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EMPLOYMENT TRIBUNALS

Claimant: **Ms M Richards**

Respondent: **London Borough of Hackney**

Heard at: **East London Hearing Centre**

On: **7 – 10 February 2017**
In Chambers: **17 March 2017**

Before: **Employment Judge Jones**

Members: **Ms M Long**
Mr L O'Callaghan

Representation

Claimant: **In Person**

Respondent: **Mr R Kohanzad (Counsel)**

RESERVED JUDGMENT

It is the unanimous judgment of the Employment Tribunal that: -

1. The Claimant's complaints of discrimination on the grounds of age, race, sex, and religion or belief philosophical belief under the Equality Act 2010 all fail and are dismissed.

2. The Claimant's dismissal was fair. Her complaint is dismissed.

REASONS

1. The Claimant who began her employment with the Respondent on 29 June 2008, worked as a Young Hackney Worker. The Claimant was dismissed on 27 December 2015. The Respondent's case is that she was dismissed because her post was redundant. The Claimant's case is that her dismissal was because of the combination of her age (being over 40), her ethnicity (being a black woman) and because of her trade union/political activity within the borough.

Preliminary Matters

2. Prior to the start of this Hearing, the Claimant had applied to the Tribunal for Witness Orders for 16 people to attend her hearing as her witnesses. That list included: the former Mayor of Hackney, Jules Pipe; the Chief Executive, Tim Shields; the former Director of Children's Services, Alan Wood; the former Head of Service, Tina McElligott; Trade Union representatives and individuals such as Ciara Burke and Tom Sheppard, whom she had named as her comparators in her complaints. It was evident from her application that the Claimant had not spoken to these people to seek their consent to be witnesses in her case. Also, she was unable to show relevance of those witnesses and the evidence they may give, to the issues in her case. For example, the Claimant wanted the former Mayor to attend the hearing to give evidence and be questioned about *"labour obstruction and intervention restricting levels of political activity of the Claimant locally"*. It was not her suggestion that he had been instructive in her dismissal. The Claimant's initial application for witness orders was refused. The grounds of refusal were set out in a letter to the Claimant dated 1 February. In summary, the application was refused not only because it had been made late in proceedings but also because it was not apparent to the Tribunal how those individuals had been involved in the decisions to dismiss her, or in relation to her redeployment issues, or any of the other issues that the Tribunal would need to address in her Hearing.

3. The Claimant wrote again to the Tribunal to make a fresh application for Witness Orders in relation to different people. The Tribunal granted the Claimant a Witness Order for Norman Saggers, who was the trade union representative who assisted her in the grievance process while employed. She was asked to provide a witness statement for him. The Tribunal refused to give her a Witness Order for Hannah Vickerie for the same reasons as had been refused earlier.

4. After discussion between the parties and the Tribunal, the following issues were agreed as the issues that the Tribunal needed to address:

List of issues

Unfair dismissal

5. Was there a genuine redundancy situation?

6. If so, was the Claimant dismissed by reason of redundancy?

7. If not, what was the reason for the dismissal?

8. If the Claimant was dismissed for a potentially fair reason, namely redundancy, was the dismissal actually fair?

9. Did the Respondent:

   9.1. Fail to adhere to the organisational change policy by not offering redeployment opportunities to the Claimant prior to them being advertised internally or externally for the following posts:

9.1.1. Strategic Manager – Youth Support and Participation (27 March 2015);

9.1.2. Youth Programmes and Project Manager (10 April 2015);

9.1.3. Hub Manager – Young Hackney (17 June 2015);

9.1.4. Learning Manager at the Learning Trust (14 August 2015);

9.1.5. Youth Support and Development Team Leader (23 September 2015 and 29 November 2015);

9.1.6. Youth Support and Development Worker (23 September 2015 and January 2016);

9.1.7. Social Pedagogue (1 October 2016);

9.1.8. Consultation and Communication Officer (7 October 2015);

9.1.9. Project Worker – Partnerships and Grants (7 October 2015);

9.1.10. Youth Justice Practitioner (1 November 2015 and January 2016);

9.1.11. Safeguarding and Learning Consultant (15 November 2015);

9.1.12. Grants and Investment Officer (17 January 2016).

9.2. There were jobs within the new structure that were not filled that were similar to the Claimant's old job that could have been considered as suitable alternative employment for the Claimant. These were [the list set out above].

9.3. Failure to offer training or coaching for roles in the restructure.

9.4. Whether the senior management team promises to retain skilled and experienced staff, if so, did they renege on the promise?

9.5. Was there a requirement to advise staff of the performance levels to be met in order to secure a role, if so, was there a failure to do so?

9.6. Did the Claimant perform sufficiently well during the interview process to be offered the roles that she had been ring-fenced for?

9.7. Were agency staff given priority in favour of permanent staff by allowing them to remain in posts that the Claimant could have filled?

Youth Justice Team – the following workers were on agency contracts:

9.7.1. Sue; and

9.7.2. Danielle.

9.8. Whether the Respondent had to directly offer redeployment opportunities to the Claimant prior to them being advertised internally or externally, if so, was there a failure to do so?

9.9. Did the Respondent favour candidates that had a former employment record in for example the police, army, special forces?

9.10. Was the Claimant not appointed to roles because of union activity?

9.11. The Claimant alleges that she scored the highest for the post of Project Worker Partnerships and Grants. The post was withdrawn without explanation.

Age discrimination

9.12. Younger less experienced staff were appointed to roles. For example Ciara Burke, Kate Lee and Rochelle Watkins who were appointed to the Youth Justice Team.

9.13. Dismissing the Claimant from her job.

Race discrimination

9.14. White members of staff being approached by members of the senior management team and offered positions. Robert Faulkner was approached by Pauline Adams.

9.15. In June 2011, the Claimant was ring-fenced to a lower position than Ciara Burke.

The Claimant as a Youth Participation Worker was ring-fenced to the post of Young Hackney Practitioner.

Ciara Burke was a Young Woman's Participation Worker, previously on the same scale, and was ring-fenced for the Young Hackney Worker post.

9.16. In August 2011, the Claimant was informed that she was unsuccessful in her application for the Core Leaders post.

9.17. 14 December 2012, Tom Sheppard given an induction to his role. The Claimant was not. When we discussed this part of her case the Claimant confirmed that her complaint was that Tom Sheppard had been given training when he did not have the skill set for the role to which he was appointed whereas in her case the Respondent refused to appoint her to roles because she did not have the skill set and did not consider giving her training so that she could become skilled for those jobs.

9.18. 15 October/November 2013: the Claimant was accused of abandoning her team when she took a period of extended leave. John Hart and Hashim Bhajee also took leave and were not treated in the same manner by the managers, Gifty Green or Pauline Adams.

9.19. There was a failure by Gifty Green to ensure that the Claimant's work was covered in her absence.

9.20. 17 October 2015, the appointment of Ciara Burke, Karolina Dabrowska, Mariana Caetano to posts.

Sex discrimination

9.21. Bullying/harassment from David McLean January 2014 – July 2015. When we discussed the issues – the Claimant confirmed that she was not asking the Tribunal to make a finding that she had been bullied or harassed by David McLean. Instead, she wished the Tribunal to conclude that Mr McLean must have been given authorisation or instructions to harass her in the way that he did because he was never punished for it

10. The Claimant stated that at the Preliminary Hearing with Regional Employment Judge Taylor she produced a document entitled *'draft list of legal and factual issues'.* Those were not adopted at that hearing. REJ Taylor advised the Claimant to confer with Ms Juliette Babb, from the Respondent's legal services so that they could create a composite list of issues. That did not happen. However, the Respondent prepared a list of issues from the Claim form and the Response. This was discussed in detail on the first day of the Hearing. The Claimant agreed that the list of issues that we were working to was the complete list of issues. It was also the list that she reproduced in her witness statement and which were in the bundle of documents. On the third day of the Hearing the Claimant produced this additional document. The Tribunal's decision was to continue to consider the above agreed list of issues that was in her witness statement and in the bundle.

11. At the start of the Hearing the Claimant asked that the Respondent be ordered to disclose an anonymous letter that had been sent to one of the Respondent's elected councillors referring to corruption and improper practices within Young Hackney. An order was not necessary as the Respondent agreed to bring a copy of the letter into the Tribunal on the following day and did so. The Claimant produced a witness statement from Mr Saggers. As the Respondent had no questions for Mr Saggers he was not called to give evidence in the Hearing.

12. The Claimant made an application that the Respondent's witnesses should be kept out of the room while she gave her evidence. She stated that she did not want them to be in the room until it was their time to be cross-examined. After a discussion about the Claimant's reasons for making this application, the Tribunal determined that it was not in the interests of justice to exclude the witnesses. The Claimant did not have any reason to suspect that the Respondent's witnesses would not conduct themselves properly during the Hearing. The Tribunal's decision was that it was appropriate to allow them to stay in the Hearing. The Tribunal has the power under Rule 43 of the Employment Tribunal Rules of Procedure to exclude from the hearing

any person who is to appear as a witness if it considers it in the interest of justice to do so. The Tribunal did not exercise its discretion to do so in this case. However, the Tribunal did rearrange the seating in the room to ensure that when giving her evidence the Claimant would be sitting directly facing the Tribunal and be out of eye contact with any of the Respondent's witnesses. The Respondent's witnesses were also required to give their evidence in the same way. The Claimant agreed that the Hearing could proceed in this way.

13. The Respondent queried the Claimant's complaints in relation to the 2011 redundancy process as the Claimant's complaint was not issued until 8 April 2016 and therefore any complaint about 2011 will be well outside of the time limits set out in the Equality Act 2010. The Claimant stated that she was relying on the issues in 2011 as background and therefore not matters that she would expect the Tribunal to award her remedy, even if they found that her allegations were well-founded. The Claimant later changed her position to claim that there was a continuing act in this case and that all her complaints were connected and should be considered.

14. The Tribunal had a discussion with the parties in relation to the Claimant's allegations about her political activity in the London Borough of Hackney and the local Labour Party. After the Tribunal had done the pre-reading and before hearing the evidence, we discussed with the Claimant her allegations in relation to her political activity in the borough and her desire to be selected as a Labour councillor, a London assembly member, or a member of parliament, and her belief that those ambitions had been thwarted, allegedly deliberately, by the local Labour Party. The Tribunal queried whether we had the jurisdiction to address these complaints. The Claimant stated that she considered that it was all related and that it was part of the historical context of the way in which she had been treated since being at Young Hackney. The Claimant was advised that the Tribunal only had jurisdiction to address the issues in relation to her employment and the redundancy processes that resulted in her employment being terminated on 27 December 2015. The Claimant was advised that she had the opportunity in the Hearing to show how her political activity in the borough related to her redundancy and the termination of her employment.

