



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Miss A Smithson

**Respondent:** British Telecommunications plc

**Heard at:** London Central Hearing Centre (by CVP)

**On:** 6, 7, 8 and 9 December 2022  
with deliberations on 9 and 12 January 2023

**Before:** Employment Judge Morris

**Members:** Mr N Brockmann  
Mr S Soskin

**Representation:**

**Claimant:** In person **Respondent:** Ms A Smith of counsel

## RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal as follows:

1. The claimant's complaint that the respondent directly discriminated against her by treating her less favourably than others because of race contrary to section 39 of the Equality Act 2010, with reference to section 13 of that Act, is not well-founded and is dismissed.
2. The claimant's complaint that the respondent subjected her to harassment related to race contrary to section 40 of the Equality Act 2010, with reference to section 26 of that Act, is not well-founded and is dismissed.
3. The claimant's complaint that the respondent victimised her contrary to section 39 of the Equality Act 2010, with reference to section 27 of that Act, is not well-founded and is dismissed.

# REASONS

## The hearing, representation and evidence

1. This was a remote hearing, which had not been objected to by the parties. It was conducted by way of the Cloud Video Platform as it was not practicable to convene a face-to-face hearing, no one had requested such a hearing and all the issues could be dealt with by video conference.
2. The claimant appeared in person and gave evidence herself. The respondent was represented by Ms A Smith of counsel who called the following employees of the respondent to give evidence on its behalf: Mr C Duffy, Senior Manager in Desk and Acquisition Sales; Mrs H King, Senior Manager in Contract Management; Mr K Power Senior Manager in Contract Assurance.
3. The evidence in chief of or on behalf of the parties was given by way of written statements, which had been exchanged between them. The Tribunal also had before it an agreed bundle of documents comprising in excess of 700 pages that were relevant to the issues it had to determine. The numbers shown in parenthesis below refer to page numbers (or the first page number of a large document) in that bundle.

## The claimant's complaints

4. As had been identified at a Preliminary Hearing conducted on 5 May 2022 ("the May Hearing"), the claimant's complaints are as follows:
  - 4.1 The respondent had directly discriminated against the claimant because of race contrary to sections 13 and 39 of the Equality Act 2010 ("the Act").
  - 4.2 The respondent had subjected the claimant to harassment contrary to sections 26 and 40 of the Act.
  - 4.3 The respondent had victimised her contrary to sections 27 and 39 of the Act.

## The issues

5. The issues in this case were also identified at the May Hearing and are recorded in the Case Summary that was sent to the parties on 6 May 2022. As that is a matter of record and is contained in the bundle of documents (39), the issues do not need to be set out in full in these Reasons. Suffice it to note as follows:

*Direct discrimination and harassment*

- 5.1 The “things” or conduct by or on behalf of the respondent relied upon by the claimant in relation to both her complaint of direct discrimination because of race and her complaint of harassment related to race are recorded as being as follows:
- 5.1.1 “Ms King asserting in the presence of colleagues that the claimant was not qualified to do her job.
  - 5.1.2 Ms King questioning in the presence of colleagues whether it was the claimant’s job to be responsible for compliance.
  - 5.1.3 Ms King refusing to acknowledge that being disrespectful and belittling in the presence of other white colleagues to the only black member of the team could adversely affect the claimant.
  - 5.1.4 Ms King refusing to listen/dismissing the claimant’s assertions about the impact Ms King’s behaviour was having on her as the only black employee.
  - 5.1.5 Ms King asserting that she will not be told how to speak or limited in how she should communicate with the claimant and that she will speak to the claimant as she chooses.
  - 5.1.6 Demoting the claimant.
  - 5.1.7 Constructively dismissing the claimant.”

*Victimisation*

- 5.2 The “protected acts” relied upon by the claimant are recorded as being as follows:
- 5.2.1 “Verbally asserted on 21 September 2021 to Keiran Power that she had been racially discriminated against.
  - 5.2.2 Formally made a grievance on or around 27 September 2021.
  - 5.2.3 Formally made a second grievance on or around 29 November 2021.”
- 5.3 The “things” or conduct by or on behalf of the respondent relied upon by the claimant in relation to her complaint of victimisation are recorded as being as follows:
- 5.3.1 “Inform the claimant on 13 October 2022 that she would be demoted as a result of changes in the hierarchy.
  - 5.3.2 Constructively dismiss the claimant.”

**Consideration and findings of fact**

6. Having taken into consideration all the relevant evidence before the Tribunal (documentary and oral), the submissions made by or on behalf of the parties at the Hearing and the relevant statutory and case law (notwithstanding the fact that, in pursuit of some conciseness, every aspect might not be specifically mentioned below), the Tribunal records the following facts either as agreed between the parties or found by the Tribunal on the balance of probabilities.

- 6.1 The respondent is an extremely large well-known company in the business of telecommunications.
- 6.2 The claimant was employed by the respondent as Contract Assurance Specialist – Governance and Compliance. Her employment commenced on 5 April 2021 and ended on 14 January 2022 following her resignation with notice, which she submitted on 15 October 2021.
- 6.3 The claimant's appointment resulted from the fifth advertisement that the respondent had placed for her role, previous attempts to fill it not having been successful. The claimant's role would require experience of working as a contract manager and, preferably, experience of working on BT Enterprise major contracts. The claimant did not have such experience but was considered to have previous experience in industry that would provide a number of transferable skills and it was believed that she could "learn on the job". The Tribunal accepts Mr Power's evidence that in these circumstances he sought to support and mentor the claimant in her role. Additionally, as Mr Power had limited direct experience in auditing and did not have day-to-day experience of running a contract, to complement the support he would provide the claimant, with the agreement of his manager, Ms Hudson (who was responsible for Contract Management overall), he asked Mr Wills, Senior Manager in Contract Start-up and Recovery, to provide coaching to support the claimant's development and technical capability. Mr Wills had previously been head of the governance team and was recognised as one of the most experienced and respected contract managers in BT.
- 6.4 When the claimant's employment commenced Mr Power led the Contract Assurance team to which she was appointed and was her line manager. Mr Power had other responsibilities in addition to Contract Assurance; for example, he managed 25 contract managers who had responsibilities for small to medium contracts and another group of employees in the Contract Management Office whose customers included central government departments and defence. Indeed, Contract Assurance was a relatively small part of his role. In the Contract Assurance team, the claimant initially had two employees who directly reported to her: Ms Narayan and Ms Groundwell. In view of personal differences in the team, Mr Power decided to 'flatten the reporting line' and restructured that team so that all three employees reported directly to him. The claimant was pleased with that change.
- 6.5 Ms Hudson, Mr Wills and Mr Power began to have concerns about the claimant's progress and, around the end of June 2021, asked Mr Bissex, Senior Commercial and Contract Manager, to provide the claimant with mentoring and coaching support to help her with her career progression and personal development.

- 6.6 Mr Power was away from work on bereavement leave and holiday from 27 August until 20 September 2021. Upon his return he was concerned that the claimant's performance did not appear to have progressed despite the support she had been given. The lack of improvement was evident in two calls on 20 and 21 September which had to be led by others due to the claimant's lack of understanding of the issues. Ms Hudson was so concerned that on 20 September she asked Mr Power to begin making notes of issues that he had identified in relation to the claimant's performance, which he did (295). The Tribunal accepts Mr Power's evidence that that was the reason for his creation of the notes and it had nothing to do with an incident that occurred that day, 20 September, involving the claimant and Mrs King to which the Tribunal returns below.
- 6.7 Although Mr Power made such notes he did not commence any formal process in respect of the claimant's performance. The Tribunal accepts Mr Power's oral evidence (which the Tribunal considers he gave sincerely) that the reason for this was that he did not want to formalise matters; he had recognised that a wrong decision had been made in appointing the claimant but considered that the fault for that lay with the respondent and not with the claimant, and in such circumstances he preferred to proceed by way of informal mentoring/monitoring. The Tribunal also accepts Mr Power's evidence that he felt he had a responsibility to help the claimant succeed and would have exhausted all options to help her do so. Should it have reached the point where there were no options left he would have sought to facilitate a move for her into a more suitable role in BT.
- 6.8 Prior to the commencement of the claimant's employment an audit had been conducted following which recommendations were made to the Contract Management team led by Mrs King about recording contacts and RACI (responsible, accountable, consulted, informed) information for each contract. In response to those recommendations, the management team led by Ms Hudson had agreed that they would use a system called Hermes, which was a strategic platform onto which they were in the process of moving contracts. The claimant's predecessor had initially been involved in this work but, following his departure and the claimant's appointment, it became one of her responsibilities.
- 6.9 At 15:24 on 27 July 2021 the claimant sent an email to Mrs King's team in which she set out two corrective actions that they needed to make arising from the audit: namely, that on Hermes they needed to have updated their contact list and recorded all customer specific processes. She asked them to confirm by Friday, 30 July 2021 that the actions had been done (208). Mrs King replied fairly swiftly at 15:32 on 27 July confirming that she had previously raised the claimant's requests with her team but could not yet confirm that they were in place (471). She continued that she had 1:1 sessions booked with each of her contract managers in September at which they would evidence Hermes and she would note what additional action was still required. She noted that there were a few teething issues and would not

expect that every contract would be compliant but anticipated that they would have action plans and agreed dates for this. On 8 August, the claimant emailed the team again referring to her email of 27 July and asking, “Can you confirm (and send me evidence by return) that the we below corrective actions were taken” (207). The claimant’s email surprised Mrs King given that she had already replied to her earlier email.

- 6.10 Mrs King replied on 13 September 2021 (204). She suggested that some advice might be required or agreement among them as a team about how to discharge the corrective action. She observed that in reviewing contracts on Hermes none of the existing areas was particularly useful in terms of providing the required information, and she explained why by reference to screen shots that she attached (204). In under two hours there then followed a sequence of six further emails between the claimant and Mrs King some of which were only minutes apart. In one from Mrs King (203), she explained that she had identified a number of practical issues and suggested a call to progress matters. In the claimant’s reply she stated that the information needed to be recorded in Hermes (202) but in Mrs King’s opinion that did not answer the queries or ensure consistency or that what was to be implemented was going to be practical and capable of being maintained. In the email from the claimant she said that she would seek some technical advice, which she did. In her witness statement the claimant said that in doing this she resolved the IT errors/inadequacies but the Tribunal does not accept that evidence and prefers the evidence of Mrs King that the system remained not fit for purpose. Importantly, the Tribunal also accepts the evidence of Mrs King that although it had been agreed what system would be used (i.e. Hermes), the team had not collectively agreed how they would use it, where on the system they would store the information and the format it would take.
- 6.11 On the face of it that exchange of emails between the claimant and Mrs King was business-like and amicable but the Tribunal is satisfied that the written word does not reflect the actuality of the claimant, fairly newly appointed to her role, focusing on deadlines within which to get the task done and Mrs King with her team of experienced contract managers focusing less on timing and more on looking at all the options so as to establish a system that would work to the benefit of the respondent and its customers. Thus, the Tribunal is satisfied that the claimant and Mrs King were approaching the meeting from different angles: the claimant determinedly focused on implementing corrective actions as a matter of some urgency; Mrs King focused on achieving a workable solution.
- 6.12 The following day, 14 September 2021, Mrs King wrote to the claimant and the members of her team. She apologised for what she described as the “flurry of emails” the previous day and informed them that she had set up a call for the following Monday, 20 September to discuss matters further (200). She reminded them of the audit action and observed that from her limited use of Hermes, none of the three separate areas to add or update contacts

was suitable. She asked everyone to “play around” with the system: the claimant so that she would be able to provide guidance on how the action could be discharged; the contract managers so that they could identify which option best addressed the audit requirement which, she said, in her opinion must be of genuine use rather than a tick-in-box exercise.

