained in that document that Mr Hamid had spread malicious lies and that Stacy Mason wanted to encourage arguing at the reception desk and

“wanted chaos and anarchy to rain between me and my team at reception for her agenda. When she left I could see the difference, it comes as sport to her.”

Protected screen complaint

69. On 10 September 2020 the Claimant wrote to Mr Izzard, copying Mr Hamid as follows:

I know I mentioned this to you before but now that the building is getting busier I have realised that people are coming very close to the desk and the protective screening is too low so doesn't provide a barrier so despite wearing PPE masks we are exposed to Covid-19.

We do as you suggested asking people to stand back but its proving difficult to control, could you order a higher screen for reception please

70. Stepping forward out of the chronology the Claimant write the a follow up e-mail copying both gentleman again on 1 December 2020:

"It would have great if you had updated me about the risk assessment taken on these protection screens and on the findings that its up to the reception team to control people entering the building and the social distancing being adhered to rather than me asking on a whim when you visited the office today. Communication is key.

As discussed, people often do not speak English and by the time we have asked them to step back 3 or 4 times and pointed to your signage (which they do not understand) we are already covered in spittle and are totally at risk.

What was the point in you ordering these "protective screens" that cannot offer protection!"

Grievance appeal outcome

71. Reverting to the chronology, a grievance appeal meeting took place on 17 September 2020 by telephone conference. There was a discussion in which the Claimant indicated that she did not agree with the outcome reached by Ms Blair; she disagreed with the outcome to remove her individual e-mail address; she questioned the recommendation for a meeting between herself and Mr Hamid; and she felt that the outcome should include an apology from Mr Hamid.
72. An outcome to the grievance appeal was provided in a letter dated 1 October 2020 by David Eden, a director.
73. Following the grievance appeal was the Claimant's individual email address was temporarily reinstated. As to communications from Stacy Mason, Mr Eden confirmed that she was on maternity leave and that confirmation could be provided when she returned from maternity leave.
74. Mr Eden explained that the idea of a meeting between the Claimant and Mr Hamid would be to clear the air. He reiterated that he would be happy to attend such a meeting.

Receptionists moving sites

75. On the afternoon of 27 October 2020 Mr Izzard held a conference call to explain about some reception staff moving sites. Although the Claimant made herself available for that call she left the call before it concluded saying that she had to

sort out a lot of things being on annual leave. She wrote an e-mail following up on that meeting saying that she got the general tone of the call and seemed to assume that she would be being moved to a different site or being moved from site to site and related this to something that Mr Hamid had said to her. She asserted that although it had been presented as Covid related she knew it was nothing to do with the pandemic. She said that she was not happy to move to different sites as she was contracted to the Stanhope Gate site, and said that she had not done anything wrong to deserve this punishment.

76. She also went on in her email:

“Another Savills employee has already warned me about Savills antics in discomfoting quality staff off their sites and playing musical chairs until they can but only leave the company out of despair. Two Savills employees have said you don’t really like to have black representation as their receptionists although you plan to move around all Lothbury receptionists not just me. However, I do not care to be liked or disliked by Savills only expect the respect I have given.”

77. It seems that the Claimant may have jumped to conclusions prematurely. Mr Izzard responded to emails within a few minutes to say “if you had stayed on the phone you would have learned that you are the only one who is not required to move sites.” He went on to say that he would forward this to HR on the basis that she had raised some serious points.

78. In a email sent later on that afternoon Natalia Damian Zaragoza, Regional HR Advisor confirmed that the Claimant would not need to move sites but that there would be a change in her working pattern to accommodate the needs of the business. There was then some back and forth by email list. The Claimant again apologised for having to leave the call. A new conference call was set up for the following Monday.

Complaint about working rather than furlough

79. In a further e-mail dated 13 November 2020 the Claimant complained about the fact that she was working whereas other colleagues were on furlough at home. She described the proposals as being “barbaric”. She said that “these are things I have come to expect from Savills but I am not in the business excepting discrimination of any kind. [sic]

80. A meeting took place on 19 November 2020 which the Claimant attended together with Wayne Goyns, Associate Director and Georgina Kelly Williams, HR advisor. This was to discuss and explain what was going on with furlough. It was explained to the Claimant during that meeting that her building was open throughout lockdown due to tenants whereas other sites [55 St. James and 20 Rathbone] we're not resulting in different treatment for the staff at different sites.

