Appeal No. UKEAT/0006/19/OO

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, FETTER LANE, LONDON EC4A 1NL

At the Tribunal
On 29 July 2019

Judgment handed down on
31 July 2019

Before

THE HONOURABLE MR JUSTICE KERR

(SITTING ALONE)

MR GEORGI MECHKAROV	APPELLANT
CITIBANK N.A.	RESPONDENT

JUDGMENT

APPEARANCES

For the Appellant	MR GEORGI MECHKAROV (The Appellant in person)
For the Respondent	MR SIMON FORSHAW (of Counsel) Instructed by: CMS Cameron McKenna Nabarro Olswang LLP, Cannon Place, 78 Cannon Street, London EC4N 6AF

SUMMARY

DIRECT RACE DISCRIMINATION
VICTIMISATION DISCRIMINATION
POST EMPLOYMENT DISCRIMINATION
RACE DISCRIMINATION DETRIMENT

The appellant, the claimant below, was a former employee of the respondent who had taken voluntary redundancy and entered into a settlement agreement with the respondent. He brought complaints of race discrimination and victimisation, relying on post-termination events which he said were acts of direct discrimination and detriments imposed because of protected acts.

The issue was whether certain of the tribunal's findings adverse to the claimant were inadequately reasoned or perverse. They were not inadequately reasoned or perverse. The tribunal's reasons were cogent and it was not obliged to deal with every point or explain why it rejected every detail of the claimant's submissions.

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THE HONOURABLE MR JUSTICE KERR

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The Appeal

1. Mr Mechkarov, the appellant (the claimant below, and hereafter), was permitted by Slade J at a rule 3(10) hearing to advance certain grounds of appeal against a decision of an employment tribunal sitting at East London, chaired by Employment Judge Lewis sitting with Mr D Kendall and Mrs S Taylor. Their reserved judgment and reasons were dated 19 March 2018. His claims for direct race discrimination and victimisation were all dismissed.

Facts

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2. The claimant, a Bulgarian citizen, worked for the respondent from 2006 until 2013. The respondent is a bank which operates worldwide. From 2006 to 2010, the claimant worked in the Bulgarian office of the respondent as a banker. In 2010, he moved to its London office in Canary Wharf. He became a Vice President.

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3. Unfortunately, he became unwell from about March 2013 and was admitted to hospital in April 2013, never to return to work for the respondent. He was diagnosed with post-traumatic stress disorder in May 2013. He took voluntary redundancy in July 2013. In September 2013, a settlement agreement was concluded between the parties.

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4. By July 2014 the claimant was looking for work. He contacted his former line managers, Ms Catherine Pierre and Mr Christopher Blin, seeking help. The claimant wanted to work for the respondent again, but that did not happen. From August to December 2014, faced with dwindling financial resources, he met various employees of the respondent to discuss the position.

5. Five of the meetings during that period led to the claims which are the subject of the remaining, surviving grounds of appeal. Three were with Ms Pierre, one with Mr Blin and one with Mr Amin Pannu, whose job included investigating allegations of wrongdoing against the respondent or its staff.

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The Claims

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6. I omit unnecessary details of certain appellate and other proceedings not relevant to this appeal. The claimant presented wide ranging complaints to the tribunal on 29 January 2015, for unfair dismissal, breach of contract, unpaid wages, direct race discrimination and victimisation. A preliminary hearing was arranged to consider the respondent's objections to the claims and the claimant's contention that the settlement agreement had been made under duress.

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7. Employment Judge Warren heard evidence and determined on 10 August 2015 that the settlement agreement was valid and precluded the claims for unfair dismissal, unpaid wages and breach of contract; that the discrimination claims based on pre-termination acts were out of time and it would not be just and equitable to extend time. And he struck out the discrimination claims based on post-termination acts, saying they had no reasonable prospect of success.

8. In May 2016, Mitting J allowed the claimant's appeal against the striking out of those claims, saying that the judge had wrongly held a "mini trial" on issues of fact. He remitted back the strike out application in respect of the discrimination claims founded on post-

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termination events. The respondent then withdrew its strike out application and the matter proceeded to a trial of those discrimination and victimisation claims, in November 2017 over six days.

The Grounds of Appeal

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9. The surviving grounds of appeal relate to five conversations between the claimant and three employees of the respondent, which took place in 2014, on 21 August, 3 November, 27 November, 1 December and 8 December that year. The allegations arising from the first two meetings were of direct race discrimination. Those arising from the third, fourth and fifth meetings were of victimisation. Numbers in brackets below refer to the numbering in a list of issues identified during the case management process and used by the tribunal below.