15. We also discussed with the parties and the Claimant in particular, as she was a litigant in person, the law applicable to her complaints. We discussed the burden of proof in discrimination cases in the employment tribunal and the application of the concept of the shifting burden of proof.

16. We advised the Claimant that we did not have jurisdiction to address the freedom of information (FOI) request that she made to the Respondent and its response. The Tribunal only had jurisdiction to address the issues of disclosure in relation to the issues before it.

17. Regional Employment Judge Taylor addressed the issue of disclosure and the FOI request in the Preliminary Hearing on 8 August 2016. In particular, in paragraph 7 in relation to the issue of disclosure, Regional Employment Judge Taylor stated:

> *"Background evidence in support of her claims or contentions, if relevant can be included in her evidence, but any documents that the respondent does not provide voluntarily will have to be judged as relevant and necessary before an order could be made for its production."*

18. At paragraph 6, she stated that the Claimant was either unwilling or unable at the Preliminary Hearing to identify real comparators in respect of her claims of sex discrimination, age discrimination and race discrimination detriment for or trade union activities. The Claimant sought to have the Respondent disclose an equality impact assessment before she considered she would be able to identify individuals.

19. Regional Employment Judge Taylor reminded the Claimant of the overriding objective of the Tribunal which is to enable Tribunals to deal with cases fairly and justly. Dealing with cases fairly and justly includes, so far as practicable, dealing with cases in ways which are proportionate to the complexity in accordance with the issue, avoiding delays so far as compatible with proper consideration of the issues and saving expense. The parties and the representatives should assist the Tribunal to further the overriding objective and in particular, shall cooperate generally with each other and with the Tribunal. The Claimant confirmed that she was not asking the Tribunal to revisit any of her grievances but to see them as part of the motivation for the way in which she was treated by the Respondent.

Evidence

20. The Tribunal had an agreed bundle of documents. Also, the Respondent produced the anonymous letter that had been sent to Councillor Anntoinette Bramble during the Claimant's employment. There was a bundle of witness statements produced in addition to the Claimant's witness statement. The Tribunal heard from the Claimant and had a witness statement from Norman Saggers, on her behalf.

21. For the Respondent, the Tribunal heard from Pauline Adams, Head of Service, Young Hackney; Brendan Finnegan, Service Manager, Youth Justice; Florence Obinna, Consultation Manager in the Communications and Consultation Team; Sarah Wright, Director of Children and Families, who at the time of her involvement with the Claimant was Head of Service Safeguarding, Corporate Parenting and Learning; and Brigitte Jordaan, Head of Service, Children in Need.

22. From the evidence, the Tribunal make the following findings of fact. The Tribunal has restricted itself to making findings of fact on the evidence related to the issues in this case and the background matters that the Claimant relies on.

Findings of fact

23. The Claimant was initially employed by the Respondent in 2008 as a Youth Participation Worker. At the same time, the Claimant was involved in local politics having worked in parliamentary research roles as a Youth Officer in the local Labour Party. She supported the participation of young people in politics by coordinating events with the then Mayor Jules Pipe and the local MP's, Diane Abbott and Meg Hillier.

24. The Claimant was born on 19 March 1967. At the date of her dismissal, the Claimant was 48 years old.

25. In performing the duties of her role, the Claimant caused Hackney Youth Participation work to occasionally appear in the local newspaper. She clearly enjoyed

being involved in the organisation of the Hackney Youth Parliament elections and other youth consultations in the borough. She was involved in local high profile campaigns such as the "No to Knives" campaign launched by former Prime Minister Gordon Brown and the drug and alcohol misuse consultation initiative with Ed Balls, MP, and the Department of Health.

26. In 2011, the Respondent restructured the Youth Service. Around this time, Pauline Adams became Head of Service, Youth Hackney. The Claimant was within Pauline Adams' line management structure. She was managed by Gifty Green who in turn was managed by Pauline Adams.

27. During the restructure, the Claimant was ring-fenced to the post of Young Hackney Practitioner. The Claimant's case is that this was on a lower grade whereas Ciara Burke, who was a Young Woman's Participation Worker, and therefore on the same scale as her, was ring-fenced to the Young Hackney Worker post which was on a higher scale. We find it likely that both the Claimant and Ms Burke were given a ring-fenced interview for the same role. The Claimant was also interviewed for the role of Young Hackney Worker, to which she was appointed. We find that the Claimant was appointed to the role that she considered that she ought to have been appointed to, which was the Young Hackney Worker role which was the same role that Ciara Burke was appointed to. The Claimant's case is that this only happened because of the advocacy performed by her and her trade union colleague.

28. The Claimant made no complaint of race discrimination at the time. The Claimant made no complaint of any discrimination at the time, whether internally through by raising a grievance or in the employment tribunal.

29. In the 2011 restructure, some members of staff in Young Hackney took the opportunity of voluntary redundancy. Some of those workers were black members of staff. We find that Andrew Carnegie was a black man who had been working in Young Hackney at the time. Mr Carnegie accepted voluntary redundancy and in the context of an informal discussion between himself and Ms Adams where he was discussing what he was going to do next, she suggested that he might want to consider becoming a foster carer as she considered that his skill set may lend itself to that role either in Hackney or in another borough. This was in the context of him expressing a desire to continue to work with young people. We find that it was unlikely that Ms Adams spoke to anyone else in this way. Ms Adams did not suggest to him that this was the Respondent's view as this was said in a private conversation between them. Ms Adams was trying to be helpful.

30. There was no evidence that the Respondent had a plan to get people to accept voluntary redundancy and then take up the option of becoming foster carers. However, we find it likely that the older members of staff some of whom were of black and minority ethnic origin took the opportunity to take voluntary redundancy.

31. We also find that another black man, Chris Murray, had previously been employed as Hub Manager within the department had been ring-fenced for that role but applied for a Youth Projects Manager post and was successful.

32. As part of the 2011 redundancy process the Claimant unsuccessfully applied for the permanent Core Leader role. Once she was informed that she had been

unsuccessful in achieving that role, the Claimant decided to undergo the assessment for the Young Hackney Worker role and was successful. The Claimant was seconded to the post of Core Leader in October 2012. The secondment was due to expire in 2015. We return to the secondment later in these findings.

33. There were other white women that the Claimant referred to in the Hearing, namely Hayley Birch and Fiona Meeks who she considered were not appropriately appointed to the senior roles that they achieved at the end of the 2011 process. The Claimant also alleged that Alice Deacon, Fiona Meeks and Naomi Watson were appointed to roles where they had not met the assessment or qualifying grade in the assessment and were therefore not suitable for those roles. The Tribunal did not have the information on which to make findings about the suitability of those individuals for the roles to which they were appointed. However, the managers who attended to give evidence all confirmed that during the reorganisation processes either in 2011 or 2015 the Respondent was seeking to meet its statutory responsibilities to young people in the borough with limited resources and that therefore the department needed to be refocused and reorganised in a cost-effective manner. In those circumstances, it is unlikely that the Respondent would appoint people to roles if they did not meet the criteria to fill those roles, when there was work that needed to be done to meet statutory obligations and responsibilities in relation to vulnerable residents.

34. The Respondent confirmed that as part of the 2011 reorganisation Tom Sheppard as the Youth and Communications Coordinator took on responsibility for overseeing the organisation of the Hackney Youth Parliament. It was the Respondent's desire that that piece of work should not be kept by one person but that other workers in Young Hackney should contribute to it. The Claimant had been solely responsible for that piece of work prior to the restructure. We find that Mr Sheppard was not given the Claimant's portfolio but that he oversaw that work thereafter.

35. Whereas the Claimant had been responsible for youth participation before the 2011 restructure, because of the refocusing of the department, there was no post that had youth participation as part of its job description. It was no longer the responsibility of just one worker. All members of staff were expected to be involved in youth participation in the borough and it became something that was embedded across the service. The Claimant was particularly aggrieved at losing this aspect of her work.

36. As part of the 2011 reorganisation process, the Claimant when from a Scale 6 post to a PO2 post and therefore she was not disadvantaged in that process.

37. Also, although the Claimant complains about her initial ring-fencing in the 2011 redundancy process, she did not point to a role and state that she ought to have been ring-fenced for that role instead and had not been.

38. We find that Robert Faulkner, a white male chose voluntary redundancy in the 2011 process. AT the time that his employment was due to end, he was working closely with a family on a sensitive matter. Because of this Ms Adams asked him to extend his notice period by one month to conclude that work. That was to meet a temporary service need and he agreed to do so. Ms Adam did not offer him a new job. He simply extended his notice. At the end of that additional month, Mr Faulkner left the Respondent in accordance with his voluntary redundancy.

39. The Claimant states that the Respondent was subject to many Employment Tribunal cases on the grounds of discrimination arising out of the 2011 process. We find that Tribunal judgments are a matter of public record and the Claimant did not produce to us any judgments from other cases that supported her position.

40. The Claimant was very active politically in the London Borough of Hackney. Around the time that she was appointed to the seconded post of Core Leader, the Claimant was also actively seeking selection as a member of the Greater London Assembly and a seat in the local council elections. The Claimant's ultimate aspiration was to be a member of parliament.

41. In August 2013, the Claimant requested four weeks' annual leave to pursue her candidacy for a seat in the forthcoming council election. The Respondent granted her 13 days' leave and 5 days' unpaid leave from 4 September 2013 until 27 September 2013. The Claimant was due to return to work on 30 September 2013. This was agreed with the Claimant's manager, Gifty Green.

42. Following that leave, in September, the Claimant requested an additional five days' leave unpaid to continue to pursue her personal political aspirations. The Claimant stressed that this leave was crucial to her securing her ambitions. However, the Respondent considered that she had already been away from the service for an extended period and had utilised most of her leave entitlement for her personal ambitions and was not using her leave for rest and refreshment. It was noted that the Claimant was tired and stressed. Gifty Green discussed the Claimant's application with her manager, Pauline Adams, and they decided that the Claimant's decision to use her leave entitlement in this way was not allowing her sufficient time to recuperate from her demanding role as Core Leader. In addition, the Claimant had exhausted her leave and was now asking for further unpaid leave.

