



EMPLOYMENT TRIBUNALS

Claimant
Ms K Wabara

v

Respondent
Sherlock Holmes Park Plaza
Limited

Heard at: Central London Employment Tribunal

On: 21 - 24 October 2024, 25 October & 6 December 2024 in
Chambers

Before: Employment Judge Brown

Members: Mr S McLaughlin
Mr T Robinson

Appearances:

For the Claimant: in Person

For the Respondents: Ms C Step-Marsden, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Respondent dismissed the Claimant fairly.
2. The Respondent did not subject the Claimant to direct race discrimination or race harassment.
3. The Respondent did not subject the Claimant to direct disability discrimination or to discrimination arising from disability.
4. The Claimant's claims fail and are dismissed.

REASONS

Preliminary

1. By a claim form presented on 30 May 2022 the Claimant brought complaints of direct disability discrimination, discrimination arising from disability, direct race

discrimination, race harassment and unfair dismissal against the Respondent, her former employer.

2. The Claimant relied on physical impairments of IBS-related symptoms, IBD ulcerative colitis and Fibromyalgia in her disability discrimination complaints.
3. The Claimant relied on being Black in her race discrimination complaints.
4. The parties had agreed a list of issues as follows:

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 3 March 2022 may not have been brought in time.

1.2 Were the race discrimination and harassment complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

(a) Why were the complaints not made to the Tribunal in time?

(b) In any event, is it just and equitable in all the circumstances to extend time?

2. Unfair dismissal

2.1 What was the reason or principal reason for dismissal?

2.2 Was it a potentially fair reason?

2.3 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

2.4 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy. The Claimant says that this is a 'sham' reason, and the main reason was disability and/or race discrimination.

2.5 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal will usually decide, in particular, whether:

2.5.1 The Respondent adequately warned and consulted the Claimant;

2.5.2 *The Respondent adopted a reasonable selection decision, including its approach to a selection pool;*

2.5.3 *The Respondent took reasonable steps to find the Claimant suitable alternative employment;*

2.5.4 *Dismissal was within the range of reasonable responses.*

3. Remedy for unfair dismissal

3.1 *Does the Claimant wish to be reinstated to their previous employment?*

3.2 *Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?*

3.3 *Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.*

3.4 *Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.*

3.5 *What should the terms of the re-engagement order be?*

3.6 *If there is a compensatory award, how much should it be? The Tribunal will decide:*

3.6.1 *What financial losses has the dismissal caused the Claimant?*

3.6.2 *Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?*

3.6.3 *If not, for what period of loss should the Claimant be compensated?*

3.6.4 *Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*

3.6.5 *If so, should the Claimant's compensation be reduced? By how much?*

3.7 *What basic award is payable to the Claimant, if any?*

3.8 *Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?*

4. Disability

~~4.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:~~

~~4.1.1 Did she have physical impairments — IBS-related symptoms, IBD ulcerative colitis and Fibromyalgia~~

~~4.1.2 Did they have a substantial adverse effect on her ability to carry out day-to-day activities? The Claimant avers that her physical impairments caused intense pain all over body and chronic fatigue.~~

~~4.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairments?~~

~~4.1.4 Would the impairments have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?~~

~~4.1.5 Were the effects of the impairment long term? The Tribunal will decide:~~

~~(a) did they last at least 12 months, or were they likely to last at least 12 months? The Claimant avers that her impairments are long term for life and that there is no cure.~~

~~(b) if not, were they likely to recur?~~

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

5.1 Did the Respondent treat the Claimant badly throughout her employment in the following ways:

5.1.1 Throughout her time at Sherlock Holmes, the Claimant's manager, Tracy Downs (Financial Controller), did not give her the same cross training opportunities as her colleague, Vera Compares (Financial Assistant) who was given cross training on fixed assets and other assignments.

5.1.2 Throughout the Claimant's time at Sherlock Holmes, on numerous occasions Tracy Downs would tell her that she has not bothered to look at emails.

5.1.3 Throughout the Claimant's time at Sherlock Holmes, Tracy Downs would not communicate regarding requests from other team members, sabotaging the Claimant's working relationships with other team members, an example of which was when Chris Crooks (Financial Accountant) asked Tracy Downs for reports in August 2021 and she advised the Claimant of this over a month later.

5.1.4 Throughout the Claimant's time at Sherlock Holmes, Tracy Downs never backed up the Claimant to the team concerning procedural changes that would benefit the team, even though the Claimant was told by Ms Downs she was correct, which increased the Claimant's workload of menial tasks. One example of this is that she would have to do the daily tasks of kitchen staff, which involved the Claimant printing reports that both she and a member of the kitchen staff were both privy to.

5.1.5 Throughout the Claimant's employment, Tracy Downs deliberately withheld showing the Claimant anything that would enable her to progress within her career or the company.

5.1.6 In March 2021, when the Claimant's manager Ali Earp asked the General Manager Jennifer McCabe, the Claimant was refused to have a laptop to work in the office and from home, despite everyone working from home and being given

laptops, and despite there being two unused laptops in the safe and despite her health conditions. The Claimant was told to go to reception and do her work on their computer.

5.1.7 In July 2021, Tracy Downs muttered under her breath when the Claimant asked for training and development that she did everything but leave.

5.1.8 In August 2021 the Claimant asked Tracy Downs to work from home due to her health conditions, but this was refused.

5.1.9 In September 2021, when the Claimant asked Tracy Downs if she could be considered for the apprenticeship course, she was told that because of Covid-19, apprenticeships were not taking place. The Claimant says other team members approached her at this time to say that they started their apprenticeship during Covid-19.

5.1.10 In October 2021, when the Claimant asked Tracy Downs for training/development opportunities and potentially transition into an Assistant Financial Controller or other role, the Claimant was not given these, and instead was given a catalogue of excuses, told to help out the income audit or credit control teams with their backlog, and told she was selfish.

5.1.11 In November 2021, Victoria Twiddle (sic) (HR Business partner) came into the office and stated that the office had so much space now that we can fit a jungle, whilst staring at the Claimant.

5.1.12 In December 2021, the Claimant made a written request to work from home which was agreed in February 2022 for one day a week on a 12-week trial basis. The Claimant avers that the agreement was reluctant and she never received a laptop to work from home with.

5.1.13 In January 2022 in the Claimant's end of year review with Tracy Downs, she made no reference to what the Claimant had submitted, made no objectives, and showed a clear lack of interest. The Claimant told Ms Downs of her career aspirations and was told there would never be an Assistant Financial Controller role and the Claimant should look for another job. The Claimant asked about the level 7 apprentice role and Ms Downs said she would put her on the course, as she has stated she would do in previous conversations. but she never did because she was made redundant.

5.1.14 In February 2022, after the initial restructuring meeting, a Front Office Manager Bogdan came into the Claimant's office and said to Tracy Downs "aren't you happy, by the end of the month she'll be gone." At this time the Claimant was also asked to hand back her keys to the safe.

5.1.15 In February 2022 and thereafter, the Assistant Financial Controller role was not published on internal or external platforms for months after her interview, and in that time the Claimant could have been trained for the role.

5.1.16 In February 2022, the notes taken in the Claimant's interview for the Financial Assistant Role with Tracy Downs and Victoria Twiddle (sic) were not

accurate. Following the interview, when they were back in the office, Victoria Twiddle said goodbye to Tracy Downs and then called the Claimant a useless human.

5.1.17 In March 2022, all of the Claimant's counter-proposals in the redundancy consultation were rejected.

5.1.18 In March 2022, the redeployment options offered by the Respondent to the Claimant were not suitable.

5.1.19 Dismiss her (it is accepted that the Respondent dismissed the Claimant).

5.2 Was the treatment she experienced and her dismissal less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated – the 'comparator'. The comparator will be someone who was in the same or very similar circumstances at work, but who was of a different race or national origins, was treated better during her employment, and/or was not dismissed.

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

5.3 If the Claimant was treated less favourably, was this because of her race.

6. Direct disability discrimination (Equality Act 2010 section 13)

6.1 It is accepted that the Respondent dismissed the Claimant.

6.2 Was that less favourable treatment?

6.3 Was her dismissal less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated – the 'comparator'. The comparator will be someone who was in the same or very similar circumstances at work, but who was not disabled and was not dismissed.

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

6.4 If the Claimant was treated less favourably, was this because of her disability?

7. Discrimination arising from disability (Equality Act 2010 section 15)

7.1 It is accepted that the Respondent dismissed the Claimant.

7.2 Did the following things arise in consequence of the Claimant's disability:

7.2.1 The Claimant's requirement to work from home part of the week for medical reasons?

7.2.2 The requirement for a laptop to enable her to work from home?

7.3 Was the unfavourable treatment (failure to provide her a laptop, and dismissal) because the Claimant required to work from home?

7.4 Did the Respondent decide to dismiss the Claimant because she had submitted a homeworking request, or was working from home for medical reasons?

7.5 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent will specify its aims in its amended defence to the claim.

7.6 The Tribunal will decide in particular:

7.6.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

7.6.2 could something less discriminatory have been done instead;

7.6.3 how should the needs of the Claimant and the Respondent be balanced?

7.7 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

8. Harassment related to race (Equality Act 2010 section 26)

8.1 Did the Respondent treat the Claimant throughout her employment in the following ways:

8.1.1 Throughout her time at Sherlock Holmes, the Claimant's manager, Tracy Downs (Financial Controller), did not give her the same cross training opportunities as her colleague, Vera Compares (Financial Assistant) who was given cross training on fixed assets and other assignments.

8.1.2 Throughout the Claimant's time at Sherlock Holmes, on numerous occasions Tracy Downs would tell her that she has not bothered to look at emails.

8.1.3 Throughout the Claimant's employment, Tracy Downs deliberately withheld showing the Claimant anything that would enable her to progress within her career or the company.

8.1.4 In March 2021, when the Claimant's manager Ali Earp asked the General Manager Jennifer McCabe, the Claimant was refused to have a laptop to work in the office and from home, despite everyone working from home and being given laptops, and despite there being two unused laptops in the safe and despite her health conditions. The Claimant was told to go to reception and do her work on their computer.

