



EMPLOYMENT TRIBUNALS

Claimant: Dr Ekaete Efretuei

Respondent: Newcastle University

RESERVED JUDGMENT

Heard at: Newcastle Employment Tribunal

On: 9 and 10 May 2023, deliberations: 22 May 2023

Before: Employment Judge Jeram, Mr S Carter, Ms L Jackson

Representatives:

Claimant: In person, assisted by her husband

Respondent: Ms C Millns of Counsel

The unanimous judgment of the Tribunal is as follows:

1. The claim of direct race discrimination is not well founded and is dismissed.

REASONS

1. By a claim presented on 25 October 2022, the claimant alleges that she was subject to a single act of direct race discrimination, being the decision to refuse to appoint the claimant as an external supervisor for a student upon termination of her contract of employment with the respondent.
2. This matter was case managed by EJ Sweeney on 8 February 2023 when the legal principles were explained to the claimant and recorded in written detail in

the Case Summary. Those principles were revisited and discussed at the outset of the hearing.

Issues

3. The issues were confirmed as follows:
 - a. The treatment complained of is the decision not to appoint the claimant as an external advisor following the termination of her employment. The treatment is admitted, and the respondent accepts that the treatment is capable of amounting to a detriment.
 - b. Did the respondent treat the claimant less favourably than it would have treated a hypothetical comparator in materially the same circumstances? The claimant does not seek to rely upon an actual comparator, but seeks to rely upon a hypothetical comparator whose circumstances were informed by a number of other external advisors who were appointed by the respondent.
 - c. If the respondent treated the claimant less favourably, was it because of her colour? The claimant describes herself as black.

Procedure

4. Neither party requested any reasonable adjustments to the hearing procedure when asked; they were invited to seek breaks if necessary, but no such requests were made.
5. After receiving the respondent's written and oral submissions, the claimant sought an adjournment in order to adduce written submissions. Despite the respondent's objection to the same, and our view that neither an adjournment nor written submissions were necessary, we nevertheless acceded to the claimant's request to present her submissions in writing within the timeframe she sought. The respondent was permitted to submit a written reply restricted to points of law and dealing with any new material raised by the claimant in her written submissions; nothing in this judgment turns upon the contents of the respondent's reply.

Evidence

6. We had regard to a bundle comprising of 161 pages. The claimant objected to two tranches of documents because they had been disclosed to her by the respondent after the date for compliance of the relevant Tribunal order. After hearing submissions from both parties, we allowed both sets of documents as they were relevant to the issues. Although the first tranche had been disclosed in ample time before the date for exchange of statements, the second tranche had been disclosed on 21 April 2023, being the date on which the claimant unilaterally sent her statement to the respondent, in the face of a request for a short extension of time. The claimant was unable to identify any prejudice to her which could not be addressed by being given time to read the documents, check

the proposed pagination and the opportunity to comment on those documents in her oral evidence; the Tribunal could identify no prejudice, either. In the event, the claimant declined the opportunity to comment on the additional documents in her evidence, when prompted by the Tribunal.

7. We read the statement of, and heard from, the claimant. For the respondent, we read the statements of and heard from Dr Shanta Davie, Senior Lecturer in Accounting and Finance and Dr Ian Biddle, Dean of Post Graduate Studies. Upon the claimant confirming that she did not seek to rely upon an actual comparator, the respondent withdrew its application to rely upon a supplemental statement of Dr Davie.

Credibility

8. The Tribunal was greatly impressed with the respondent's witnesses; they gave their evidence in a manner that was as considered as it was measured. It is necessary to our findings to make particular note of the direct and unflinching approach of both witnesses, and particularly in the case of SD we might add the dignified manner, in which they approached the contents of internal correspondence written by others that made for, on occasion, uncomfortable reading. They both made for highly credible witnesses.

Findings of Facts

9. Having considered the written and oral evidence of both parties, and their submissions, the Tribunal finds the following facts on the balance of probability.
10. The respondent's Code of Practice for Research Degree Programmes requires a PhD student to be led by a supervision team that consists "*of at least two members (normally two members of Newcastle staff) with the appropriate research skills and knowledge. . .*". The Code states that where a change in supervisory team is as necessary, "*research students should normally be consulted in advance. The University will take all reasonable steps to replace supervisors with suitable alternatives and may extraordinarily include arrangements for supervisors to be from a different academic unit or even from outside the University*".
11. The Newcastle University Business School (NUBS) Policy for External PhD Advisers was codified in writing in September 2022, so as to reflect the pre-existing, unwritten, policy. It foresees that there may "*be the need to appoint external supervisors to secure specialist academic and industry knowledge that is not available within NUBS*". The Policy requires that an appointment of an external advisor should be based upon an agreement between the PhD student, the remaining NUBS supervisor and the proposed external advisor.