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10. Before I consider each of those matters in turn, it is convenient to consider first two general points taken by Mr Forshaw, for the respondent. The first related to the tribunal's assessment of the claimant's credibility as a witness. They found (paragraph 53) that the respondent's witnesses were to be preferred where there was a direct conflict; the claimant's evidence lacked credibility in various respects. The tribunal referred to the claimant misrepresenting the evidence of others and presenting a "distortion of the truth".

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11. Mr Forshaw submitted, as I understood his argument, that even if any of the surviving grounds of appeal were good on their merits, it would be pointless to remit the matter back to a tribunal for further consideration in the light of that assessment of credibility, since the claimant must necessarily fail anyway in view of the generic finding that his evidence is not worthy of belief.

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12. For my part, I am not confident that Mr Forshaw's proposition is correct and I prefer not to speculate in a general way on what might be the consequence of any finding that any of the grounds were good on their merits. The tribunal was not saying that every word of the claimant's evidence was untrue; there was common ground about many matters, such as that the meetings to which I am coming took place, and about some, though far from all, of what was said.

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13. It seems to me that if I were to decide that the decision was flawed in any of the ways now contended for by Mr Mechkarov, I would have to address the question of remedy in a manner tailored to my exact reasoning and conclusions on the particular ground under consideration. The generic finding that the claimant is not a credible witness might need adjusting if and when any of the grounds of appeal are reconsidered.

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14. I do accept that the tribunal's general adverse finding about the claimant's credibility forms part of the tribunal's reasoning which must be taken into account when considering whether the reasoning is, as Mr Forshaw submits, adequate and the findings based on it non-perverse. I was referred to the usual authorities on adequacy of reasoning which show that the tribunals need not produce refined draftsmanship but must tell the story and state their conclusions and the reasons for reaching them, so that the parties know why they have won or lost.

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15. In defending the adequacy and soundness of the tribunal's reasoning, Mr Forshaw emphasised that in respect of all the remaining grounds of appeal the tribunal's work must be judged in its context, which included the generic finding at paragraph 53, adverse to the

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claimant's credibility, and also certain previous findings of Employment Judge Warren, binding on the parties and the tribunal.

16. I agree with Mr Forshaw that such is the context in which the adequacy of the tribunal's reasoning must be judged. The findings of EJ Warren, accepted as binding on everyone at the tribunal were that the claimant had chosen voluntary redundancy; that his absence from work was not caused by bullying, harassment and overwork; that Ms Pierre had been supportive of him during his absence; that the claimant initiated contact with Ms Pierre in July 2014; that the claimant was not subjected to any physical threat before entering into the settlement agreement; that he was not required to keep silent or prove his trustworthiness; and that Ms Pierre did feel threatened by the claimant and his demeanour on 1 December 2014.

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17. Secondly, Mr Forshaw submitted that the tribunal (at paragraph 52) effectively decided that, applying section 108 of the **Equality Act 2010** (the Act), it lacked jurisdiction to consider the complaints of discrimination founded on post-termination events, since on the facts as found by the tribunal, any discrimination was not "closely connected" to the previous employment relationship and was not conduct that would, had it occurred during the employment relationship, have contravened the Act.

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18. Again, I do not accept that this is an overarching basis for concluding that the appeal must necessarily fail irrespective of the merits of the individual surviving grounds. The tribunal's reasoning in paragraph 52 is not very clear but it does appear to say that the necessary close connection with the former employment relationship would only arise if there had been an agreement (which there was not) to assist the claimant in securing new employment, made while he was still employed.

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19. Having rejected the existence of any such agreement subsisting during the employment, the tribunal went on to say that there was "no obligation on former colleagues or the Respondent, in circumstances such as we have found those of this Claimant to be, to assist former employees with finding new work". That remark does not clearly address the causation test in section 108(1)(a) of the Act, nor the issue arising under section 108(1)(b) as to whether the conduct would have amounted to discrimination if it had occurred during employment.

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20. The tribunal clearly did not base its decision on what it inaccurately called "jurisdiction", referring to the tests in section 108(1)(a) and (b). For my part, I am not clear what would be the outcome of applying those tests in the event of a remission consequent on the success of one or more of the grounds of appeal. I therefore pass on from Mr Forshaw's overarching points and turn to consider the surviving grounds in the chronological order in which they arise.