8.1.5 In July 2021, Tracy Downs muttered under her breath when the Claimant asked for training and development that she did everything but leave.

8.1.6 *In August 2021 the Claimant asked Tracy Downs to work from home due to her health conditions, but this was refused.*

8.1.7 *In October 2021, when the Claimant asked Tracy Downs for training/development opportunities and potentially transition into an Assistant Financial Controller or other role, the Claimant was not given these, and instead was given a catalogue of excuses, told to help out the income audit or credit control teams with their backlog, and told she was selfish.*

8.1.8 *In November 2021, Victoria Twiddle (HR Business partner) (sic) came into the office and stated that the office had so much space now that we can fit a jungle, whilst staring at the Claimant.*

8.1.9 *In February 2022, after the initial restructuring meeting, a Front Office Manager Bogdan came into the Claimant's office and said to Tracy Downs "aren't you happy, by the end of the month she'll be gone." At this time the Claimant was also asked to hand back her keys to the safe.*

8.1.10 *In February 2022, the notes taken in the Claimant's interview for the Financial Assistant Role with Tracy Downs and Victoria Twiddle (sic) were not accurate. Following the interview, when they were back in the office, Victoria Twiddle said goodbye to Tracy Downs and then called the Claimant a useless human.*

8.2 *If so, was it unwanted conduct?*

8.3 *Did it relate to her race?*

8.4 *Did the conduct have the purpose of creating a hostile, degrading, or offensive environment for the Claimant?*

8.5 *If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*

9. Remedy for discrimination or victimisation

9.1 *Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?*

9.2 *What financial losses has the discrimination caused the Claimant?*

9.3 *Has the Claimant taken reasonable steps to replace lost earnings, for example with another job?*

9.4 *If not, for what period of loss should the Claimant be compensated?*

9.5 *What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?*

9.6 *Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?*

9.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

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

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

9.10 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

9.10.1 By what proportion, up to 25%?

9.10.2 Should interest be awarded? How much?

5. At the start of the hearing, the parties agreed that the Tribunal should determine the 'Polkey' issues at this liability hearing. The Respondent's Polkey argument was that, if the Tribunal found that the dismissal was in any way discriminatory, or was procedurally unfair, the Respondent would have dismissed the Claimant for redundancy following a fair and/or non-discriminatory process.
6. On 22 April 2024 the Respondent had written to the Tribunal and the Claimant confirming that "the Respondent accepts that the Claimant had a disability, namely IBS related symptoms, IBD Ulcerative Colitis and Fibromyalgia, at all material times. It is the Respondent's position that it became aware of the Claimant's health conditions (as set out in this email) when considering and responding to her flexible working request dated 20 December 2021."
7. Disability was therefore not in dispute and knowledge was not in dispute from 20 December 2021.
8. This hearing had originally been listed for 7 days, to determine liability. In the event, only 5 days were available. The Tribunal heard evidence and submissions on the first 4 days. It made its decision in Chambers on 25 October 2024 and on a further day, 6 December 2024. The Tribunal set a date for a provisional remedy hearing.
9. The Tribunal heard evidence from the Claimant. It read witness statements from the Claimant's parents, p488 and 491. The Tribunal also heard evidence from: Victoria Ebbon, Vice President, Operational Finance, who was involved in the redundancy process; Tracy Downs, Financial Controller and the Claimant's line manager; James Goulding, a manager (and Vice President) in the Respondent's Human Resources Department and the grievance officer; and Victoria Tweddell, HR Business Partner. It read the witness statement of Christopher Crooks. The Tribunal attached little weight to his witness statement because he did not give evidence. Only where other evidence corroborated Mr Crooks' evidence, did the Tribunal take his statement into account.
10. There was a bundle of documents. Page numbers in this Judgment refer to page numbers in the bundle.
11. The parties made written and oral submissions. The Tribunal timetabled the case at the start of the hearing.

Findings of Fact

12. The Respondent is part of the PPHE Hotel Group. The Respondent owns a Hotel, called the Holmes Hotel, where the Claimant worked.
13. From 17 October 2016 the Claimant had worked at Park Plaza Waterloo (“Waterloo”), another hotel in the PPHE Group. She was not employed by the Respondent, but by a different legal entity, at that time. She had brought a grievance in 2016 or 2017, which had been investigated and an outcome had been given.
14. The Claimant’s employment with the Respondent started on 6 January 2020. She was employed as a Finance Assistant at the Holmes Hotel. She was the only Black person in her team.
15. Tracy Downs was employed by the Respondent as Cluster Financial Controller in the PPHE Group. She took on responsibility for the Respondent in July 2021. Ms Downs became the Claimant’s manager at that point. Ms Downs also line-managed Vera Compares, the Finance Assistant at the Park Plaza Park Royal Hotel (‘Park Royal’) another hotel in the PPHE Group. Ms Compares is not Black.
16. Ms Downs worked two days each week at the Holmes Hotel, where the Claimant was based, two days a week at Park Royal, where Ms Compares was based, and one day per week at home.
17. Ms Downs told the Tribunal that the Claimant and she “had a good working relationship and there was no animosity between them.” She told the Tribunal that they would often have lunch together.
18. The Claimant told the Tribunal that she had been subjected to race discrimination by numerous colleagues at other Hotels in the PPHE Group. She said that Ms Downs was very friendly with at least some of these people – the Claimant told the Tribunal that she believed that Ms Downs’ attitude towards the Claimant was negative, almost from the outset of their working relationship, because of Ms Downs’ friendship with these other people.
19. It was not in dispute that there had been an incident in November 2019 between the Claimant and another colleague, Maria. The Claimant told the Tribunal that Maria had sworn at her in the office. Ms Ebbon told the Tribunal that the Claimant and Maria had been involved in a serious and noisy altercation, but that they had attended an informal mediation-type meeting afterwards and they had apologised to each other. There was no formal grievance process and the Tribunal accepted that the matter had been resolved informally at the time.
20. In her consultation meeting on 3 March 2022, the Claimant said, “I love PPHE, I have grown into the person that I am today, sometimes not great and at the moment I am in such a good place compared to two years ago.” P262.
21. It was not in dispute that Ms Downs suggested to the Claimant that the Claimant write a blog about her work on the company intranet, as a way of “getting her name known” - increasing the Claimant’s visibility to referrals to her from other areas of the business.
22. The Tribunal decided that, on the evidence, Ms Downs did not have a negative attitude to the Claimant from early in their working relationship. There was evidence that they

had a friendly and supportive relationship, from Ms Downs making suggestions to the Claimant as to how she could increase her profile and from their private conversations about their shared health conditions. The Tribunal did not find that Ms Downs had been negatively influenced because of anything she had been told about the Claimant by other colleagues.

23. The Claimant told the Tribunal that, in March 2021, the Claimant's manager, Ali Earp, asked the General Manager, Jennifer McCabe, to provide a laptop for the Claimant because she was having problems with her desktop in her office. The Claimant told the Tribunal that she had informed Mr Earp about her health conditions and he therefore requested the laptop because of her health conditions and COVID-19. The Claimant told the Tribunal, " Ali told me I was entitled to be given a laptop. The majority of Finance was working from home and were given laptops. I was refused despite my health conditions and my desktop giving me problems. There were even two unused laptops in the safe, but I was told to go to reception and use the computer there."
24. Neither Mr Earp nor Ms McCabe gave evidence. There was no documentary evidence, by way of emails, for example, of Mr Earp requesting a laptop for the Claimant in March 2021.
25. Ms Downs told the Tribunal that, when the Claimant told her about her IBD ulcerative colitis in July 2021, the Claimant also mentioned that she did not want anyone at the Respondent to know because it was a private matter. In a later meeting on 24 January 2022 with Ms Downs and Lauren Fisher, Employee Relations Manager, the Claimant said, "As you know I was quite worried about letting my employer know about my health as it felt intrusive." P503.
26. Ms Downs also told the Tribunal that, at the time, Ms Compares, the Finance Assistant at Park Royal, and the Finance Assistants at Park Plaza Leeds and Park Plaza Nottingham did not have laptops and did not work from home.
27. The burden of proof is on the Claimant to prove primary facts. On the balance of probabilities, the Tribunal decided that the Claimant did not tell Mr Earp about her health conditions and did not ask for a laptop in March 2021 in relation to her health conditions. From the Claimant's own words, she was reluctant to tell her employer, even in February 2022, about her health because she considered that to be intrusive. On the balance of probabilities, she asked for a laptop in March 2021 because her desktop was not working and she was asked to use another desktop at the hotel. The Tribunal accepted Ms Downs' evidence that the Finance Assistants at Park Royal, Leeds and Nottingham, did not have laptops and did not work from home. Ms Downs was in a position to know this, having worked with these people, whereas the Claimant did not work with them.
28. The Claimant gave evidence that, in July 2021, when the Claimant asked for training and development, Ms Downs muttered under her breath that the Claimant, "did everything but leave". Ms Downs denied having said this. The Claimant and Ms Downs had just started working together. On the balance of probabilities, the Tribunal did not find that Ms Downs said this. The Claimant gave no context for this apparently random statement by Ms Downs. She and Ms Downs had just started working together and Ms Downs did not have any negative view of the Claimant. It was very unlikely that Ms Downs would have made this comment in those circumstances.