- 6.13 Mrs King sent her team members and the claimant an invitation to the Teams meeting on 20 September, “To discuss the audit requirement of Hermes contacts” (227) but the claimant declined the invitation (228). A further email exchange ensued between Mrs King and the claimant in which the comments became more terse (231 – 229). Mrs King requested that the claimant should attend a call with everyone so that they could discuss the matter as a group. The claimant agreed.
- 6.14 At the commencement of the Teams meeting on 20 September the claimant made a PowerPoint presentation and explained to the team how they should fill in contact details on Hermes. Mrs King considered the claimant’s manner to be patronising and condescending. In her opinion she was simply explaining how to fill in a form on Hermes but was not addressing the fundamental issue. Further, the claimant had never used the system herself so Mrs King found it patronising that she was telling her team, who had access to and had been using the system for a while, how to use it. Mrs King asked, rhetorically, whether everyone was happy that this should be done as a “JFDI” [*just fucking do it*] or a tick-in-the-box exercise that would be of no benefit whatsoever.
- 6.15 Mrs King accepted in evidence that in the course of the Teams meeting she had stated that the claimant was not a contract manager, because she was not, but denied saying that the claimant was not qualified to do her job. The claimant’s evidence was that Mrs King had stated that she was not a contract manager and continued, “so you do not understand, you don’t have the insight”. The claimant’s evidence was also that Mrs King added that the claimant was not qualified to adequately do her job, which was not only disrespectful but also unprofessional. Another issue between Mrs King and the claimant was whether, when during the meeting Mrs King had sought the views of her team members, the claimant had interrupted and prevented that.
- 6.16 In considering this conflict of evidence the Tribunal has brought into account the evidence of Mrs King and the claimant and also the records of the interviews Mr Duffy subsequently conducted with those who participated in the Teams meeting when he was investigating the claimant’s grievance. So far as is relevant to what occurred in the Teams meeting, those records include the following:
- 6.16.1 Mr Johnson (390 and 397) stated that there was a bit of a conflict between the claimant and Mrs King but that he did not recall Mrs King

asking the claimant questions about her experience of having worked in contract management. He did recall that “it just seemed to explode for some reason” and the claimant had become visibly upset. There were no raised voices. It had been like flicking a switch but he could not pick up on why. He did not recall Mrs King saying that the claimant did not know what she was doing or what she was talking about, saying that she was inexperienced or had not done a contract management role but Mrs King was challenging the claimant in terms of why they were getting the information, which he considered was warranted. Mrs King had tried to involve at least him for his input but “that was cut down absolutely dead” by the claimant who said “I don’t want their input yet”. She “just quickly shut it down”;

“she was very, very quickly to ensure that nobody else had a say in this. She quickly closed us down”. He did not think that anyone on the call was disrespectful towards another person. He did not once think that Mrs King was out of order with her tone or the way she spoke to the claimant, which he would have recalled and would probably have pursued with both Mrs King and the claimant and/or Mr Power but he did not feel as though it warranted that.

6.16.2 Ms Groundwell (398 and 403) did not recall Mrs King saying that the claimant did not have any contract management experience but thought she had mentioned that the claimant had not been in the business for very long. The call had become heated and had escalated quite quickly. She remembered that Mrs King was trying to explain why she felt that the Hermes contact module was not suitable as it stood to fulfil the audit requirement but she was not able to speak or voice her opinions as she was shut down quite quickly by the claimant. Every time Mrs King tried to speak the claimant had spoken over her so she could not continue. The claimant had then got upset, said she was being disrespected and quickly left the call.

6.16.3 Mr Szabo (454 and 462) did not recall Mrs King questioning the claimant’s experience in the contract management area or questioning her capability. There had been email communications prior to the call and he had the sense that there was prior history between Mrs King and the claimant where there were frustrations. The tone and responses between Mrs King and the claimant were not pleasant. It was along the lines that they had a major disagreement, had not found the common ground and were sticking to their guns. When Mrs King had asked for his input the claimant had immediately answered that it was not something that he should input into. He was not sure what triggered the unpleasantness but perhaps it had been when Mrs King was about to ask for other opinions and the claimant shut it down saying “please do not involve someone else in the conversation” to which Mrs King had responded with words to the effect that the claimant should not tell her not to ask the opinion of others. He would not say that Mrs King had been disrespectful. It was a business conversation but it had been uncomfortable to listen to. In his opinion Mrs King had not offended the claimant at any point and when the



claimant became upset it had surprised him, and Mrs King had tried to comfort her.

- 6.17 Also of relevance in relation to what occurred at the Teams meeting on 20 September is that when it was put to the claimant (three times) during cross examination how Mrs King asking her in her role how the audit actions could be implemented had nothing to do with race (and the claimant initially having remarked in different ways that everything she experiences is a racial issue) she eventually answered, “prima facie nothing”.
- 6.18 Having considered the above evidence of all those who were involved in the Teams meeting on 20 September the Tribunal finds that on at least two occasions Mrs King asked two experienced members of her team (Mr Johnson and Mr Szabo) for their views on the matter but the claimant was not prepared to allow them to contribute and on each occasion cut across Mrs King’s intervention remarking, as the claimant herself accepts, that this was not a point that could be lobbied. The Tribunal also finds, on balance of probabilities, that Mrs King, having said that the claimant was not a contract manager may well have gone on to add that she did not understand but the Tribunal does not accept the claimant’s evidence that Mrs King then stated that the claimant was not qualified to adequately do her job. It follows that the Tribunal does not accept the claimant’s contention that in saying this Mrs King was not only disrespectful but was also unprofessional. It is considered more likely that that was an inference drawn by the claimant, which is possibly understandable given that the discussion was heated. That also has to be seen in the context of the exchange of emails between Mrs King and the claimant referred to above. It is apparent that Mrs King was frustrated and no doubt felt that she needed to make clear that her assessment of the capabilities of Hermes should have priority, and did so quite firmly. That is not to say that she was wrong in that opinion and Mr Power confirmed in evidence that the claimant’s proposal was worse than not workable and would have led to chaos; hence Mrs King’s strength of feeling. Especially given the differentials between the claimant and Mrs King’s team in terms of experience and skills, however, it is easy to see how something said firmly or sharply to the claimant (who the Tribunal considers is clearly a sensitive person) in the midst of a heated discussion could have caused her to think that she was being belittled and disrespected but that subjective opinion is not supported by the evidence of the other participants in the meeting referred to above.
- 6.19 Notwithstanding these findings of the Tribunal in relation to what Mrs King said to the claimant and how the claimant reacted, the Tribunal finds that in equivalent circumstances (including, for example, that Mrs King had worked for the respondent for 27 years and been in her current role for some 2½ years whereas the claimant had only five months’ experience of a role that was completely new to her) Mrs King would have conducted herself in precisely the same way in relation to any person of any race, colour,

nationality, ethnicity or sex who was behaving as was the claimant in the Teams meeting.

- 6.20 On the evening of that Teams meeting, the claimant sent an email to Mr Power (237) informing him (misleadingly in the opinion of the Tribunal) that Mrs King saw no added value in updating the contacts on Hermes as a result of which they were now late on delivering the corrective actions. The following morning Mrs King wrote to the claimant (copied to Mr Power) informing her that she did not appreciate her “voiced concerns and desire to find a mutually acceptable outcome to be twisted and misrepresented in this way” (237). She continued that she had set up a call at 10 to discuss the action further and also the Teams call the previous day “and how this was handled”. The claimant declined that 10 o’clock call.
- 6.21 Later that morning the claimant replied to Mrs King at some length (235). Having described her background as “a legal professional in the City” as a result of which she was “very adept at deciphering someone’s position on a matter” she set out her view that there was no misrepresentation or twisting of words. In essence, the claimant continued to focus on implementing the outstanding action which she said Mrs King, as sector lead, was required to do. The claimant’s email then continued on what she described as “a personal note”. She noted that people come from different backgrounds but mutual respect is fundamental, inherent in which was treating someone how they want to be treated. She referred to having said during the Teams meeting that she thought that Mrs King was disrespecting her and commented that when she had apologised for the claimant’s feelings that was not an apology but was akin to the common trope of celebrities causing gross offence but then, instead of acknowledging their responsibility, attributing the damage it causes to the other person receiving it poorly, which she maintained was “the worse form of gaslighting”. The claimant then referred again to the Teams meeting and how she considered Mrs King had cut across her such that she did not get the opportunity of explaining why what Mrs King was doing was causing offence. That being so, she set out her position in some detail:
- 6.21.1 This was an audit requirement and her unwillingness to change her position in the face of Mrs King’s apparent opposition was not disrespect.
- 6.21.2 She had interjected when Mrs King had tried to involve others because “there is no room to lobby an alternative position”, although she did respect Mrs King’s right to dissent.
- 6.21.3 As a black woman she was very conscious not to fall into the stereotype of ‘the angry black woman’ and, as such, like many black female professionals she could not show her anger/discomfort/annoyance in the way other women can. She suggested that Mrs King could not fathom how frustrating it is to go through life “hyper-aware of how your coming across” and explained that her “morals and ethics are such that I am hyper aware of how I

speak to, and about, other women in the workplace, for obvious reasons”, which she appreciated might be unique to her. She asserted that Mrs King had belittled her the previous day and had done so in the presence of male colleagues.

The claimant concluded her email, “Moving forward, I will not be disrespected, belittled, or told that my professional background somehow makes me ill-equipped to do my job.”

- 6.22 Mrs King’s evidence was that she had been extremely surprised and upset by the claimant’s email and could not understand what she had said or done that had prompted such a reaction. She replied to the claimant that she found her email and continued communication “offensive in the extreme” and would discuss matters further with Mr Power (235). Mrs King also forwarded the claimant’s email to Ms Haq, her HR Business Partner (243), as she was considering making a formal complaint, and to Ms Hudson (249).
- 6.23 Having received copies of the emails referred to above Mr Power spoke to Mr Szabo and Mr Johnson who had been present during the call on 20 September: the former had said that he felt that Mrs King was a little pushy but not excessive; the latter that nothing untoward was said but that the claimant had failed to grasp the issue they were trying to solve. Mr Power also spoke to Ms Haq who advised that he should hold a mediation call involving Mrs King and the claimant, which he arranged for that afternoon, 21 September.
- 6.24 Mr Power took manuscript notes of the mediation call (253) but they are very brief and not particularly helpful. The Tribunal rejects the claimant’s evidence, however, that they “are extremely concerning and have a distinctly racist undertone”. During the mediation the positions of the two women continued as before.
- 6.24.1 Mrs King explained that she was 100% behind the audit action but had issues with the solution proposed by the claimant and thought there was a better approach.
- 6.24.2 The claimant did not consider that the solution was open for discussion and that due to her legal background she saw deadlines as fixed. The claimant explained that she felt disrespected and suggested that the difference over what was disrespectful may have been down to cultural differences adding that as a black woman she could not speak as freely as others can. The claimant took issue with Mrs King’s apologising for her feelings commenting that that was a non-apology and that an apology should only be used for admissions of guilt.
- 6.25 During the mediation call an issue arose as to the responsibilities of the claimant. She maintained that she was responsible for governance and compliance whereas Mr Power and Mrs King were of the view that it was

more of a collective responsibility; they were all accountable. As the claimant explained to Mr Duffy during her grievance interview on 1 November 2021 (352), as is clear from her job title she is the person who was “accountable as Head of Governance and Compliance in Contract Management, as the lead, essentially” (371). This point is expanded upon in the claimant’s formal grievance that she submitted on 24 September 2021 (263). During his grievance interview with Mr Duffy, Mr Power explained that he agreed that it was the claimant’s responsibility to lead audit and compliance but, “equally, all of the senior teams’ responsibility to agree on the best solutions to recommendations” (444). In the notes that Mr Duffy made following the grievance interview he conducted with Mrs King it is recorded that Mrs King had said that they were all accountable, the claimant had responsibility for ensuring they were acting on the action but it was not her responsibility to decide how to discharge the action, which was a collective responsibility (525). Those notes represent Mr Duffy’s summary of the recording of that interview (417) in which Mrs King explains in more detail that she was making the point that it was a collective responsibility, they were all accountable: the claimant “is accountable to the audit team to say, yes, contract management have, tick in the box, done something. But ultimately, I am also accountable if my contract fails” (434/5).

- 6.26 The Tribunal accepts this distinction and finds on the evidence before it that everyone at this level had some responsibility for compliance. The claimant was responsible as what might be referred to as ‘timekeeper’ or process manager for ensuring that contract management was acting on the required action (in which she was reinforced by her legal background) but she was not the person who was responsible for determining what the process should be. It is clear that there was a real divergence of views, the context for which included Mrs King having significant experience and knowing what she was doing and what needed to be done and the claimant, new in her role, being keen to get the job done. Her focus was on obeying the letter of the required action rather than its spirit even if that was not in the best interests of the business, which was Mrs King’s focus. Hence the claimant felt that Mrs King was questioning her role, authority and legitimacy.
- 6.27 The claimant’s evidence is that during this call Mrs King shouted at her. That is not accepted by Mrs King although she did explain that the claimant continually interrupted and spoke over her and she was left to try to continue talking or stop talking altogether; and she accepted in her later meeting with Mr Duffy that she had “snapped” at the claimant during this call. The claimant stated that when she asked Mrs King to whom she was speaking she replied that she was speaking to the claimant and would speak to her in the manner she likes. Mrs King expressly denied that. In this regard, in her witness statement the claimant explained, “Due to the racist history of the country, and the former British colony which I come from; there is a long history of white people speaking to black people in a disrespectful and inferior tone. I come from the last decolonised country in the Commonwealth. As a Caribbean person, living both in Britain and in the

Caribbean white people often feel empowered to speak to black people in a manner in which frankly they would not speak to another white people. I believe this is one of those occasions. Helen Kings' utterance throughout this interaction was steeped in anti-black racism."