Sick absence January 2021

81. On 4 January 2021 the Claimant left the office at 4:00 PM with a stomach ache and returned to work on 13 January 2021. This was recorded by Mr Izzard as an absence of five days.

Performance review March 2021

82. On 17 February 2021 the Claimant's line manager Bobby Izzard sent her a Performance Development Review.
83. There is a tick box section in which the Claimant was rated "outstanding" for the following: works in a safe manner; quality of work; customer service; presentation and attendance/timekeeping. She was rated "good" for working in a team, using her own initiative and flexibility in taking on additional tasks. She was rated "mostly satisfactory" for communicating with others and reliability and flexibility. She did not rated the bottom assessment "needs development" for anything.
84. There is a narrative section dealing with "Agreed actions required for performance development" which contains the following:

COMMUNICATING WITH OTHERS

There has been a breakdown with Joyce and a few members of the management team, the Ops manager for the site has now been changed. Joyce needs to concentrate on working cohesively in future for the benefit of the site and the role, and work on general communication.

RELIABILITY & FLEXIBILITY

In terms of what the role requires and what is needed there has been some questions from Joyce on her role. We continue to look into this and if Joyce has any questions in the future she should seek help from her new Ops manager. There has also been some issues of flexibility raised based on the needs of the role which are currently sorted but may need addressing again. Examples of this are the flexibility to work the early shift and taking on additional responsibility's such as making sure the front desk is not left unmanned in the absence of security.

85. There is further narrative in the Summary section which reads as follows under the heading summary & general comments:

Joyce has very good relationships with the tenants on site, however the site is changing and will soon move to single occupancy. I feel a day of shadowing a different, larger team or building would benefit Joyce to give her some fresh ideas on continuing in her current role and self-development.

Going forward Joyce will need to improve on how she communicates with others within SMR Reception Services and also building relationships that are imperative to the successful to the day to day running of the site. Joyce often challenges the management team on aspects of her role, Joyce needs to understand that as business manager we are often making decisions or requests with the bigger picture in mind and with input from a number of parties, such as the Client, tenants and Client Relationship Manager. Hopefully some

shadowing of other teams and sites will expose Joyce to the collaborative approaches taken at other sites.

It has been a very unusual year on site and for everyone involved in the site and hopefully this year the building can go back to running as usual without the external influences of the pandemic, etc.

We are also looking to create a communication matrix so we can define what communication is needed on site, when and who to so it's clear for all front desk staff.

86. Following on from the review process on 18 March 2021 the Claimant wrote an email to her manager Mr Izzard in disrespectful terms, including the following criticisms of him:

I've cultivated strong working relationships with SMR Reception team, you on the other hand manage to create a hostile working environment for me and others (see Handover attached) where you greatly distressed one of my colleagues at the desk through your lack of email etiquette.

...

The simple fact is that you don't answer my email then when you do you begin with a sentence, and I quote "The first part of your message does not read well but I think I can make sense of it" despite it being in plain English. Your poor communication skills put me at severe risk during these perilous times.

...

You have made a plethora of errors, failed to provide leadership where needed, and as if that wasn't enough, you extend the tyranny to aggressively pester me during my annual leave trying to force me to take a pay cut and 12 hour shift under the deception that all staff working for this client were having to as well which was a false information as I was told by a fellow colleague that she was not being treated this way.

...

I think it's an abuse of power for you to use my PDR to fabricate these accusations about my character rather than to take ownership for your shortcomings.

Current position

87. It is not relevant to the matters that we need to determine, but we noted that as at the date of the Tribunal hearing the Claimant was still working with Mr Hamid and he is her line manager.