29. In mid-July 2021 Ms Downs and the Claimant had a personal conversation about Ms Downs' Crohn's disease and the Claimant told Ms Downs that she had IBD ulcerative colitis. The Claimant told Ms Downs that she did not want anyone at the Respondent to know about her condition because she felt that it was private. During the time Ms Downs worked with the Claimant, the Claimant had two days off sick from work. Ms Downs conducted return-to-work interviews, as the Claimant's manager. The Claimant told Ms Downs that her absence had been unrelated to her IBD.
30. Ms Compares helped the Fixed Assets Team with their work from time to time, usually at month end, when the Fixed Assets Team needed assistance, for a period of about 3 – 4 months. The Tribunal accepted Ms Downs' evidence that Ms Compares undertook tasks such as processing invoices and doing reconciliations, tasks which are part of her Finance Assistant role. The Claimant did not speak to Ms Compares about the work Ms Compares undertook for the Fixed Asset Group, so she was not aware of the nature of the work Ms Compares carried out there.
31. The Claimant assisted the Income Audit and Credit Control teams. She also undertook work which part of her Finance Assistant role
32. The Tribunal decided that Ms Compares did not receive training in the Fixed Asset team; she was doing the work of a Finance Assistant there.
33. In about August 2021, Ms Downs informally agreed with the Claimant that she could start her working day a little later than 09.00 if she needed to, provided she still completed her contracted hours.
34. The Claimant told the Tribunal that, in the same conversation in August 2021, the Claimant had asked Ms Downs that the Claimant be allowed to work from home, but that Ms Downs had simply told her that, for the time being, the Claimant could have a flexible start time. Ms Downs denied that the Claimant had asked to work from home in August 2021. She told the Tribunal that she had the authority to agree a later start, but not a working from home, which would need to be approved by Human Resources. Ms Downs told the Tribunal that when, later, the Claimant asked to work from home, Ms Downs informed her that the request would need to be put in writing. The Claimant did make a written flexible working from home request in December 2021.
35. The Tribunal accepted Ms Downs' evidence that the Claimant did not ask to work from home in August 2021. It accepted her evidence that working from home needed to be authorised by HR and requested in writing and that she advised the Claimant of this, when the Claimant raised the matter some time after August 2021.
36. The Claimant told the Tribunal, "I had a colleague, Cristopher Crook (sic), from a different finance department requesting work from me that was originally given to my manager months prior; my manager never even told me about it, leaving me to look bad to other colleagues. This made me feel like she was sabotaging my working relationships with other colleagues."
37. The Claimant gave little detail about this – for example, what the requested reports related to. There was no documentary evidence to support what the Claimant said.

38. Ms Downs told the Tribunal that Mr Crooks was the financial controller of the PPHE Group's holding company accounts, so would have been unable to obtain reports relating to his work from the Claimant, as she worked as a Finance Assistant of the Respondent only. Mr Crooks' witness statement also said that he could not recall asking Ms Downs, or, by extension, the Claimant, for any reports in about August 2021.
39. The Tribunal decided, on the balance of probabilities, that Mr Crooks had not asked for the Claimant to provide reports – and also that Ms Downs hadn't failed to pass that message on.
40. The PPHE Group provides apprenticeships for its employees and pays 0.5% of its annual pay bill into the Apprenticeship Levy. Before Covid-19, the PPHE Group provided finance qualification apprenticeships. During Covid-19, its overall annual pay bill dropped considerably, because of furlough and a reduction in employee numbers. Its business contribution into the Apprenticeship Levy likewise fell substantially. As a result, funding for apprenticeships also fell.
41. In about October 2021 the Claimant asked Ms Downs about undertaking a finance qualification apprenticeship.
42. When she visited the PPHE Group's head office at County Hall, Ms Downs asked Victoria Ebbon, twice, and Victoria Tweddell, HR Business Partner, once about the possibility of the Claimant undertaking a finance qualification apprenticeship. Both told Ms Downs that there were no finance qualification apprenticeships available at the time.
43. When PPHE Group's hotels began to open after Covid-19, the Respondent prioritised recruitment of chefs and engineering / maintenance teams. Brexit had resulted in a national recruitment shortage in these areas and there was significant competition for chef and engineering / maintenance resource in the hotel sector, as these are essential roles in hotels.
44. The Respondent did not get new funding for finance qualification apprenticeships during Covid-19 and in its immediate aftermath. Employees who were already apprentices before the pandemic were able to continue their courses. Some apprenticeships started during the Covid-19 pandemic in the chef and engineering / maintenance teams, p578 – 579.
45. The Claimant told the Tribunal that, in September 2021, a team member called Bianca told her that they started their apprenticeship. The Respondent did not dispute this. Ms Ebbon told the Tribunal that a person the finance team – “employee 30”, whose start date had been agreed and for whom funding had already been approved, re-started her finance qualification apprenticeship during the pandemic, following her recruitment at the end of 2019, p 578. This did not represent new funding approved during Covid-19 for finance qualification apprenticeships. Another employee, “employee 3”, was approved for a payroll qualification apprenticeship during the pandemic, p578. The payroll team was identified as business critical during that period. There were very high demands on the payroll team due to the furlough scheme.

46. The Tribunal found that the Respondent did not provide the Claimant with an apprenticeship in 2021 and early 2022 because new funding was not available at that time, soon after the pandemic, for new finance qualification apprenticeships. The Tribunal noted that the Claimant's own secret recording, of a conversation between Ms Downs and the Claimant in February 2022, corroborated that lack of funding, rather than unwillingness, was the reason the Respondent did not fund an apprenticeship for the Claimant. The recording showed Ms Downs giving the Claimant information about who in the Company to approach about development and saying, "... there is nothing stopping us having this conversation in 3 months' time and seeing where we are and if there's a position in the company and say can we fund it outside of an apprenticeship..." p433. That appeared to show Ms Downs thinking creatively about how to fund a financial qualification for the Claimant, even if an apprenticeship was not available. That was evidence that Ms Downs was supportive of the Claimant's financial qualification and was actively thinking of ways to fund it, despite the constraints on apprenticeships.
47. The Claimant gave evidence that Ms Downs often told her that she had not looked at the Claimant's emails.
48. Ms Downs told the Tribunal that she spent the first hour of every day going through her emails and prioritising the ones which needed urgent attention. At month end, in particular, when she was very busy, she needed to heavily prioritize urgent work. She told the Tribunal that she would look at, and address all her emails.
49. Both Ms Ebbon and Ms Downs told the Tribunal that, during 2021, Ms Downs was extremely busy in work. In cross examination Ms Downs told the Tribunal that, "I was running 2 hotels. We worked together 6 or 7 months and in that time we had audit period, budget period, I was maximising profit in an underperforming hotel. I was under extreme pressure."
50. The Claimant told the Tribunal that, every time she asked Ms Downs to provide her with training, for example experience relevant to an Assistant Financial Controller post, Ms Downs would make excuses for not doing so. Ms Downs' evidence was that, on 2 occasions when the Claimant had asked Ms Downs to show her something outside the scope of her role, the Claimant was not up to date with her own tasks. However, Ms Downs gave evidence that, " We talked about how to forecast revenue and I showed bank reconciliation – we were out by £60 –I showed [the Claimant] how I went back and looked at reconciliation.
51. The Tribunal found that Ms Downs was extremely busy and had little time to devote to additional work like training outside the scope of the Claimant's role. As a result of her workload, she also had to prioritise her emails, so she would not necessarily read the Claimant's emails first. However, the Tribunal accepted Ms Downs' evidence that she did eventually reads all her emails, including all the Claimant's emails, and that she did show the Claimant some additional skills beyond the scope of the Claimant's job.
52. The Claimant alleged that Ms Downs did not support her when she wanted to change workplace practices and that Ms Downs insisted that the Claimant print documents for the head chef, which was not part of the Claimant's job. The "workplace practices" were the requirement to print these documents. Ms Downs and Ms Ebbon both gave evidence that the checking the receipt and payment of goods was within the remit of

a Financial Assistant's job, so that helping the head chef undertake these tasks, including by printing documents, was a reasonable expectation.

53. The Tribunal accepted Ms Downs and Ms Ebbon's evidence – it was a reasonable request for Ms Downs to ask the Claimant to help the chef undertake these stock related activities.
54. In October 2021, the Claimant asked Ms Downs for training and development opportunities and for the Claimant to move into an Assistant Financial Controller role.
55. The PPHE group had undergone restructures during the Covid-19 downturn and recovery, and Assistant Financial Controller roles had been removed and not replaced. As a result, Ms Downs believed that there were no available AFC roles at the Respondent and there were unlikely to be any in the future.
56. Ms Downs gave the Claimant networking advice. As well as suggesting that the Claimant create a blog on the intranet, she suggested that the Claimant could assist the income audit or credit control team, so that they might reach out and/or create a new role for her.
57. Ms Downs also asked the Claimant to think about what would happen if the Respondent did not bring back an AFC role, or did so only a long time in the future. Ms Downs suggested that, if being an AFC was all the Claimant wanted, as the Claimant suggested, then the Claimant should look at other companies to see if there were any vacancies.
58. Later, in February 2022, the Respondent did introduce an AFC position, as part of its reorganization (see below), but Ms Downs was not aware of the proposed reorganisation until February 2022.
59. The Claimant told the Tribunal that, in the course of this conversation, Ms Downs told the Claimant that she was selfish. Ms Downs denied this. There was no corroborating evidence for the Claimant's allegation. On the balance of probabilities, the Tribunal found that Ms Downs did not say that the Claimant was selfish. Ms Downs was, in fact, giving the Claimant sensible advice on her career development. Accusing the Claimant of being "selfish" would not have been in keeping with the tenor of the rest of the conversation.
60. In November / December 2021, the Claimant and Ms Downs had a further discussion about career development, but when Ms Downs asked her what development she was thinking about, the Claimant was unspecific.
61. On 20 December 2021 the Claimant made a written request to the Respondent for flexible working from home, saying, "I am writing this letter as a request for me to be allowed to work from home as a result of my ongoing health conditions. I have a mobility condition which affects my ability to leave the house without being in severe pain and having reduced movement on said days", p500. The Claimant said that working flexibly from home when she was affected in this way would allow her to work from home rather than taking time off, sick.