- 6.28 Taking account of all the evidence, particularly as summarised above, the Tribunal accepts Mr Power's assessment of the situation as at the end of the mediation call that this was a case of two people who could not see the view point of the other. The claimant did not understand the technical issue that was being discussed during the Teams meeting, felt that Mrs King was challenging her and felt threatened in front of her colleagues but that any disagreement was not related to the claimant's race.
- 6.29 In her witness statement, referring to Mr Power's notes of the mediation call, the claimant denied that she had been aggressive. Her evidence was that, on the contrary, she had left the call crying from being humiliated. She continued, "The characterisation of black people as "angry" and "aggressive" has existed since the first enslaved Africans were brought to the Americas in the 1600s. The narrative of the "angry black women" has been industriously pushed through the media and societal teaching. I am so accurately aware of this racist stereotype, that I acknowledge it in my email to Helen King, and asserted that even when she humiliated me in front of our colleagues I felt that I could not react in a way a white colleague would, because I am a black person."
- 6.30 Mr Power spoke to both women after the mediation call and found them to be upset. He suggested that the claimant took the rest of the day off and she also remained absent the following day because of the distress. Mr Power spoke to the claimant when she returned to work and she explained that she felt that she had been treated that way because she was a black woman. Mr Power expressed his surprise at that and explained that Mrs King was always the one who championed diversity and inclusion, colleague well-being and employee engagement. The claimant remarked that Mrs King should have respected her as a black woman, particularly on a call with male colleagues. She explained microaggressions and some of her experiences of racial prejudice.
- 6.31 The claimant raised a formal grievance on 27 September 2021 (261) in respect of which Mr Duffy was appointed as investigating officer. In his witness statement he summarised the claimant's allegations (drawing upon a summary of the key issues to be investigated that he had recorded following the investigation meeting with the claimant (389)) as follows:
- 6.31.1 Mrs King was disrespectful towards the claimant on a call on 20 September 2021 in front of other colleagues and this disrespect was based on racial bias.

- 6.31.2 In her email of 21 September, Mrs King disrespected the claimant when she said that she found continued communication with the claimant offensive in the extreme.
- 6.31.3 Mrs King disrespected the claimant during the mediation call on 21 September when she was dismissive of the claimant's professional background and used an intentionally racist approach to disrespect the claimant's responsibility in her role.
- 6.32 On 13 September 2021 one of the respondent's employees, Mr Cope, telephoned Mr Power enquiring if there were any vacancies in the Contract Assurance Team as he had been placed at risk of redundancy. Mr Power replied that there had been a vacancy in the team since July 2021 and asked Mr Cope to send in his CV, which he did (286). Mr Cope had 20 to 30 years' experience in Contract Management and had extensive knowledge of governance and compliance, working for many years in second-line audit so he appeared to be an excellent fit for the vacancy. It was nevertheless posted again on the respondent's online system to ensure fairness. Mr Power spoke to two senior managers who had previously worked with Mr Cope and both highly recommended him. On 12 October Mr Power consulted Ms Hudson, Ms Haq and Mr Wills about appointing Mr Cope and they also discussed the merits of changing the reporting line within the team. They all agreed that if Mr Cope were to be appointed it would be sensible for the claimant to report into him so that he could provide her with additional support and development.
- 6.33 On 13 October Mr Power spoke to the claimant and explained the above situation to her. There is a conflict of evidence between the claimant and Mr Power about what was said during that conversation.
- 6.33.1 The claimant's evidence that she was relieved to learn that there would be someone else joining the governance team but when Mr Power asked how she would feel about reporting to that person she had responded, "how would you feel if I resigned". She stated that it was a demotion to which Mr Power had responded that she would keep her job title and salary. The claimant replied that this would be a change of hierarchy and thus a demotion. The claimant went on to assert that due to the racism she had experienced she had considered resigning but would wait until that Friday, 15 October 2021.
- 6.33.2 Mr Power's evidence was that he had explained his intention that the claimant would report into Mr Cope who would be able to offer her more support and expertise than he could, which was the best decision for her development and long-term success. The claimant had replied that she had understood why he was making the change and that it would be good to get someone who had such experience. She asked whether it was a demotion but Mr Power explained that it was not. While she would be reporting to the new person, her career level, role code, benefits etc would stay exactly the same. At that point the

claimant started giggling and said that she had already decided to submit her resignation later in the week but that now was the right time to tell him. She said that following the issue with Mrs King she could not see a way for her to continue to work in the business. Being disappointed to hear this Mr Power asked her to reconsider, told her that there were a lot of people who wanted to see her succeed and asked her to speak to her mentor, Mr Bissex, before she finalised her decision. He offered the claimant a number of options including employment elsewhere within Contract Management or the respondent generally, or he would try to get her a role in the BT Legal team if that was what she wanted. The claimant declined all options saying that she wanted to start afresh. She was not sure what but was seriously thinking about going back to the conventional legal pathway and completing her formal training. Mr Power's evidence reflects the note of the telephone call, which he says he made at the time (297/8).

- 6.34 Although making a determination in respect of such conflicts of evidence is never easy, the Tribunal has significant experience in this connection. It duly considered and gave due weight to all the above evidence and the documents relating to it, and particularly Mr Power's note of the telephone call referred to immediately above. In cross examination the claimant twice stated in relation to that note, "All that's a lie – it never happened." Although taking note of the claimant's contentions, having heard Mr Power's evidence and explanations it accepts that that note is a contemporaneous record made by Mr Power of the telephone call that he had with the claimant on 13 October. As such, the Tribunal considers that note to be persuasive. That being so, it prefers the evidence of Mr Power, in which he draws from that note, and accepts that evidence.
- 6.35 In relation to the above telephone conversation on 13 October, which the claimant contends amounted to her being demoted, the Tribunal records that in cross examination she confirmed that she did not suggest that that demotion had been racially motivated, "my case is that I was demoted due to the victimisation because of my grievance".
- 6.36 The claimant submitted her resignation on 15 October 2021 (309). She explained, "My resignation comes as a result of experiencing what I believe to racial discrimination from one of my colleagues, Helen King." She continued that although she had hoped to continue in her employment with HR sorting things out by the grievance procedure, she felt "that Ms King has made this impossible." Finally, as she said she had discussed with Mr Power, "this ordeal has had a hugely detrimental effect on my Mental Health", which she detailed. In conclusion, the claimant stated, "I believe my position at BT to be untenable." The claimant added that she would be working her three-month period and took the opportunity to state that Mr Power and Ms Hudson had "been amazing professional mentors".

- 6.37 Returning to that matter of the claimant's grievance, after initially contacting the claimant on 19 October by telephone Mr Duffy wrote to her that day (314) inviting her to attend a meeting via Teams which, due to intervening half term holidays, he arranged for 1 November 2021.
- 6.38 While Mr Duffy had previous experience of investigating disciplinary issues and grievances and had completed his training on diversity and inclusion, as he had not previously dealt with a racial issue and was conscious of being a white male he wanted to try to get the perspective of someone who was a black female. He therefore contacted one of the respondent's Diversity and Inclusion Leads, Ms Osewa-Edia, so that he could ask questions relating to racial bias and fully understand the claimant's case. The Tribunal considers that it was right and proper for Mr Duffy to seek such guidance especially in light of his evidence as to his experience. Additionally, is relevant to the claimant's evidence that the appointment of Mr Duffy as investigator surprised her little "as Mr Duffy is a white man who from conversations we had had before was not enlightened about the nuances of race and the experience of colleagues colour in the organisation".
- 6.39 The grievance meeting duly took place on 1 November 2021 via Teams with the claimant being accompanied by a colleague, Mr Wilson, who worked as a Diversity and Inclusion lead within the respondent's Technology and Corporate Units division. By consent, the meeting was recorded (352) and Mr Duffy also made notes (385). The claimant set out the background of the email exchanges leading up to the meeting on 20 September 2021 during which she explained that there were racial microaggressions, which she clarified were the statement by Mrs King that she did not have the experience and the manner in which Mrs King had spoken to her. When asked, she confirmed that her view was that Mrs King had said what she had said because she was a black woman. The claimant then provided her account of the mediation call and, when asked, confirmed that Mrs King's questioning of her responsibilities was another example, in her view, of a typical racial trope; a micro-aggression (372). She also asserted that when she had tried to explain what could amount to being disrespectful Mrs King had responded, "stop trying to control the way I speak" (373). At the end of the meeting the claimant confirmed that she was happy that she had been able to put everything across that she wanted to use as part of the investigation (383).
- 6.40 Mr Duffy then produced a summary of the discussion of the issues at the meeting and concluded by setting out a list of key issues to be investigated (383), which the claimant confirmed. Those issues are those set out at paragraph 6.30 above but, additionally, the claimant had raised a fourth issue during her initial call with Mr Duffy on 1 November that Mr Power had "delivered a lack of support" in the following ways: on the mediation call not challenging Mrs King; not supporting the claimant's responsibility for compliance; stating that if the claimant started a black initiative Mrs King would be the first to join (gas lighting); refusing to raise a



formal case with HR; demoting the claimant following her raising a formal grievance based on racial prejudice (389). Mr Duffy's evidence in his witness statement was that he addressed these points as part of the second grievance outcome because the claimant raised them formally in writing as part of her second grievance. Having considered the claimant's second grievance, however, the Tribunal notes that the claimant did not in fact raise these matters "in writing as part of" that second grievance; always accepting that there may have been a related document that is not before the Tribunal in which the claimant did raise these matters in writing. Instead, it appears to the Tribunal that the claimant raised these matters orally at the grievance meeting that was held on 1 November and, she having done so, Mr Duffy then took them into account and dealt with them as part of the second grievance.

- 6.41 As part of his grievance investigation, Mr Duffy spoke to Mr Johnson, Ms Groundwell and Mr Szabo as recorded above. He also spoke to Mrs King via a Teams call on 2 November 2021. As he had done with the claimant, Mr Duffy recorded that call (417) and made his own notes (522). As Mr Duffy said in evidence, it is apparent from those records that in relation to the Teams call on 20 September he challenged Mrs King on several occasions as he thought appropriate, which the Tribunal is satisfied demonstrates that he approached matters with an open mind. Additionally, the Tribunal is also satisfied that concessions made by Mrs King that she had stated that the claimant was not a contract manager, that she had snapped at the claimant during the call on 20 September and her confirmation that she had not offered an apology to the claimant during the call on 21 September but had only said that she was sorry the claimant felt as she did lends credibility to her account overall; by way of example, given that Mr Duffy noted that Mrs King was clearly worried about the allegations that had been raised against her, it would have been easy for her to have maintained that she had intended what she said to be a genuine apology. Finally, Mr Duffy also spoke to Mr Power on 3 November (442) noting, amongst other things, that when Mrs King had said that she did not care what the claimant's professional background was, that was because her background was not relevant to the situation.
- 6.42 Having spoken to all relevant witnesses, Mr Duffy contacted Ms OsewaEdia again on 8 November 2021 and explained to her the allegations made and an overview of the evidence he had gathered. His primary intention was to understand, from her perspective, if she considered that racism and in particular racial micro-aggressions were a likely component to the disrespect of which the claimant had complained.
- 6.43 Ms Osewa-Edia wrote to Mr Duffy that day (451). She explained that from what she had heard so far it was difficult for her to assess whether the disrespect that was complained about was based on racism. She continued, "To really make that judgement, we'll need more information:

- Has the senior manager been accused of racism in the past by other colleagues?
- Has the complainant previously complained about the senior manager being racist to them?
- Have witnesses corroborated the complainant's version of events?"

6.44 On the basis of the evidence before the Tribunal, the answers to each of those three questions is, No. As to the third question, although the Tribunal is alert to the fact that the witnesses on the Teams call on 20 September were all members of Mrs King's team and may have been inclined to support her, as set out more fully above, their assessment of the exchanges between Mrs King and the claimant included as follows: Mr Johnson referred to conflict but did not think that anyone had been disrespectful and if Mrs King had been out of order he would have probably pursued that with Mrs King and the claimant and/or Mr Power; Ms Groundwell referred to the conversation becoming heated; Mr Szabo expressed his opinion that Mrs King had not offended the claimant at any point and, when she became upset had tried to comfort her.

6.45 Ms Osewa-Edia concluded her email of 8 November 2021 with the following comment (452), which the Tribunal considers to be sound advice:

*"While it is difficult to assess whether the disrespect was based on racism, we do need to recognise that the complainant interpreted it this way so lessons should be learned from this case. It would be good to ensure that the senior manager is aware of the following:*

- *Senior colleagues need to be aware of power dynamics in the workplace. Statements that are made by senior colleagues about junior colleagues, especially in a hierarchical organisation – and in the presence of other colleagues – carry a lot of weight, and can have a potentially damaging effect on the reputation of much junior colleagues.*
- *While the senior manager might feel that their utterances were not disrespectful and racist, the complainant certainly thought so. It is recommended that they remain conscious of how they communicate with other colleagues in future."*

6.46 As is apparent from his letter to Mrs King of 22 December 2021 (623) (to which the Tribunal returns below), Mr Duffy took that advice on board, which the Tribunal considers shows that he adopted a balanced approach to investigating the claimant's grievances.