12. Supervisors have no right of automatic ownership over a PhD project.
13. External supervisors, whilst paid a fee for their engagement, are not accountable to the respondent; the success of the engagement rests upon the continued cooperation and engagement of the external supervisor with the rest of the team, including the student.
14. A healthy relationship between co-supervisors requires, for the benefit of the student, an ability to openly communicate, challenge and cooperate with one another.
15. The claimant was appointed as Lecturer in Accounting and Finance at the respondent's business school on 1 September 2016.
16. In October 2017, the claimant was appointed second supervisor to a student ('the Student') who had just commenced his PhD at the Business School. Professor Stecciolini was lead supervisor because she met the respondent's requirement of having overseen at least one PhD to completion, whereas the claimant did not. All three were based at the respondent's then London campus.
17. In October 2018, after discussion between the claimant and Professor Stecicolini, Dr Shanta Davie ('SD'), who was based at Newcastle, was appointed as third supervisor. That was necessary because of a newly introduced policy that all PhD students must have at least one supervisor based at the Newcastle campus.
18. Professor Steciolini left employment with the respondent in or around March 2019. Neither the claimant nor SD had by this stage supervised a PhD to completion at this stage, and so a further supervisor was sought. In June 2019, Dr Claudia Gabionata ('CG'), also based at Newcastle, was appointed to lead the Student's supervision team. CG is white.
19. By July 2021, the respondent closed its London campus. The claimant and the Student were required to transfer to Newcastle campus.
20. CG stepped down as supervisor on 30 September 2021 and two months later left the respondent. She made an application to be retained as external supervisor for the Student.
21. SD and the claimant discussed CG's request. By now, SD had achieved supervision to completion of another student's PhD and therefore met the requirement necessary to act as lead supervisor.

22. We prefer SD's evidence to that of the claimant and find that the claimant and SD jointly agreed that CG's retention as an external supervisor was unnecessary because the supervision could be maintained between them, *'in house'*.
23. We are satisfied, having seen the 'change in supervisor' form relating to the proposed retention of CG, that it was not strictly necessary for either the claimant nor SD to have applied their signature to the form in order for CG's appointment to have been approved.
24. Ultimately, CG was not taken on as an external supervisor for the Student, although she was retained as an external supervisor for another PhD student.
25. By March 2022, the claimant secured the position of Lecturer at Liverpool University. She was contractually obliged to give the respondent three months' notice. She intended to leave employment at the end of June 2022, using several days at the end of the month as annual leave.
26. On 31 May 2022, the claimant notified Ms Sara Maioli ('SM'), Postgraduate Director of her intention to leave the university on 30 June. She informed SM that she had consulted with David McCollum-Oldroyd (DMO), Sub Group Head of Post Graduate Studies and was contacting her at his suggestion with a request to be retained as an external supervisor to the Student commencing 1 July 2022. DMO was the line manager of the claimant and of SD.
27. SM replied in an email sent a week later, on 6 June 2022, stating *"yes, no problem at all with this. You can remain as external supervisor, however you need to identify a suitable person internally who can take the role of supervisor as by regulation we need two internal supervisors anyway"*. The claimant was told to ask the Student to submit a form relating to a change of supervisors.
28. On 9 June 2022, the claimant informed SD of her departure from the University at the end of the month. By now, the claimant had not only obtained the support of SM and DMO for her application, she had also informed the Student of her plans.
29. SD was surprised by the news and put out to discover that not only was she the last person to be informed that her co-supervisor was leaving the University in a few weeks but that DMO and SM had agreed to the claimant's retention as an external supervisor for the Student without obtaining her input.
30. In the absence of any acceptable explanation for informing SD of her plans last, we conclude that the claimant deliberately excluded SD from her discussions; she anticipated, accurately, that SD's response would be to question the

necessity of her retention as an external supervisor when only a few months before, the two of them had jointly resisted CG's identical application.