62. Ms Downs invited her to a meeting to discuss her request, p501. Ms Downs and Lauren Fisher, Employee Relations Manager, met with the Claimant on 24 January 2022, p503 – 507. The Claimant commented that, as Ms Downs was aware, she was “quite worried about letting my [her] employer know about my [her] health as it felt intrusive”. She, did, however, go on to describe the effects her fibromyalgia and IBD were having on her. Her request was for working from home one day per week, and for flexible start and finish times to continue.
63. On 27 January 2022, the Claimant emailed Ms Downs, asking to work from home two days per week.
64. On 9 February 2022, Ms Downs wrote to the Claimant, agreeing that she could work from home 1 day a week on a 3-month trial basis and that, on the days when she attended the office, she would have a flexible start time between 9:30 and 10:00 to completion of her contracted daily hours, p119 – 121.
65. On 11 February 2022 Victoria Tweddell raised a purchase order for a laptop for the Claimant, p580. Ms Downs did not realise that she was required to raise a separate work request to have the laptop set up for the Claimant when it arrived, but she did this on 25 February 2022. There was no evidence that laptop arrived before the Claimant went on gardening leave. There were significant delays for all laptops which the Respondent ordered in early 2022, because of problems with the supply chain, pp 581 – 587, 589.
66. There was a dispute of fact as to whether there were 2 laptops in the safe which the Claimant could have used, rather than being given a new one. The Claimant told the Tribunal that she had the key to the safe and knew that there were laptops in the safe. Ms Downs disagreed that there were any laptops in the safe, but said that, if there were, they would have been pre assigned and would have needed configuration. Ms Downs said that, if the Respondent had had a suitable laptop on site, the Respondent we would have issued the Claimant with that one, rather than buying a new one.
67. The Tribunal accepted Ms Downs’ evidence that there were no suitable laptops at the hotel for the Claimant. The Respondent did, in fact, order the Claimant a brand new laptop. That suggested that the Respondent was trying to provide the Claimant with a laptop, rather than the opposite. It was very unlikely that the Respondent would have spent money on a new laptop as a way of trying to deprive the Claimant of a laptop.
68. In January and February 2022, Ms Downs met with the Claimant to discuss her 2021 performance review– the meetings were delayed from December 2021 because the Claimant had been off work, sick, on the day originally scheduled. The Claimant had prepared a review document, setting out her career aspirations.
69. Ms Downs did not complete a PDR document for the Claimant. Ms Downs looked at the Claimant’s document before the meeting. She gave the Claimant the following broad objectives: (1) work on attention to detail; (2) complete tasks in a timely manner; and (3) work on email wording, making them more professional. Ms Downs said that she would review the Claimant’s emails to help this. She did not do this in a structured PDR format, so the conversation was more like a 1-2-1 meeting, without formalised development review and objectives.

70. On 14 February 2022 Victoria Ebbon, the Respondent's VP Finance Operations, held a Teams meeting with the Claimant and Ms Compares, p124, 125 - 130. She told them that Holmes Hotel had undergone a £15million refurbishment and as a result, needed to generate significant profit growth. She said that further support from the finance team would be required to deliver that. She also said that, due to the Coronavirus pandemic, the PPHE Group and Respondent were seeking to reduce costs at a corporate and hotel level. She told them that the Respondent proposed to restructure the Holmes Hotel and Park Royal's finance teams, with a single Finance Assistant role ("Cluster FA") covering both hotels and introducing an Assistant Financial Controller position ("Cluster AFC"), also covering both hotels.
71. She said that there would be a redundancy consultation process, and gave a timeline for it, p130.
72. Ms Ebbon told the Claimant and Ms Compares that other finance vacancies were also available: Cluster Income Auditor, and Cluster Credit Controller and Goods Receiver (PPWL).
73. Also on 14 February 2022 Ms Ebbon wrote to the Claimant, pp 131 – 133, confirming the plans to restructure the Respondent and Park Royal's finance team and the start of a redundancy consultation process. By another letter that day, p 134 – 135, Ms Ebbon invited the Claimant to a first consultation meeting to be held on 15 February 2022.
74. During the first consultation meeting on 15 February 2022, Ms Ebbon went through the job descriptions for the Cluster AFC and Cluster FA roles, including the proposed annual salaries for each, and the proposed selection criteria for the Cluster AFC role, amongst other things p158. The Claimant asked questions, which Ms Ebbon answered in detail. The meeting lasted 1 hour.
75. The Claimant told the Tribunal that, on 15 February 2022, after the consultation meeting, the Front Office Manager, Bogdan, came into the room where the Claimant and Ms Downs were sitting and asked the Claimant how her interview had gone. Bogdan said, of the Claimant, to Ms Downs "aren't you happy, by the end of the month she'll be gone". Ms Downs' evidence was that, neither Bogdan, nor anyone else at the Respondent, ever made such comment to her. Ms Downs said that it would not be in Bogdan's nature to say such a thing. She said, in answer to a question in evidence at the Tribunal, "Bogdan is an articulate and professional person. He is not someone who would say off the cuff things, or in jest, or demeaning to anyone – this is not the nature of conversation I have come to associate with him." The Claimant did not describe her own relationship with Bogdan.
76. The Tribunal considered that Ms Downs gave a very convincing and detailed description of Bogdan's professionalism in her live evidence. The Tribunal preferred Ms Downs' detailed denial that Bogdan had made the alleged comment.
77. The Claimant told the Tribunal that, on another occasion, Ms Downs had said to Sarah Jessop, in front of the Claimant, "I like putting my bananas in the shower to help them grow." The Claimant told the Tribunal, "I thought it was a strange conversation, especially after telling her about my aspirations." The Claimant appeared to imply that Ms Downs associated the Claimant's professional growth with bananas' growth.

78. Ms Downs was asked about this in evidence. She said that Sarah Jessop had bought Ms Downs a Peace Lily when she had moved to her new apartment; that Ms Jessop had asked her if it was still alive, as they are difficult to grow, and Ms Downs had replied that she put her Peace Lilies in the shower to help them grow.
79. The Tribunal preferred Ms Downs' evidence. She explained exactly what the comment was about and how it had arisen. Ms Downs did not say anything about bananas in the shower. The Claimant's account of this conversation was strikingly inaccurate and was potentially highly prejudicial to Ms Downs. The Tribunal considered that this was an example of the Claimant's evidence, about comments which her colleagues made, being factually incorrect and highly unreliable. The Claimant provided no context for this alleged inflammatory comment by Ms Downs. The Tribunal noted that this was a theme in the Claimant's evidence – she did not provide context for apparently random and insulting comments allegedly made by her colleagues. Given that her evidence on this alleged random comment about bananas was so inaccurate, the Tribunal also doubted the Claimant's credibility in relation to other, apparently random comments, allegedly made by her colleagues.
80. The Claimant told the Tribunal that, in the same week as the consultation began, she was asked to hand back the key to the safe, for which the Claimant had sole responsibility. The Tribunal accepted the Claimant's evidence that she was responsible for access to the safe and for its contents. Ms Downs told the Tribunal that there was only one key to the safe and the Finance team needed access to it, so Ms Downs told the Claimant that the key had to be kept in the Respondent's finance office. The Tribunal decided it was likely that people, other than the Claimant, would need access to the key. It accepted that this was the reason that Ms Downs asked the Claimant to keep the key in the finance office.
81. The Claimant contended that there was no genuine redundancy situation, in that the Holmes Hotel was meeting its yearly revenue targets and that the Respondent would actually increase its expenditure by appointing an Assistant Financial Controller rather than 2 financial assistants.
82. Ms Ebbon told the Tribunal that the Respondent had spent £15M in 2019 on refurbishment, which needed to be recouped and, as a result of the pandemic, it needed to increase its revenue. She said that an Assistant Financial Controller was needed to help with this, rather than the more junior Financial Assistant role. The Tribunal accepted Ms Ebbon's evidence – she was in a more senior position than the Claimant in the company and was in a better position to know its overall finances and strategy. Further, as the Tribunal will explain below, the Respondent undertook a genuine and extremely thorough redundancy process. It would not have done so if the redundancy was a sham.
83. On 16 February 2022, Ms Fisher sent the Claimant the notes of the 15 February consultation meeting and attached job descriptions for the Cluster AFC and Cluster FA roles, as well as potential suitable alternative roles for her to consider – Cluster Income Auditor and Cluster Credit Controller, p150.
84. The Claimant and Ms Compares were also both interviewed, on a ring-fenced basis, for the Assistant Financial Controller Role. Neither was assessed as meeting the minimum criteria for the role. There was a dispute about whether the Respondent

genuinely interviewed them for this post, or whether the Respondent never had any intention of appointing either of them. The Claimant contended that the interview process was a sham.

85. Ms Ebbon and Chris Crooks, the Respondent's Financial Accountant, interviewed the Claimant for the Assistant Financial Controller role on 23 February 2022. They also interviewed Ms Compares. Ms Ebbon and Mr Crooks used the same format as had been used in previous restructures of finance teams in the PPHE Group in 2020. This interview framework and scoring mechanism had been consulted upon in 2020 and the team who had undergone the consultation process had provided feedback on the framework.
86. Ms Ebbon and Mr Crooks updated the interview questions, which were identical for the Claimant and Ms Compares. The scoring was to be out of 100. The Claimant was provided a copy of the scoring matrix in advance, p165.
87. Both Ms Ebbon and Mr Crooks made notes of the interviews. During the interview, Ms Ebbon prompted the Claimant, by probing her and asking follow up questions, to draw out more detailed answers. Ms Ebbon's notes of the Claimant's interview were at p 175 – 181 and her notes for Ms Compares' interview were at p182 – 188. Mr Crooks' notes were at p 191 – 198 and p199 – 205, respectively. Their agreed scoring was at p206.
88. The Respondent had set minimum scores, as it required a minimum capability level to be able to perform what it considered to be a senior role.
89. The Claimant failed to reach the minimum score for the competency, technical knowledge or technical skills questions. Ms Compares failed to reach the minimum score for the technical knowledge questions, although she reached the minimum score for the competency and technical skills questions.
90. Ms Ebbon told the Tribunal that she wanted to give both the Claimant and Ms Compares a chance in interview, to demonstrate that they could do the role. She gave examples of other interview processes in which other employees had been able to show themselves capable of performing more senior roles.
91. The Tribunal decided that the Respondent genuinely offered the Claimant and Ms Compares the opportunity to be considered for this role, through a transparent selection process.
92. The Claimant contended that Ms Compares had been able to score better than the Claimant on one question – on personal development activities undertaken in the previous 12 months which have empowered others – because Ms Compares had been given the opportunity to work in the fixed asset team and the Claimant had not. Ms Ebbon told the Tribunal that that this question had not been limited to work matters and that a wide range of experience could have been used.
93. The Tribunal has already decided that Ms Compares did not gain additional training through her Fixed Asset work.