LAW

DISCRIMINATION – EQUALITY ACT

88. The Equality Act 2010 contains the following provisions:

13 Direct discrimination

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

89. We have considered the guidance for discrimination cases set out in *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205, EAT, as approved and revised by the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases* [2005] ICR 931, CA as follows:

(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s. 41 or s. 42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word “could” in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since “no discrimination whatsoever” is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

90. We have also considered *Nagarajan v London Regional Transport* [1999] IRLR 572, *Madarassy v Nomura International plc* [2007] IRLR 246 CA, *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. In *Hewage v Grampian Health Board* [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

“the burden of proof provisions in discrimination cases... are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent’s motivation... they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent’s motivation and what is in issue is its correct characterisation in law’.

91. In *Madarassy v Nomura International plc* 2007 ICR 867 CA Lord Justice Mummery held as follows:

“The court in *Igen v. Wong* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent “could have” committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.” (para 56)

92. In *Glasgow City Council v Zafar* 1998 ICR 120, HL, Lord Browne-Wilkinson said that in the context of a discrimination claim ‘the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant “less favourably”.’ He approved the words of Lord Morison, who delivered the judgment of the Court of Session, that ‘it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances’. It follows that mere unreasonableness may not be enough to found an inference of discrimination.

CONCLUSIONS

93. The conclusions below represent the unanimous decision of the Tribunal.

Time limits

94. We have dealt with each aspect of the claim on its merits, we have not separately looked at the question of elements of the claim being presented out of time and the effect on jurisdiction. In summary a claim is out of time insofar as it relates to matters complained of which are more than three months before the claim is presented, unless those matters form part of a continuing act of discrimination.
95. Given however that we have not found any continuing act of discrimination, it is difficult to see how any matters falling 3 months before the claim form and earlier could be in time. The onus would be on the Claimant to show why time should be extended and she has not done so.

DIRECT RACE DISCRIMINATION (Equality Act 2010 section 13)

Basis of race claim

96. The Claimant describes herself as Black British, of Nigerian descent.
97. During the course of the Claimant's oral evidence and reiterated by her in submissions she said that she had "never" experienced racism the UK until working for the Respondent. She was born in the UK and has lived here since then.
98. She was careful her submissions of discrimination to clarify that it was not the whole Respondent organisation, but rather was this particular area of the Respondent business in which she believed there was racism.
99. The Claimant did not pursue a number of the allegations of discrimination set out in the list of issues at the hearing and for example acknowledged that there was not a racial element in the way that the grievance and grievance appeal had been dealt with.

Allegations of fact

[Issue 2.2.1] In February 2019 Stacey Mason (now Gill) and the Claimant's then managers Harley Dixon, Jordan Newell told the Claimant not to do things that took her away from the reception desk.

100. It is clear that Stacy Mason gave the Claimant guidance about not staying away from her desk too long and indeed went further and got the Claimant to sign a document identifying her responsibilities.
101. To the extent that the Claimant was being offered direction that she should not be away from her desk for long periods, the Claimant's case is that this was Stacey "clipping her wings" in a similar way to she had in 2017 as a way to prevent her from progressing as a black employee.
102. We do not accept the way that the Claimant has characterised what occurred at that meeting. We do not find that she was told that she could not do things that

took her away from the reception desk. That mischaracterised what she was being told. The underlying concern was about the Claimant being away from her desk for long periods and also involving herself in things that went outside of her remit. It is for this reason that the job description document was drawn up and discussed.