31. In their meeting, SD did remind the claimant that only some 7 to 8 months previously, they had jointly made the decision to recommend the rejection of CG's application to remain as an external supervisor for the Student; she said she was concerned about inconsistency of treatment. SD queried how appointing the claimant as an external supervisor was in the best interests of the Student given the practical difficulties in coordinating effective supervision.
32. SD understood there remained scope for discussion. After the meeting, she searched for alternative internal supervisor for the Student. Two people were identified as potentially suitable; Dr Amanze Ejiogu ('AE') and one other. AE was based at Newcastle and was keen to be appointed second internal supervisor. AE is black and also, like the claimant, is of Nigerian origin.
33. At 11pm the same day, the claimant emailed SD. She informed SD that DMO and SM had accepted her request to be appointed as an external supervisor and that it was now for her, i.e. the claimant, to appoint an alternative internal supervisor and reallocate her supervision split as appropriate. By reference to *"the case of fairness with regards to the last supervisor"*, she sought to differentiate her own situation by stating that *"it might help to clarify"* that the *"prevailing argument"* was that CG was relatively new to the team and that she had been retained as an external supervisor on another matter. The claimant stated that she understood SD would be *"marking now and may need some time"* but reminded her that she would be leaving in two weeks and invited a prompt response.
34. SD read that email the following morning, and forwarded it to DMO and SM. She stated that she had been unaware of any discussion with the claimant about the claimant's continued supervision of the Student and that she was *"rather upset"* that she had not been involved in this discussion until yesterday and that she appeared have little or no say in the matter.
35. DMO replied to SD stating that he had agreed nothing. SM replied by stating that she failed to see why SD might be upset with *"[her] and David"*.
36. In her reply, re-stating her position, SD added *"I strongly believe the supervision should be in the house. Also there needs to be communication with the remaining supervisor such as me. In this case, we have the appropriate expertise and capacity within [Accounting and Finance]"* (emphasis added). She named the two potential co-supervisors she had identified after speaking to the claimant, adding *"I thought I was doing my job!"*.

37. In the first of a number of replies from SM to SD that might be described as difficult, SM stated that she had not approved “*anything*”, other than to inform the claimant that she could continue as an external supervisor, “*because by regulation she can*”. She commented that she had not received the ‘change in supervisor’ form. In recounting the history of supervision of the Student, she commented: “*when [CG] left Newcastle, you and Ekaete wanted to keep the supervision internally*” (emphasis applied).
38. She added “*Frankly, I am not sure what is going on here, and I wonder if this is due to a relationship problem between Ekaete and yourself, but at this point I am out of the picture and if you want Ekaete to stop supervising [the Student] then it has to be you who tell her [sic]*” (emphasis applied).
39. Later, on 10 June 2022, and with notable restraint, SD informed SM and DMO that the Student was happy with AE as his supervisor and that he was keen to meet him. She asked if they were content for her to communicate this to the claimant.
40. SD received no response to her email of 10 June 2022 from either SM or DMO.
41. In the meantime, in light of the demands of the academic calendar, SD concentrated on her responsibilities to her students at exam time, as well as her role of chair of the Personal Extenuating Circumstances committee, whose determination may affect the final degree classification of graduating students.
42. On 17 June 2022, having heard nothing more, the claimant emailed SD and, separately, DMO seeking an update.
43. DMO responded by informing the claimant, in somewhat cryptic terms, that he was sure SD had ‘*now taken this on board*’ and that she would ‘*no doubt be in touch when she’s decided*’.
44. The claimant replied to DMO on 21 June 2022 stating that she was content for SD to ‘*make a decision immediately in line with [her] request*’ but that ‘*otherwise*’ the matter should be escalated to the Postgraduate Dean and the Pro Vice Chancellor.
45. On 22 June 2022, SD reminded SM and DMO of her responsibility and duty to the Student; she informed them that the Student was a confident university lecturer who was keen to retain SD as the primary supervisor, that he had weathered change in supervisors in the past and that he was looking forward to meeting AE. She attached the change in supervisors form for processing.