94. The Tribunal decided that, during the interview for the Cluster AFC role, Ms Compares simply answered the question better than the Claimant did. In any event, on the facts, Ms Compares still did not get the role, so this question made no difference to the outcome.
95. There was a dispute of fact about whether, at the end of the interview, Ms Ebbon had said the Claimant was more than capable of doing the Assistant Financial Controller role. Ms Ebbon told the Tribunal that the Claimant was distressed at the end of the interview and that Ms Ebbon had agreed with the Claimant that she was capable. The Claimant told the Tribunal, "I said I was nervous - she said that she knew that I was more than capable of doing the role - 'You are more than capable of doing the role' - that's what she said."
96. The Claimant produced a small part of a recording she had secretly made of the interview for the Assistant Financial Controller role, p432, as follows:
- “I know I haven't got experience in the role, but with the right exposure, I know I'm capable of doing it.
- Speaker B: We know you are.”
97. The Tribunal decided that, at the end of the interview, when the Claimant was upset and was telling the panel that she believed she was capable of doing the role, Ms Ebbon responded affirmatively to her, in order to be kind and supportive.
98. Ms Downs and Victoria Tweddell, HR Business Partner, also interviewed the Claimant and Ms Compares for the Cluster Finance Assistant, on 28 February 2022 and 1 March 2022, respectively.
99. Before the Claimant's interview, Lauren Fisher sent the Claimant the selection criteria for the Cluster Finance Assistant role and informed her that undertaking an MS Excel skills-based exercise would be part of the selection process, p 223 – 224.
100. Ms Downs took notes of the Claimant's interview, p248 – 251. Ms Downs scored the Claimant 28 out of 80 for her interview answers.
101. The Claimant undertook the MS Excel skills test on about 1 March 2022 and scored 10 out of 20, p247. Ms Compares undertook the same test and scored 19 out of 20. The tests were marked, blind, without the candidates' names, by Paul Bloomfield, a financial controller outside Ms Downs' team.
102. Ms Tweddell also assessed and scored the Claimant's interview, p215 – 218.
103. The Claimant contended that she had mentioned Ms Tweddell in her 2016 / 2017 grievance, so that Ms Tweddell should not have interviewed the Claimant. The Claimant did not explain in what way Ms Tweddell had been mentioned in the grievance. There was no evidence that there had been any adverse finding against Ms Tweddell in the grievance. Ms Tweddell was unaware that she had been mentioned in the Claimant's historic grievance and the Claimant did not raise the issue during the redundancy process.

104. The Claimant told the Tribunal that the notes taken during the Finance Assistant interview, of the Claimant's answers to the questions asked, were inaccurate and that information was omitted, so that she was set up to fail
105. Ms Downs told the Tribunal in oral evidence, " My notes -I don't write them verbatim. I highlight key words and points. It's no reflection on race – it's my style." Ms Tweddell's evidence was, 'I made handwritten notes as [the Claimant] was speaking and therefore, I consider my notes are an accurate representation of the meeting.'
106. The Tribunal considered that Ms Downs' and Ms Tweddell's notes clearly were just that - notes. They were not a transcript. The Claimant did not explain to the Tribunal what was omitted from the notes. The Tribunal therefore found that the notes were not full, but that they did not have material omissions.
107. The Tribunal found that the Claimant was not "set up to fail" in the interview for the Finance Assistant role. It noted that, separately, the MS Excel test was marked independently, blind, and Ms Compares also performed much better than the Claimant in that part of the selection process.
108. Ms Compares achieved a higher overall score than the Claimant – 54.5 out of 100, as opposed to the Claimant's 37 out of 100. Ms Compares was offered the role of Cluster Finance Assistant.
109. The Claimant also told the Tribunal that, at the end of the working day, after the Cluster Finance Assistant interview, Victoria Tweddell said goodbye to Tracy Downs and called the Claimant a "useless human". In evidence, Ms Tweddell denied having done so. Ms Downs also told the Tribunal that Ms Tweddell had not said this, corroborating Ms Downs' denial. Both she and Ms Downs told the Tribunal that Ms Tweddell did not return to the office after the interview, but stayed in the interview room, reviewing the answers and scoring. The Tribunal considered that this was another example of the Claimant attributing an apparently random comment to a fellow colleague, without any explanation of the context in which it might have been said. On the balance of probabilities, the Tribunal preferred Ms Tweddell's and Ms Downs' evidence that Ms Tweddell did not call the Claimant a useless human.
110. The Claimant also told the Tribunal that, "Whilst supporting the income audit in November 2021 at Park Plaza Riverbank Victoria Tweddell from HR came into the office I was in and stated the office has so much space now, expressing you can fit a whole jungle whilst staring at me, I found this to be an extremely inappropriate and racist remark from HR."
111. Ms Tweddell denied having done so. It was not in dispute that the office in which the Claimant was working in November 2021 was quite empty, because a lot of furniture had been removed from it. Ms Tweddell denied having made this comment – she told the Tribunal that these were not words that she would use. Biby Amde, whose desk was in part of the same office, told a later grievance investigation that she did not recall this comment being made, and that there were no awkward conversations between the Claimant and Ms Tweddell, p577
112. On the balance of probabilities, the Tribunal accepted Ms Tweddell's evidence and found that Ms Tweddell did not make the comment the Claimant alleged. Fitting a

jungle into a space is not an idiom which is used to describe a large empty space. An idiom which might commonly be used is being able to fit a football pitch into a large empty space. The alleged words themselves were therefore incongruous and unlikely. Further, given that another person, Biby Amde, worked in part of the office, if the words really had been used, there might be corroboration of them. There was none.

113. The Claimant attended a second consultation meeting on 3 March 2022, p 260 – 263. Ms Ebbon and Lauren Fisher, Employee Relations Manager, both conducted the meeting. The Claimant was told that she had been unsuccessful in both her interview for both the Cluster Assistant Financial Controller and Cluster Finance Assistant roles. Ms Fisher emailed the selection matrix and Ms Downs' and Ms Tweddell's interview notes to the Claimant, p267. At the meeting, Ms Ebbon told the Claimant that she now had 2 options – redeployment or redundancy. Of redeployment Ms Fisher said, "We do have a number of other roles that are suitable alternatives, the salary point is the same and they are roles that would avoid a redundancy situation. Even if the role was a temporary move with a focussed development plan in place for a future Assistant FC role, it would enable you to remain with PPHE." P262. The Claimant responded that she considered that those roles were limited and would not help her growth.
114. The Claimant attended another consultation meeting shortly afterwards, on 7 March 2022, p274 – 281. During this consultation, Ms Ebbon told the Claimant that neither the Claimant nor Ms Compares was ready to undertake the AFC role at the Respondent hotel, which needed an AFC immediately, "with minimum support and maximum knowledge" .
115. There was a dispute of fact as to how long it would have taken for the Claimant to be trained to undertake the AFC role – the Claimant contended that it would have taken 3 months; Ms Ebbon told the Tribunal that, in her view, it would take 18 months for the Claimant, or Ms Compares, to gain the experience and independence to be able to take on the AFC role.
116. The Tribunal accepted Ms Ebbon's evidence. She is a senior Finance officer and is likely to have an overview of the skills and competencies required for finance roles below hers, as well as experience of how long it takes for employees to gain the skills to progress to higher finance positions. The Claimant, as a much more junior finance employee, is less likely to have this knowledge or experience.
117. In the 7 March 2022 meeting the Claimant gave an account of her previous experience working in the Respondent's Waterloo hotel and in Credit Control, to explain why she did not wish to accept redeployment jobs, p279 - 281. She gave alternative suggestions for the restructure.
118. Ms Ebbon produced a 4 page written document, responding to each of the Claimant's alternative restructuring proposals and explaining why they could not be accepted, p271 – 274. For example, the document set out the Respondent's assessment of various potential junior finance roles. It explained that the Claimant's proposal for a Senior Finance Assistant Position, or an additional Assistant Financial Controller position, either did not achieve the expected support requirement, or was prohibitively expensive. Ms Ebbon sent this to the Claimant on 8 March, p 290.

119. Further on 8 March 2022, Lauren Fisher emailed the Claimant the notes from her second and third consultation meetings, and set out the action points arising, p295. Ms Ebbon also sent the Claimant feedback for the Cluster AFC role, p319, and provided four model answers, to give the Claimant, "some further insight into the scoring levels & how the higher scores of 6+ would be achieved."
120. On 9 March 2022, the Claimant attended a fourth redundancy consultation meeting, p298 – 302. Ms Ebbon raised a possible redeployment to a Senior AP Clerk role. The Claimant again gave an account of her previous work history and interactions with other employees. Ms Ebbon asked the Claimant how her concerns related to the AP "Accounts Payable" team. The Claimant replied, "Can I think about it first? Then I'll raise my concerns. I feel like I am always trying to be loyal and always trying not to jeopardise other people's employment or careers." P301.
121. The Claimant did not agree to be redeployed to the Senior AP Clerk role. She explained to the Tribunal that a schoolfriend worked in the AP department and had told the Claimant that the schoolfriend was being bullied.
122. Ms Ebbon told the Tribunal that she disagreed that that individual was being bullied, or that there was any inappropriate behaviour on the team. She said that the individual was one person in a 10 person team, which otherwise was working well. Ms Ebbon also told the Tribunal that the AP team worked entirely remotely, which she thought would be attractive to the Claimant, and that its manager, Adrian, had recently been recruited and had not worked with the Claimant previously. Her evidence was that Adrian would be the Claimant's line manager and would conduct her 121s.
123. The Tribunal considered that the Senior AP Clerk role was likely to have been well suited to the Claimant's skills and needs. It was a remote role, which would have allowed the Claimant to work from home, when the Claimant had asked to be able to work from home more often. She would not have to work alongside colleagues in the workplace and had not worked with the manager, Adrian, previously. This would have been a fresh start for her, whatever her previous experience with other teams. The Tribunal observed that it was very unfortunate that the Claimant's schoolfriend influenced the Claimant to reject a suitable finance role which could have kept the Claimant in employment.
124. On 24 March 2022 the Respondent wrote to the Claimant, confirming that she had been selected for redundancy, and that her employment would end on 28 April 2022, when her 5 weeks' notice expired, p373-377. In the letter, "During your 3rd individual consultation meeting on 7th March, you expressed the concerns you had with potentially redeploying into the Credit Control and Income Audit teams. You also expressed during your consultation that despite raising historic concerns, you would not consider these roles as they did not meet your own professional development ambitions and were roles you did not have an interest in pursuing. You were then presented with a third alternative role in the Senior Accounts Payable Clerk, which was discussed with you during your 4th individual consultation meeting on 9th March 2022. You later declined the role, on 16th March 2022 without further explanation." P365.
125. Also on 24 March 2022, the Claimant provided a sick note to Ms Downs, p380 – 381, and told her that she had not received a laptop to allow her to work from home.