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(1) <u>The Allegations of Direct Race Discrimination</u>

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<u>Meeting with Ms Catherine Pierre on 21 August 2014</u>

21. The claimant alleged below that the respondent directly discriminated against him on the ground of his race, meaning his Bulgarian origin and nationality. It was common ground that he contacted Ms Pierre and they met at Café Brera near Canary Wharf on 21 August 2014 and discussed his employment position. The claimant alleged that four separate acts of direct race discrimination occurred during their conversation.

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22. They were, first, that Ms Pierre said that it was time for the claimant to look for another job and "if not there is always the black market" (7.1.3); second, that Ms Pierre unreasonably asked the claimant to keep "their agreement" confidential. This was an agreement, the claimant alleged, that he would keep away from the respondent for a period, after which Ms Pierre would look for employment for him with the respondent or elsewhere (7.1.4); third, that Ms Pierre told the claimant that it would not be good to come back to the respondent because of a "head count reduction", intending to frighten him (7.1.5); and fourth, that Ms Pierre said the claimant's "background" would be a disadvantage, referring to his Bulgarian background (7.1.6).

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23. The tribunal rejected all four allegations, accepting Ms Pierre's evidence that she did not make any of the statements attributed to her, except that she "may have referred to a head count reduction" but not intending to frighten the claimant. He submits in this appeal that the tribunal's findings are inadequately reasoned and perverse. He developed his arguments in a detailed written skeleton argument and orally.

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24. His main points were as follows. He said the tribunal had not identified inconsistencies in his own evidence on these issues and should have accepted his evidence. The tribunal had (at paragraph 51.6) confused Ms Pierre's statements made in 2014 with a statement she made later, in a text message in November 2014, mixing up with the conversation on 21 August her later message that he should contact his old boss in Bulgaria and "leverage" his Bulgarian background.

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25. The claimant submitted, further, that the tribunal had failed to engage with detailed written points made by him in closing submissions below, drawing out inconsistencies and muddle in Ms Pierre's evidence; for example, she denied having been told about the claimant's wife's illness, despite having said in a previous (2015) witness statement that she was aware of her illness. He argued that the tribunal failed to assess Ms Pierre's admission that she "may" have referred to a "head count reduction" in the light of the undisputed evidence that there was no such reduction at the respondent at the time; on the contrary, there were 15 vacant positions in the London office, and one at the Paris office.

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26. Mr Forshaw, defending the tribunal's reasoning, argued that the tribunal's narrative findings were more than adequate, properly reasoned and not perverse. At paragraph 51.6, he said, the tribunal was deliberately referring to a future event, namely the sending by Ms Pierre of her text message in November 2014, which was itself the subject of a separate allegation (7.1.9, not live in this appeal). The tribunal, said Mr Forshaw, referred to that future message to support its reasoning that Ms Pierre would not have said in August 2014 that the claimant's background would be a disadvantage.

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27. He added that even if the tribunal did err in referring to the November 2014 text message, the error was not material. The claimant was entitled to prefer Ms Pierre's evidence and gave cogent reasons for doing so. There was also evidence that Ms Pierre supported the claimant's attempts to find work in the UK financial services industry; for example, putting him in touch with a head hunter. This made it very unlikely that she would have mentioned the "black market" or advised him to look outside the UK on the basis of his "background".

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28. In my judgment, the tribunal's findings about the meeting of 21 August 2014 are properly reasoned and are not perverse. First, I note that the tribunal's reasoning included its assessment of the claimant's credibility generally, which I have already mentioned; and its assessment of Ms Pierre's evidence and its finding that she was "simply reaching out to try to provide him [the claimant] with some assistance in recognition with [sic] their former working

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relationship" (paragraph 54) and that she was "genuinely concerned for his wellbeing and had no ill will or malintention [sic] towards him …".

29. Second, the narrative findings included reference to Ms Pierre's follow up email after the meeting, suggesting ways in which the claimant might conduct his job search. The tribunal actually quoted from that email (paragraph 15). Third, the tribunal considered Ms Pierre's "[m]otivation" and (paragraphs 31-33) found her to be a witness of truth, rejecting the suggestion that she had made or would make any derogatory comments about Bulgarians, or people of "lower class, plebs or gypsies" as the claimant had alleged.