46. DMO emailed SD, twice, asking her to reconsider. He suggested that there was a duty of care *'to each other'* and that he, too, was of the view that a refusal to retain the claimant as external supervisor would generate complaints and create *'hassle'* inviting SD to *"think again unless [she had] a strong professional justification"* (emphasis added).
47. SM added to the email chain by stating that aside from the benefit of the Student, she was concerned for the *'professional development of a colleague'* and found SD's position *'incomprehensible'*.
48. In correspondence that day and the next, and in increasingly emphatic terms, SM stated that the *"implications of such a decision are not going to stop here"* and that the claimant was certain to pursue complaints if she were not retained, that it would be her, i.e. SM, that would have to expend time responding to and accounting for a decision that she *'disagreed with'*; SM said she refused to sign the change of supervision form.
49. On 22 June 2022, SM wrote an email to Dr Ian Biddle ('IB'), Postgraduate Dean, criticising SD's view and observing that the claimant was the only person who had supervised the Student from the beginning, adding *"but now the current supervisor [SD] wants to exclude her (because by principle she wants to keep the supervision only internally) - which is fine from an internal point of view. The person leaving wants to remain involved as external supervisor and has threatened escalation to yourself and the PVC if this matter is not resolved by allowing her to remain as external supervisor. I need your guidance here!"* (emphasis added).
50. Those were the circumstances in which IB became involved in the matter; his role was intended to be restricted to that of mediator and to provide his recommendation as to how to resolve the apparent impasse between SD on the one hand and SM and DMO on the other, about the claimant's application to be appointed external supervisor. That is a role that IB has adopted in other situations.
51. IB met with SM on 27 June 2022. He agreed that continuity of supervision was, indeed, an important factor to consider. However, he also identified that it was necessary to consult with, and obtain the input of, the Student and that that *appeared* not have been done yet. He agreed to meet with SD at SM's suggestion.
52. In the meantime, in reply to an email from the claimant asking for an update, DMO stated *"the difficulty at the moment is that we are all rushing around like headless chickens with all the exam board stuff"* (emphasis applied). The claimant did not suggest that that was a disingenuous explanation when put to

her. On 27 June 2022, the claimant emailed an administrator, apologising for the delay in returning the change in supervision form, adding “[DMO] and [SD] are at a busy time of the year with exam boards”

53. On 7 July 2022, DMO emailed the claimant to explain that his understanding was that there was a delay because a dispute had arisen over the composition of the supervision team, and that although the matter had been referred to IB, there was a delay because IB had been poorly with Covid.
54. On 2 August 2022, IB met with SM and SD. IB wanted to understand whether SD was being, as she was accused of being, intransigent. Instead, after discussing matters with her, he found her position to be well founded.
55. IB was content to accept SD’s representation that AE was suitably qualified and experienced to act as a second supervisor for the Student. SM, in a later email to DMO, stated that SD had informed them that there was expertise within the School to supervise the Student adding “*I can’t argue against that and assume it is true*”.
56. We find, for the avoidance of doubt, that SD was correct in her assertion to IB and that there was the necessary expertise internally to supervise the Student. We do so because SD is a compelling witness and we regard her evidence as fundamentally truthful. She had identified not one but two suitable supervisors. At no stage did SM and DMO suggest that either of the suggested supervisors had inadequate experience. Nowhere in the contemporaneous evidence, nor in her written evidence, did the claimant ever suggest that there was inadequate internal experience to supervise the Student; she did not deny the assertion made by IB on 3 August 2022. We consider a lack of relevant experience to have been the most obvious point to make, if the claimant believed that to be the case. In fact, in response to a direct question from the Tribunal as to whether she contended that the School did not have the requisite experience, she replied only “*I have the primary expertise*”.
57. IB asked SD whether she felt safe continuing to work with the claimant; she replied that she did not.
58. For the avoidance of doubt, we find that SD was truthful when she informed IB of her concerns about working with the claimant. SD felt that the claimant had behaved in a way that left her feeling as if she were ‘walking on eggshells’ and that any disagreement or even, as she suspected as was the situation here, anticipated disagreement, would lead to the claimant excluding her, or escalating matters without consulting her. She felt that this behaviour would in turn impact on her own freedom and ability to fulfil her responsibilities to the respondent and the Student.