43. The Claimant's request for additional unpaid leave came at a time when the Respondent was expecting notification of a Youth Justice inspection and followed a period of significant recruitment and change across the service. We have outlined above the significant changes brought about by the 2011 restructure. The Claimant's team, while not raising the issue with her directly, had raised with her manager, Gifty Green, that there were issues regarding the Claimant's supervision, support and communication with them. Ms Green informed Ms Adams that the Claimant's staff described feeling that they had lacked consistent leadership including a lack of modelling of good practice by her.

44. For those reasons, the Respondent took the unusual step of not only refusing the Claimant's request for additional leave but of terminating the Claimant's secondment early. The secondment was terminated in October 2013. Following the termination of the secondment, the Claimant resumed her substantive position as a Young Hackney Worker within the custody triage team.

45. The Claimant was unhappy about the Respondent's decision to end the secondment early and took out a grievance against Pauline Adams. Ms Adams wrote to the Claimant on 17 October 2013 setting out in detail her reasons for terminating the secondment. In her grievance, the Claimant stated that the decision to terminate her contract prematurely was unfair and she wished to challenge the grounds given as the evidence and justification for this decision by Ms Adams. She pleaded that the period

of extended leave had been approved by management and was therefore planned for and that was Gifty Green's responsibility to ensure that her staff did not feel abandoned during her leave. She stated that the Respondent was aware of her leave and that it had all been done with management approval and management awareness and therefore there should not have been any issue with it. She also complained that she had spoken to Ms Adams in her line manager's absence to informally discuss concerns that she had about her health and wellbeing and that information and now been used against her to undermine her position within the unit.

46. Eamon Brennan, Head of Service Young Hackney, conducted the investigation into the grievance. He spoke to the Claimant, Pauline Adams and Gifty Green. He met with the Claimant on two occasions as part of his consideration of her grievance His conclusion, notified to the Claimant in a letter dated 11 December 2013, was that he was unable to support the Claimant's grievance or to support her proposed resolution. He also produced a detailed report on the grievance.

47. The Claimant in this case has compared the treatment of her application for the extended five days' unpaid leave to the way in which the Respondent agreed leave for two male colleagues who are also Muslims to celebrate Eid al-Fitr. We find that John Hart and Hashim Bhajee were Muslim colleagues of the Claimant within Young Hackney. They had arranged with the Respondent to take leave during the period of Eid al-Fitr. They had not asked for their leave to be extended but had simply taken the leave agreed and returned to work thereafter. We find also that the Claimant was given the leave that had been arranged with her for her to seek her political appointment. What was refused, was the additional five days' unpaid leave and the circumstances for that were explained to her in Ms Adams' letter dated 17 October.

48. The Claimant had on tried on two previous occasions to seek political appointment, and this was her third time. The letter confirmed that the only additional leave that she would be given was the two days TOIL that she had already accrued. The Claimant therefore got two out of the three days that she asked for and those days were to be paid rather than unpaid.

49. Once she received Mr Brennan's decision, the Claimant decided that she would not pursue her grievance any further. The Claimant did not pursue her internal appeal and she did not bring a complaint to the Employment Tribunal. The Claimant was active within UNISON and would have been aware how to access advice about the Employment Tribunals.

50. In January 2015, the Claimant was managed by David McLean. In January, the Claimant and Mr McLean had an argument during which he spoke loudly to her in the office. The argument was also conducted in an email exchange between them and was over the Claimant's decision in relation to her management of a young person to whom she was providing a service. Her trade union colleague, Norman Saggers witnessed the incident in January 2015 and in his witness statement stated that he was alarmed by the way in which Mr McLean spoke to the Claimant.

51. The Claimant had been put into this department under Mr McLean's management in 2013 once her Core Leader role had been terminated. It is likely that the Claimant and Mr McLean had a difficult relationship.

52. In May 2015, the Claimant took out a grievance against Mr McLean. That grievance was directed to Brendan Finnegan who at the time was Mr McLean's line manager. She alleged that Mr McLean had been increasingly malicious and that his communications with her had been increasingly virulent and aggressive in tone and manner. She referred in the grievance, to an incident that occurred on 16 April 2015. She also stated that she had witnessed similar systemic and undermining behaviour that Mr McLean had demonstrated to other female colleagues in the department who had resigned in response to his treatment. She alleged that Mr McLean had raised matters concerning her casework with her which ought to have come from her line manager, Nick Jabbari and that he had showed her animosity which had affected her ability to work productively. She stated that management had responded unsympathetically to her sickness and when she returned from sick leave, she was presented with a batch of sickness forms and prompted to complete them with no invitation to a back to work interview to discuss the impact of her recent absence. She stated that when she was given the opportunity for a back to work interview, there was little focus on her wellbeing.

53. Karen Popely, Service Manager, Access, Assessment and Family Support Services was appointed to investigate the grievance. We did not hear from Ms Popely in evidence as she was no longer in the Respondent's employment. However, we did hear from Brigitte Jordaan, who conducted the Claimant's appeal against Ms Popely's finding.

54. There was also a letter which had the Claimant's name along with her colleagues': Linton Harper, Hannah Vickerie and Chantel De Senna entered at the end. This letter made complaints about Mr McLean's conduct in the office and his treatment of staff. We find that the Claimant liaised with Matthew Waterfall, a trade union representative, in putting together the letter. It stated that it was drafted by UNISON on behalf of the staff in the Youth Justice Team. There may well have been other staff that collaborated with the drafting of that letter. The letter was submitted at a different date from the Claimant's grievance and so did not form part of the Claimant's grievance investigation. It was unclear to the Respondent who had written the letter as it was unsigned and once it was submitted, UNISON did not take ownership of it even though its name was written in the title.

55. We find that it is likely that Matthew Waterfall told Mr McLean that a grievance was about to be instigated against him by the Claimant. Mr McLean appeared to know of the grievance before it was issued or around the time that it was issued. Mr Finnegan's evidence was that he did not know who Matthew Waterfall was. Ms Adams had little involvement with Mr Waterfall and had not been privy to the Claimant's grievance. Mr Waterfall left the Respondent around the same time that Mr McLean's agency role came to an end.

56. Mr Finnegan confirmed in his evidence that he spoke to the Claimant to encourage her to follow an informal process with her grievance as he considered that would be the most appropriate way for it to be raised. However, the Claimant made it a formal grievance. Ms Jordaan confirmed that the Respondent expected their managers to raise their grievances through an informal process before formalising it. As Mr Finnegan had been involved in those discussions, he could not investigate the grievance.

57. We find that Mr Finnegan did not know about the severity of the issues between the Claimant and Mr McLean until the Claimant formally raised her complaint. It is unlikely that Mr McLean would have told him that there were issues between them as it is unlikely that he would have wanted to admit to there being any issues with one of his direct reports. We found no evidence that there had been instructions from Mr McLean or Ms Adams to over manage the Claimant. There was no evidence that the Claimant's emails and work had been monitored by any of the Respondent's officers. The Respondent noticed some under recording by the Claimant about an at risk young person. This would always be a matter of concern no matter who the worker was. Because of this, a few of her cases were checked to see if there was a pattern.

58. The Respondent's procedure for investigating grievances would not usually require the investigator to look at matters that had occurred more than three months before the grievance was submitted. The Claimant submitted a timeline as part of the grievance investigation which referred to incidents as far back as 2013. Although Ms Popely agreed to look at incidents outside of the three months' time limit, she did not investigate the 2013 matters. The list of people to be interviewed as part of the grievance was agreed between the Claimant and Ms Popely. It is unlikely that Mr Saggers was part of that list as he was not interviewed as part of her investigation.

59. Soon after the grievance was submitted, Mr McLean was no longer working at Young Hackney. Ms Jordaan was unable to tell us the exact date that Mr McLean left. Mr McLean had been working as an agency worker with the Respondent. In May 2015, his contract had been reduced to 2-3 days a week. In April, the Respondent planned that his agency role would not continue beyond September. In June, it was reduced to two days a week. He no longer had any line management responsibility. This was confirmed by Mr Finnegan in his evidence and he had direct line management responsibility for Mr McLean. Mr Finnegan's reason for reducing Mr McLean's days and then terminating his agency role was simply to save costs. The employed full-time managers could take on the work that Mr McLean had been doing. Apart from doing some restorative practice training, Mr McLean has not been asked to return to work in Young Hackney.

60. Ms Popely investigated the Claimant's grievance but did not uphold it. She did speak to Mr McLean as part of her investigation. It was her decision that it was correct for managers to refuse staff on sick leave permission to record that time as working from home. This would not allow managers to address sickness absence through council procedure and ensure that staff and employee's responsibilities were adequately met. In relation to the occupational health report recommendation that the Claimant should be allowed to work from home; Ms Popely found that the Respondent had followed that advice for an interim period but that it had been an unsuitable solution for the Respondent to manage the Claimant's attendance at work and so it was discontinued.

61. Ms Popely also decided that the issue of sickness management in the Claimant's case had been unnecessarily complicated by the absence of consistent, well recorded sickens monitoring arrangements over the past year. One of her recommendations was that the Respondent should ensure that managers were trained in the management of sickness absence in accordance with its procedures. The Respondent had not properly recorded the Claimant's historic sickness absences or subjected her to formal procedures and so the relevant procedures had not been consistently followed in

regards to the Claimant's sickness absence. This was due to multiple changes of line managers, changes to the service over the past year which all led to the Claimant viewing how she was being currently monitored as bullying and harassment. Ms Popely's finding was that the Claimant had not given her evidence of bullying and harassment but instead, there had been a shift in management scrutiny of her absences from work. Ms Popely concluded, after consideration of all the evidence that it would not have been reasonable to conclude that David McLean and the other managers had bullied or harassed the Claimant. She did not uphold her grievance. On 21 June 2016 Ms Popely wrote to the Claimant informing her that she had not upheld her grievance and advising her of her right of appeal.

62. As the Claimant had not raised her complaint as one of harassment and bullying, but as a grievance, the Respondent had investigated it using the grievance process. If it had been investigated under the harassment and bullying policy the Respondent would have looked at the evidence she produced to see if it supported an allegation of harassment and bullying in the definition set out in the policy. The Respondent did do that in its investigation of the Claimant's grievance.

63. The Claimant appealed against Ms Popely's decision and Ms Brigitte Jordaan conducted an appeal. Ms Jordaan wrote to the Claimant on 23 October 2015 inviting her to a grievance appeal hearing on 18 November 2015. We will return to this later on in these findings.