30. Fourth, the tribunal rejected (at paragraphs 34 and 52) the claimant's case that he had made a verbal agreement with the respondent, while still employed, that the respondent would help him find new employment. That supports and underpins the rejection of allegation 7.1.4 that Ms Pierre unreasonably asked the claimant to keep their verbal agreement confidential. The tribunal was right to find that allegation "not factually sustainable" (paragraph 51.4). Fifth, the tribunal was entitled to accept and did accept the evidence of Ms Pierre (paragraph 32) that she never made a link between the claimant and the "black market" and does not understand what the claimant meant by the black market.

31. I think the tribunal may well have erred at paragraph 51.6 when it referred, without explanation of the shift forwards in time, to the text message sent about three months after the meeting. It is quite likely that the tribunal overlooked the point that the text message formed part of a different and later conversation. If it was aware of that time difference, it should have said so for the sake of clarity. The fact that the tribunal was aware of the text message in the context of a separate allegation (7.1.9) does not mean it must necessarily have appreciated, when writing paragraph 51.6, the three month time difference.

32. But I am confident that the error (if, as I think likely but not certain, it was one) was not material. The subject matter of the November 2014 text message – advice to exploit Bulgarian contacts in response to a request for advice on the issue – was not thematically irrelevant to the tribunal's reasoning that Ms Pierre would not have dwelt on the claimant's background; it was potentially relevant that she only mentioned it in her text message after the claimant, not she, had raised the subject.

33. I therefore reject the grounds of appeal challenging the tribunal's findings concerning the meeting on 21 August 2014.

Meeting with Ms Catherine Pierre on 3 November 2014

34. It was agreed that the claimant met Ms Pierre again at Café Brera on 3 November 2014. The tribunal omitted mention of this meeting from its roughly chronological factual account; it should have featured between paragraphs 20 and 21. The claimant feels very strongly about this and criticises the omission. He pursued various allegations of direct race discrimination below in relation to that meeting, of which only three remain live in this appeal.

35. The three surviving allegations are: first, that Ms Pierre told the claimant he should prove his trustworthiness and keep his part of the verbal agreement between the claimant, Ms Pierre and Mr Gelis (another senior manager, based in Paris) if he was to ensure his safety and that of his family (7.1.8); second, that when he explained his financial difficulties Ms Pierre suggested he might be "sitting on a pile of cash", which he took to be a reference to the black

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market (7.1.11); and third, that she said it might be easier for him to fit into an Eastern culture, by which she meant the Far East (Japan) and/or central and Eastern Europe (7.1.12).

36. The tribunal tersely rejected all three allegations (paragraphs 51.8, 51.11 and 51.12). They said that the first "did not happen". As for the second, "this was not said". And as to the third allegation: "[w]e do not find that Mr Pierre said this to the claimant". The claimant criticises the paucity of reasoning. He submitted that the tribunal failed to engage with the claimant's detailed account of the meeting in his witness statement, which touched on matters not mentioned in the judgment; for example, that Ms Pierre asked him how much money he had in his bank account before commenting that he might be "sitting on a pile of cash".

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37. The claimant had also pointed out in written closing submissions to the tribunal that Judge Warren's decision did not preclude a finding that the verbal agreement which the claimant said had been made during his employment, was made. He had complained in his written closing that Ms Pierre had omitted mention of having suggested that he take "a blue-collar job at McDonalds", though she had reluctantly owned up in cross-examination to having said this in a previous witness statement. The tribunal did not engage with this point at all.

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38. The tribunal did make observations about Ms Pierre's evidence and motivation generally, as I have already mentioned, and did say (paragraph 34) that when she "met with him in 2014 she was meeting with him as a former manager and colleague". That passage applies to the meeting on 3 November as well as to the other meetings. The tribunal also made a finding that the verbal agreement alleged by the claimant had not been entered into while he was employed, as I have already mentioned.

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39. As Mr Forshaw pointed out, the tribunal did not lack Ms Pierre's account of that meeting. She dealt with it in her witness statement. I have seen her account of the meeting in that statement. She said the meeting covered much of the same ground as the previous meeting on 21 August 2014. She denied having said at the meeting that he would have to keep to the verbal agreement if he wished to ensure his own and his family's safety. She denied having said he might be sitting on a pile of cash. She denied having treated him any differently from how she would have treated a person of "Western European" origin. She denied having said it would or might be easier for him to fit into a Far Eastern, or central or Eastern European, culture.