59. IB believed SD and he accepted her view that a constructive relationship going forward would prove difficult, if not impossible. IB understood that a strained relationship between co-supervisors may impact the welfare of the Student, causing him confusion and stress. He decided that, in these particular circumstances, it was inappropriate to consult with the Student about the situation, since to do so may place him in an invidious position.
60. IB considered that external advisors should not be the usual state of affairs; he believed that logistically arranging and coordinating supervision could be problematic and that the arrangement relies upon continued cooperation and goodwill between the supervisors; in the event of difficulties, there is no control over, or accountability of, the external supervisor.
61. IB concluded that, that it was unnecessary and undesirable to appoint a third, external, supervisor for the Student.
62. The same day, IB informed DMO of his recommendation that in his view the best way forward for the Student was to appoint an internal supervisor to replace the claimant. It was for DMO, as line manager of both SD and the claimant, to accept or reject that recommendation and communicate to the claimant his own decision. DMO refused to either accept or reject IB's recommendation. He lamented the loss of a chance on the part of the claimant to lay claim to having successfully completed supervision of a PhD. IB reminded DMO of his ability to reject IB's recommendation and make a different decision. He informed DMO that whatever reservations he, i.e. DMO, may have about SD's reaction to the situation, it should be taken seriously '*because it will affect the student, which is my main concern here*' (emphasis as original).
63. DMO disagreed with IB's recommendation but refused to communicate any decision at all to the claimant, whether his own, or one that simply reflected IB's recommendation.
64. It was against DMO's refusal to communicate any outcome at all to the claimant that on 2 August 2022 that IB conveyed to the claimant his recommendation as a decision, made on behalf of the respondent. IB said that it was his role and his desire to concentrate on the Student's needs, which he believed was best served by finding a supervisor within the team rather than require the Student to negotiate what may become a complex supervisory arrangement inside and outside the respondent.
65. On 3 August 2022, the claimant responded to IB. She claimed to be unaware that her retention on the supervisory team was the subject of any concern or discussion. She asked IB to note she required attribution for the Student's work,

and that her continued supervision was necessary for her career progression. She sought to be a *'passive external third member of the team'* but that if the decision could *'not be revisited'* then *'this will be a clear case of discrimination'*. She sought from IB confirmation of her options, indicating that she was willing to seek *"legal advice and intervention"*.

66. IB replied. He told the claimant that tensions between herself and SD were at a very high level, which placed the Student in an extremely difficult situation and there was *"plenty of internal expertise"* which led him to believe that this was the best solution. IB informed the claimant that his role had been advisory albeit that he *had "strongly recommended"* that the supervisory team be made up of colleagues based at Newcastle. He stated that it was open to DMO *"and the team"* to depart from his position, if they wished to.
67. In her reply to IB, the claimant denied that there was any tension nor any evidence of tension, stating *"these are scenarios potentially created to excuse an act of discrimination"*. She stated she had had extensive conversations with DMO and would proceed to seek *"legal advice and intervention"*. She did not deny the assertion there was *"plenty of internal expertise"*.
68. IB replied, stating that whilst he took her comments about discrimination and legal action at face value, equally he understood she had every right to challenge the decision.
69. The comparator. The claimant seeks to rely on a list of 8 external supervisors, all of whom she contends are all white. In fact, at least one is a Belgian national of Far East Asian origin. The respondent does not suggest that any of those 8 supervisors are black. The details of the students were redacted and we received no evidence as to the subject matter of each PhD, or the availability of the relevant expertise within the School on the date that each external advisor was appointed.

The Law

70. Section 4 of the Equality Act provides that race is one of the protected characteristics. Further, section 9 provides that *'race'* includes *'colour'*: see subsection (1)(a).
71. Section 13 of the Equality Act 2010 ('EqA') provides that: *'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'*.
72. The test requires a comparison exercise to be performed in order to determine whether the treatment complained of is because of race. The requirements of

an appropriate comparator are provided for at section 23 of the Equality Act 2010 i.e. '*there must be no material difference between the circumstances relating to each case*'. The EHRC Code of Practice (2011) at para 3.23 explains although the circumstances need not be identical, those circumstances that are relevant to the way the claimant was treated must be the same or nearly the same for the claimant and comparator. Where there is no appropriate actual comparator, it is incumbent on the Tribunal to consider how a hypothetical comparator would have been treated: *Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting* [2002] ICR 646, CA.

73. Section 136 of the Equality Act 2010 identifies where the burden of proof lies. It is for the claimant to prove facts sufficient to establish a prima facie case. At this stage, the Tribunal must have regard to all of the facts, from whichever party the evidence originated. A prima facie case is established if, in accordance with section 136(2), there are facts from which the Tribunal could decide, in the absence of any other explanation, that the employer contravened the provision concerned. A difference in status and a difference in treatment is not, without more, sufficient material from which a tribunal 'could decide' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination: *Madarassy v Nomura International plc* [2007] ICR 867. That is not a rule of law, however and the process of considering whether, or what, inference to draw and whether the burden shifts, is situation and fact specific; there does need, however, to be some fact or feature which the Tribunal identifies as potentially capable of supporting an inference of discrimination: *Jaleel v Southend University Hospital NHS Foundation Trust* [2023] EAT 10.
74. There will be no contravention, however, if the employer shows that it did not contravene the provision: section 136(3). This is the second stage and it is only reached if the claimant has successfully discharged the burden on her; it requires careful consideration for the employer's explanation for the treatment complained about: *Igen Ltd v Wong* [2005] ICR 9311 approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054.
75. It is not obligatory to apply the two-stage process, particularly where the Tribunal is in a position to make positive findings on the evidence one way or another; *Hewage*.
76. In the case of direct discrimination, it is necessary to consider the mental processes, conscious or unconscious operating on the mind of the alleged discriminator: *Amnesty International v Ahmed* [2009] ICR 1450 EAT. Motive is irrelevant. In order for the treatment to be 'because of' the protected characteristic, it is sufficient that it was an effective cause.