- 6.47 On 19 November 2021 Mr Duffy conducted another Teams call with the claimant (again accompanied by Mr Wilson) as he wanted to follow up, as part of his investigation, on why she had chosen to resign and the suggestion that she had been demoted (536). Having done so, he also spoke to Mr Power that day to follow up on points the claimant had raised and particularly to understand the rationale for bringing Mr Cope into the team (446). In this connection Mr Duffy also spoke to Mr Wills (507/514), Mr Bissex (516/520) and Ms Haq (546/553). The Tribunal particularly notes that Ms Haq explained that the word “demotion” would not have come up at all during the call between Mr Power and the claimant because “Demotion is a formal sanction, typically as a result of sort of a disciplinary or something” and that “demotion is a formal outcome”. Demotion “is a formal output of a formal process” “it is not a line manager change”, which the respondent makes “all the time across the business”.  
“That is not a demotion. A demotion is a formal process.”
- 6.48 To assist him in coming to his decision Mr Duffy also consulted the respondents “Let’s talk about race – A guide for managers – 2021” (134), training in respect of which he had recently completed (169).
- 6.49 In summary thus far, the Tribunal considers that Mr Duffy carried out an extremely thorough investigation, many aspects of which could be said to be exemplary. As recorded above, the Tribunal particularly notes that he made the effort to consult with Ms Osewa-Edia and did so in order to ensure that he could fairly consider the claimant’s grievance.
- 6.50 The claimant presented her second grievance on 29 November 2021 (574). Having set out the background of the first few months of her employment by the respondent, which she referred to as a “Baptism by Fire”, the claimant turned to the telephone conversation with Mr Power on 13 October. The Tribunal has referred to and made its findings of fact in relation to that telephone call above. It is nevertheless appropriate that what the claimant set out in her grievance should be recorded here. She stated that Mr Power had informed her that a new person would be joining the team and he would like the claimant to report to them. The claimant said that she had responded that this would amount to a demotion. She stated that the problem was two-fold: first she had “never been performance managed/failed mandatory training/or being told that my performance is otherwise subpar”; secondly, just over three weeks prior she had complained about “racism discrimination” and the demotion “prima facie looks retaliatory.” She concluded, “In response to the prospect of demotion, I handed in my resignation on 16<sup>th</sup> October 2021.”
- 6.51 On 17 December 2021 (586) Mr Duffy invited the claimant to attend a meeting with him, via Teams, on 21 December to discuss her second grievance. That meeting duly went ahead with the claimant again being accompanied by Mr Wilson. As previously, the meeting was recorded (589)

and Mr Duffy made additional notes of the discussions (600). The claimant set out the context of her employment and the matters that she had raised in her first grievance. She then moved on to the conversation with Mr Power on 13 October explaining, first, that she had not been provided with the tools necessary to do her job correctly and had to work with Mrs King who is “racially discriminatory” and in respect of which Mr Power had been unwilling to give her support. In essence, the claimant explained that having being told about Mr Cope joining the team she asked for clarification of whether she was being demoted and had responded, “what do you think if I resign?”. She explained that she had never been performance managed and it had never been said that her work was sub par. As such, she thought it looked retaliatory because she had raised a racial discrimination claim. There was also a backdrop of disability in that she had disclosed to Mr Power that she had mental health issues, anxiety and depression. The claimant explained that as a result of her grievance she sought financial compensation for racial discrimination and victimisation, and confirmed that that would be dealt with through ACAS.

6.52 Mr Duffy arranged a call with the claimant on 22 December 2021 to inform her of the outcome of her first grievance, which he followed up in a letter to her that day (613) enclosed with which was a very detailed document setting out the key areas that he had investigated and his findings in each case (616). In essence, Mr Duffy stated as follows:

6.52.1 He had found insufficient evidence to uphold the alleged breaches of relevant policies of the respondent.

6.52.2 He found no evidence to uphold the complaint that Mrs King had disrespected the claimant based on racial prejudice.

6.52.3 In relation to the call on 20 September he had found that Mrs King did not disrespect the claimant or take a conscious or unconscious racist approach.

6.52.4 He had concluded that Mrs King did not disrespect the claimant in the email exchanges on 20/21 September but believed that the interaction between both people was generally unhelpful in trying to resolve the situation.

6.52.5 He found that Mrs King’s comments on the mediation call about the claimant’s professional background were ill-considered and had had a detrimental impact on the claimant as a more junior manager in BT. As to the claimant’s assertion that Mrs King had asked her to stop trying to control how she spoke, Mr Duffy was unable to make a conclusive finding as different accounts of this aspect had been given by the claimant, Mrs King and Mr Power. He did, however, find that Mrs King’s choice of words was unprofessional and did not help to diffuse the situation, and he encouraged her to consider her use of language in the future. That said, he did not believe that Mrs King made the statement “based on conscious or unconscious racial bias”, rather it was said out of frustration (621).

- 6.52.6 He had made recommendations but was not at liberty to share those relating to other individuals but, regarding the claimant he recommended that she “should reflect upon her approach and ensure that she approaches situations in an open and collaborative manner.” (614).
- 6.52.7 He informed the claimant of her right to appeal any part of the above outcome
- 6.53 Also on 22 December Mr Duffy wrote to Mrs King to inform her of his decisions in respect of the claimant’s grievance (623) and again attached the document setting out the key areas he had investigated (625). Mr Duffy’s letter is in similar form to that which he had written to the claimant but he also recommended that Mrs King should consider the approach and language that she uses when dealing with more junior colleagues and how she can better diffuse challenging conversations.
- 6.54 By letter of 23 December 2021, the claimant lodged a grievance appeal (630) in respect of which she set out four specific grounds as follows:
- 6.54.1 Competence – specifically that Mr Duffy had little knowledge about insidious forms of racism (particularly micro-aggressions experienced by the members of the black community and other issues about being black within the workplace) and their history.
- 6.54.2 Understanding – in his outcome letter Mr Duffy had made no reference to any forms/allegations of racial micro-aggressions that she had made, had implied that a finding of racial discrimination is predicated on intent and did not “appear to understand what a racial micro-aggression is, how it manifests, and how black people experience racism within the workplace.”
- 6.54.3 Professionalism – she had asserted to Mr Duffy that in the absence of a finding of racial discrimination, Mrs King’s behaviour still fell below a professional standard in shouting at the claimant and, when challenged, asserting that she would speak to her in the manner she chose; and the fact that she is a black woman and Mrs King is white “makes this intrinsically a racial issue.”
- 6.54.4 Victim Blaming – the respondent had not created a safe environment and had failed to protect her; instead, “as is common in these situations, a black person has been blamed for the racism they have received.”
- 6.55 The claimant closed her letter by asserting that the respondent “has an open culture of racism. This is not only reflected in its attrition of black staff members, but the open white supremacist ideologies which staff members have shared on the intra-net. BT is not a safe place for colleagues, and this is my experience.”

- 6.56 Mr Duffy wrote to the claimant on 11 January 2022 to inform her of the outcome of her second grievance. He enclosed a copy of his “Investigation Summary” (638). Mr Duffy’s findings in relation to each of the points raised by the claimant were as follows:
- 6.56.1 The claimant had felt that Mr Power did not challenge Mrs King on the mediation call but his role was as mediator, to support a constructive conversation and resolution.
  - 6.56.2 The claimant had complained that Mr Power supported Mrs King’s view on responsibility for compliance, audit and governments but Mr Duffy did not believe that this was a lack of support but was a genuine understanding from Mr Power that the claimant had responsibility for leading on those areas and the practical actions were to be agreed collectively by the team.
  - 6.56.3 Mr Power had denied saying that if the claimant started a black initiative Mrs King would be the first person to join albeit he accepted that he did say that if there was something to be done regarding wellbeing, in his experience, Mrs King is always the first person to get involved. As this had been a conversation between only the claimant and Mr Power, Mr Duffy commented that it was impossible for him to be sure what was said.
  - 6.56.4 The claimant had complained that Mr Power had refused to raise a formal complaint with HR but that was not his role; it was her responsibility to do that, which she had done.
  - 6.56.5 The claimant had asserted that she had been demoted following her raising a formal grievance based on racial prejudice. Mr Duffy set out his findings in this respect at some length (639). In particular he recorded the claimant saying that while she had been considering resigning due to the issues with Mrs King it was the decision to move her to report to another person that cemented her decision; it was ‘the straw that broke the camel’s back’. This had suggested to Mr Duffy that the claimant may not have decided to resign before the conversation on 13 October in relation to what she saw as her demotion. Importantly, Mr Duffy had been unable to find any written evidence of conversations taking place with the claimant about gaps in her performance albeit that Mr Power was adamant that such conversations had taken place and that the claimant had been fully aware. Noting the lack of such evidence Mr Duffy considered that the decision to have the claimant report to the new person to provide support to her was “of some concern” and was in breach of the respondent’s expectations but it did not “equate to the demotion as noted within the complaint” (643).
  - 6.56.6 Mr Duffy had identified two differing accounts of what was communicated by the claimant to Mr Power regarding her mental health but he had no way of being sure what she had told Mr Power about her disability.

- 6.57 Mr Duffy recorded his decision as partially upholding the claimant's complaint. He concluded that Mr Power did provide a satisfactory level of support to the claimant and he commended the support specifically provided by Mr Wills and Mr Bissex. He recorded

"I am, however concerned by the decision to move Ashleigh to report to a new member of the team, in particular as there is no written evidence that any performance concerns were raised or discussed with Ashleigh. The failure to document any performance gaps to Ashleigh is in breach of our expectations and is fair to conclude led to Ashleigh not fully understanding the rationale behind the resulting decisions. This does not however equate to the demotion as noted within the complaint.

I have found no evidence to uphold the allegation that any actions taken by Kieran or the business were in direct response to Ashleigh's earlier grievance."

- 6.58 Mr Duffy concluded his letter by offering the claimant the opportunity to rescind her resignation, which he urged her to consider, but the claimant replied on 14 January 2022 that she did not intend to rescind her resignation.

- 6.59 Although Mr Duffy had reminded the claimant that she had a right to appeal his decision it appears that she did not do so.

- 6.60 There was some to-ing and fro-ing in relation to the conduct of the claimant's appeal with regard to the outcome of her first grievance while efforts were made "to ensure the appropriate person is appointed" (652). Ultimately, however, Ms Ikwuagwu (described as being Director/Wholesale Customer Solutions) was appointed. In her outcome letter, Ms Ikwuagwu described herself "as a black senior leader within the BT business". She conducted a call with the claimant on 14 April 2022. In the notes of that call Ms Ikwuagwu recorded that the claimant had two grievances (racism and victimisation) and had also raised that the respondent proposed to demote her three weeks after raising the racism issue. As that was not one of the claimant's grounds of appeal in her appeal letter the Tribunal assumes that the claimant raised it with Ms Ikwuagwu during their call on 14 April. Ms Ikwuagwu then records the four grounds of appeal set out above and what the claimant had said about each one before concluding her record by setting out other considerations that the claimant had raised with her. Ms Ikwuagwu submitted the draft notes (677) to the claimant which she approved subject to a few points of detail (679), which Ms Ikwuagwu incorporated in the final version of the notes (682).

- 6.61 The Tribunal finds this to be comprehensive and succinct notes of the claimant's concerns that were discussed at the grievance appeal.

6.62 Ms Ikwuagwu wrote to the claimant on 5 December 2022 attaching the outcome of her grievance appeal. Neither of these documents was in the bundle before the Tribunal but they were submitted on the first day of the Tribunal hearing. For ease of reference, the Tribunal has continued the numbering of the bundle and numbered the email as page 696 and the outcome letter pages 697 to 709. Ms Ikwuagwu set out the areas of the claimant's grievance that she had investigated and relevant information that she had considered as part of her investigation: this included the view of ACAS regarding micro-aggressions and the respondent's Our Standards of Behaviour procedure and Diversity & Inclusion policy. Ms Ikwuagwu then detailed her finding in respect of the claimant's four grounds of appeal.