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40. The witness statement mostly consisted of fairly bare denials. The tribunal's conclusions in relation to this trio of allegations consists of pretty much equally bare acceptance of those denials. There was, though, one other allegation arising from the same meeting, no longer live in this appeal: that Ms Pierre had spoken in glowing terms about her recent holiday in Abu Dhabi, saying that people there have servants when she knew that the claimant was in financial difficulties (7.1.13). Ms Pierre accepted having mentioned her holiday in Abu Dhabi "as part of a general conversation" but denied having referred to servants.

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41. The tribunal (not knowing which of its findings might be examined on appeal) did address that allegation at greater length (15.13), accepting her account and saying that even if she had mentioned servants that might have been insensitive but she would have had the same conversation with anyone from anywhere; what she said "had nothing to do with the Claimant's Bulgarian nationality".

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42. Mr Forshaw submitted in his skeleton argument that the reasons were *Meek* compliant because "[i]t is clear why the Claimant lost: the … ET did not believe him. It believed Ms.

A Pierre". That submission, in a vacuum, would be too glib. It is not usually sufficient for a tribunal to say, without more, that it preferred the evidence of witness X to that of witness Y. The tribunal must go on to say at least something about why it preferred the evidence of witness X (cf. *Anya v University of Oxford* [2001] ICR 847, CA, per Sedley LJ at paragraphs 24-25).

43. However, in the context of the tribunal's other findings about the credibility of the claimant, on the one hand, and Ms Pierre (and her motivation), on the other, I am prepared to

B accept that the summary rejection of the claimant's case does not betray inadequate reasoning or perverse findings. It would have been better if the tribunal had included positive findings in its narrative of events; and if it had linked its conclusions to those findings and to its general observations about Ms Pierre's motivation and truthfulness. But I am not in doubt that those findings and observations informed what would otherwise be conclusions not adequately underpinned by reasoning.

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44. I therefore uphold the decisions of the tribunal arising from the meeting on 3 November 2014. I reject the grounds of appeal impugning the findings about that meeting.

(2) The Allegations of Victimisation

45. The next part of the appeal concerns three allegations of victimisation (7.2.3, 7.2.4 and

D 7.2.6) arising from three further meetings in November and December 2014. In each case, the tribunal recorded that the claimant "relies on the same treatment as that asserted for direct discrimination as being detriments in respect of his claim for victimisation" (paragraph 7.2). This passage in the statement of issues identified for determination reflects the elements of the statutory tort of victimisation, now codified in section 27 of the Act.

46. As is well known, there has to be a "protected act" and the perpetrator must subject the

E victim to a "detriment" "because" the victim does a protected act (section 27(1)(a)) or the perpetrator "believes that" the victim "has done, or may do, a protected act" (section 27(1)(b)). A person may, therefore, victimise another person by subjecting the other to a detriment in anticipation that the other will do a protected act in the future.

47. Mr Forshaw submitted in his skeleton argument that "the detriment relied on must post-

F date the relevant protected act". He made that submission in the context of a claim brought under section 27(1)(a). It is correct that in a claim brought under section 27(1)(a) the detriment must post-date the protected act. But where the claim is brought under section 27(1)(b), the detriment need not post-date the protected act; the words "may do" in section 27(1)(b) of the Act bring within its scope cases where the detriment is imposed in anticipation of a future protected act.

G 48. The claimant's case here, if correctly recorded in the decision at paragraph 7.2 (and the claimant does not suggest otherwise), was that the respondent subjected him to the various detriments forming his allegations of direct race discrimination. There were 22 such allegations of direct race discrimination, of which only seven remain live in this appeal, four arising from the meeting of 21 August 2014 and three arising from the meeting of 3 November 2014; and all, on what is left of the claimant's case in this appeal, inflicted by Ms Pierre.

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49. The victimisation claims were six in number, of which three now remain to be considered in this appeal. They relate to comments made by the claimant relied on by him as protected acts, in November and December 2017 to, respectively, Mr Blin, Ms Pierre and Mr

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Pannu. The other three, no longer live in this appeal, relate to a complaint made back in 2013 and to emails making complaints in November and December 2014.

50. Conceptually, there is nothing untoward about the claimant relying, under section 27(1)(b) of the Act, on detriments imposed in anticipation of future protected acts by him. The claimant carefully explained this to me at the hearing of the appeal. Thus, in principle and by way of example, Ms Pierre could have subjected the claimant to a detriment in August 2014 as a pre-emptive strike, because she thought he would soon complain to others within the respondent of discrimination.