77. Sometimes the question of whether there has been less favourable treatment cannot be resolved without, at the same time, deciding the reason why the claimant received that treatment: *Shamoon v Chief Constable of the RUC* [2003] UKHL 11.

Discussion and Conclusions

78. The operative cause of the treatment complained of by the claimant was the decision made by IB. SD did not have the final say, rather when she was consulted, she was asked to explain her view; it was IB who ultimately made the decision to refuse the claimant's request to be appointed as external supervisor for the Student. SM believed that she possessed the authority to make the final decision, and DMO certainly did have the authority, but both persisted in their refusal to exercise it. It is therefore the conscious or unconscious motivation of IB when arriving at his decision to refuse the claimant's request to act as an external supervisor, that the Tribunal is concerned with.
79. We consider it necessary to address that finding at the outset, given the lack of clarity in the claimant's case. The claimant was given ample time and opportunity to reflect on and put her case to each of the respondent's witnesses, and she was warned of the potential consequences of failing to do so. The claimant was reminded, and assisted, by the Tribunal in putting those aspects of her case insofar as she had articulate them.
80. In her written evidence, the claimant stated that there were "*individuals with some racist ideologies that may have considered [SD] a suitable instrument to use in discriminating against other blacks as she is a woman of colour. . . It would appear less suspicious is not related to race*" and that SD "*would pass for the 'one black friend' within the establishment to showcase diversity. Primarily, she receives more favourable treatment at the expense of other black individuals and in return, she would be the vessel to front racist/discriminatory agenda against the less favoured*" and that SD "*lead the bidding to deny my right*". They are plainly serious allegations, yet the claimant failed to put them fully, in the case of SD, or at all, in the case of IB, whilst refusing to resile from these words.
81. It is for the claimant to establish a prima facie case and the initial burden to prove facts sufficient to shift the burden rests upon her. When asked what features of the case she relied upon in order to discharge the burden of proof, other than a difference in race and a difference in treatment, she replied that "*the two main things*" she relied upon SD's refusal to reply or respond to her emails, together with the list of white external supervisors contained in the hearing file.
82. We bear in mind that the claimant is articulate and intelligent, but not legally represented and that the Tribunal may have regard to all of the facts, irrespective

of which party adduced the evidence, to examine whether there are inferences that may be drawn in the claimant's favour. We recognise that there are unlikely to be facts in direct support of a discriminatory motive, and that what is important is to analyse the whole of the facts to identify whether an appropriate inference can be drawn from them.

83. Examining first the claimant's case, we start by considering SD's actions and motivations. We have little doubt that the claimant identifies SD as being the cause of the obstruction in her plan to be appointed as a third, external, supervisor; had SD done what the claimant required of her, when it was required of her, the claimant's objective would likely have been fulfilled.
84. We are satisfied that those actions that SD did take, were driven solely by her sense of professional duty. Immediately that SD learned of the claimant's impending departure, in accordance with her duty to him, she consulted the Student to obtain his views. He was content to change supervisors and looking forward to meeting AE. She discharged her responsibility to the respondent by sending to SM and DMO the email on 10 May 2022. Even whilst asking IB to intervene, SM understood that '*principle*' was SD's motivation
85. Turning then to the criticism that SD failed to reply or respond to the claimant. There was no evidence before us, nor even a suggestion, that there was any obligation on SD to respond to the claimant's emails, much less comply with her request to complete a 'change in supervision' form in a manner that was contrary to her professional opinion.
86. The claimant intentionally delayed informing her co-supervisor of her intended departure. She informed SD lastly and belatedly because she anticipated SD's objection, correctly as it happened. Insofar as there was any expectation on the part of the claimant that SD should respond favourably to her request, that arose because, we find, she intentionally garnered support from SM and DMO first, before presenting SD with a plan that she regarded, erroneously as it happened, as a *fait accompli*.
87. June is the busiest month in the academic calendar, and the claimant was, in her own contemporaneous correspondence, alert to the weight of professional demands on SD's time. SD prioritised her limited time to her duties to her students and her role as chair of the PEC over and above the demands of the claimant. That was the factual reason for her lack of response to the claimant; her judgment was not only sound, it was untainted by the claimant's race.
88. We are unable to identify any facts the claimant seeks to rely upon, from which we could properly draw an inference of racial motivation on the part of SD.