126. On 16 March 2022, the Claimant appealed against her dismissal and raised a grievance, p324-343.
127. Her grievance hearing and appeal against redundancy was heard on 8 April 2022, p396 – 400.
128. A grievance investigation meeting took place on 14 April 2022, 560-561 , p566, p571, p574, p577.
129. On 25 April 2022 the Respondent sent the Claimant a grievance outcome and appeal outcome letter , p403 – 408.
130. The Claimant's employment ended on 28 April 2022, p50.
131. The Claimant underwent ACAS Early Conciliation between 3 – 6 May 2022. She presented her claim on 30 May 2022.
132. The Cluster AFC role was advertised in May 2022, after the Claimant and Ms Compares had been interviewed for it.
133. The Claimant gave extensive evidence about alleged incidents of race discrimination which had occurred during her previous employment in the PPHE Group, including at Park Plaza Waterloo and Park Plaza Westminster. In a Judgment sent to the parties on 24 October 2023, EJ Nicolle had decided that the Claimant, "can rely on matters which occurred during her previous employment prior to it transferring to the Respondent to the extent that they constitute relevant background evidence. However, those matters will not constitute acts or omissions upon which the Tribunal could make rulings giving rise to liability, but merely matters upon which the Tribunal could potentially draw inferences given to some extent the commonality of individuals involved in some incidents."
134. However, there was little commonality between the individuals allegedly involved in previous allegations of race discrimination and the current claim. The Claimant's witness statement said that Ms Tweddell had previously disliked her and had been unpleasant about her, but the Claimant did not put these matters to Ms Tweddell in evidence. The Tribunal also decided that Ms Downs was not influenced by any other person in her treatment of the Claimant. The Tribunal did not find that the Claimant's allegations of previous race discrimination shed any light on the allegations which she has brought in these proceedings against this Respondent.

Relevant Law

Discrimination

135. By s39(2)(c)&(d) *Equality Act 2010*, an employer must not discriminate against an employee by dismissing him or subjecting him to a detriment.

Direct Discrimination

136. Direct discrimination is defined in s13(1) *EqA 2010*: "(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

137. Race and disability are protected characteristics, *s4 EqA 2010*.
138. In case of direct discrimination, on the comparison made between the employee and others, “there must be no material difference relating to each case,” *s23 Eq A 2010*.
139. The ET must decide whether or not the alleged discriminator’s reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase “by reason that” requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?.” Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].
140. However, if the Tribunal is satisfied that the protected characteristic is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, *per* Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. “Significant” means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

141. In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment”. However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Burden of Proof

142. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010*.
143. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.
144. In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865 and confirmed that the burden of proof does not simply shift where M proves a difference in sex and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.
145. Unreasonable or unfair conduct is not, by itself, enough to trigger the transfer of the burden of proof— *Bahl v Law Society* [2003] IRLR 640, EAT per Elias J at [100], approved by the Court of Appeal at [2004] IRLR 799.
146. The warning that unreasonable treatment in itself cannot give rise to an inference of discriminatory conduct was repeated by the EAT in *Eagle Place Services*

Ltd v Rudd [2010] IRLR 486. However, in that case, the EAT also said at [86], "A decision to dismiss the comparator on [the grounds found by the ET] would have been wholly unreasonable. It is simply not open to the respondent to say that it has not discriminated against the claimant because it would have behaved unreasonably in dismissing the comparator. It is unreasonable to suppose that it would in fact have dismissed the comparator for what amounts to an irrational reason. It is one thing to find, as in *Bahl* that a named individual has behaved unreasonably to both the claimant and named comparators; it is quite another to find that a corporate entity such as *Nabarro* or its service company would behave unreasonably to a hypothetical comparator when it had no good reason to do so."

147. Unreasonable treatment, therefore, can be a factor which can be taken into account in deciding whether the burden of proof shifts to an employer. A Tribunal should not simply assume, without evidence, that an employer would have behaved equally unreasonably towards a comparator.

148. If the burden of proof does shift, it is then for the Respondent to prove that the treatment of the Claimant was "*in no sense whatsoever*" because of the Claimant's protected characteristic (*Igen v Wong* [2005] IRLR 258, para 76(11), as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870).

Discrimination Arising from Disability

149. s 15 EqA 2010 provides:

"(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability".

Unfair Dismissal

150. By s94 *Employment Rights Act 1996*, an employee has the right not to be unfairly dismissed by his employer.

151. s98 *Employment Rights Act 1996* provides it is for the employer to show the reason for a dismissal and that such a reason is a potentially fair reason under s 98(2) *ERA*, "or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held." Redundancy and "some other substantial reason" are both potentially fair reasons for dismissal.

Redundancy

152. Redundancy is defined in s139 *Employment Rights Act 1996*. It provides so far as relevant, " ..an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—... (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.”

153. According to *Safeway Stores plc v Burrell* [1997] IRLR 200, [1997] ICR 523, 567 IRLB 8 and *Murray v Foyle Meats Ltd* [2000] 1 AC 51, [1999] 3 All ER 769, [1999] IRLR 562. There is a three stage process in determining whether an employee has been dismissed for redundancy. The Employment Tribunal should ask, was the employee dismissed? If so, had the requirements for the employer's business for employees to carry out work of a particular kind ceased or diminished or were expected to do so? If so, was the dismissal of the employee caused wholly or mainly by that state of affairs?

Fairness

154. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under s98(4) *Employment Rights Act 1996*. In doing so, the Employment Tribunal applies a neutral burden of proof and applies a broad band of reasonable responses *Iceland Frozen Foods v Jones* [1982] IRLR 439, (confirmed by the Court of Appeal in *Foley v Post Office* [2000] IRLR 827.

155. *Williams v Compair Maxam Ltd* [1982] IRLR 83, set out the standards which guide tribunals in determining the fairness of a redundancy dismissal. The basic requirements of a fair redundancy dismissal are fair selection of pool, fair selection criteria, fair application of criteria and seeking alternative employment, and consultation, including consultation on these matters.

156. In *Langston v Cranfield University* [1998] IRLR 172, the EAT (Judge Peter Clark presiding) held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case, they will be treated as being in issue in every redundancy unfair dismissal case.

157. “Fair consultation” means consultation when the proposals are still at the formative stage, adequate information, adequate time in which to respond, and conscientious consideration of the response, *R v British Coal Corporation ex parte Price* [1994] IRLR 72, Div Ct per Glidewell LJ, applied by the EAT in *Rowell v Hubbard Group Services Limited* [1995] IRLR 195, EAT; *Pinewood Repro Ltd t/a County Print v Page* [2011] ICR 508.

158. In *Samels v University of Creative Arts* [2012] EWCA Civ 1152 at [4], the Court of Appeal stated that “The courts have emphasised that tribunals must not substitute their own view [on what pool is appropriate]. The tribunal has to consider whether the pool chosen by the employer falls within the range of reasonable responses from the employer”. At [5] of *Samels* the Court of Appeal cited with approval the judgment of Mummery J in the EAT in *Taymech v Ryan* [1994] EAT/663/94), “... The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind the problem.”

159. It is not for the Tribunal to substitute its view for the employer's assessment of criteria, or to subject the Respondent's assessment of criteria to minute examination, *British Aerospace plc v Green* [1995] IRLR 433, [1995] ICR 1006.
160. In order to act fairly in a redundancy dismissal case, the employer should take reasonable steps to find the employee alternative employment, *Quinton Hazell Ltd v Earl* [1976] IRLR 296, [1976] ICR 296; *British United Shoe Machinery Co Ltd v Clarke* [1977] IRLR 297, [1978] ICR 70.
161. The Tribunal should, however, look at the whole process in deciding whether a redundancy dismissal is fair. In *Haycocks v ADP ROP UK Ltd* [2024] IRLR 178 the EAT set out the following guiding principles at [22]:
- “ (a) The employer will normally warn and consult either the employees affected or their representative; *Polkey*.
- (b) A fair consultation occurs when proposals are at a formative stage and where adequate information and adequate time in which to respond is given along with conscientious consideration being given to the response; *British Coal*.
- (c) Whether in collective or individual consultation, the purpose is to avoid dismissal or ameliorate the impact; *Freud*.
- (d) A redundancy process must be viewed as a whole and an appeal may correct an earlier failing making the process as a whole reasonable; *Lloyd v Taylor Woodrow*.
- (e) The ET's consideration should be of the whole process, also considering the reason for dismissal, in deciding whether it is reasonable to dismiss; *Taylor v OCS*.
- (f) It is a question of fact and degree as to whether consultation is adequate and it is not automatically unfair that there is a lack of consultation in a particular respect; *Mugford*.
- (g) Any particular aspect of consultation, such as the provision of scoring, is not essential to a fair process; *Camelot*.
- (h) The use of a scoring system does not make a process fair automatically; *British Aerospace*.
- (i) The relevance or otherwise of individual scores will relate to the specific complaints raised in the case; *British Aerospace*.