6.62.1 She considered together the first two grounds of Competence and Understanding. She detailed the steps that Mr Duffy had taken to build his knowledge and consequently his competence to hear the case including his several conversations with Ms Osewa-Edia and found that "his competence and understanding in arriving to the findings and outcome of the original grievance was sound." Ms Ikwuagwu particularly considered whether Mr Duffy had placed sufficient focus and consideration on micro-aggressions in assessing the grievance. She was satisfied that he was aware of the distinction between overt racism and more subliminal micro-aggressions and had specifically considered three different potential microaggressions in assessing the case and arriving to his outcome. Interestingly, Ms Ikwuagwu expressed her assessment of the interaction between Mrs King and the claimant during the Teams meeting on 20 September as follows: "I find it most probable that her [*Mrs King's*] words and actions stemmed from frustration of feeling that her preferred resolution to the audit was not being accepted by a more junior colleague despite her overriding authority as the senior manager". As already intimated above, having considered all of the evidence before it, the Tribunal shares that opinion.

6.62.2 Ms Ikwuagwu then considered the third ground of appeal of Professionalism. She found that both Mrs King and the claimant carried out certain actions and behaviour that lacked diplomacy and professionalism. She was critical of Mrs King as the more senior colleague and undertook to ensure that remedial action identified by

Mr Duffy was addressed. She was also critical of the claimant and offered advice on what would have been the best course of action for her to take. It is again interesting that she expressed her opinion as follows, "Unfortunately as Ashleigh felt as though she was the guardian of the audit process and outcome she was focused on compelling adherence to the remedial action and taking this unwavering approach is not always productive in a corporate workplace where sometimes diplomacy and respecting hierarchy yield better results." Once more as already intimated above, having considered all of the evidence before it, the Tribunal shares that



opinion, which reflects what it has described above as the claimant and Mrs King approaching the meeting from different angles: “the claimant determinedly focused on implementing corrective actions as a matter of some urgency; Mrs King focused on achieving a workable solution.” Reflecting upon this, the Tribunal finds, in essence, that it was not for the claimant, whatever her background or ethnicity, to try to force Mrs King and the team that she managed into a course of action that they were far from convinced would provide a satisfactory solution.

6.62.3 Finally, Ms Ikwuagwu considered the fourth ground of appeal of Victim Blaming. She again expressed satisfaction with the investigation Mr Duffy had undertaken and that in his outcome letter he had sought to take a fair and reasonable view of the case. She repeated that both Mrs King and the claimant could have approached the situation differently but did not find that the claimant was to be blamed for the way Mrs King behaved, although she considered that she could learn from the situation. She found that Mrs King had a greater responsibility to display diplomacy, patience and professionalism but was satisfied that remedial action was identified to address that in Mr Duffy’s outcome. In her covering letter to the claimant, Ms Ikwuagwu stated, “I recognise that going through a process such as this can be difficult and would welcome a call if you’d like to discuss my investigation further” (696). On the evidence before the Tribunal it would appear that the claimant did not take up this offer.

6.63 Ultimately, for the reasons stated in the Decision section of her outcome letter (709), Ms Ikwuagwu found that the overall outcome of Mr Duffy’s findings was fair and reasonable. As such, she found the claimant’s appeal to be unsuccessful. She nevertheless recorded her understanding of the impact on the claimant of her interactions with Mrs King and recorded her view that the respondent could learn from what had occurred and recommended a series of remedial actions, which she said she would ensure were actioned.

## **Submissions**

7. After the evidence had been concluded the claimant and Ms Smith made submissions by reference to written skeleton arguments, which addressed the matters that had been identified as the issues in this case in the context of relevant statutory and case law some of which was cited. It is not necessary for the Tribunal to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from our findings and conclusions below. Suffice it to say that we fully considered all the submissions made and the parties can be assured that they were all taken into account in coming to our decision. That said, there are set out below certain of the key points made by the claimant and Ms Smith in submissions. Given that written skeleton arguments were produced and considered, the points set out below are drawn primarily from the oral submissions that they each made.

8. The key points made by the claimant included as follows:

*Direct discrimination*

- 8.1 Before Mrs King had made comments to the effect that I was not a contract manager and did not have the necessary insight she had already given thought to our cultural differences, meaning that I am black. So when she said those words she knew she was saying them to a black person, which meant that I was treated less favourably. Race is part of who I am. It might not have been her motive but the reason for the treatment can be said to be my race.

*Harassment*

- 8.2 When Mrs King made the comments that she made on 21 September 2021 when she questioned my role and whether I was responsible for compliance she knew that I was black. She is very articulate and what she said was said with intent to cause humiliation and create an intimidating, hostile, degrading, humiliating or offensive environment for me: to belittle me.
- 8.3 But it also had that effect, which has been grave. It was unwanted conduct and Mrs King should have known this through her training.
- 8.4 My demotion was also harassment. Mr Power gave powerful evidence saying that I should never have been offered the role. He did not want me in my role any more. There had been no performance management and Mr Duffy had said that he would have expected to see evidence but there was none. Mr Power said that he did not want to start a formal process but I would have had no objection to that. They were going to demote me in the knowledge that they were dealing with a black person. Treating me the same as white colleagues would have been treated would have been to performance manage me or have documented evidence. If equality is to reign I should have the same treatment as white colleagues.
- 8.5 My detriment was because my job changed. All the places where I would lead I would no longer be leading. This amounted to a repudiatory breach of contract with the offer of continued employment in a lesser role. Previously thinking that I might resign is not the same as resigning; no proactive steps had been taken.

*Victimisation*

- 8.6 I rely upon sections 27(2)(c) and (d). I had communicated to Mr Power that discrimination had taken place and I raised a complaint of race discrimination in the workplace; although I appreciate that my demotion came between the two.

- 8.7 I was demoted because of the protected act. In this connection, in her written “Summing Up” the claimant relied upon the findings in Robinson v Tescom Corporation [2008] IRLR 408. There was no other reason. The fact that Mr Duffy said there was no evidence supports that. There was no disciplinary process, even informal. I was hired to do the job as set out in the job description. As far as I was aware I was doing it well. I did not realise that I was being marked against metrics.
- 8.8 The incidents occurred because I was black. After complaining I suffered the detriment of demotion, which amounts to direct race discrimination, victimisation and harassment.
9. Key points made by Ms Smith on behalf of the respondent included as follows:
- 9.1 In her submissions the claimant had introduced new evidence which should be disregarded. She had also continually asserted that people had said things or accepted things when they had not.
- 9.2 Where there had been conflicts of evidence the Tribunal should prefer that of the respondent’s witnesses, which had been consistent with documentary evidence, consistent with other witness evidence, consistent with common sense and internally consistent with their own statements. This compared with the evidence of the claimant which contradicts contemporaneous documentary evidence, is not consistent with any other witness or with common sense and is internally inconsistent including that the claimant contradicted her witness statement in cross examination.
- 9.3 This case is all about motive or intent, conscious or unconscious. The claimant’s evidence repeatedly confirmed that she did not say what others’ motives were and the claim should therefore stop there.
- 9.4 To shift the burden of proof the claimant has to at the very least allege that acts or comments were because of or related to race or a protected act. In cross examination she accepted that every alleged act was prima facie not because of or related to race so her claims fail there and then.
- 9.5 Her allegations are based on a fundamental misunderstanding of the Equality Act and the case law. She seemed to say that because her race was what she entered the world with everything that was done or said to her was inextricably linked to race. That does not satisfy the test. If her argument succeeds it would be effectively saying that any act or comment made to a black person by a white person is discrimination because race cannot be removed from the equation. That is a nonsense.
- 9.6 Ms Smith then worked methodically through the list of issues as recorded in the Case Summary arising from the May Hearing, which is referred to above. The Tribunal noted each of the points that was made and need not set them out in detail here. In particular, she submitted as follows:

- 9.6.1 the claimant had not made out the factual basis of many of her allegations;
  - 9.6.2 other allegations did not amount to less favourable treatment or unwanted conduct;
  - 9.6.3 most importantly there was no evidence that any of the matters were because of or related to race;
  - 9.6.4 by reference to the decision in Madarassy, to point to a difference in treatment and a difference in characteristics is not enough;
  - 9.6.5 likewise, in every respect the respondent had a non-discriminatory reason for all the matters complained of;
  - 9.6.6 the claimant cannot shift the burden and the claim must fail.
- 9.7 As to the victimisation claim, the first act relied upon by the claimant is a protected act but the grievance needs to be read carefully to assess whether it is a protected act. Simply saying, “this is a disrespect issue which is based in racism” (264) is not sufficient. Also, the claimant accepted that the third protected act occurred after the treatment which cannot be right as something cannot be done because of something that has not happened. The claimant accepted that her terms and conditions and salary remained the same; only her reporting line changed, which is very common in BT – it is part of the culture. It is highly relevant that the claimant previously had her reporting lines flattened so when she says that she had her management job removed on 13 October 2021, that is not true. All that was happening was someone was inserted between her and her manager. The fact of the claimant’s calls being reduced would have happened regardless of whether the incoming employee was placed alongside the claimant or inserted between her and her manager. The most important thing about this claim is that Ms Groundwell is an actual comparator and she is white. There is no protected act. She was also affected by the arrival of the incoming employee, the same as the claimant. The claimant has provided no explanation as to why her demotion was because of or related to race and, even so, the respondent provided a non-discriminatory reason. The claimant was not performing adequately. The respondent understood why – the claimant had been put in a role without the necessary experience. Then, out of the blue, the employee with decades of experience needed a new role.
- 9.8 There was no breach of contract, repudiatory or otherwise. If the Tribunal does not accept that, on the unchallenged evidence of Mr Power and claimant’s own resignation letter, this was not about alleged demotion but about Mrs King; the claimant had decided to leave anyway. If that is correct the victimisation claim fails; and because there was no discrimination there can be no breach. Neither has the claimant said why this was because of or related to race. The timing of the alleged demotion was simply because the incoming employee was to be redundant and approached the team: there was no conspiracy.

## The law

10. The principal statutory provisions that are relevant to the issues in this case are as follows:

10.1 Direct discrimination - section 13 Equality Act 2010

*“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.”*

10.2 Harassment - section 26 Equality Act 2010

10.3 *“26 Harassment*

*(1) A person (A) harasses another (B) if -*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of –*

*(i) violating B’s dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(4) In deciding whether conduct has the effect referred to in subsection*

*(1)(b), each of the following must be taken into account - (a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect.*

*(5) The relevant protected characteristics are -*

*....*

*race;*

*.....”*

10.4 Victimisation - Section 27 Equality Act 2010

*“27 (1) A person (A) victimises another person (B) if A subjects B to a detriment because - (a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

(2) *Each of the following is a protected act –*

....

- (c) *doing any other thing for the purpose of or in connection with this Act;*
- (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*

10.5      Section 39 - Employees and applicants

(3) *An employer (A) must not discriminate against an employee of A's (B)-*

.....

- (c) *by dismissing B;*
- (d) *by subjecting B to any other detriment.*

10.6      Section 40 - Employees and applicants: harassment

(1) *An employer (A) must not, in relation to employment by A, harass a person (B)-*

- (a) *who is an employee of A's*

10.7      Section 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.*

10.8      Section 212 - General interpretation

(1) *In this Act -*

.....

*“detriment” does not, subject to subsection (5), include conduct which amounts to harassment;*

### **Application of the facts and the law to determine the issues**

11. The above are the salient facts relevant to and upon which the Tribunal based its judgment having considered those facts and submissions in the light of the relevant law and the case precedents in this area of law. The Tribunal also had regard to relevant aspects of the Equality and Human Rights Commission Code of Practice on Employment (2011) (“the Equality Code”).
12. The Tribunal also records at this juncture some other general matters that it brought into account in coming to its judgment.
13. First, the claimant was very clear and often repeated that she was not asserting that hers was a case of overt racial discrimination such as would arise from what she described as being “a racial slur”. Instead, she maintained that she had been subjected to micro-aggressions particularly by Mrs King; as she asked rhetorically in cross examination, “was it a subtle dig giving it a racial undertone.” Micro-aggressions are explained in the respondent’s guide for managers, “Let’s talk about race – 2021” (134) in the following terms:

“Microaggressions. Casual and subtle comments and behaviours, may intend no malice but are typically quite harmful.”
14. On the basis of the evidence from all three of the respondent’s witnesses, the Tribunal is satisfied that each of them was familiar with this guide and understood the concept of micro-aggressions.
15. Additionally, in the appeal outcome letter from Ms Ikwuagwu she sets out relevant guidance from the respondent’s internal procedures and policies referred to above and also the view of ACAS regarding micro-aggressions:

“Race discrimination may not be obviously racist comments towards someone, microaggressions – small comments, questions or behaviours that are offensive or inappropriate, sometimes without the person who is doing it realising. This type of language or behaviour may not always be intended. But it can lead to someone feeling offended, unsafe of feeling like they do not belong. It can be very distressing.” (700)
16. The Tribunal brought this guidance and the claimant’s evidence in relation to it into account in coming to its decisions.
17. Likewise, the Tribunal had regard to the perceptive observation by Ms Ikwuagwu in her appeal outcome letter, “I can appreciate the considerable impact racial micro-aggressions can have on a recipient, and given the concept that “perception is reality” and if Ashleigh perceived those actions to amount to racial micro-aggressions then that became her reality and weighed heavy on her emotional and mental well-being” (706).