103. The tasks on that document necessarily involve the Claimant going away from her desk for short periods, for example completing checklist logs and completing a weekly building report. We note that the final section refers to tasks and responsibilities being unpredictable and varied and setting out the expectation that staff should work in a flexible way when the occasion arises where not specifically covered in the job description. We have sympathy with the view expressed by Stacey Mason at paragraph 15 of her witness statement that she was not attempting to chain the Claimant to her desk and that the Claimant did subsequently distort what it was that she was being told and did not take a commonsense approach.
104. We find, in respect of the reason why the Claimant was treated in this way that the client had originally raised these concerns in 2017 and this led to the conversation on that occasion. Returning to the same topic in February 2019, we accept Ms Mason's evidence that the Claimant's immediate line managers were struggling to deal with her and that expectations of her role needed to be discussed again. Specifically the question of leaving reception desk without good reason. We note that the Claimant's white colleague Ina was, according to the Claimant herself, also asked to sign a similar job description.
105. We do not find that the Claimant has proved facts from which we could reasonably conclude either directly or by inference that race was a factor in this treatment. The problem posed by a receptionist being away from her desk for long periods is something that obviously required management. The Respondent we note did not treat this as a disciplinary matter. It was simply a conversation about expectations of the role.
106. We cannot lose sight of the fact that a white colleague was asked to sign the same document in February 2019 and the evidence of Ms Mason's first review of the Claimant was positive. This strongly suggests that their initial relationship was good and Ms Mason had a positive impression of the Claimant if her agenda was to prevent the Claimant progressing as a black woman she would not we find have given any positive review or talked about progression opportunities we do not find it to be plausible that she started off with an open minded attitude to the Claimant's progression but then at a later stage for reasons of race changed her attitude.
107. The Claimant's response to Ms Mason's comments has been unfortunate. She might simply have accepted this as guidance but instead has dwelt on it and repeatedly brought it up with subsequent managers who were not party to the original conversation.
108. The Claimant has portrayed this as a deliberate attempt to create a barrier to her progression within organisation. We do not accept that it genuinely was a barrier to progression. We note that the Claimant has chosen not to apply for promotion to a more senior role.

[Issue 2.2.2] Facilities manager Mr Mohammed Hamid asked the Claimant's white fellow receptionist to do the tasks that the Claimant had been told not to do, specifically Ina Vasileva; and Diana for a few months from February 2020 onward.

109. We find that Mr Hamid was initially asking the Claimant to do the same sort of tasks as her white colleagues and that it was his genuine belief that these were reasonable requests.
110. It is common ground that the Claimant refused to carry out these tasks because she believed that this ran counter to the direction given to her earlier by Stacey Mason.
111. We entirely accept Mr Hamid's evidence that because the Claimant was refusing to carry out his requests he chose to direct those requests to colleagues who were willing to do as he requested. This is the entire explanation for why the Claimant was treated as she was. Her race was not any element of the reason. We do not need to consider the operation of the burden of proof.
112. Purely as an observation, while the Tribunal understands the frustration that Mr Hamid must have experienced in the Claimant refusing to carry out what appeared to be reasonable requests. It strikes us that there may have been a missed opportunity for him to clarify with her that he as her manager would take responsibility in the event that someone more senior, for example Ms Mason chose to query it.

[Issue 2.2.3] Mr Hamid briefed the Claimant's fellow receptionist Diana at the commencement of her role in February 2020 about working with the Claimant, saying negative and disparaging things about her, with the aim of creating conflict and the impression that the Claimant was bullying Diana.

113. There is no direct evidence that Mr Hamid briefed Diana Cazacu at the commencement of her role in disparaging terms about the Claimant. The Claimant's case is that she inferred this from a deterioration in her relationship with Diana.
114. We have considered carefully the content of the Claimant's email about Diana at page 65. This is in disparaging, arrogant and inappropriate terms to a colleague, and suggests to us that the Claimant's own actions towards Diana were the reason for the deterioration in the relationship between the two women. In his internal interview Mr Izzard's evidence were that the Claimant will often say to Diana "you wouldn't understand" in the context of English not been Diana's first language. This again suggested a dismissive tone. This is of a piece with a number of other comments that the Claimant has made about colleagues which are disparaging.
115. In short therefore there is ample evidence that the Claimant's own actions would have been likely to cause a deterioration in the relationship. We accept Mr Hamid's evidence that the only conversation he had with Diana about the Claimant came close to the end of Diana's employment, not at the beginning. We simply do not accept that he was deliberately trying to create conflict in a team which he had the

responsibility of managing. Apart from anything else this would make his own job more difficult.

116. We do not find that the Claimant has established the alleged treatment or that the Claimant's own race was a factor in it.

[Issue 2.2.4] During the Covid-19 pandemic [confirmed during the hearing to be April 2020] Mr Hamid criticised the Claimant for moving back away from clients at reception.