Indeed, we were able to identify several facts, set out below, from which we conclude that there was an absence of such motivation.

89. Parity of treatment was plainly very important to SD; she reminded the claimant of their joint approach to CG's request on 9 May 2022 when the claimant, unexpectedly, informed SD of her plans. We agree with the respondent's submission that the claimant's failure to include in her witness statement any mention of, much less the circumstances surrounding, CG's request to remain as external supervisor, was a significant omission. That only months beforehand, they had jointly declined an identical request made by a white colleague, in respect of the same Student, is clearly highly relevant when considering whether race was a motivating factor in SD's response to the claimant's request.
90. We consider the following facts also to support the absence of race as a factor operating on SD's mind. On the claimant's own case, she and SD had no difficulties in their relationship before the events of June 2022; the disharmony generated in June 2022 was because of the manner in which SD was treated, and not because of any behaviour on the part of SD; SD responded to CG's request to be retained as external supervisor for this particular Student in the same way as she treated the claimant's identical request; SD's response to CG's request occurred only 7-8 months before SD responded to the claimant's request; CG is white and the claimant is black yet their treatment by SD was identical; there was suitable expertise to be found within the School; SD's desire to retain the supervision within the School was in accordance with the respondent's Code of Practice for Research Degree Programmes; SD identified AE as a suitable supervisor - he is not only black but, coincidentally, also of Nigerian origin; SD identified AE as being suitable before the claimant made allegations of 'discrimination'; there is no part of the respondent's relevant policies which require the respondent to have regard to, much less balance, the needs or career aspirations of an external supervisor with those of its own students; a supervisor has no ownership of the PhD he or she supervises.
91. Returning to the claimant's case, other than her bare assertion, we found no evidence at all, to support the allegation that SD was motivated by the claimant's race. We firmly reject the claimant's written evidence in which she makes serious allegations that SD was a token employee, or that she carried out discriminatory actions at another's behest, for personal gain or otherwise; we see absolutely no racial motive in SD's actions.
92. On the contrary, and in the unanimous view of the Tribunal, SD presented as a considered, empathic and highly principled witness whose priorities were firmly centred on the needs of her students and her responsibility to her employer. We consider that SD was motivated solely by her belief that no external supervision

was necessary and, furthermore, that to entertain the claimant's request would offend her own standard of fairness and equality of treatment.

93. We are satisfied that no part of SD's conduct was motivated by the claimant's race.
94. We therefore turn to the motivation of IB. The claimant refused to put to IB why she contended his decision was motivated by race, even when reminded to do so by the Tribunal and warned of the potential consequences of failing to do so; she simply maintained that she had put her case adequately. The claimant is plainly capable of putting her case as she wishes, on occasion with the assistance of the Tribunal, but we have regard to the fact that she is not legally represented and have in any event reviewed the whole of the evidence before the Tribunal.
95. We bear in mind that there was no evidence before us of the existence of any relationship at all between the claimant and IB before the matter in issue.
96. Although the claimant had sought an escalation of her request to IB in the event that it was not met with approval, we note that IB's involvement in fact came about at the request of SM, who at the time, was highly supportive of the claimant's request, and critical of stance taken by SD.
97. When he first became involved, IB's role was intended to be restricted to discussing the situation and making a recommendation to DMO. On IB's own evidence, he wished to see if SD's stance was intransigent as SM had described; he found otherwise. He has experience of acting in a mediation role and we might add, having witnessed his demeanour and heard his rationale, he was plainly suited to it.
98. SD informed IB that the School had within it the necessary experience to continue supervision of the Student internally; IB took that assertion at face value and we can see no basis why he should not have taken that assertion at face value. He had been given no reason to question SD's integrity or experience and she had been the lead supervisor for that Student for some years. SM was unable to disagree with SD on this issue and DMO had not enquired whether SD had a '*strong professional justification*' for her position, much less communicated to IB, a contrary view.
99. Although it is not necessary in order to avoid the drawing of an adverse inference, we note that IB's view that internal supervision should be the normal state of affairs accords with the respondent's own Code of Practice and the School's Policy for External PhD Advisers. The claimant had no automatic claim to ownership of the Student's PhD project. She was unable to identify to us any

basis in respondent's Code or Policy that enables or requires regard to be had to a supervisor's needs or their future career aspirations. There were no 'extraordinary' circumstances identified to, or by, the Tribunal as required by the School's Policy for External PhD Advisers.