18. Finally in relation to this introductory section, the Tribunal records that in considering the claimant's complaints under the Act it paid attention to 'the reverse burden of proof'. In this regard the Tribunal sought to apply the guidance contained in the decision in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] IRLR 332 as approved and adjusted by the Court of Appeal in Igen Ltd v Wong [2005] IRLR 258. The Tribunal reminded itself that, in summary, this involves a two-stage approach. First, it is for the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination: see also Ayodele v Citylink Ltd [2017] EWCA Civ 1913. Only if the claimant satisfies that initial burden of proof is the second stage engaged whereby the burden then shifts to the respondent to show that, in no sense whatsoever, was the particular treatment on the protected ground. At each stage, the standard of proof is the balance of probabilities.

*Direct discrimination on grounds of race – sections 13 and 39 of the Act*

19. Adopting the order of the complaints as set out in the list of issues identified at the May Hearing, the Tribunal first considers the complaint of direct race discrimination. This requires a comparison to be made with how the respondent has treated other workers or would have treated them in similar circumstances. Section 23(1) of the Act provides that on a comparison of cases, "there must be no material difference between the circumstances relating to each case". The Explanatory Notes to the Act summarise the comparator at paragraph 91 as an actual or hypothetical person who:
- 19.1 does not share the claimant's protected characteristic, and
- 19.2 is in not materially different circumstances from him or her.
20. It is explained in the Equality Code that, "If the employer's treatment of the worker puts the worker at a clear disadvantage compared with other workers, then it is more likely that the treatment will be less favourable".
21. As stated by the House of Lords in the decision in Chief Constable of West Yorkshire Police v. Khan [2001] UKHL 48, "... it suffices if the complainant can reasonably say that he would have preferred not to have been treated differently." As was said in the decision in London Borough of Islington v Ladele [2009] IRLR 154 EAT, it cannot constitute direct discrimination to treat all employees in precisely the same way. Two other factors of relevance also arise from that decision of the EAT: first, the mere fact that an employee is treated unreasonably is not sufficient to justify an inference of unlawful discrimination; secondly, it is sufficient if a tribunal is satisfied that the prohibited ground is one of the reasons for the treatment. A similar point is to be drawn from the decision in O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615; namely, that the question is whether the prohibited grounds was an "effective cause" of the treatment.



22. In respect of the complaint of direct discrimination the claimant has not expressly identified an actual comparator and therefore relies upon a hypothetical comparator. As explained above, to construct a hypothetical comparator the Tribunal needs to have in mind a person who was in the same, or not materially different, circumstances as the claimant and then consider if the claimant has shown that such a comparator would have been treated more favourably than her. In this respect the Tribunal reminded itself of the guidance contained in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL including that it can sometimes be preferable for a tribunal, rather than being diverted into confusing disputes about the identification of the appropriate comparator, to concentrate primarily on why the claimant was treated as she was, and whether it was on the proscribed ground or for some other reason. This reflects the decision of the House of Lords in Nagarajan v London Regional Transport [1999] IRLR 572 that “the crucial question” in every case is for the tribunal to determine the reason why the claimant received less favourable treatment. The Tribunal adopted the guidance in these decisions in this case.
23. The identification of a hypothetical comparator is relatively straightforward in this case given the claimant’s repeated references to her being black and others being white; for example, the others engaged in the Teams meeting on 20 September 2021 or the other employees of the respondent who might have been perceived to be under-performing whom the claimant asserts, if they had been white, would have been taken through some form of performance management process. Thus the Tribunal finds that the hypothetical comparator is a person who is not black (the claimant has specifically referred to people who are white) in the same, or not materially different, circumstances as the claimant.
24. The acts of direct discrimination relied upon by the claimant are set out in paragraph numbered 5.1 above, which the Tribunal addresses in turn:
- Ms King asserting in the presence of colleagues that the claimant was not qualified to do her job.*
25. As recorded at paragraph 6.18 above, Tribunal has found that Mrs King did not make this assertion that the claimant was not qualified to do her job. She accepted that she had stated that the claimant was not a contract manager but that is not the same point, and she was not.
- Ms King questioning in the presence of colleagues whether it was the claimant’s job to be responsible for compliance.*
26. The Tribunal has considered this matter above, particularly at paragraphs 6.25 and 6.26. In the circumstances as found there, there is no real dispute that, given Mrs King’s different concept of the claimant’s role, which was shared by Mr Power, she did question the claimant’s role and whether it was her job to be responsible for compliance. Further, as that occurred during the mediation meeting, it occurred in the presence of a colleague, Mr Power.

*Ms King refusing to acknowledge that being disrespectful and belittling in the presence of other white colleagues to the only black member of the team could adversely affect the claimant.*

27. It is clear from the claimant's first grievance (262) that the reference in this issue is to the interaction between her and Mrs King during the course of the Teams meeting on 20 September 2021. In accordance with the Tribunal's findings above relating to the product of Mr Duffy's interviews with the other persons who attended that meeting, the Tribunal is not satisfied that Mrs King was "disrespectful and belittling" during that meeting. That being so, it was not that she refused to acknowledge that her conduct could adversely affect the claimant; rather, there was nothing for her to acknowledge.
28. That said, while not amounting to any form acknowledgement, as also found above, although Mrs King did not apologise to the claimant during the mediation call on 21 September, she did say that she was sorry that the claimant felt as she did. The Tribunal accepts the claimant's position in that regard that that amounted to something of a non-apology.

*Ms King refusing to listen/dismissing the claimant's assertions about the impact Ms King's behaviour was having on her as the only black employee.*

29. On the basis of the documents and the oral evidence before the Tribunal it is apparent the reference in this issue is to the mediation meeting on 21 September 2021. Having regard to that evidence it is clear that there was a difference of perspective in relation to which, in cross examination, Mrs King held her ground. In a way, it could be said to be strictly accurate in a literal sense that Mrs King dismissed the claimant's assertions in this respect but the Tribunal is satisfied that that was because she was firmly of the view that what she had said during the course of the Teams meeting the previous day had nothing to do with race. Mrs King's position in that regard is not determinative but in that she was supported by Mr Duffy when he came to investigate the claimant's grievances and also by Ms Ikwuagwu in the outcome of the claimant's grievance appeal. Each of those individuals made a similar finding that Mrs King, as the senior manager, ought to have adopted a more professional approach to the situation but they were satisfied that her approach had nothing to do with race and the Tribunal also finds that to be case.

*Ms King asserting that she will not be told how to speak or limited in how she should communicate with the claimant and that she will speak to the claimant as she chooses.*

30. Once more, the reference in this issue is to the mediation meeting. As Mr Duffy found when he considered this complaint of the claimant as part of her grievance, differing accounts have been given in this respect by the claimant, Mrs King and Mr Power. Mrs King's evidence is clear that she did not make this assertion; the claimant's evidence is equally clear that she did and that she was shocked by Mrs

King's response, "because as philosophers such as Rousseau emphasise, living in any society comes with rules which control our behaviour." There is thus a clear conflict in the evidence but given that Mr Power informed Mr Duffy that he thought Mrs King had said something to the effect "stop trying to control when I apologise and what I apologise for" the Tribunal accepts that Mrs King did say something to the effect as set out in this issue.

*Demoting the claimant.*

31. The Tribunal has already made certain findings above in relation to this issue of whether the claimant was demoted but now draws together those findings and other considerations it makes in this respect.
32. To recapitulate, as set out in greater detail above, the Tribunal has found that the claimant's appointment resulted from the fifth advertisement for that role and it is reasonable to infer that there was some pressure to make an appointment. The claimant did not possess the required experience but was thought to have transferable skills in respect of which she was provided with support by Mr Power, Mr Wills and latterly Mr Bissex. Despite this, there were concerns about the claimant's progress, which came to a head upon Mr Power's return to work on 20 September 2021 whereupon, at Ms Hudson's request, he began to keep notes of the claimant's performance issues. He did not, however, formalise matters as although he recognised that a wrong decision had been made in appointing the claimant he considered that the fault for that lay with the respondent. On 13 September, Mr Cope who was facing the prospect of redundancy and was highly experienced in this line of work approached Mr Power and following discussion it was agreed that he should be appointed into the Contract Assurance team and that the claimant should report to him. Mr Power made the claimant aware of this during their telephone conversation on 13 October. The Tribunal has found above that it prefers the evidence of Mr Power as to what occurred during that conversation although it considers the suggestion that this introduction of Mr Cope was to help and support the claimant to be somewhat disingenuous; on the contrary, the Tribunal is satisfied that the primary consideration was that the respondent was rather desperate to have someone capable in a senior position in the team.
33. Given all the emotion at the time it is understandable that this information came to the claimant as something of a 'red rag to a bull'. If the claimant was not performing to the requisite standard she had not been told about this, no performance planning and been put in place and she was unaware of any issues until the decision was made, first, to bring in Mr Cope and, secondly, to have the claimant report to him in which connection the respondent's managers do not appear to have taken account of the effect of this on the claimant.

34. The issue, however, is whether this amounted to a demotion. The Tribunal accepts the evidence and submissions on behalf of the respondent that the claimant's job title, terms and conditions of employment and salary would have remained the same. In the claimant's job description (76), however, it is expressly stated that the role holder will report "directly to the Senior Manager of Contract Assurance, although in many cases working directly with the CPS Director of Contract Management" and "will lead a team responsible for managed contract Governance and Compliance in Enterprise". Moreover, in the section of that job description setting out the accountabilities of the claimant's post (77) on numerous occasions the words "lead" and "accountable" are used. In cross examination Mr Power accepted that after Mr Cope's appointment the claimant would not be leading in these respects although he suggested that she would be doing the same job. The claimant put to him in cross examination that she would not be accountable and he agreed, "No, but you would be doing all the other things", and he accepted that Mr Cope would be "leading the team". Mr Power explained that he did not suggest that the claimant would be co-leader but maintained that her responsibilities day-to-day would be very similar. Mr Power also accepted that Mr Cope was to be brought in and made "accountable for deliverables". When asked by the Employment Judge whether the claimant no longer being able to access him, as her boss, directly could rankle, he fairly agreed adding, "it could be seen as a demotion." Mr Power then explained that he had not been completely comfortable in appointing Mr Cope into the team and having the claimant report to him, which is why he had approached Ms Haq for advice. He continued that while she had confirmed that it was right to do this, which gave him some support, "I still felt it might be a demotion."
35. Other evidence recorded above is relevant in this connection also. Ms Haq explained to Mr Duffy her view that demotion was a formal sanction arising typically in a disciplinary situation and that a change in line manager would not constitute a demotion, and she informed Mr Duffy that it was within the gift of management to decide upon reporting lines as there was no contractual change to anyone involved. The Tribunal has not heard directly from Ms Haq but if that was her opinion it does not agree, as although a demotion can be linked to a disciplinary matter, that is too narrow a view. On the contrary, there can be many circumstances in which a demotion is not linked to a disciplinary matter; for example, it could also be associated with issues of ill-health, performance or, in certain circumstances, a redundancy situation; additionally, the Tribunal is satisfied that demotion can occur when a new post is 'slotted into' a staff structure above an existing post-holder who is then required to report to the new post-holder. That opinion from a HR professional would, however, clearly be of influence upon Mr Power and the others who made the decisions in these respects and was also accepted by Mr Duffy who found that what occurred did not equate to a demotion.
36. The evidence of the respondent's witnesses and the submissions made on its behalf was that as the claimant's job title, terms and conditions of employment and salary would have remained the same, there could not be a demotion; in this connection the submission of Ms Smith was, "All that was happening was someone

was inserted between her and her manager – in the context of BT culture that is not uncommon.”

37. The Tribunal disagrees. What might be termed the ‘standing’ of an employee in the hierarchy of her employment, her direct access upwards through that hierarchy and the responsibilities and accountabilities that she has in the performance of her role are important considerations that go beyond more tangible factors such as job title, terms and conditions of employment and pay.
- The parties are agreed that on Mr Cope’s arrival in the team, while the claimant was not apparently positioned lower in the hierarchy than previously, in actual fact, having an extra ‘link’ or ‘step’ in the management chain would inevitably have led to a diminution in her role and responsibilities as Mr Power ultimately conceded. Whether or not changes to an employee’s job content or status amount to a demotion will depend to a large extent on whether the changes fall within the job description. Having considered all of the above evidence, not least that of Mr Power in cross examination, the Tribunal is satisfied that the changes to the claimant’s role consequential upon Mr Cope’s appointment did not fall within her job description and that the introduction of Mr Cope into the Contract Assurance team with the claimant reporting to him rather than directly to Mr Power amounted to her demotion. As such, it is satisfied that as a result of the combination of these factors (Mr Cope’s appointment and the claimant reporting to him) the claimant was demoted.