117. The Respondent submits that there is no evidence of this allegation at all and therefore it cannot succeed. The Claimant does not deal with this allegation in her witness statement. We note however that at page 290 in an email dated 1 December 2020 the Claimant referenced Mr Hamid telling her that it was not the right approach to step back whilst dealing with clients. She raised it in that email as evidence of an inconsistent approach, since Mr Izzard was now telling her that it was acceptable to step back to indicate to visitors of the building that she was not comfortable with them being too close to her.
118. It is clear that the Claimant had raised (not for the first time) a matter which she felt to be a inconsistent guidance from management.
119. The Tribunal cannot ignore the reality that in April 2020 the Covid-19 pandemic was new to the UK. The guidance being given out by government and other bodies was evolving and changing during 2020. We detect that the Claimant was concerned about her own health in the way that most of the population naturally were at that time. Uncertainty and inconsistent guidance contributed to that concern.
120. What the Claimant has not proved is any reasonable basis to conclude that Mr Hamid's comments about stepping back from clients in April 2020 were because of her race.

[Issue 2.2.5] Diana bullied the Claimant, for example shrieking at her in front of the client at approximately the end of April 2020.

121. We accept that Diana Cazacu shouted at the Claimant at a location at the end of April 2020. This account is supported by the unchallenged witness statement of Kazem Zergani. Mr Hamid acknowledged in his evidence that Mr Zergani had said something similar to him about Diana's conduct on this occasion. According Mr Zergani, Diana was shouting at the Claimant and accusing her not having signed in some keys back into the keylogger. According to the Claimant Diana herself had forgot to document the receipt of some keys. There appears to have been some question as to who was to blame.
122. We bear in mind the disparaging email sent by the Claimant on 1 April 2020. We have also considered Diana's follow-up email sent to managers written in frustrated but slightly more balanced terms within a few minutes on the same day. Ms Cazacu on the one hand suggested that the Claimant was a "lovely lady", but this was qualified by the Claimant talking to her in disrespectful language which was causing Ms Cazacu stress.

123. We have considered whether we could infer that the Claimant's race was the reason. It has not been suggested to us that the language used was itself inherently racist or suggested a discriminatory mindset.
124. The Claimant has characterised her relationship with Diana as initially good. She referenced Diana buying some lipstick as a gift to thank her for being patient during Diana's training. This was not a situation in which Diana inexplicably had a negative reaction to the Claimant from the outset, which might suggest some sort of racial prejudice. The evidence of the Claimant is to the contrary.
125. We find that the evidence of the emails sent on 1 April 2020 is quite clear that the relationship between the two ladies was deteriorating and that Ms Cazacu was finding the Claimant difficult to work with. Ms Cazacu was not the first colleague to struggle to work with the Claimant. In this context and outburst from Diana is not entirely surprising.
126. The Claimant has not demonstrated why her race is to be inferred to be a reason for Diana's outburst. The contemporaneous evidence suggests that it was the way that the Claimant treated Diana which explained the deterioration in the relationship.
127. This allegation of direct race discrimination does not succeed.

[Issue 2.2.6] Diana again bullied the Claimant by banging on the bathroom door and trying to push the door when the Claimant was half dressed preparing to go home in approximately late June 2020.

128. The Claimant says that Diana "harassed and bullied" her by banging on the changing room door and trying to push the door when she was half dressed. This does not appear to be substantiated by contemporaneous documentation. That is significant since the Claimant did not hesitate to raise criticisms of Diana or other colleagues to her superiors. This leads us to the conclusion that if there was such an occasion on which Diana was banging on the door it that did not have particular significance in the Claimant's mind at the time.
129. This was two months further on in the chronology of the deteriorating relationship between the two women. Our considerations for this allegation are the same as for the previous allegation. We cannot identify a feature of this allegation or the evidence that suggests that the Claimant's race was a feature or a reason why this occurred.
130. This allegation of direct race discrimination does not succeed.

[Issue 2.2.7] On Friday 17 July 2020 after Diana left Mr Hamid blaming the Claimant for the high turnover of staff.