64. At the same time as the Claimant was raising her grievance against Mr McLean, because the council had an unprecedented reduction in its funding, a delegated powers report of the Children and Young People's Service was written dated 7 July 2015 by Sheila Durr recommending a restructure of the Young Hackney, Family Support, Triage and Youth Justice Services to make anticipated savings for the years 2015 to 2016 and 2016 to 2017 of £1,952,000. It was Ms Adams' evidence that prior to 2011, the Youth Department was a youth service focused on activities, etc, for young people. After 2011, the department was refocused so that it was amalgamated with Youth Support and Youth Justice into one Young Hackney Service. It was much more targeted and Ms Adams' evidence was that she wanted to strip out some of the management positions within the Youth Service and create a more streamlined structure where everyone was required to do more targeted, focused work. In 2015, Youth Justice was put with Social Care as further funding cuts meant that the service had to be done with even less money. The Young Hackney Service was refocused to early help and intervention, targeting the statutory responsibilities that the council had to meet.

65. After the delegated powers report in July 2015, a 90 day consultation process began which was done in conjunction with the unions. The final delegated powers report was signed in July. At that point, the service reorganisation began in earnest. The focus of the new service was interpreted into the job descriptions that came out of the reorganisation. As there were significant savings that had to be made, the Respondent did not intend to keep everyone who was already employed by the Respondent.

66. In the group consultation meetings, it is possible that officer stated that the Respondent wished to keep experienced staff, but there was indication that it wished to do so without ensuring that the people who were retained could perform the jobs in

which they were placed.

67. The Respondent sought to follow its redeployment and organisational change policies in the reorganisation. We had both policies in the bundle of documents. The organisational change policy stated that it applies to all Hackney employees but not to agency workers. The policy stated that the Respondent is committed to managing all changes, including those leading to restructuring and/or redundancy, in a way that is fair, consistent and legally compliant; and communicating with all employees affected by change openly and transparently. The policy did not apply to staff on fixed-term contracts, those seconded into jobs or those subject to transfers under the Transfer of Undertaking (Protection of Employment) Regulations 2006 ("TUPE Regulations"). The policy set out that the Respondent intended to maintain its commitment to equality and diversity during periods of change; maintain high levels of performance and service delivery throughout periods of change; mitigate the consequences of any redundancies and support employees who are redundant; treat employees fairly throughout periods of change; maximise employee and trade union input into change proposal and encourage a culture of working together; and be flexible and adaptable to bring about a quick and efficient change. Where posts were deleted, the Respondent aimed to retain employees' skills within the organisation wherever possible by conducting a thorough redeployment search. Ms Adams' evidence was that if a post was not filled during the ring-fencing interview process, it would be made available for those who are in the redeployment pool for two days prior to it being advertised internally and externally. The delegated powers report recommended that the Claimant's role should be deleted as part of the restructuring of the Children and Young People's Service.

68. The process to be followed was that if someone's post was identified as being redundant then that person would be ring-fenced for roles that were one grade above or one grade below the one that s/he had previously occupied. If the Claimant and any other employee who has been made redundant was not successful for one of the posts that they had been ring-fenced to in the re-organisation, then they would go on the redeployment register. Once on the redeployment register, the Respondent would follow the redeployment procedure. While on the redeployment register, the Respondent would conduct a job search of internal vacancies for suitable alternative employment. The search would run concurrently with the employee's notice of dismissal and would normally last for 12 months where the job search results from a restructure. If at the end of the job search period suitable alternative employment has not been found, then the employee would be dismissed. If an agency worker is occupying a post that has been identified as suitable alternative employment for an employee on the redeployment register, then the agency worker will be displaced by a redeployee if they have the appropriate skills and abilities, to avoid their redundancy. A job will be considered as a suitable alternative offer of employment where the vacant post is at the same grade as the redeployee's substantive grade; and the redeployee has the qualifications, skills and competencies required in the person's specification; and working conditions (for example, hours of work, working patterns) between the old job and the new job are broadly comparable. A redeployee has the option to request that they be considered for opportunities at one grade below their substantive grade on six months' salary protection; and/or opportunities at two or more grades below their substantive grade on no salary protection. A redeployee would not be considered for posts above their substantive grade. A redeployee can apply for these posts should they be advertised in the usual way.

69. An employee at risk of redundancy would need to complete a redeployment form setting out their skills, abilities, experience and relevant qualifications. The central recruitment team will then carry out preliminary matching of the redeployee against corporate vacancies within the employee's job family based on the information supplied on the redeployment form. Where there is a potential match to a post about to be advertised, the recruitment will be suspended pending the completion of the following steps, and that is the redeployment would be sent to the Vacancies Manager. The manager would judge the employee's suitability by objectively considering the employee's skills, abilities and experience against the requirements of the job and the person specification. The employee could then be interviewed or tested for the job and if they were successful at interview they would be offered the job on a four week trial basis. If they were unsuccessful, they will return to the redeployment pool.

70. Ms Adams was clear that there was no absolute requirement to recruit and that there was no automatic right for someone who was facing redundancy to be retained within the Respondent's employment. A person affected by the restructure would only secure another position if their application met the requirements of the job description and if their performance at interview met the requirements of the job.

71. In the 2015 restructure, Ms Adams had to make £2 million worth of savings which meant that it was important that people who were seeking redeployment or to be appointed to the new jobs created in the structure would be suitable for those jobs and not require any additional investment in terms of training.

72. After the group consultation meetings, the Respondent undertook individual consultation meetings. In order to minimise redundancies, where staff could not be directly assimilated into a role, the decision was made to ring-fence staff to all jobs of the same or similar grade. The Claimant's individual consultation meeting with Tina McElligott (her Head of Service) took place on 14 May 2015. Ms McElligott confirmed with the Claimant that there were 139 staff affected by the restructure. The notes of their meeting show that they discussed the vision for the development of the Youth Service Department, the minimum skill set for practitioners undertaking Youth Justice interventions. The Claimant asked how competence would be measured. The Claimant was informed that interviews would be used together with expressions of interest from those seeking appointment. The Claimant was reassured that agency staff would not have access to those opportunities until permanent staff had exhausted the ring-fenced posts. The Claimant's role was graded PO2 and she was offered the opportunity for ring-fenced interviews for the post of Youth Justice Worker, grade PO2, Youth Support and Development Worker, grade PO1, Restorative Justice Worker, grade PO1 and Project Worker Partnerships and Grants, grade PO1.

73. In her individual consultation meeting, the Claimant was given some pointers as to how performance would be assessed in the ring-fenced interview process and what it would take to meet the person specification for each job. She was advised that she would need to demonstrate in her application forms and at interview that she fitted the job description and that she could do that job. There was no expectation that managers would be taking into the account their personal knowledge of members of staff who were applying for jobs. The ring-fenced process was competitive. Managers recognised that some staff may not have been interviewed for some time given that most of the staff within the service had been employed for a long time. The Respondent therefore offered interview training to all staff affected by the restructure.

Staff who were unsuccessful in the ring-fenced opportunity were given the opportunity to receive feedback and to reapply for available posts through open recruitment. We find therefore that the Claimant would have had ample opportunity to know that the Respondent was expecting her to make fresh applications for each job, to evidence her suitability for the post in each application form and to continue to do so at interview.

74. Pauline Adams was part of the interview panels for the three ring-fenced positions the Claimant applied for: Restorative Justice Worker, Youth Support and Development Worker and Project Worker Partnership and Grants. Ms Adams was joined on the interview panel by Alice Deacon, Service Manager.

75. Although Sheila Durr may have spoken to staff to reassure them that there would be opportunities for them during the reorganisation, it was not the main focus of the reorganisation to retain all skilled and experienced staff. The main areas of improvement which they hoped to achieve through the proposed changes and on which the service would be focused were set out in the delegated powers report as follows: that there will be a lean core service that governed all standards and methods of work, that money would be focused where it has the most impact, that only the best are employed and retained, that community settings undertake most work; and that the community should be empowered to address abuse, neglect, social need and prevent escalation to statutory services and dependency. Also, that all work would be family work or otherwise clearly defined i.e. youth work, education, adolescent transition to adulthood, that focuses on preventing people's needs escalating and/or helping people receive/exit statutory services rapidly. Lastly, that experience and knowledge is maintained and developed within the workforce and that outcomes are explicit for families and practitioners.

76. We had the grading forms in the bundle for some of the posts that the Claimant applied for. Those had been used by each member of the panel to score her. On each form, the panel member had the questions printed. The form also had the matters that the Respondent expected to have included in the candidates answer. The rating was divided into numbers "1" – "4" with "1" being "*Significant development required (virtually all the 'effective' indicators are not met)"* and "4" being *"Strong evidence of competence (majority of the 'effective' indicators are met)"*. "3" was the "*Benchmark*" and meant that over half of the effective indicators had been met. "2" was *weak* in that some development was required. There were six questions in each interview for a job. Those were the same forms used in each process and therefore this was the standard that everyone was asked to meet.

77. In relation to the Restorative Justice Worker post, the Claimant was interviewed on 4 September. There was only one vacancy. Four candidates including the Claimant were interviewed for the role. The Respondent wanted the successful candidate to demonstrate in their answers a high level of skills and knowledge and experience of Youth Justice and a clear understanding of the needs of the job that she had applied for. The Claimant was the lowest scoring candidate with just 8/20 points. We find that this was the sole reason why she was not appointed to the role. The Claimant's answers were focused on the roles that she had previously held. The Claimant failed to demonstrate the application of her experience to the requirements of this role. The Claimant did not show that she could interpret her experience to meet the needs of the role but assumed that the panel should know that she could do so because of the previous jobs she had held.

78. The Claimant was also interviewed for the role of Project Worker, Partnerships and Grants. She was interviewed on 2 September 2015. It is the Claimant's case that she scored the highest for this role and should have been appointed to it. There was one vacancy and four people were interviewed for the role. The Claimant scored 8/16 points, Subira Cameron-Goppy also scored 8/16, Hazel Turner-Lyons scored 7/16 and Cory Alleyne performed even lower with just 6/16. The Respondent considered that no one had performed to the benchmark necessary for appointment. Even though the Claimant scored the highest out of all the applicants, her score was still too low for her to be appointed. Following the interviews, Ms Adams reviewed the role and decided that none of the candidates had demonstrated the skills, knowledge and experience required to identify funding opportunities and manage large scale grants programmes through the application, implementation, monitoring and reporting cycle. Ms Adams stated in live evidence that she reviewed the Respondent's need for someone to be employed to carry out this work and after discussion with other people in other youth services around the country she decided that an alternative solution was appropriate. The more cost effective solution was to engage external bid writers as and when funding opportunities came up. The project management of any successful bids would be managed within the team and without a dedicated staff resource. The post was deleted from the Young Hackney structure.