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51. The difficulty with the victimisation claims which the claimant faces in this appeal, however, is the one drawn to my attention by Mr Forshaw in oral argument. The tribunal rejected all 22 allegations of direct discrimination and I have, in this appeal, rejected the attack on the seven that remained to be considered. There are therefore no detriments left open to the claimant to complete his cause of action for victimisation.

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52. That would be sufficient to dispose of the appeal, but for the sake of completeness I will go on to consider, following the chronological order of events, the findings of the tribunal relating to the claimant's three remaining alleged protected acts and the claimant's attack on those findings as perverse and inadequately reasoned.

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Meeting with Mr Christopher Blin on 27 November 2014 and meeting with Ms Catherine Pierre on 1 December 2014

53. The claimant argued that these two protected acts should be considered together because his arguments about them overlap. I therefore consider them together. The first protected act relied on is the making of comments by the claimant to Mr Blin at a meeting on 27 November 2014 (7.2.3). The second protected act relied on was comments made by the claimant to Ms Pierre at a meeting on 1 December 2014 (7.2.4).

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54. The issue in each case was whether the claimant had, at that meeting, complained of discrimination or not. If he had not, his complaint would not be a protected act; if he had, it would be. In each case, the tribunal found that he had not complained of discrimination and had therefore not done a protected act.

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55. As regards the meeting with Mr Blin on 27 November 2014, the tribunal found (paragraphs 49.3.1 and 49.3.2) that "Mr Blin did not remember any allegation of race discrimination being made at that meeting when he made his witness statement"; and they accepted from Mr Blin that if the claimant had made such an allegation, he would have told Ms Gail Reavy in human resources.

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56. Ms Reavy did not give evidence but the tribunal accepted evidence from Ms Sonal Shah, head of human resources, that Ms Reavy would have reported the allegation on to her, Ms Shah, had it been reported to her, Ms Reavy. By that route, the tribunal concluded that the complaint made was not one understood by Mr Blin to be one of discrimination. The tribunal also said Mr Blin was a "very thoughtful witness who was obviously concerned about the claimant". He would not have neglected to pass on a complaint of discrimination.

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57. As regards the meeting with Ms Pierre on 1 December 2014, the tribunal (paragraph 49.4) said it accepted Ms Pierre's evidence that the claimant referred at that meeting to "you

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and your posh friends" and that there was no reference at the meeting to Bulgaria, race or nationality, nor any allegation of discrimination.

58. The claimant complains in his skeleton argument that the tribunal focussed on some minor emails and telephone calls but failed to address his argument that those persons all knew full well that the claimant had been complaining of a campaign of discrimination against him since 2013 and knew that those complaints had been focused on an alleged plan by the respondent to return the claimant to Bulgaria or another "similar country".

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59. More specifically, he submitted that it was not open to the tribunal to accept that nothing was reported to Ms Reavy without hearing evidence from her; that the tribunal should not have rejected his evidence that he told Mr Blin at the meeting that Ms Pierre and Mr Gelis were "treating me and Mr Victor Bekh [another employee from Eastern Europe] much worse than others because we are Eastern Europeans"; and that Mr Blin's evidence should have been rejected because his memory was faulty and his account contained inconsistencies.

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60. He went on to submit that the tribunal should have taken account of cross-examination and re-examination of Mr Gelis, during which he admitted that he, Mr Gelis, understood the claimant's complaints to be of discrimination; and that a complaint about his pension position was considered (as shown in an email of 26 November 2014) by Mr David Walker of the respondent to have "more to do with the circumstances re leaving than any issue with the communication of pension".

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61. He complained, furthermore, that the tribunal had failed to take into account a handwritten "diary" or day book entry penned by Ms Pierre on 1 December 2014, which he said was produced late and, he claimed, was inconsistent with her written account in her witness statement. The diary entry included the words "conversation from legal". The claimant was particularly aggrieved that the tribunal had not mentioned this document in its decision.

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62. Mr Forshaw submitted that the tribunal's reasoning was sound and sufficient to justify its conclusion that the claimant had not complained of discrimination. He too showed me various documents and emails and notes which were before the tribunal, including the entry in Ms Pierre's "diary", which he described as a "day book", and commenting that they did not include an account of any report of an allegation of discrimination made by the claimant.