131. Mr Hamid admits that he blamed the Claimant for a high turnover in staff.
132. We accept Mr Hamid's explanation that his concern raised with the Claimant about the high turnover of staff was straightforwardly because he genuinely believed that she was responsible for the high turnover of staff. Given the evidence of the

Claimant's communication with her colleagues, this was not that surprising, nor does it call for an explanation other than the Claimant's own conduct.

133. It is not a surprise to us that Mr Hamid felt frustrated, given the turnover of colleagues and given also that the Claimant appeared to refuse to carry out his reasonable instructions. This is not to endorse his conduct on 17 July 2020. He was entitled to raise difficulties in his relationship with the Claimant in this conversation and also her apparent difficulties in her relationships with other colleagues. These were matters for legitimate management scrutiny. It was not however, appropriate for him to lose his temper with her, nor to have this conversation in a public area, nor to use expletives which must have entirely undermined the legitimate professional discussion that he was trying to have.
134. There were reasons why Mr Hamid was frustrated, which were unrelated to the Claimant's race. The Claimant herself in the grievance process acknowledged that Mr Hamid was trying to get to the bottom of the situation.
135. We cannot identify a feature of this allegation or the evidence that suggests that the Claimant's race was a feature or a reason why this occurred.
136. This allegation of direct race discrimination does not succeed.

[Issue 2.2.8] In the outcome to the Claimant's grievance, provided to her on 25 August 2020 it was alleged that the Claimant was not doing enough work to help Mr Hamid.

137. The Claimant did not pursue this as an allegation of race discrimination in the hearing before us.

[Issue 2.2.9] In September 2020 the Respondent deleted the Claimant's email account.

138. The Claimant did not pursue this as an allegation of race discrimination in the hearing before us.

[Issue 2.2.10] From August 2019 onward Mr Hamid asked the Claimant to do jobs taking her away from the reception desk, contrary to Ms Mason's instructions.

139. It is clear that Mr Hamid did ask the Claimant to do some jobs which took her away from the reception desk.
140. Had he been doing this deliberately to create a conflict with other instructions given by Ms Mason, that might be less favourable treatment. We do not find that this is what occurred. We find that he was asking the Claimant to do things which he thought were reasonable management requests. He was plainly surprised and frustrated when the Claimant would not assist him for understandable reasons.
141. We do not find that this amounts to less favourable treatment.
142. In any event, we cannot identify a feature of this allegation or the evidence that suggests that the Claimant's race was a feature or a reason why this occurred.
143. This allegation of direct race discrimination does not succeed.

[Issue 2.2.11] Inadequate Covid-19 screening was provided at reception until the Claimant got ill in January 2021.

144. It's worth noting that the illness in January 2021 was a stomach ache not recorded as being Covid.
145. Even if the Covid screening was inadequate, we cannot understand this allegation of race discrimination since the Claimant at the times material to this claim was on the reception desk with white colleagues.
146. She is not suggested as part of this allegation that she had different screens to her colleagues.
147. This allegation of direct race discrimination does not succeed.

[Issue 2.2.12] The appeal from grievance outcome which the Claimant submitted on 26 August 2020 was not dealt with at all.

148. The Claimant did not pursue this as an allegation of race discrimination in the hearing before us.

[Issue 2.2.13] In a consultation meeting on 19 November 2020, the Respondent proposed to reduce the Claimant's pay.

149. The Claimant did not pursue this as an allegation of race discrimination in the hearing before us.

[Issue 2.2.14] The Respondent refused the Claimant the opportunity to flexi-furlough on [19 November 2020].

150. The Claimant did not pursue this as an allegation of race discrimination in the hearing before us.

[Issue 2.2.14] [44] [set out in the Claimant's further particulars 2.2.22] On 17 March 2021 Bobby Izzard sent me my PDR and lied about my communication skills so that my future managers wouldn't consider me for future roles that arise in Savills so I sent this to HR along with emails of Bobby having very poor communication skills regarding me and other members of staff but heard nothing back.