*Constructively dismissing the claimant.*

38. As in any case involving a claim of constructive unfair dismissal, the first question is whether there was a dismissal at all. Section 95(1)(c) of the Employment Rights Act 1996 provides that the circumstances in which an employee is dismissed include, “the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”
39. The decision of the Court of Appeal in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 has stood the test of time for over 40 years. It is well established that to satisfy the Tribunal that she was indeed dismissed rather than simply resigned, the claimant has to show four particular points as follows:
- 39.1 The respondent acted (or failed to act) in a way that amounted to a breach of the contract of employment between the respondent and the claimant.
- 39.2 If so, that breach went to the heart of the employment relationship so as to amount to a fundamental or repudiatory breach of that contract.
- 39.3 If so, the claimant resigned in response to that breach.
- 39.4 If so, the claimant resigned timeously and did not remain in employment thus waiving the breach and affirming the contract.

40. The Tribunal first addresses together the first two of the above questions of whether there was a breach of contract and, if so, whether it amounted to a fundamental or repudiatory breach.
41. The Tribunal has found above that the combination of the changes to the claimant's role consequential upon Mr Cope's appointment not falling within her job description and the introduction of Mr Cope into the team with the claimant reporting to him rather than directly to Mr Power amounted to her demotion. That being so, the Tribunal is satisfied that those circumstances were such as to amount to a repudiatory breach by the respondent of the term that is implied into all contracts of employment that, as enunciated in the decision in Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347, "employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee": see also the decisions in Malik v BCCI [1998] AC 20 and Gogay v Hertfordshire County Council [2000] IRLR 703.
42. In the circumstances and in light of the guidance the Tribunal draws from the above decisions, therefore, it is satisfied that when the claimant terminated her contract of employment she was entitled to do so without notice by reason of the respondent's conduct. Thus, the Tribunal is satisfied, applying section 95(1)(c) of the 1996 Act as set out above, that the claimant was dismissed.
43. The Tribunal therefore turns to consider the third of the above questions arising from the decision in Western Excavating (ECC) Limited of whether the claimant resigned in response to that breach: i.e. whether she resigned in response to having been demoted.
44. The conflict of evidence identified above as between the claimant and Mr Power about their telephone call on 13 October again comes into play in this regard. The claimant's evidence now, as set out in her witness statement, is recorded above. She maintains that it was a lack of support after experiencing racial discrimination, harassment and bullying and being told that she was unilaterally going to be demoted that led her to hand in her resignation.
45. The claimant handed in her resignation on 15 October 2021 (309). As set out above, the focus of the claimant's letter was primarily upon issues with Mrs King although she also recorded the matter of her mental health. Importantly, she did not make any statement related to or even hint at her demotion having been the reason for or having played any part in her decision to resign. The evidence in the claimant's witness statement, however, is as follows:

"The lack of support after experience racial discrimination, harassment and bullying and being told that I was unilaterally going to be demoted led me to hand in my resignation on 15<sup>th</sup> October 2021."

46. In this connection also, the Tribunal has referred above to Mr Duffy recording that the claimant had told him that while she had been considering resigning due to the issues with Mrs King it was the decision to move her to report to another person that cemented her decision; it was 'the straw that broke the camel's back' (639).
47. Against that, however, the Tribunal has found above that it accepts the evidence of Mr Power as to his conversation with the claimant on 13 October based, as it is, on the contemporaneous notes that he produced at the time (297/8). That evidence need not be repeated but it includes that the claimant informed Mr Power that she had already decided to submit her resignation later in the week and explained to him that following the issue with Mrs King she could not see a way for her to continue to work in the business.
48. Drawing the above evidence together, the Tribunal repeats that the focus of the claimant's letter of resignation was primarily upon issues with Mrs King although she also recorded the matter of her mental health and that, importantly, she did not make any statement related to or even hint at her demotion having been the reason for or having played any part in her decision to resign. The claimant is clearly an intelligent and articulate person and, notwithstanding the evidence in her witness statement, the Tribunal does not find it credible that if her demotion had played any part in her decision to resign she would not have made at least some reference to that factor in her resignation letter, even if only to say that that was the final straw. Rather, the Tribunal is satisfied that the reason for the claimant's resignation was as set out in her resignation letter; primarily the issues with Mrs King. Logic might dictate that the demotion was the reason for the claimant's resignation or, as Mr Duffy noted she had said, the last straw leading to her decision to resign but the Tribunal is satisfied that such a finding would be contrary to the evidence primarily as found in the claimant's resignation letter and Mr Power's notes of their telephone conversation on 13 October.
49. That being so, in answer to the third of the above questions arising from the decision in Western Excavating (ECC) Limited, the Tribunal is not satisfied that the claimant resigned in response to the breach of having been demoted. Thus, the claimant has failed to discharge the burden upon her to demonstrate that she was constructively dismissed by the respondent.
50. A final point that the Tribunal notes in relation to the claimant's contention that she was constructively dismissed is that it rejects the claimant's suggestion in cross examination of the respondent's witnesses that the respondent, "wanted me out". To the contrary, Mr Power sought to persuade the claimant not to resign and offered her alternative options; as he put it, "I laboured with you and said we would find you a job". Similarly, Mr Duffy offered the claimant the opportunity to rescind her resignation, which she declined to do. Although the Tribunal considers that those points to record that it accepts, as a matter of law, that those interventions by those two men alone would not have avoided a finding that the claimant was constructively dismissed.

51. The above concludes the Tribunal's consideration of the acts of direct discrimination relied upon by the claimant. The next issue identified at the May Hearing in respect of this complaint of direct race discrimination was whether any of the things as found to have occurred by this Tribunal were "less favourable" treatment. Self-evidently, that term introduces a comparison with how another person ("the statutory comparator") is or would be treated; it is insufficient that the claimant might have felt that she was treated unfavourably or unreasonably.
52. The Tribunal considers it appropriate to deal separately with those of the things that it has found above which are directly attributable to Mrs King and those that it has found above which are more generally attributable to the respondent.
53. Those in the first category that the Tribunal has found occurred are the things as recorded in paragraphs 26, 29 and 30 above: briefly put, Mrs King questioning whether the claimant was responsible for compliance; refusing to listen/dismissing the claimant's assertions; asserting that she will not be told how to speak or limited in how she should communicate with the claimant.
54. In each of those cases, the Tribunal has considered carefully how Mrs King would have behaved towards another employee of the respondent who did not share the claimant's protected characteristic of race (which section 9(1) of the Act provides includes colour, nationality and ethnic or national origins) and was in not materially different circumstances from her. Those circumstances would include similar differentials of age and relative experience as between Mrs King and the claimant. The Tribunal has also brought into account in relation to those circumstances the context that Mrs King's conduct towards the claimant was born out of a sense of frustration on her part at the claimant, not being a contract manager and not understanding the implications of what she was saying, seeking to require experienced contract managers to pursue a corrective action that they considered would be ineffective. That frustration was identified by Mr Szabo in his discussions with Mr Duffy, by Mr Duffy in his findings and by Ms Ikwuagwu in the appeal outcome letter in which she observed that it was most probable Mrs King's "words and actions stemmed from frustration of feeling that her preferred resolution to the audit was not being accepted by a more junior colleague despite her overriding authority as the senior manager". In these circumstances, the Tribunal is entirely satisfied that Mrs King would have behaved towards a comparator (actual or hypothetical) in the same or not materially different circumstances as the claimant in exactly the same way as she did towards the claimant.
55. That being so the Tribunal is not satisfied that in these respects the claimant was treated less favourably than a comparator would be or might have been treated. While it might be right that, as found in the internal processes of the respondent, Mrs King acted unprofessionally, that is not the issue before this Tribunal.
56. The Tribunal now turns to consider the second category referred to above of those things as found by this Tribunal that are more generally attributable to the respondent. For the reasons explained above, that category is limited to the demotion of the claimant.



57. The Tribunal has found above that, for the reasons stated, it is satisfied that as a result of Mr Cope's appointment the claimant was demoted. The crucial issue in relation to this complaint of direct discrimination, however, is again not whether that was unreasonable or unfavourable to the claimant but whether it amounted to treating her "less favourably". The Tribunal's findings of fact in this regard include that Mr Cope unexpectedly became available in circumstances of being at risk of redundancy, he possessed experience and skills relevant to the Contract Assurance team out of all proportion to those of the claimant and the claimant was underperforming; that notwithstanding the fact that no formal action had been taken in that regard on account of Mr Power's view that she did not deserve that as her failings were the fault of the respondent and not the claimant.
58. Mr Duffy found that although it did not amount to a demotion of the claimant, introducing Mr Cope into the team in the absence of any written evidence of discussions between Mr Power and the claimant regarding gaps in her performance was contrary to the respondent's policy but, once more, that is not the issue before this Tribunal. The question is whether the claimant was treated less favourably. In all the circumstances outlined in the immediately preceding paragraph and detailed more fully above, the Tribunal is satisfied that she was treated in exactly the same way as a comparator (actual or hypothetical) who did not share the claimant's protected characteristic and was in not materially different circumstances from her was or would have been treated. As such, the Tribunal is not satisfied that the claimant was treated less favourably than such a comparator.
59. In conclusion of this section of these Reasons for the reasons set out above the Tribunal is not satisfied that the respondent treated the claimant less favourably than it treated or would treat others and, therefore, it is not satisfied that by reference to the first stage identified in Igen Ltd, the claimant has established facts from which it could conclude, in the absence of an adequate explanation, that the conduct of the respondent amounted to direct discrimination. That being so, the Tribunal need not and does not go on to consider the second stage of whether the respondent has shown that, in no sense whatsoever, was the particular treatment because of race.
60. Thus, it is unnecessary for the Tribunal to go on to consider the next issue in relation to the complaint of direct discrimination as set out at the May Hearing of whether any treatment of which the claimant complains was "because of race". Had it been necessary for the Tribunal to consider that, however, it is once more entirely satisfied that both the conduct of Mrs King in relation to the above three matters and the conduct of the respondent in relation to the demotion of the claimant was for the reasons set out above and not because of race.
61. In the circumstances, on the evidence available to the Tribunal it is not satisfied that the claimant's complaint of direct discrimination is well-founded.

*Harassment on grounds of race – sections 26 and 40 of the Act*

62. The Tribunal next considers the complaint of harassment, which is defined in section 26 of the Act as set out above.
63. The Tribunal reminds itself that there are three essential elements to a harassment claim: unwanted conduct, which has the proscribed purpose or effect, and which relates to a relevant protected characteristic. Furthermore, in the Equality Code (reflecting the decision in in English v Thomas Sanderson Blinds Ltd [2009] ICR 543) it is stated at paragraph 7.8 as follows, “The word ‘unwanted’ means essentially the same as ‘unwelcome’ or ‘uninvited’. ‘Unwanted’ does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident also amount to harassment.” Additionally, in English it was pointed out that “unwanted conduct” means conduct that is unwanted by the employee; this suggesting that deciding whether conduct is unwanted should be assessed subjectively from the point of view of the employee.
64. The unwanted conduct relied upon by the claimant is the same conduct as the Tribunal has addressed in its above consideration of the complaint of direct discrimination because of race and its findings in that section of these Reasons apply equally. Utilising the same brief description as the Tribunal has adopted above,
- 64.1 Mrs King questioning whether the claimant was responsible for compliance; refusing to listen/dismissing the claimant’s assertions; asserting that she will not be told how to speak or limited in how she should communicate with the claimant;
- 64.2 the respondent demoting the claimant.
65. Addressing the first essential element set out above, there can be no doubt, and the respondent has rightly not sought to contend otherwise, that the conduct of which the claimant complains was unwanted by her.
66. The second of the above essential elements is whether the unwanted conduct had the purpose or effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
67. On the basis of its findings so far, the Tribunal is not satisfied that either aspect of the unwanted conduct set out above had any of the above purposes. The question of whether the conduct had that effect requires the Tribunal to take three particular matters into account as set out in section 26(4) of the Act follows:
- 67.1 The perception of the claimant; which the Equality Code explains means did the claimant, subjectively, regard it as violating her dignity or creating an intimidating etc environment for her.