79. Ms Adams disagreed that her scoring of the Claimant was arbitrary or open to bias. Ms Adams did not interview or score the Claimant on her own but always as a member of an interview panel.

80. 34 Youth Support and Development Worker posts were created as part of the restructure of Young Hackney. Unfortunately, there were more people in post than available posts as 43 members of staff from within Young Hackney alone were matched to it. The post was also open for staff in Youth Justice and Family Support to consider applying for as had been agreed through the delegated powers report. The Claimant had a ring-fenced interview for the Youth Support and Development Worker post. The Claimant was interviewed on 1 September 2015. Ms Adams' recollection was that the Claimant's responses failed to illustrate a fundamental understanding of the principles, methodology and approach of early help/intervention services. She was able to describe the service structure but Ms Adams' evidence was that she did not demonstrate her own understanding of the service methodology or evidence based approaches nor did she demonstrate how she would apply those in practice. In accordance with the Respondent's redeployment and redundancy procedures, Ms Adams provided the Claimant with verbal feedback following the ring-fenced interview process to enable her to reflect and improve her way of presenting herself prior to any subsequent interview she might have. She also gave the Claimant feedback by email.

81. Once the ring-fenced process has concluded, the Claimant reapplied for the post of Youth Support and Development Worker when it was advertised. The Claimant was short listed and interviewed on 23 October 2015. The panel for that interview was Alice Deacon, Pauline Adams and John Hart who was the newly appointed Hub Manager. John Hart had not previously interviewed the Claimant during this process. The Claimant scored 10.5 points out of a maximum score of 24, which was the lowest score out of those interviewed in that exercise.

82. Other candidates were interviewed on 20 October. The Claimant was not the

only candidate who failed at the interview stage. The assessment process included an exercise with young people who were not part of the panel's decision making process but were used to sense check the panel's decision. The Claimant was also scored poorly by the young people. There was no evidence that the Respondent specifically chose young people who did not get on with, or knew, the Claimant to do this exercise.

83. There were other people who scored well such as Tamba Ngegba who scored 21/24 points and Gabriel Ajose who scored 14/24 who are likely to be from the black or ethnic minority communities. Those two individuals were the only two who were appointed to the post during that round of interviews.

84. We find that Pauline Adams is a member of the Labour Party but that she did not have any specific connections within the local Labour Party. She confirmed in her evidence that she had been supportive of the Claimant's attempts to be selected for political office. She also confirmed that there had been no intervention by councillors, executive officers or elected officers in relation to the Claimant's employment or her opportunities for redeployment. Ms Adams confirmed that she had never met Stella Creasy who was the MP for Walthamstow.

85. The Claimant did not put to Ms Adams or Mr Finnegan that their particular brand of Labour Party beliefs or socialism was different to that of the Claimant. There was no discussion of anyone's beliefs in socialism or any other type of political beliefs in this Hearing.

86. Ms Adams' evidence was that the post of Strategic Manager Youth Support and Participation was graded at PO8 and the post of Hub Manager was also graded at PO8. The post of Youth Programmes and Project Manager was graded PO10 and the Learning Manager post was graded at PO6 as was the Safeguarding and Learning Consultants Post. The Youth Support and Development Team Leader post was graded at PO6. The Grants and Investment Officer post was graded at SL1. The redeployment policy, referred to above, did not allow the Claimant to be ring-fenced for those posts as they were not on the Claimant's grade or one grade up or one grade down from her grade. The Claimant could not have been given a ring-fenced interview for those posts because her substantive grade was PO2. The post of the Consultation and Communication Officer (PO1), Learning Manager (graded PO6) and Social Pedagogue (graded PO2) were not part of the restructure and so the Claimant could not have been given a ring-fenced interview for them. The Claimant could have applied for those posts directly to the recruiting departments.

87. The Claimant was given a ring-fenced interview for the role of Youth Justice Practitioner. The Claimant was interviewed for that role. Brendan Finnegan and Tina McElligott were on the interview panel. Ms McElligott chaired the panel. There were 12 Youth Justice Practitioner roles in the new structure. They were in Mr Finnegan's department and not within Ms Adams' department. Two of those posts had to remain as possible future roles to offer to staff on maternity leave. The panel was therefore recruiting to 10 posts. We had the scoring sheets of the recruitment for this post in the bundle of documents. Four of the Claimant's answers to the panel's questions were graded as 'weak' by the members of the panel. The Claimant was not the only person to be unsuccessful in this round.

88. It was the Respondent's case, that the Claimant was not appointed because she

did not show that she had the necessary effective skills and that she would require development in over half of the areas the questions related to. Mr Finnegan's evidence was that at the interview, the Claimant did not show that she could transfer her skills from informal out of court service to a formal service. The job had become more formal and the Claimant did not demonstrate in the interview that she appreciated the difference in emphasis.

89. Mr Finnegan's evidence was that not enough internal ring-fenced candidates were appointable and an external recruitment process had to be undertaken. A further external recruitment process was completed in the autumn of 2016. As of November 2016, all Youth Justice Practitioners posts have full-time staff appointed to the roles. This shows that the Respondent were endeavouring to ensure that the best people were appointed to the posts. They took some time to make sure that they had the right people. We were provided with an ethnic breakdown of the people who now occupy the Youth Justice Practitioner roles. The present cohort is made up of 50% female of whom 80% were from black and minority ethnic communities and 60% self-defined as black. Two of those candidates are older than the Claimant. One is male and the other described herself as British, that is Susan Edwards, who is stated to be 58 years old. That information was provided to the LGC Committee in February 2016 at which there was no union representation.

90. It is the Claimant's case that she applied for the post again in November 2015 and again in January 2016 but the Respondent did not have the information to hand at our Hearing to make specific points about the quality of her application on those occasions. It was the Claimant's evidence in the Hearing that she made many applications for jobs around this time. She confirmed that she cut and paste parts of her applications from one form to another and did not specifically tailor the information that she put on her application forms to suit the role that she was applying for. She also suggested that the Respondent managers on the panels should have taken account of the fact that she had been working for the Respondent for many years and that she had performed similar roles and that therefore she would be able to perform the roles that she had applied for. We find that this was not the basis on which the Respondent conducted recruitment. The Respondent's conduct of a fair and equal opportunities recruitment process required members of the panel to put out of their minds any personal knowledge that they had of candidates and to base their decisions on the candidate's performance in the interview and the information that they entered on the application forms.

91. As the Claimant was unsuccessful during the ring-fenced interview process, Ms Adams wrote to her on 5 October 2015 giving her notice of redundancy. The Claimant was informed that 27 December 2015 would be her last day of service. The Claimant therefore had opportunity for redeployment from 5 October 2015 to 27 December 2015.

92. In October 2015, the Claimant applied for the post Consultation and Communications Officer. We heard from Florence Obinna who is the Consultation Manager in the Communications and Consultations Team and who was responsible for overseeing that recruitment process. The Claimant was not short-listed for the position. Ms Obinna's evidence was that the Claimant's application for the post was generic and set out the casework experience she had achieved through working in Children and Young People's Services. In her application, the Claimant did not attempt to demonstrate how her experience would make her a good candidate for the role of

Communications and Consultation Officer. She did not target her application to the position she was applying for. Ms Obinna's evidence was that the Claimant did not address, for example, whether she had data analysis skills, which was an important requirement that had been clearly set out in the job advert for the position. Ms Obinna concluded that the Claimant might have rushed through her statement based on other statements she had submitted for other jobs. However, if the statement was not appropriately tailored to the specific job specification for each role it could mean that the applicant would not be short-listed for the role.

93. During her time in redeployment, the Claimant applied for positions of Project Worker Partnership and Grants on 7 October 2015 and the Youth Support and Development Team Leader role which was a PO6 graded post. Unfortunately, the Claimant's written statements for those roles were the same as she has used previously and did not specifically respond to the job descriptions and person's specifications of these roles. As the Claimant's supporting statement did not sufficiently demonstrate her suitability for the role, her application was not short-listed for the team leader post. As already stated, the Project Worker Partnership and Grants post was withdrawn for the reasons referred to above in these findings.

94. We find that Ciara Burke was on maternity leave during the 2015 restructure and because of this, was afforded protection to a post in the new structure. Ms Burke chose to take voluntary redundancy and did not remain within the department. Kate Lee was appointed to the role of Youth Support and Development Worker grade PO1 on merit after an interview process. Rochelle Watkins was interviewed by two different panels for both the Youth Support and Development Worker post and the Youth Justice Worker post. Ms Watkins was successful in both interviews on merit and chose to work within the Youth Justice Team. Ms Adams confirmed in her evidence that Karolina Dabrowska and Mariana Caetano were appointed to the posts of Youth Support and Development Worker following interview process. There is no evidence that they did not meet the assessment criteria or that they were not appointable to the role. The Respondent undertook a rigorous process in recruiting to these roles and the Tribunal find that those people who were appointed were deservedly so.

95. Ms Jordaan conducted the Claimant's appeal against the outcome of her grievance against Mr McLean. Ms Jordaan spoke to Ms Vickerie after speaking with the Claimant. Ms Vickerie confirmed that she had nothing to add. Ms Jordaan considered all aspects of the Claimant's appeal and in her outcome letter she addressed each point in detail. If there had been any evidence of bullying or harassment by Mr McLean she would have triggered the Respondent's bullying and harassment procedure – even if the Claimant had brought her complaint as a grievance. Apart from the Claimant, none of the other individuals named at the end of the Unison complaint about Mr McLean corroborated it or supported the Claimant's complaint. The letter had been unsigned. The Respondent considered that it had no corroboration of the Claimant's complaint.

96. Ms Jordaan and Ms Popely both recognised that there had been some increased monitoring of sickness absence and that the Claimant may have been affected by that. This was Council policy and not targeted at her specifically. They made recommendations for managers to undertake further training in relation to sickness monitoring. However, they found no evidence of harassment and bullying by Mr Mclean and the Claimant's grievance was not upheld on appeal.