151. Mr Izzard's performance review of the Claimant was careful and measured. There are positive points made about the Claimant's performance. All but two elements of performance are rated as outstanding or good.
152. The central thrust of the Claimant's allegation is that Mr Izzard lied about her communication skills i.e. was deliberately untruthful. We simply do not accept that this reflects the reality. We find that this was a careful report in which Mr Izzard was attempting to highlight some areas for improvement alongside areas which were good or outstanding. We find that there is sufficient contemporaneous evidence of the way that the Claimant communicated with and about colleagues to suggest that communication was perceived to be a difficulty by her immediate managers. She may not herself have understood this. In short she seems to have been unaware or oblivious to the fact that she was causing upset and frustration

on the part of colleagues to the point that some colleagues working closely with her left the organisation.

153. Contrary to the allegation that Mr Izzard was lying or being untruthful, we find that he was trying to do his best to state the situation as he saw it.
154. That we do not find that this was less favourable treatment. We do not accept that communicating some messages to an employee that are not welcome in the context of an overall balanced performance review amounts to less favourable treatment. It is no more or no less than a manager should do if they perceive that there is a problem. Mr Izzard would be failing as a manager if he did not raise an area for potential improvement.
155. In any event, we cannot identify a feature of this allegation or the evidence that suggests that the Claimant's race was a feature or a reason why this occurred.

[Issue 2.3] Was that less favourable treatment?

[Issue 2.4] If so, was it because of race

156. The Claimant says s/he was treated worse than Ina Vasileva and Diana in respect of 2.2.2. Alternatively the Claimant relies upon a hypothetical comparator
157. For convenience and ease of communication we have dealt with these questions issue by issue above.

Fellow receptionist's comment in 2013

158. The Tribunal had to consider what to make of the Claimant's hearsay evidence about the comments of a fellow receptionist in 2013. We note that this comment was said to have been made 10 years ago. We have not received a signed witness statement nor heard live evidence from that fellow receptionist, so have not been able to explore the context for that remark. We do not know if this individual would stand by this remark or if this exactly what she said or meant.
159. This comment is not mentioned in the claim form. It did not feature in the list of issues. Given this, unsurprisingly this evidence in the Claimant's witness statement was not challenged by counsel for the Respondent since it was not part of the claim that the Respondent had prepared to meet.
160. Finally, the Claimant herself conceded in her closing submissions that "the Respondent had come a long way since 2013 and that there were now a lot of black receptionists". Furthermore she herself was careful not to allege that that whole organisation was discriminatory.
161. Ultimately, although we noted the evidence of this comment, it did not assist us in our conclusions. It was so far removed from the specific allegations which we heard detailed evidence on that we did not feel that we could safely draw a conclusion from what is a hearsay version of an opinion of a third party in relation to discrimination alleged by the Claimant to have taken place 6-8 years after the comment was made.

162. Had this been a very finely balanced case on the question of race discrimination such that the burden of proof was a central focus of our deliberations, this additional evidence might conceivably have been a piece of evidence weighed in the scale which would help the Claimant to satisfy the initial burden of proof upon her. We did not find but it was one of those finely balanced cases. This was a case in which we were able to make positive findings for the reason for the Claimant's treatment. We did not find that the Claimant's race was the reason or even part of the reason for any of the treatment about which she complains.

Remedy

163. The claims did not succeed. In view of that we do not need to consider remedy

Workplace mediation

164. It does not fall within the remit of this Tribunal to make a recommendation arising from a successful claim of discrimination.
165. Nevertheless, having heard the evidence over several days the Tribunal wishes to comment as follows. A number of individuals within the Respondent at different stages have suggested mediation. Mr Eden who dealt with the grievance appeal confirmed to the Tribunal at the conclusion of his evidence to us that from his perspective the offer of mediation was still on the table. It seems to this Tribunal that is a genuine offer and a positive opportunity for both Claimant and Respondent.
166. We consider that that mediation is an appropriate and helpful suggestion in circumstances where an employee has expressed concerns which have been investigated and the employee remains working for an employer.
167. A workplace mediation is focussed on restoring relationships rather than seeking to settle litigation with a financial sum. A workplace mediation is a good way to clear the air. The Claimant suggested that she would like to receive an apology for being sworn at in a public area by Mr Hamid. If it is right that she has not been apologised to for unprofessional conduct, that is an understandable wish.
168. The Claimant for her part may wish to reflect upon the fact that the way she has communicated with and about some colleagues has not led to good workplace relationships. It may be to her own advantage as well as her colleagues if she can raise concerns or criticisms in a more diplomatic way.
169. The Tribunal is hopeful that mediation may assist in this case.