- 67.2 The other circumstances of the case; which the Equality Code explains can include the claimant's personal circumstances and the environment in which the conduct takes place.
- 67.3 Whether it is reasonable for the conduct to have that effect; which the Equality Code explains is an objective test which a tribunal is unlikely to find satisfied if it considers a claimant to be hypersensitive and that another person would not have been offended.
68. In these respects, the Tribunal first considers the conduct referred to above that is attributable to Mrs King. Although the Tribunal understands what the claimant might subjectively have felt, in all the circumstances based upon its findings recorded above it is not satisfied (applying the guidance given in the decisions in Pemberton v Inwood [2018] IRLR 542, CA and Richmond Pharmacology v Dhaliwal [2009] IRLR 336, EAT) that it was objectively reasonable for the claimant to consider that the conduct of Mrs King had the effect of violating her dignity or creating an intimidating etc environment for her.
69. The second aspect of the conduct referred to above is the respondent demoting the claimant. In this respect, however, again bringing into account the matters provided for in section 26(4) of the Act, the Tribunal takes the opposite view. It is satisfied that it was objectively reasonable for the claimant to consider that her being demoted had the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment environment for her; the most likely effect being "degrading".
70. The last of the above three essential elements is whether the unwanted conduct of demotion related to the relevant protected characteristic of race. The Tribunal is alert to the risk of conflating the two 'tests' of "because of" in relation to a complaint of direct discrimination and "related to" in a complaint of harassment and has taken care not to do so. That said, for the same reasons as it has found that none of the above four things (the three aspects attributable to Mrs King and the claimant's demotion) occurred because of race it also finds that none of those things related to race. In particular in this connection the Tribunal has set out its findings above in relation to the appointment of Mr Cope, especially that he possessed experience and skills relevant to the Contract Assurance team, which the claimant who was underperforming did not. On the basis of those same findings, the Tribunal is satisfied that the claimant's demotion, however unwanted, was not related to race.
71. In short, having considered each of the above three elements, the Tribunal is again satisfied that by reference to the first stage identified in Igen Ltd, the claimant has failed to established facts from which it could conclude, in the absence of an adequate explanation, that the respondent subjected her to harassment. As such, the Tribunal need not and does not go on to consider the second stage.

72. For the above reasons, on the evidence available to the Tribunal it is not satisfied that the claimant's complaint of harassment is well-founded.

*Victimisation – section 27 of the Act*

73. Finally, the Tribunal considers the complaint of victimisation. In relation to such a complaint, building upon the decisions in Khan and Derbyshire v St Helens Metropolitan Borough Council [2007] ICR 841, HL, the three stage process adopted by the Tribunal is as follows:

73.1 Did the alleged victimisation arise in any of the prohibited circumstances covered by the Act?

73.2 If so, did the respondent subject the claimant to a detriment?

73.3 If so, was the claimant subjected to that detriment because she had done a protected act?

74. The three acts relied upon by the claimant as protected acts are set out in paragraph numbered 5.2 above, which the Tribunal addresses in turn:

*Verbally asserted on 21 September 2021 to Kieran Power that she had been racially discriminated against.*

75. This assertion is contained in the claimant's witness statement, in relation to which she was not questioned in cross examination. Furthermore, Ms Smith in her oral submissions accepted on behalf of the respondent that "the first act is a protected act".

*Formally made a grievance on or around 27 September 2021.*

76. Also in her oral submissions, Ms Smith urged the Tribunal to read this first grievance carefully to assess whether there had been a protected act arguing that simply saying that this is a disrespect issue which is based in racism is not sufficient.

77. In this first grievance of the claimant, she raises the issue of disrespect by explaining at some length what she maintained occurred during the Teams meeting on 20 September and the mediation call on 21 September. In the concluding paragraph of her grievance the claimant then states, "I feel this is a disrespect issue which is based in racism." Having had regard to the decision in Durrani v London Borough of Ealing UKEAT/0454/2012 upon which Ms Smith relied, the Tribunal is satisfied that that is sufficient for the purposes of section 27(2)(d) of the Act, which provides that a protected act includes, "making an

allegation (whether or not express) that A or another person has contravened this Act.”

*Formally made a second grievance on or around 29 November 2021.*

78. As the claimant accepted both in cross examination and in her submissions, she raised this second grievance after the conduct of which she complained and (assuming for these purposes that this was a protected act) something cannot be done because of a protected act if that protected act has not yet happened.
79. This being so, although this act might well have been a protected act, the Tribunal does not consider it further and considers only the first two of the above acts that are relevant in this case, which it is satisfied were protected acts; those being the verbal assertions on 21 September 2021 referred to above and the claimant’s first grievance on or around 27 September 2021.
80. This therefore leads to a consideration of the two “things” or conduct by or on behalf of the respondent relied upon by the claimant as amounting to a detriment, which are set out in paragraph 5.3 above. The Tribunal addresses each of those things in turn:

*Inform the claimant on 13 October 2022 that she would be demoted as a result of changes in the hierarchy.*

81. Strictly, the respondent did not directly “inform the claimant” that she would be demoted but the Tribunal has found that that was the effect of what senior managers of the respondent had agreed that Mr Power would inform the claimant, which he did in their telephone conversation on 13 October 2021.

*Constructively dismiss the claimant.*

82. The Tribunal has found above that the respondent did not constructively dismiss the claimant.

*Detriment?*

83. Therefore, the next question is whether by doing either of the above things the respondent subjected the claimant to detriment. Given the Tribunal’s finding that the respondent did not constructively dismiss the claimant only the first of the above things needs to be considered. This is consistent with the claimant’s approach in which she focused on having been informed that she would be demoted.
84. In this connection the Tribunal reminds itself that in the decision in Shamoon the House of Lords held that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The Tribunal brings that into account along with the Equality Code

in which, drawing on relevant case law it is stated, “Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage”.

85. In light of the guidance in that decision, there can be doubt that demoting the claimant, as the Tribunal has found, subjected her to detriment.

*Because of the protected act?*

86. Crucially, however, the question therefore becomes whether the respondent subjected the claimant to that detriment of demotion because she had done one of the two protected acts as found above: the verbal assertions on 21 September 2021 and/or the claimant’s first grievance on or around 27 September 2021. As explained more fully above, the Tribunal is satisfied that the reasons why Mr Cope was recruited into the team were related to his significant experience in Contract Management, his extensive knowledge of governance and compliance and his having been highly recommended by two senior managers. There is no evidence before the Tribunal to corroborate the claimant’s assertions that his appointment (and therefore her demotion) was retaliatory or in any way connected with either of the above two protected acts.
87. As such, the Tribunal is not satisfied that, by reference to the first stage identified in Igen Ltd, the claimant has established facts from which it could conclude, in the absence of an adequate explanation, that the detriment of her demotion was because of the protected acts, which therefore would constitute victimisation. That being so, the Tribunal need not and does not go on to consider the second stage of whether the respondent has shown that, in no sense whatsoever, was the detriment of demotion because of the protected acts.
88. For the above reasons, on the evidence available to the Tribunal it is not satisfied that the claimant’s complaint of victimisation is well-founded.
89. A final observation that the Tribunal makes, which could be said to be applicable to all of the claimant complaints, is that it found nothing in the evidence before it to support the claimant’s contention in her witness statement, “it is clear that BT is institutionally racist.”

### **Concluding observations**

90. The above considerations of the Tribunal and its Judgment are based upon the application of our findings of fact and the statutory and case law referred to above. While the matters contained in the following section of these Reasons are not therefore relevant to our Judgment as such, given the importance that the claimant clearly attached to her race and colour and her view of herself and her relationships with other members of society the Tribunal considers that the matters contained in this section are worthy of brief mention.

91. Throughout the hearing the claimant made repeated reference (particularly in answer to questions in cross examination) to her position in these respects. These included as follows:
- 91.1 “I see the world through a prism as a black person.”
  - 91.2 “Everything I experience is a racial issue.”
  - 91.3 “My race is inextricable with who I am.”
  - 91.4 “It has everything to do with race because it has everything to do with me.”
  - 91.5 “My race is inextricably linked to me. It is not a question of a slur but micro-aggression – was it a subtle dig giving it a racial undertone?”
  - 91.6 “Her saying that I was not a contract manager was problematic for a black person. I don’t think she considered or intended that.”
  - 91.7 “My race is inextricably linked to me. I am black – anything said to me cannot be because I’m not black.”
  - 91.8 “Anything to do with me is a racial issue.”
  - 91.9 She is hyper-aware of how she is coming across. “Personally my morals and ethics are such that I am hyper aware of how I speak to, and about, other women in the workplace, for obvious reasons.” (236).
  - 91.10 The claimant described the consequences to her feelings “because it was a white woman speaking to a black woman.”
  - 91.11 Her reply to the question of whether the other people attending the Teams meeting had worked for the respondent for a number of years was, “I don’t know”: that would have answered the question but claimant then added, “but all the others were white”, which was not the question.
92. In light of the above, the Tribunal thought to be persuasive the submissions made by Ms Smith on behalf of the respondent in her skeleton argument, “If the claimant’s argument succeeds, it would be effectively saying that any act or comment made to a black person by a white person is discrimination”.
93. Some might regard the claimant’s perspective as set out above as representing a somewhat extreme position but of relevance in this respect is a section of the guidance that Mr Duffy received from Ms Osewa-Edia in her letter of 8 November 2021 (451), which is set out above but bears repeating in relation to this section of these Reasons. She commented as follows:

*“While it is difficult to assess whether the disrespect was based on racism, we do need to recognise that the complainant interpreted it this way so lessons should be learned from this case. It would be good to ensure that the senior manager is aware of the following:*

- Senior colleagues need to be aware of power dynamics in the workplace. Statements that are made by senior colleagues about junior colleagues, especially in a hierarchical organisation – and in the presence of other colleagues – carry a lot of weight, and can have a potentially damaging effect on the reputation of much junior colleagues.*
- While the senior manager might feel that their utterances were not disrespectful and racist, the complainant certainly thought so. It is recommended that they remain conscious of how they communicate with other colleagues in future.”*

[The above underlining by way of emphasis has been added by the Tribunal.]

94. Also of relevance in this respect is the decision of Ms Ikwuagwu who conducted and ultimately rejected the claimant’s grievance appeal (who was described to the Tribunal as a black woman of mixed race whose father was Nigerian). The Tribunal has already set out above Ms Ikwuagwu’s observation regarding “the considerable impact racial micro-aggressions can have on a recipient” and her reference to the concept that “perception is reality”. Her decision in relation to the claimant’s appeal also includes the following concluding paragraphs:

*“I can wholly appreciate that the outcome of the grievance does not change the impact Ashleigh’s interactions with Helen will have had on her emotional and mental well-being. I can also appreciate the difficulty in finding evidence to uphold the assertions made from Ashleigh in a case like this where the only evidence is based on witness testimonials. In the absence of those witnesses corroborating Ashleigh’s claims it is very difficult to substantiate that all assertions occurred and amounted to racial micro-aggressions.*

*I do however feel that BT, as large corporate with a commitment to diversity and inclusion, and a growing black and ethnic workforce, has a duty of care to learn from grievances such as this and use those learnings to improve the processes and working environments for existing and future black employee who may find themselves in Ashleigh’s position in the future. It is for this reason that although I uphold the overall outcome of the grievance, and in doing so I find the appeal unsuccessful, I do recommend a series of remedial actions which I will ensure are actioned.”* [Once more, the above underlining by way of emphasis has been added by the Tribunal.]

95. Taking all of the above into consideration, while the Tribunal might appreciate and understand how the claimant sees the world and her interactions with colleagues and society more generally, and what is said or done to her through a prism as a black person, that characteristic being inextricably linked to who she is, it is the



responsibility of this Tribunal to find the facts on the basis of the evidence that has been presented to it and apply the relevant law. Having undertaken that task we have come to the findings set out above and the Judgment below.

96. That said, the Tribunal notes from the above two excerpts, particularly as indicated in the phrases with emphasis it has added, that although the conduct of the respondent's managers of which the claimant has complained did not contravene the relevant sections of the Act, the respondent nevertheless has recognised the claimant's perception of and reaction to that conduct and has responded appropriately (always assuming that the advice in the above excerpts and in the findings of Mr Duffy arising from the claimant's grievances are acted upon as Ms Ikwuagwu has said she will ensure they will be), which might give the claimant some reassurance.

### **Judgment**

97. The unanimous judgment of the Employment Tribunal is as follows:
- 97.1 The claimant's complaint that the respondent directly discriminated against her by treating her less favourably than others because of race contrary to section 39 of the Equality Act 2010, with reference to section 13 of that Act, is not well-founded and is dismissed.
- 97.2 The claimant's complaint that the respondent subjected her to harassment related to race contrary to section 40 of the Equality Act 2010, with reference to section 26 of that Act, is not well-founded and is dismissed.
- 97.3 The claimant's complaint that the respondent victimised her contrary to section 39 of the Equality Act 2010, with reference to section 27 of that Act, is not well-founded and is dismissed.

**EMPLOYMENT JUDGE MORRIS**

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE  
ON 26 January 2023**

**JUDGMENT SENT TO THE PARTIES ON  
26/01/2023**

**FOR THE TRIBUNAL**

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