100. IB's concerns about the relationship between the claimant and SD going forwards was a secondary but nonetheless important factor in his recommendation. IB believed SD when she expressed her concerns about the prospects of her and the claimant maintaining a healthy and constructive relationship going forward. SD was genuine about her concerns and we can see no reason why he should not have believed her. IB personally viewed the claimant's delay in informing SD of her departure as discourteous and unprofessional; whilst that view of her conduct did not inform his final recommendation, we can see why he was able to identify with SD's expression of concern about future cooperation when there would be no obligation at all on the claimant to be cooperative. His focus, however, remained upon the interests of the Student and the potential for the dynamics to impact upon him; that is plain from his email to DMO.
101. Thus, there were two factors that informed IB's recommendation to DMO; the presence of adequate internal expertise at the time the assessment is made and the strained relationship between the two co-supervisors. We consider those to be two features that were relevant to the way the claimant was treated and therefore necessary to take into account when considering whether an appropriate comparator would have been treated more favourably.
102. The list of external supervisors relied upon by the claimant does not contain information about either of these factors; it therefore necessary to construct an alternative hypothetical comparator. We draw some assistance from the response to CG's application. In respect of the same Student, and around the same time, had SD and/or the claimant informed IB that an external supervisor was unnecessary because the School had adequate internal expertise, we have no reason to believe that that factor alone would have led IB to recommend a rejection of the application. Our assessment of that situation is fortified by the presence of the second factor, namely the tense state of the relationship.
103. We note, however, that at that stage, IB understand that his role was limited to making a recommendation. We have little doubt that IB would hope that DMO would have some regard for his recommendation, but we received no evidence to suggest that when he made his recommendation, there was any expectation that DMO should feel obliged to adopt it. On the contrary, there was evidence before us of IB reminding DMO of his freedom to reject his recommendation. We conclude therefore, and in the absence of any evidence to the contrary, that both at the time IB agreed to become involved, and the time at which he made his

recommendation to DMO, IB believed his role was limited to an indication of his personal view as to how matters ought to be resolved.

104. Nor was there any suggestion before us that IB had expected, or even contemplated, that DMO would simply refuse to provide any outcome at all to the claimant; that was the only reason why IB communicated to the claimant his own recommendation as a formal decision on the part of the respondent.
105. Put shortly, IB became involved because there appeared to be an intractable problem between SD on the one hand and SM and DMO on the other about the claimant's application. His recommendation was based on his assessment that an external supervisor was unnecessary and, in the particular circumstances of this case, potentially detrimental to the Student; finally, his recommendation only acquired the status of a decision because of an unexpected refusal on DMO's part to communicate any outcome at all to the claimant.
106. In none of the analysis above are we were able to identify any relevant feature or fact of this case that might support an inference of discrimination. As with SD, for the reasons we have identified, we have no hesitation in rejecting any suggestion made by the claimant that IB's were motivated by her race. We find that, in materially the same circumstances, IB would have treated a white applicant no more favourably than the way he treated the claimant.
107. For the avoidance of doubt, and insofar as the claimant suggests in her written evidence that IB was the '*individual with racist ideologies*' – and we are at a loss to understand who else that could be a reference to - we reject that suggestion outright as baseless.
108. The claimant fails to discharge the burden upon her to establish a prima facie case. Insofar as her expectations for her appointment were raised, they were raised by her own actions in ensuring that she had maximised the support SD's seniors before disclosing her plans to SD. Whatever support she did obtain was provided without consultation with the SD, or indeed the Student, and took into account factors that were irrelevant to a proper assessment of her request. The claimant sought the involvement of IB and obtained it; we consider her claim to be borne simply of a dissatisfaction of the outcome of his involvement, and her criticisms of him driven by his refusal to capitulate in the face of thinly veiled threats of litigation.
109. Further and in the event that the claimant has established a prima facie case, we dismiss her claim because we find that the reason why IB refused to agree to the claimant's request was because he considered an external supervisor unnecessary and inappropriate to meet the needs of the Student and that

provides a complete and non-discriminatory explanation for the treatment complained of.

Employment Judge Jeram

Date: 1 August 2023