97. We had no evidence that David McLean had been given license to harass or bully the Claimant.

98. The Claimant had not secured a position through the ring-fenced process, through the redeployment process or through open recruitment. Her employment terminated on 27 December 2016.

99. We heard limited evidence about the Claimant's trade union involvement. Most of her trade union involvement seemed to be in 2011 when she was an active member of UNISON and worked together with Norman Saggers and/or Matthew Waterfall in relation to various matters. The Claimant did not give evidence about her union activity thereafter.

100. We heard evidence about the Claimant's efforts to seek political office in 2013/2014. We did not hear about her political activity thereafter. Mr Finnegan and Ms Adams both denied that anyone had been chosen, recruited, or appointed to post because they had previously worked in the armed services or in the police. The Claimant did no allege that anyone had that background before they were appointed. We did not hear any evidence about any post that had been recruited to in that way.

101. In her witness statement the Claimant renewed her application for the Witness Orders that she had previously applied for, in correspondence with the Tribunal (as referred to above). The Claimant was unable to tell us what relevant information about her employment could be provided by the prospective witnesses she listed. The Tribunal did not make any additional witness orders. In relation to Hannah Vickerie, Ms Jordaan confirmed that she had been interviewed as part of the grievance process and confirmed that she had no information to give in relation to Mr McLean. We did not have a witness statement from her. The Tribunal was also conscious that the issue of Mr McLean's treatment of the Claimant was a background matter and not something that the Claimant was asking us to find as an act of discrimination against her. In those circumstances, and given the fact that Ms Vickerie was unlikely to say what the Claimant wished that she would say even if she were called to the Tribunal, the Tribunal declined to grant a Witness Order for her.

102. The Respondent provided the Tribunal with some statistical evidence from the 2015 reorganisation process. From that information, we conclude that 146 staff were affected by the process. 89 were appointed to new roles, 33 took voluntary redundancy and 15 were made compulsorily redundant, six resigned and two had settlement agreements. Out of those who were made redundant, 8 men were made compulsorily redundant whereas 7 women were made compulsorily redundant. As there were 100 female members of staff, that was 7% of the women. As the Claimant identified as black, we looked at the figures to see the percentage of black staff that were affected. Working from the ethnic breakdown in the document, we find that 15% of the Caribbean staff, 10% of the British staff, no Nigerian staff, and 1 out of 3 'other African' staff were made compulsorily redundant. We did not find significant differences as the Claimant submitted that we would. Also, because the numbers involved are so small, any slight difference could skew the results.

103. The Claimant has stated in her submissions that she proved in the Hearing that all the people who were seconded to the Core Leader post were the trade union

activists. That was not part of her evidence at the Hearing. It was also not proven that scoring could have been arbitrary and subject to bias and scores marked artificially low. The Claimant suggested to Mr Finnegan in the Hearing that his scoring was open to bias and he agreed that that was technically possible but he did not agree that he had scored her artificially low or had been biased against her. His evidence was that she had not provided sufficiently targeted and appropriate answers to enable her to be scored higher than she had scored. The Respondent confirmed that in relation to the agency staff, Sue and Danielle; they had been undertaking Youth Justice Practitioner duties and continued to do so while the recruitment of experienced and competent candidates was undertaken. Both Sue and Danielle applied in 2016 for externally advertised full-time Youth Justice Practitioner roles. That would have been at the end of the ring-fenced and redeployment processes for employees. Both were successful in achieving those roles. We find therefore that roles were not kept for them but because roles were still available at the end of the internal processes they could apply and were appointed. Looking at the list of Youth Justice Practitioners supplied to us by the Respondent, we find it likely that the two agency workers referred to by the Claimant in this case are Danielle Dewsbury who is of mixed race, (white and Caribbean ethnicity) and Susan Edwards who was identified as British.

104. Tom Sheppard's role was not part of the restructures in 2011 or 2015. He therefore did not require induction into his role. However, as the service had changed around him, he was invited to induction to understand the new model. That is likely to be the training the Claimant observed. It was not training to enable him to reach the standard to do his role.

105. The law applied in this case was as follows.

The law

Discrimination

106. Discrimination on the grounds of age, race, sex and philosophical belief are all prohibited under Section 13 Equality Act 2010 (EqA). A person (A) discriminates against another (B) if, because of a protected characteristic and in this case the Claimant relies on age, sex and race; A treats B less favourably than A treats or would treat others. The Claimant can refer to either a hypothetical or an actual comparator to assist her in making her case in this regard.

107. It was the Claimant's case that the Tribunal would need to consider the combination or all 4 protected characteristics in deciding whether she had been subject to discrimination.

108. In relation to the comparators that the Claimant has relied on, the Tribunal will need to assess whether they were appropriate comparators or not and if not, what would be the characteristics of a hypothetical comparator - if that would assist the Tribunal in reaching a conclusion on her claims. The comparators the Claimant relies on are referred to in her complaints and in the list of issues.

109. Section 23 EqA states that, *"On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case"*.

110. In relation to the burden of proof, as the Claimant brings discrimination complaints, the burden of proof is on her. There have been several cases which have discussed the concept of the burden of proof in discrimination complaints. That is encapsulated in Section 136 EqA. In that section, it states that:

> *"(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."*

111. It has been held in the case of *Igen v Wong* and others that this requires the Tribunal to assess the evidence in a two-stage process. First, if the Claimant proves facts from which the Tribunal can infer that she has been treated less favourably on the grounds of her race and there is something additional such as background evidence which shows that it is likely that race was a factor in the Respondent's treatment of the Claimant, then the burden shifts to the Respondent to prove a non-discriminatory, cogent reason for the treatment. In the case of *Laing v Manchester City Council* [2006] IRLR 748 it was held that the Tribunal does not have to go through a two-stage process in every case if in the first stage, the Respondent has proved the reason for the treatment and that it is not in any way related to a protected characteristic. In that case, that will be the end of the assessment and the Tribunal would not need to go on to any other stages.

112. In *Laing* tribunals were cautioned against taking a mechanistic approach to the proof of discrimination in following the guidance set out above. The employee must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer had committed an unlawful act of discrimination against them. The tribunal can consider all evidence before it in concluding as to whether a claimant has made a prima facie case of discrimination (see also *Madarassay v Nomura International Plc* [2007] IRLR 246).

113. In every case the tribunal must determine the reason why the claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 *"this is the crucial question"*. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

114. The Claimant submitted in her written submissions and during the Hearing that she also was claiming direct discrimination on the grounds of her philosophical (political) belief. The Claimant never made an application to amend her case to add this complaint. She had not done so before the Hearing. Section 10 of the EqA deals with discrimination on the grounds of religion or belief. 10(2) states that belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

115. In the case of *Grainger v Nicholson* [2010] IRLR 4 Burton J in the EAT set out the parameters of a philosophical belief:

115.1. The belief must be genuinely held;

115.2. It must be a belief and not an opinion or viewpoint;

115.3. It must be a belief as to a weighty and substantial aspect of human life or behaviour;

115.4. It must attain a certain level of cogency, seriousness, cohesion and importance; and

115.5. It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

116. In applying those principles tribunals have held that a belief in Spiritualism can be a philosophical belief whereas in another case, Marxist/Trotskyist views were held not to be so since they could lead to socially destructive conduct. In the case of *Henderson v the GMB* [2015] IRLR 451 Simler J at the EAT upheld the tribunal's judgment that the claimant's 'left wing democratic socialist beliefs' were capable of protection. The Claimant's case was that she was seeking political office as a local councillor, as a member of the Greater London Assembly and had ambitions to become a Member of Parliament in the future. She did not tell us about any philosophical belief she held that caused her or could have caused her problems with her employer or her managers.

Time

117. It was the Claimant's case that she had been subjected to a continuing act of discrimination by the Respondent which began in 2011 of harassment and bullying, deliberately employed to engineer her departure from the service.

118. The Claimant submitted that Ms Adams had been involved since 2011 with her employment and that that was part of why she submitted that it was a continuing act.

119. The Tribunal notes that in Section 123 EQA complaints must be submitted to the Tribunal before the end of –

"(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable. …

(3) For the purposes of this section –

(a) conduct extending over a period is to be treated as done at the end of the period;

> *(b) failure to do something is to be treated as occurring when the person in question decided on it. …"*

120. The leading authority on the issue of time limits is the case of *Hendricks v Commissioner of Police for the Metropolis* [2003] IRLR 96. In assessing whether the Claimant has proved that there is a continuing act which extends over a period, the Tribunal needs to differentiate between a continuing act and a one-off act which has continuing consequences. In *Hendricks*, the court made it clear that the focus of enquiry must not be on whether there is something which can be characterised as a policy, rule, scheme, regime or practice but rather on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, (including the Claimant) was treated less favourably. In deciding whether a particular situation gives rise to an act extending over time, the Tribunal would need to have regard to (a) the nature and conduct of the discriminatory conduct of which complaint is made, and (b) the status or position of the person responsible for it. A single person being responsible for discriminatory acts is, the Court of Appeal stated in *Aziz v FDA* [2010] EWCA Civ 304, a relevant, but not conclusive factor in deciding whether an act has extended over a period.

121. If the Tribunal decides that there is no continuing act here, we would then need to consider whether it was appropriate to use our discretion as set out in Section 123(1)(b) EqA referred to above, to grant an extension of time if we considered it just and equitable to do so.

122. Although a tribunal has a discretion to extend time, it is aware that time limits are to be exercised strictly in employment cases and there is no presumption that a Tribunal should exercise its discretion to extend time on the just and equitable ground. The onus is always on the Claimant to convince the Tribunal that it is just and equitable to extend time, *"the exercise of discretion is the exception rather than the rule"* (*Robertson v Bexley Community Centre* [2003] IRLR 434). It has been held that whether a claimant succeeds in persuading a tribunal to grant an extension in any particular case is not a question of either policy or law; it is a question of fact and judgment, to be answered case by case by the tribunal at first instance which is empowered to answer it.

123. In considering whether to apply its discretion, a tribunal can take all factors into account and can apply the formula to that given to the Civil Courts by section 33 of the Limitation Act 1980 and referred to in the case of *British Coal Corporation v Keeble* [1997] IRLR 336. A tribunal would consider the prejudice which each party would suffer because of using or not using its discretion, and to have regard to all the other circumstances, in particular: -

(a) the length of reasons for the delay;

(b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the extent to which the party sued had co-operated with any request for information;

(d) the promptness with which the claimant acted once he or she knew the facts giving rise to the cause of action; and

(e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

124. Although, these factors will frequently serve as a useful checklist, there is no legal requirement on the tribunal to go through such a list in every case, provided that no significant factor has been left out of account by the Employment Tribunal in exercising its discretion (*London Borough of Southwark v Afolabi* [2003] IRLR 220).