Discussion and Decision

162. The Tribunal took into account all its findings of fact and the relevant law before coming to its decision. It addressed the individual separately, for clarity.
163. It addressed the discrimination and harassment allegations first.
164. *Did the Respondent treat the Claimant badly throughout her employment in the following ways:*

165. *5.1.1 Throughout her time at Sherlock Holmes, the Claimant's manager, Tracy Downs (Financial Controller), did not give her the same cross training opportunities as her colleague, Vera Compares (Financial Assistant) who was given cross training on fixed assets and other assignments (direct race discrimination and race harassment).*
166. The Tribunal found that both the Claimant and Ms Compares helped other teams, undertaking tasks which were part of their Finance Assistant role. The Tribunal decided that Ms Compares did not receive training in the Fixed Asset team; she was doing the work of a Finance Assistant there. The Respondent treated the Claimant and Ms Compares in the same way. It did not treat the Claimant less favourably than Ms Compares, so the race discrimination complaint fails. The Respondent also did not subject the Claimant to unwanted conduct, so the race harassment complaint fails.
167. *5.1.2 Throughout the Claimant's time at Sherlock Holmes, on numerous occasions Tracy Downs would tell her that she has not bothered to look at emails (direct race discrimination and race harassment).*
168. The Tribunal found that Ms Downs was extremely busy and, as result of her workload, had to prioritise her emails, so she would not necessarily read the Claimant's emails first. However, the Tribunal accepted Ms Downs' evidence that she did eventually reads all her emails, including all the Claimant's emails. Accordingly, the Tribunal found that Ms Downs did look at the Claimant's emails. There was no evidence that the Claimant sent an important email which was ignored, or that Ms Downs would have looked at the emails, if they had been sent by a person of a different race, earlier. She did not treat the Claimant less favourably than a comparator in similar circumstances. On all the evidence, the Tribunal found that, if Ms Downs did not look at the Claimant's emails immediately, this was because of pressure of work and was nothing to do with race. These race discrimination and harassment complaints fail.
169. *5.1.3 Throughout the Claimant's time at Sherlock Holmes, Tracy Downs would not communicate regarding requests from other team members, sabotaging the Claimant's working relationships with other team members, an example of which was when Chris Crooks (Financial Accountant) asked Tracy Downs for reports in August 2021 and she advised the Claimant of this over a month later (direct race discrimination only)*
170. The Tribunal found that that Mr Crooks had not asked for the Claimant to provide reports – and also that Ms Downs hadn't failed to pass that message on. There was no evidence that Ms Downs failed to pass other messages on. This allegation failed on the facts.
171. *5.1.4 Throughout the Claimant's time at Sherlock Holmes, Tracy Downs never backed up the Claimant to the team concerning procedural changes that would benefit the team, even though the Claimant was told by Ms Downs she was correct, which increased the Claimant's workload of menial tasks. One example of this is that she would have to do the daily tasks of kitchen staff, which involved the Claimant printing reports that both she and a member of the kitchen staff were both privy to (direct race discrimination only).*

172. The Tribunal found that checking the receipt and payment of goods was within the remit of a Financial Assistant's job. Accordingly, Ms Downs made a reasonable request when asking the Claimant to help the head chef undertake these tasks, including by printing documents. There was no evidence that Ms Downs would have treated a Finance Assistant at Sherlock Homes Hotel, of a different race, differently. The request to help the chef was not related to race in any way, but was because the task came within the Claimant's job functions.
173. *5.1.5 Throughout the Claimant's employment, Tracy Downs deliberately withheld showing the Claimant anything that would enable her to progress within her career or the company (direct race discrimination and race harassment).*
174. The Tribunal accepted Ms Downs' evidence that she was very busy, but that, even so, she did talk to the Claimant about how to forecast revenue and showed her bank reconciliation. Ms Downs also advised the Claimant on networking. As well as suggesting that the Claimant create a blog on the intranet, she suggested that the Claimant could assist the income audit or credit control team, so that they might reach out and/or create a new role for her.
175. The Tribunal therefore found that Ms Downs did try to help the Claimant progress with her career and in the company. She did not withhold showing the Claimant things which would help her progress. Ms Downs also asked about funding for a finance apprenticeship on the Claimant's behalf.
176. This allegation fails on its facts.
177. *5.1.6 In March 2021, when the Claimant's manager Ali Earp asked the General Manager Jennifer McCabe, the Claimant was refused to have a laptop to work in the office and from home, despite everyone working from home and being given laptops, and despite there being two unused laptops in the safe and despite her health conditions. The Claimant was told to go to reception and do her work on their computer (direct race discrimination and race harassment).*
178. The Tribunal decided that the Claimant did not tell Mr Earp about her health conditions and did not ask for a laptop in March 2021 in relation to her health conditions. She asked for a laptop in March 2021 because her desktop was not working and she had been asked to use another desktop at the hotel. The Finance Assistants at Park Royal, Leeds and Nottingham, did not have laptops and did not work from home.
179. The Respondent did not treat the Claimant less favourably than it treated other Finance Assistants. She was treated the same - none were given laptops and none worked from home. The Claimant had not told the Respondent about her health condition at this time. The Respondent's treatment of the Claimant was not related to race in any way, so the race harassment and discrimination complaints in this regard fail.
180. *5.1.7 In July 2021, Tracy Downs muttered under her breath when the Claimant asked for training and development that she did everything but leave (direct race discrimination and race harassment).*

181. Ms Downs did not do this. This allegation fails.
182. *5.1.8 In August 2021 the Claimant asked Tracy Downs to work from home due to her health conditions, but this was refused (direct race discrimination and race harassment).*
183. On the Tribunal's findings of fact, this did not happen.
184. *5.1.9 In September 2021, when the Claimant asked Tracy Downs if she could be considered for the apprenticeship course, she was told that because of Covid-19, apprenticeships were not taking place. The Claimant says other team members approached her at this time to say that they started their apprenticeship during Covid-19 (direct race discrimination).*
185. The Tribunal has found that the Respondent did not provide the Claimant with an apprenticeship in 2021 and early 2022 because new funding was not available at that time, soon after the pandemic, for new finance qualification apprenticeships. This was nothing to do with the Claimant's race, so the race discrimination complaint fails. Indeed, on the contrary, in early 2022, Ms Downs discussed other possible means of funding a financial qualification for the Claimant, even if an apprenticeship was not available. That was evidence that Ms Downs was supportive of the Claimant's financial qualification and was actively thinking of ways to fund it, despite the constraints on apprenticeships. Far from discriminating against the Claimant, Ms Downs was doing what she could to support her.
186. *5.1.10 In October 2021, when the Claimant asked Tracy Downs for training/development opportunities and potentially transition into an Assistant Financial Controller or other role, the Claimant was not given these, and instead was given a catalogue of excuses, told to help out the income audit or credit control teams with their backlog, and told she was selfish (direct race discrimination and race harassment).*
187. The Tribunal found that Ms Downs gave the Claimant networking advice. As well as suggesting that the Claimant create a blog on the intranet, she suggested that the Claimant could assist the income audit or credit control team, so that they might reach out and/or create a new role for her. These were positive, supportive suggestions and Ms Downs did not call the Claimant selfish. There was no evidence that Ms Downs would have treated a comparator of a different race any differently. This was not less favourable or unwanted treatment and was nothing to do with race.
188. *5.1.11 In November 2021, Victoria Twiddle (sic) (HR Business partner) came into the office and stated that the office had so much space now that we can fit a jungle, whilst staring at the Claimant (direct race discrimination and race harassment).*
189. Ms Tweddell did not say this.
190. *5.1.12 In December 2021, the Claimant made a written request to work from home which was agreed in February 2022 for one day a week on a 12-week trial basis. The Claimant avers that the agreement was reluctant and she never received a laptop to work from home with (direct race discrimination).*

191. *7.2 Did the following things arise in consequence of the Claimant's disability:*
192. *7.2.1 The Claimant's requirement to work from home part of the week for medical reasons?*
193. *7.2.2 The requirement for a laptop to enable her to work from home?*
194. *7.3 Was the unfavourable treatment (failure to provide her a laptop, and dismissal) because the Claimant required to work from home? (discrimination arising from disability).*
195. The Claimant made her flexible working request on 20 December 2021 and the Respondent held a meeting to discuss it with her just over a month later, on 24 January 2024. On 9 February 2022, Ms Downs wrote to the Claimant, agreeing that she could work from home 1 day a week on a 3-month trial basis. Very shortly afterwards, on 11 February 2022, Victoria Tweddle raised a purchase order for a laptop for the Claimant, p580. Ms Downs did not realise that she was required to raise a separate work request to have the laptop set up for the Claimant when it arrived, but she did this on 25 February 2022. The laptop did not arrive before the Claimant went on gardening leave. There were significant delays for all laptops which the Respondent ordered in early 2022, because of problems with the supply chain, pp 581 – 587, 589
196. The Tribunal found that the Respondent took over 6 weeks finally to agree the Claimant's flexible working request. This was not a prompt response by the Respondent. However, there was no evidence that the Respondent normally dealt with such requests more quickly. The Respondent did order the laptop very promptly after agreeing the flexible working request, which did not indicate reluctance to facilitate the Claimant's flexible working. Ms Downs simply made a mistake when she did not make a separate work request to set up the laptop, but that made no difference to the provision of the laptop, because the supply chain was slow for all laptops. On all the evidence, the Tribunal found that the Respondent's failure to provide a laptop was not because of race and that the Respondent did not treat the Claimant less favourably than it would have treated a comparator of a different race in its decision-making and process for her flexible working request. This was not race discrimination.
197. The Respondent accepted that the Claimant had to work from part of the week for medical reasons, and required a laptop to work from home.
198. However, its failure to provide her with a laptop was not because the Claimant required to work from home. The Respondent did not have suitable laptops available for the Claimant at the hotel. The Respondent therefore ordered a new laptop for the Claimant. Its failure then to provide the laptop was solely because of supply chain delays, which affected all laptop orders at the time. This was not discrimination arising from disability.
199. *5.1.13 In January 2022 in the Claimant's end of year review with Tracy Downs, she made no reference to what the Claimant had submitted, made no objectives, and showed a clear lack of interest. The Claimant told Ms Downs of her career aspirations and was told there would never be an Assistant Financial Controller role and the Claimant should look for another job. The Claimant asked about the level 7 apprentice role and Ms Downs said she would put her on the course, as she has stated she would*

do in previous conversations. but she never did because she was made redundant (direct race discrimination).