Case Number: 2200495/2021

Employment Judge Adkin

5 August 2023

Sent to the parties on:

07/08/2023

For the Tribunal Office:

ISSUES

1. Time limits

- 1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 19 October 2021 may not have been brought in time.
- 1.2 The Respondent reserves its position on inviting the Tribunal to take time/jurisdiction as a preliminary issue at the final hearing.
- 1.3 Were the discrimination complaints made within the time limit in [section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.3.2 If not, was there conduct extending over a period?
 - 1.3.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.3.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.3.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.3.4.2 In any event, is it just and equitable in all the circumstances to extend time?

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

- 2.1 The Claimant describes herself as Black British, of Nigerian descent.
- 2.2 Did the Respondent do the following things:
 - 2.2.1 In February 2019 Stacey Mason (now Gill) and the Claimant's then managers Harley Dixon, Jordan Newell told the Claimant not to do things that took her away from the reception desk.
 - 2.2.2 Facilities manager Mr Mohammed Hamid asked the Claimant's white fellow receptionist to do the tasks that the Claimant had

been told not to do, specifically Ina Vasileva; and Diana for a few months from February 2020 onward.

- 2.2.3 Mr Hamid briefed the Claimant's fellow receptionist Diana at the commencement of her role in February 2020 about working with the Claimant, saying negative and disparaging things about her, with the aim of creating conflict and the impression that the Claimant was bullying Diana.
- 2.2.4 During the Covid-19 pandemic [**April 2020**] Mr Hamid criticised the Claimant for moving back away from clients at reception.
- 2.2.5 Diana bullied the Claimant, for example shrieking at her in front of the client at approximately the end of April 2020.
- 2.2.6 Diana again bullied the Claimant by banging on the bathroom door and trying to push the door when the Claimant was half dressed preparing to go home in approximately late June 2020.
- 2.2.7 On Friday 17 July 2020 after Diana left Mr Hamid blaming the Claimant for the high turnover of staff.
- 2.2.8 In the outcome to the Claimant's grievance, provided to her on 25 August 2020 it was alleged that the Claimant was not doing enough work to help Mr Hamid.
- 2.2.9 On [**2 September 2020**] the Respondent deleted the Claimant's email account.
- 2.2.10 From [**August 2019 onward**] Mr Hamid asked the Claimant to do jobs taking her away from the reception desk, contrary to Ms Mason's instructions.
- 2.2.11 Inadequate Covid-19 screening was provided at reception until the Claimant got ill in January 2021.
- 2.2.12 The appeal from grievance outcome which the Claimant submitted on 26 August 2020 was not dealt with at all.
- 2.2.13 In a consultation meeting on 19 November 2020, the Respondent proposed to reduce the Claimant's pay.
- 2.2.14 The Respondent refused the Claimant the opportunity to flexi-furlough on [**19 November 2020**].
- 2.2.15 (*Not identified at the Preliminary Hearing, rather introduced by the Claimant in a document entitled "Dates of Discrimination Allegations" at page 44 of the hearing*). On 17 March 2021 Bobby Izzard sent me my PDR and lied about my communication skills so that my future managers wouldn't consider me for future roles that arise in Savills so I sent this to HR along with emails of Bobby having very poor communication skills regarding me and other members of staff but heard nothing back

[dates in bold added at the outset of the hearing on 19 June 2023]

2.3 Was that less favourable treatment?

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

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated (sometimes called a hypothetical comparator).

The Claimant says s/he was treated worse than Ina Vasileva and Diana in respect of 2.2.2. Alternatively the Claimant relies upon a hypothetical comparator..

2.4 If so, was it because of race?

3. **Remedy**

3.1 How much should the Claimant be awarded?

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

3.3 Did the Respondent or the Claimant unreasonably fail to comply with it?

3.4 Is it just and equitable to increase or decrease any award payable to the Claimant?

3.5 By what proportion, up to 25%?