Trade union activity

125. The Claimant also submitted that she suffered detriment because of her trade union activity. Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 gives a worker *"the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—*

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so,

(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or

(c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions."

126. In the Tribunal's assessment, in order to come within this section, the Claimant has to prove that the Respondent subjected her to a detriment as an individual by any action, failure to act with a purpose of preventing or deterring her as set out above.

Unfair dismissal

127. The Claimant also complained of unfair dismissal. The Respondent's case was that the Claimant was dismissed by way of redundancy.

128. In assessing this part of the Claimant's complaint, the Tribunal had regard to the following law. Under Section 98(2)(c) of the Employment Rights Act 1996 ("ERA") redundancy is a potentially fair reason for dismissal. Section 139 ERA defines a redundancy as a situation where the dismissal is wholly or mainly attributable to the following:

"(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish."

129. Even if an employee's post is redundant, the employer would have to comply with the legal requirements in relation to consultation and the process to be followed in selecting who is made redundant to ensure that a fair process is followed.

130. Where there has been a redundancy situation within which an employee has been dismissed, s/he can still complain that the method of selection was unfair and/or that it was automatically unfair or unfair and unreasonable in the circumstances.

131. The Tribunal would need to consider whether the dismissal is unfair under Section 98(4) of the Employment Rights Act 1996. In the case of *Williams v Compare Maxam Ltd* [1982] IRLR 83 the EAT set out the standards that should guide tribunals in determining whether a dismissal for redundancy is fair under Section 98(4). A tribunal needs to consider whether:

131.1. The employee was given as much warning as possible to enable her to take steps to inform herself of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment;

131.2. The employer consulted the union, if applicable, and sought to agree with them of if not, the employees, the criteria to be applied in selecting employees to be made redundant;

131.3. The employer sought to establish criteria that does not depend solely on the opinion of the person making the selection but which can be objectively checked i.e. on attendance records, experience or length of service;

131.4. The employer sought to ensure that the selection was made fairly in accordance with these criteria and considered representations made to it;

131.5. The employer sought to see whether instead of dismissing an employee he could offer him alternative employment.

132. Although these were not principles of law but guidelines and standards of behaviour which may alter over the course of time, the courts have confirmed that they are a measure of the fairness of the employer's decision. As has been stated in the case of *Polkey v A E Dayton Services* [1987] IRLR 503 *"…in the case of redundancy, the employer will not normally act reasonably unless he warns and consults any*

employees affected or their representatives, adopts a fair decision which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation".

Applying law to facts

Discrimination complaints

133. It is this Tribunal's judgment that time is a relevant consideration in relation to the following items in the list of issues that allegedly occurred 2011 – 2013: numbers 9.14, 9.15, 9.16, 9.17, 9.18, 9.19 and 9.21 above.

Was there a continuing act?

134. As the Claimant made submissions about this point, we have addressed it in the section on law above and here. However, in the Hearing, the Claimant agreed that she was referring to matters that occurred in 2011 as background and that she did not want the Tribunal to consider these matters as issues that need to be decided and remedies awarded, if found proved.

135. The Claimant changed in the way in which she has put her case without seeking leave from the Tribunal to amend her claim.

136. There is one factor that could demonstrate continuity and that is that Ms Adams had been involved in managing her from 2011 and in the reorganisation process that occurred in that year. She was also the person responsible for terminating the Claimant's secondment early in 2013 and in the reorganisation process in 2015 which resulted in the termination of the Claimant's employment. However, Ms Adams was also involved in the Claimant's employment in between and there is no complaint in relation to 2014. Ms Adams was not involved in the issues that the Claimant had with Mr McLean in 2014/2015. Mr Finnegan was involved in some of the recruitment decisions during the 2015 restructure but had not been involved in the Claimant's management previously.

137. It is also our judgment that the Claimant was not disadvantaged in the 2011 restructure. At the end of the restructure the Claimant had been appointed to the Young Hackney Worker post which she states was the right position for her. The Claimant had also succeeded in being seconded to a PO2 position which could have secured further progression for her had she performed well in the role.

138. Ms Popely and Ms Jordaan were involved in the Claimant's grievance against Mr McLean but neither they nor Mr McLean were involved in her redundancy process at the end of her employment.

139. The Claimant moved between departments during her employment with the Respondent and was not managed by the same people throughout. The Claimant was involved in two reorganisations but those reorganisations occurred across the whole of the Youth Service and affected many people and not just the Claimant. The Claimant achieved a higher grade at the end of the reorganisation in 2011 and at the end of the reorganisation in 2015 her employment ended.

140. For those reasons, it is this Tribunal's judgment that the Claimant has failed to prove that she was subjected to a continuing act extending over a period.

Extension of Time?

141. We considered whether we should use our discretion to extend time to enable us to consider matters that are out of time. It is our judgment that in 2011 the Claimant was active in Unison and could have obtained advice about her employment rights if she wanted. The Claimant made no complaint in 2011 about her treatment in the restructure. The Respondent would be prejudiced if the Tribunal considered the complaints relating to 2011 as it could no longer produce the witnesses or data to be able to defend those complaints in 2016. The Claimant did not give any reason why she had not taken any action against the Claimant at the time if she considered that she was subjected to discriminatory treatment at the time.

142. In our judgment, it is not appropriate to use our discretion to extend time. The Tribunal considered the matters complained of in items 9.14 – 9.21 in this list of issues as background. (9.20 is in time) In relation to those complaints we made the following judgments.

Relevant background?

143. Issue 9.14 relates to Robert Faulkner. It is our judgment that Ms Adams approached Mr Faulkner to complete a piece of work for a vulnerable family and that he agreed to extend his notice period by one month to do so. That was not an offer of a job but a request – in the interest of the service users – to extend the date for the end of his employment in the post he already occupied. He was not offered a new position. At the end of his notice, Mr Faulkner left the Respondent on voluntary redundancy as had originally been agreed. That complaint does not provide any facts from which we can infer discrimination on any of the Claimant's protected characteristics.

144. Allegation 9.15 relates to Ciara Burke being ring-fenced to a higher position than the Claimant. In our judgment, Ciara Burke was ring-fenced to an appropriate position for her. The Claimant agreed this in the Hearing. The Claimant was ring-fenced to the Young Hackney Practitioner role and to the Young Hackney Worker role for which she was interviewed and subsequently appointed. The Claimant was therefore ring-fenced to the appropriate role and she has failed to prove any facts from which we can infer discrimination on the grounds of her age, race or trade union activity in that respect. This complaint does not provide any facts from which we can infer discrimination on any one or combination of the Claimant's protected characteristics.

145. Allegation 9.16 is that the Respondent discriminated against the Claimant on the grounds of her race when she was unsuccessful in her application for the Core Leaders post. In her written submissions, the Claimant stated that she had proved that she was one of several black and minority ethnic trade union activist who had been unsuccessful in the application for the role. This was not part of her evidence during the Hearing. The Claimant did suggest that she and another black minority ethnic worker were both seconded to the role. The Respondent was unable to produce the relevant recruitment information for that role because the Claimant only made a complaint about this matter in 2016. The Respondent would be disadvantaged if we were to make any inference from its failure to provide that information since it had no

inclination from the Claimant at the time that she considered that she had been discrimination against at the time. This issue did not provide any facts from which we could infer that the Claimant had been treated less favourably on the grounds of her race, sex and/or age in the 2015 process.

146. Allegation 9.17 is that in December 2012 Tom Sheppard was given an induction to his role whereas the Claimant was not. During the Hearing the Claimant clarified that her complaint was that in relation to the roles that she applied for in 2015.

147. It is our judgment the Claimant is here not comparing like with like. Mr Sheppard is not an appropriate comparator for this allegation. Mr Sheppard was not newly appointed to a post. His role was not part of the restructure. He was given an induction to the new structure of the service. In our judgment, an induction is not the same as training to meet a benchmark for a role. The Claimant failed to prove that anything that was done for Mr Sheppard was more than a basic induction to the new structure and where his role fitted in rather than training to meet the benchmark for the job. In contrast, in the Respondent's judgment, the Claimant did not meet the benchmark for the roles that she had applied for during the ring-fencing and redeployment process within the Respondent or the roles that she applied for once those and other jobs were advertised externally. In the 2015 restructure the Respondent sought to appoint people who could perform their roles straightaway. The Claimant had not applied for training roles. The Claimant has failed to prove facts from which we can infer that her comparison is correct or that a hypothetical comparator i.e. a white male who had applied for the same jobs that she had applied for but had also failed to meet the criteria would have been appointed or given training. The complaint fails to prove facts from which we could infer that the Claimant was treated less favourably on the grounds of her sex, race or age in 2015.

148. Allegation 9.18 is that the allegation that the Claimant abandoned her team when she took a period of extended leave was an act of race discrimination. The Claimant relies on a comparison with John Hart and Hashim Bhajee who also took leave at the same time. She complains that they were not treated in the same manner by Gifty Green or Pauline Adams.

149. It is our judgment that Mr Hart and Mr Bhajee are not appropriate comparators for this complaint. When the Claimant took her agreed extended leave, there were no accusations that she had abandoned her team. The Respondent agreed the leave and allowed her to take the time. Mr Hart and Mr Bhajee also took agreed leave which did not need authorisation as it was under three weeks and returned to work thereafter. In that way, they were treated the same.

150. The letter from Ms Adams makes clear that the issues with the Claimant and her performance in the seconded role were not that she had taken the initial period of extended leave but that she was seeking to take a further five days' unpaid leave and that she had not been managing the team properly or supporting her team adequately in any event. Those are factors which make the Claimant's situation significantly different from that of Mr Bhajee and Mr Hart.

151. There are no facts from this complaint that could lead us to infer that the Respondent treated the Claimant less favourably on the grounds of race, gender or age or a combination of those factors in the 2015 process.

152. Allegation 19 is that Gifty Green failed to ensure that the Claimant's work was covered in her absence. The Tribunal did not hear from Gifty Green as she was no longer employed by the Respondent. Also, the Claimant failed to prove that it was Gifty Green's role to ensure that her work was covered in her absence. As the Claimant was their manager it is likely that it was the Claimant's role to ensure that she properly delegated her work before going off on leave.