200. The Claimant contended that Ms Downs was uninterested in the Claimant's development and review because the Claimant was Black. On the facts, the Tribunal found that Ms Downs did look at the Claimant's document for the review and gave her broad objectives. She did not do this in a structured PDR format, so the conversation was more like a 1-2-1 meeting, without formalised development review and objectives.
201. The Tribunal noted that there was a formal PDR process and document, but that Ms Downs did not follow that process.
202. There was therefore some evidence that Ms Downs treated the Claimant less favourably than other employees were treated, by not giving her a formal PDR review. The Tribunal considered, however, that this was simply evidence of a difference in treatment and a difference in protected characteristic, without more. The burden of proof did not shift to the Respondent on this allegation.
203. Even if the burden of proof did shift to the Respondent, on all the evidence, the Tribunal was satisfied that Ms Downs did try to support the Claimant's development, by showing her some new skills, making networking suggestions to her and making creative suggestions about how a financial qualification might be funded for her. The Tribunal was satisfied that Ms Downs did not treat the Claimant less favourably because of race. It found that Ms Downs was a good and supportive manager to the Claimant, within the constraints of Ms Downs' own very busy role.
204. *5.1.14 In February 2022, after the initial restructuring meeting, a Front Office Manager Bogdan came into the Claimant's office and said to Tracy Downs "aren't you happy, by the end of the month she'll be gone." At this time the Claimant was also asked to hand back her keys to the safe (direct race discrimination and race harassment).*
205. Bogdan did not say that.
206. People, other than the Claimant, needed to use the key to the safe. That was why Ms Downs asked the Claimant to keep the key in the finance office. This was nothing to do with the Claimant's race, so this discrimination and harassment allegation fails.
207. *5.1.15 In February 2022 and thereafter, the Assistant Financial Controller role was not published on internal or external platforms for months after her interview, and in that time the Claimant could have been trained for the role (direct race discrimination).*
208. The Assistant Financial Controller role was advertised in May 2022, 2 months after the Claimant and Ms Compares both interviewed unsuccessfully for the role. The Claimant could not have been trained to undertake the role in 2 months. It would have taken 18 months for the Claimant, or Ms Compares, to gain the experience and independence to be able to take on the role. There was no evidence that the Respondent treated the Claimant less favourably than a comparator of a different race by advertising the role. It had already given the Claimant an opportunity to apply for

the role, before it was advertised to other people. She had been treated more favourably, if anything.

209. *5.1.16 In February 2022, the notes taken in the Claimant's interview for the Financial Assistant Role with Tracy Downs and Victoria Twiddle (sic) were not accurate. Following the interview, when they were back in the office, Victoria Twiddle said goodbye to Tracy Downs and then called the Claimant a useless human (direct race discrimination and race harassment).*
210. The Tribunal found that the notes of the Claimant's interview were not a full transcript, but that they did not have material omissions. There was no evidence that the Claimant was treated less favourably in this regard than a comparator of a different race. The note taking was not related to race in any way.
211. Ms Tweddell did not call the Claimant a useless human.
212. *5.1.17 In March 2022, all of the Claimant's counter-proposals in the redundancy consultation were rejected (direct race discrimination).*
213. On 8 March 2022 Ms Ebbon sent the Claimant a 4-page, reasoned document, responding to each of the Claimant's alternative restructuring proposals and explaining why they could not be accepted, p271 – 274. None of Ms Ebbon's responses were related to race. They were rational, logical explanations. The Tribunal was satisfied that the rejection of the Claimant's proposals was not because of race in any way.
214. *5.1.18 In March 2022, the redeployment options offered by the Respondent to the Claimant were not suitable (direct race discrimination).*
215. The Respondent offered the Claimant numerous redeployment options, including in the Credit Control and Income Audit teams. The Tribunal found that the Senior AP Clerk role, discussed in the fourth individual consultation meeting, was likely to have been well suited to the Claimant's skills and needs. It was a remote role, which would have allowed the Claimant to work from home, when the Claimant had asked to be able to work from home more often. She would not have had to work alongside colleagues in the workplace and had not worked with the manager, Adrian, previously. This would have been a fresh start for her, whatever her previous experience with other teams.
216. The Tribunal found that the Respondent genuinely offered the Claimant roles which it considered were suitable for her. There was no hint of race discrimination in the Respondent's actions.
217. *5.1.19 Dismiss her (it is accepted that the Respondent dismissed the Claimant) (direct race and disability discrimination).*
218. *2 Did the following things arise in consequence of the Claimant's disability:*
219. *7.2.1 The Claimant's requirement to work from home part of the week for medical reasons?*
220. *7.3 Was the unfavourable treatment (failure to provide her a laptop, and dismissal) because the Claimant required to work from home?*

221. *7.4 Did the Respondent decide to dismiss the Claimant because she had submitted a homeworking request, or was working from home for medical reasons? (discrimination arising from disability)*
222. As the Tribunal will set out below in more detail, the Tribunal was satisfied that the Respondent dismissed the Claimant for redundancy, having undertaken a scrupulously fair redundancy process. The Claimant was interviewed for the available roles and was not selected for them, entirely because she did not meet the criteria for the role (Cluster AFC role) or that she was not the best candidate (Cluster Finance Assistant role). She rejected what would have been an entirely suitable alternative role – the Senior AP Clerk role. None of this was because of race, or related to race, in any way. None of this was because of disability either.
223. The Claimant’s dismissal was not because she had submitted a homeworking request, or was working from home for medical reasons. The redundancy situation arose entirely independently of these matters. The selection of the Claimant for redundancy was nothing to do with either of these things. The Claimant simply did not perform well enough in the interviews for the available roles.
224. *2.4 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy. The Claimant says that this is a ‘sham’ reason, and the main reason was disability and/or race discrimination.*
225. The Tribunal found that the Respondent has shown that the only reason for dismissal was redundancy. The Respondent restructured the Holmes Hotel and Park Royal’s finance teams, resulting in a single Finance Assistant role (“Cluster FA”) covering both hotels and a more senior Assistant Financial Controller position (“Cluster AFC”), also covering both hotels.
226. After the restructure, there was therefore a single Finance Assistant role (“Cluster FA”) covering both hotels, rather than 2 Finance Assistant roles, one in each hotel. The Claimant was not selected for the one remaining Finance Assistant role. She was therefore dismissed because the requirements of the Respondent for employees to carry out work of a particular kind, that is, the Finance Assistant role, had diminished from two to one.
227. The Claimant suggested that this was a sham redundancy process to remove her from the business. However, the Claimant was pooled with her counterpart Finance Assistant Ms Compares, interviewed for the new roles and offered redeployment opportunities. All those facts provided strong evidence that this was a genuine redundancy process and that the Claimant was not targeted for dismissal.
228. Redundancy is a potentially fair reason for dismissal
229. *2.5 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal will usually decide, in particular, whether:*
230. *2.5.1 The Respondent adequately warned and consulted the Claimant:*

231. The Respondent acted reasonably in its warning and consultation of the Claimant. It explained its proposals on 14 February 2022, before starting the consultation process. It held 4 individual consultation meetings with the Claimant, before dismissing her. After the first meeting, Ms Fisher sent the Claimant the notes of the consultation meeting and attached job descriptions for the Cluster AFC and Cluster FA roles, as well as potential suitable alternative roles for her to consider – Cluster Income Auditor and Cluster Credit Controller, p150.
232. The Respondent provided the Claimant with the selection criteria for the Cluster Finance Assistant role, before her interview for that role, p223 – 224. It provided her with interview feedback and notes of the other consultation meetings. It discussed numerous other roles, as alternatives to redundancy, with her.
233. Ms Ebbon also provided a very thorough written response to the Claimant's alternatives to redundancy, explaining why they were not feasible.
234. The Respondent's actions were well within the band of reasonable responses of a reasonable employer. Indeed, the Tribunal found that the Respondent engaged diligently in meaningful consultation with the Claimant.
235. *2.5.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;*
236. The Respondent's decision to pool the Claimant with Ms Compares and to select, from them, for the remaining Finance Assistant role was entirely reasonable. It was the obvious and fair decision.
237. The Respondent selected for the remaining Finance Assistant role using a reasonable interview process and MS Excel skills test. Both candidates undertook the same interview and the same MS Excel skills test. The interview notes were accurate. The candidates were scored by 2 different interviewers.
238. The MS Excel skills tests were marked, blind, without the candidates' names, by Paul Bloomfield, a financial controller outside Ms Downs' team.
239. The Claimant was not set up to fail. This was a transparent and fair process.
240. The selection of pool and selection from the pool were well within the range of reasonable responses of a reasonable employer.
241. *2.5.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment.*
242. The Respondent allowed the Claimant to interview for a more senior post, the Assistant Financial Controller role. The Tribunal found that the Respondent genuinely offered the Claimant the opportunity to be considered for this role, through a transparent selection process. It gave the Claimant a chance to demonstrate, in interview, that she could do the role.
243. The Respondent also offered various alternative roles to the Claimant during the consultation process. On 16 February 2022, Ms Fisher sent the Claimant potential

suitable alternative roles for her to consider – Cluster Income Auditor and Cluster Credit Controller, p150.

244. In the second consultation meeting, Ms Ebbon told the Claimant, “We do have a number of other roles that are suitable alternatives, the salary point is the same and they are roles that would avoid a redundancy situation. Even if the role was a temporary move with a focussed development plan in place for a future Assistant FC role, it would enable you to remain with PPHE.” P262. The Claimant, however, responded that she considered that those roles were limited and would not help her growth.

245. In the fourth consultation meeting on 9 March 2022, Ms Ebbon raised a possible redeployment to a Senior AP Clerk role. The Tribunal has already found that this role was suitable for the Claimant. The Claimant declined that role too.

246. On the facts, the Tribunal found that the Respondent made strenuous efforts to offer the Claimant alternative roles and to persuade her to take one of them. Its steps to find suitable alternative work for the Claimant were eminently reasonable.

247. *2.5.4 Dismissal was within the range of reasonable responses.*

248. Dismissal was well within the range of reasonable responses. There was a genuine redundancy situation. The Respondent fairly consulted with the Claimant, undertook a fair and transparent selection process, and offered the Claimant numerous alternative roles, at least one of which was plainly suitable for her. The Claimant chose not to accept it.

249. The Respondent dismissed the Claimant fairly.

250. It was not necessary to address any Polkey issues.

251. All the Claimant’s claims fail. A remedy hearing will not be required.

Employment Judge **Brown**

Date: 6 December 2024

SENT to the PARTIES ON

12 December 2024

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FOR THE TRIBUNAL OFFICE