153. In our judgment, there were no facts from the evidence on this allegation which could lead the Tribunal to infer that the Claimant was treated less favourably on the grounds of her gender, age or race in the 2015 restructure process.

154. In relation to issue 9.21 the Claimant confirmed that she did not wish the Tribunal to re-hear her grievance against Mr McLean. In our judgment, the Respondent treated the Claimant's grievance seriously and investigated it. The Claimant's allegations against him were unsupported by other staff and were unsubstantiated and so her grievance failed. The Claimant failed to prove that Mr McLean had authorisation from senior managers or elected officials to bully her or treat her in a discriminatory fashion. In our judgment, there were no facts proved in relation to this allegation which could lead the Tribunal to infer that the Claimant was treated less favourably on the grounds of her gender, age or race in the 2015 restructure.

155. The Claimant complaint in her ET1 was that she was treated less favourably because of trade union and political activity. In the Hearing, this changed to a complaint that she was treated less favourably on the grounds of her philosophical belief. It is this Tribunal's judgment that the Claimant cannot pursue a complaint of discrimination on the grounds of religion or belief in this case. Her case was that she was treated less favourably by the Respondent because she was seeking political office and because individuals within the local Labour Party, such as the former Mayor, Jules Pipe, and others did not want her to be appointed either because she was too ambitious or because they wanted those positions for themselves. That is not a description of discrimination on the grounds of philosophical belief. Being a member of the Labour Party or seeking elected office within the Labour Party either as a councillor, member of the GLA or member of parliament is not a reference to a philosophical belief. There was no evidence of a dispute between the Claimant and the management in the Youth Service over her philosophical beliefs. There was no evidence that she held different political beliefs from her managers or those who made decisions about her employment.

156. In our judgment, the Claimant's political activity in terms of seeking elected office locally; only became an issue for those responsible for managing her when she applied for additional leave to pursue her goal of becoming an elected councillor. When she applied for the initial extended leave of four weeks, the Respondent agreed it. There were emails in the bundle in which her managers expressly supported her ambitions. There was no evidence that she was treated less favourably by the Respondent's employed officers because she was seeking political office. However, the Respondent's managers' priority is the service it provides to the local community and in this case, to the young people of Hackney and their families. The Claimant's managers considered that her request for additional leave was not in the interest of the service.

In time allegations

157. We now move on to the issues in relation to the 2015 redundancy process. Those are issues 5 – 9.13 and 9.20 in the list of issues above. We have considered the Respondent's delegated powers in which it was decided that the Claimant's post would be made redundant. The Claimant did not suggest in the Hearing that it was a sham redundancy situation. In her written submissions, she stated that there was no redundancy situation. However, that was not tested in evidence and was not the case that the Respondent defended.

158. The delegated powers clearly stated that the Claimant's post was redundant. It was also the Claimant's submission that, even though there is a genuine redundancy situation, management could use it get rid of people that they wanted to.

159. The Respondent has proved that there was a significant reduction in funding for the department. The Respondent restructured in 2015 in an attempt to reconfigure the service to continue to provide much needed statutory services to young people in the borough and their families. That meant that they had to refocus and reorganise the service. The managers decided to shift the focus of the service from an informal one to a much more formal, targeted and precisely measured service.

160. In her applications for the jobs during this process, the Claimant frequently repeated information about the work that she had done in previous posts. From our findings, we judge that the Claimant assumed that the managers would use their knowledge of her and the work that she had done many years before to determine her suitability for posts in the new structure.

161. The Claimant's own evidence confirmed that she cut and pasted inserts into her application forms and that she did not tailor-make her application forms to suit the jobs that she was applying for.

162. In contrast, the people who were appointed had done so and demonstrated in their interviews that they understood the new direction or focus of the service and could interpret their skills to suit. In our judgment, we have no reason to doubt that the people who were appointed were the right people for the posts.

163. In relation to allegation 9.12 the Claimant failed to prove any facts from which we can infer that the Respondent had a policy or an intention to favour younger less experienced staff over more experienced staff in their appointment to roles.

164. In relation to issue 9.11 which concerned the Project Worker Partnership and Grants, although the Claimant scored the highest for this, it is our judgment that she failed to meet the benchmark. It was appropriate for the Respondent to consider whether it still wanted to recruit to this role since the impetus for the reorganisation was saving funds and creating a service that could be delivered with reduced resources. Any saving therefore would have been welcomed by the department. It was entirely plausible for the functions of this post to be conducted by offering project work on an ad hoc basis and then for the ongoing management of those funds to be done by existing staff. The Claimant failed to prove facts from which we could infer that her failure to be appointed to this role was due to her race, gender or age.

165. In relation to the allegation concerning the appointment of Ciara Burke, Kate Lee and Rochelle Watkins in issue 9.12, the Tribunal's judgment is that they were appropriately appointed to the roles that they secured at the end of the process. Ms Burke chose not to remain with the Respondent. In our judgment, Karolina Dabrowska, Mariana Caetano (issue 9.20) also achieved their posts because they wrote their application forms to suit the jobs that they were applying for and they performed reasonably well enough in interviews to be appointed. We did not have evidence from which we could infer that the Respondent had appointed people to roles where they were not suitable or where they could not perform the job.

166. In our judgment, the Claimant's failure to be appointed to the roles that she applied for was not because of her race, age, or gender, or her trade union activities, or a combination of all of those, or even because she was seeking political office locally. We had no evidence that the local councillors, the former Mayor, or anyone in the local Labour Party had any influence over the decisions as to who to appoint. We had evidence from Pauline Adams and Brendan Finnegan who, between them had interviewed the Claimant for five roles. They both gave evidence that they only considered her performance at interview and her applications forms in coming to those decisions. The Claimant failed to prove that it is discriminatory to do so. The Tribunal accepted Ms Adams' and Mr Finnegan's evidence that they did not have any interference and would not have allowed any interference from councillors, the existing or former Mayors of the London Borough of Hackney in conducting the recruitment for posts and it would have been highly irregular if that had occurred. We had no evidence that it had.

Unfair Dismissal

167. In relation to issue 5, it is our judgment that there was a genuine redundancy situation. It is also our judgment that the Claimant was given the benefit of the Respondent's organisational change policy, its redeployment policy and the redundancy policy. The Respondent did not breach any of those policies in the way that it dealt with the Claimant's situation.

168. It is our judgment that the Claimant had opportunity to apply for the posts that she was properly ring-fenced for, then those that she could apply for under the redeployment policy and subsequently, those that she chose to apply for in open recruitment. There was no evidence that she had been deliberately marked down in interviews or that Ms Adams or Mr Finnegan and the members of the respective panels had scored her improperly or in a biased way. The policy was that she would be ring-fenced for posts that were one level above and one below the post she occupied. The Claimant was appropriately ring-fenced and interviewed accordingly. (issue 9.8). The other jobs she referred to in the list of issues at 9.1 – 9.12 were jobs that were at very different grades to her post. It was not suitable for her to be ring-fenced to those jobs. The Respondent could not simply put her in to those roles and there was no evidence that it had done so to individuals of different races, age groups or gender to the Claimant.

169. The Claimant was redundant because her post was deleted as part of the reorganisation. The Claimant failed to secure any of the roles that she had been ring-fenced to and to secure any of the roles that she applied for during the redeployment process. The Claimant did not secure any roles thereafter.

170. In those circumstances, the Respondent could not create a role for the Claimant and the law did not require it to do so. The Claimant's contract terminated due to redundancy on 27 December 2015.

171. Was it fair to dismiss her for redundancy? The Claimant's post was deleted in the reorganisation and as part of the delegated powers report which began the whole process. It was not the Claimant's case in the Hearing that her post should not have been in the restructure.

172. In our judgment that Respondent took the Claimant through all its procedures. She was consulted. She had the offer of support and preparation for interview before the ring-fenced process began. She had feedback from those interviews and an opportunity to change the way she approached them before the redeployment process began. The Claimant had the opportunity to apply for jobs when they were advertised. She did take up those opportunities.

173. In our judgment, (issue 9.1) the Respondent applied its organisational change, redeployment and redundancy policies to the Claimant. There was no evidence that there were jobs that were not filled within the structure that the Claimant could have occupied. The evidence was that all posts were occupied. (issue 9.2).

174. In our judgment, the Respondent was not recruiting to training roles. (issue 9.3). There was no obligation for it to do so. Any general statements or promises to retain skilled and experienced staff would not have the power to override the need to recruit competent individuals who were aware of the changing needs of the service and who could adapt their practice to suit.

175. In our judgment, it was appropriate for the Respondent to have an expectation that the Claimant - along with her all her colleagues applying for roles within the new structure – whether at the ring-fence stage or when at the redeployment register, would read the job descriptions of each role applied for and the person specifications and write their statements and job applications to suit. This was a reasonable expectation. There would be no additional requirement to advise staff of the performance levels to be met to secure a role. (issue 9.5).

176. In our judgment, we did not have evidence that the Claimant performed sufficiently well in any of the interviews she attended to be offered the roles that she had been ring-fenced to. We had no evidence that roles had been saved for agency staff. The evidence was that as there were vacancies left after the redeployment round, the two agency workers applied for jobs and were taken through a recruitment process and appointed. (issues 9.6 and 9.7).

177. In our judgment, the Claimant's post was deleted as part of a restructure of Young Hackney due to substantial cuts in funding. The Claimant, along with all her affected colleagues, was afforded the benefit of the Respondent's policies and procedures but failed to secure a post within the new structure. The Claimant's employment was therefore terminated.

178. We had no evidence that the Respondent favoured candidates who had a former employment record with the police, army or special forces. We had no evidence that

the Claimant had not been appointed to any roles because of her trade union activity or because she had sought political office in 2013. (issues 9.9 – 9.10). We had no evidence that the Respondent favoured younger, less experienced staff.

179. In the circumstances, it is our judgment that the Claimant had the benefit of the Respondent's procedures and processes and that she was afforded opportunity to seek alternative employment within it. The Claimant failed to secure alternative employment and her post was redundant. It is our judgment that her dismissal was fair in all the circumstances.

180. The Claimant's complaints of discrimination on the grounds of sex, age, race or a combination of those protected characteristics fail and are dismissed.

181. The Claimant's complaints are hereby dismissed.

Employment Judge Jones

Dated: 8 May 2017