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63. In my judgment, the tribunal's findings are adequately grounded and sufficiently reasoned. I appreciate that the claimant is disappointed that the tribunal did not go into more detail but tribunals are not required to deal with every point raised by a party. These two allegations of protected acts were but two among a great many other allegations that ranged very widely. The tribunal is only required to deal with the principal issues and is not required to analyse every point made.

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64. In this instance, there was quite a lot of detail in paragraphs 22-30 of the decision, which was the factual narrative covering events from 26 November to 1 December 2014. The tribunal found that the claimant tried unsuccessfully to extract some money from his pension entitlement derived from his time with the respondent. He became upset when told this was not possible. His communication "deteriorates significantly during this period", the tribunal noted.

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65. The tribunal referred to the various contemporaneous emails and text messages at the end of November 2014 and recorded the claimant's "increasingly desperate" language. The tribunal described the concern of one employee of the respondent contacted by the claimant that

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"this was someone who appeared to be having mental health problems". The tribunal accepted that this was why contact was made with the human resources department.

66. They described Mr Blin agreeing to see the claimant straight away, on the claimant announcing in a message, on 1 December 2014, that he was outside the building. The tribunal was not bound to reject the respondent's case that no complaint of discrimination was made to Mr Blin merely because Ms Reavy was not called as a witness. The evidence of a chain of reporting that would have transmitted any such allegation is not ruled out merely because not all the human links in the chain appear before the tribunal.

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67. The tribunal made detailed findings about the meeting with Ms Pierre on 1 December. They accepted her evidence of what was said at the meeting and about the claimant's demeanour, which was found to be aggressive and threatening. The tribunal found that the claimant handed Ms Pierre a list of persons and demanded that she contact them to find the claimant a job. She refused and he appeared shocked, became "increasingly aggressive" to the point where she became concerned for her safety, declining to shake hands at the end of the meeting.

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68. The tribunal then found that Ms Pierre discussed these concerns with the respondent's human resources department and the matter was then referred to Mr Pannu, a senior internal investigator. This led to the meeting with Mr Pannu, to which I am coming next.

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69. These findings are cogent, supported by evidence, properly reasoned and in no way perverse, however strongly the claimant may disagree with them. The tribunal was not bound to go into more depth and detail than it did and was not obliged to accept the claimant's case. I reject the challenge to the tribunal's findings in relation to these two alleged protected acts.

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Meeting with Mr Amin Pannu on 8 December 2014

70. The last part of the appeal concerns the claimant's case that he did a protected act by complaining of discrimination to Mr Amin Pannu at a meeting on 8 December 2014 (7.2.6). The issue, once again, was whether he complained to Mr Pannu of discrimination. That would be a protected act.

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71. The tribunal evidently forgot to state their conclusions in relation to this point. The statement of the tribunal's conclusions should have appeared between paragraph 49.5 and paragraph 50 of the decision. However, in paragraph 50, without having referred expressly to this alleged protected act, the tribunal stated that it had not found "any of the acts relied on to amount to protected acts under the Equality Act …". So there is no doubt that the tribunal intended to reject the claimant's case in relation to this alleged protected act.

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72. The claimant submitted that the record of his communications and meetings with Mr Pannu, culminating in the meeting he had with Mr Pannu on 8 December 2014, showed that the claimant linked his Bulgarian nationality with his treatment by Ms Pierre; in particular, Mr Pannu's own note confirmed that he had said to Mr Pannu on 8 December words to the effect: "[h]ow could I go against [Ms Pierre] and [Mr Gelis] they live in West London large houses. I live in East London a low paid Bulgarian immigrant".

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73. The claimant submits that is conclusive evidence of a protected act which the tribunal could not properly reject. Mr Forshaw begs to differ. He pointed to Mr Pannu's denial in evidence that the claimant had made any complaint of race discrimination or had suggested that

any actions taken by any employee of the respondent had any relationship to the claimant's race or nationality. He disputed the proposition that the reference to the claimant being a "low paid Bulgarian immigrant" denoted a complaint of race discrimination.

74. In my judgment, the tribunal's decision to reject the claimant's evidence that he did a protected act by alleging discrimination to Mr Pannu on 8 December 2014 is sufficiently reasoned, supported by evidence and not perverse. It is regrettable that the tribunal omitted to state its conclusion to that effect, no doubt by oversight. That is an imperfection in the decision but it is not an error of law. There is no doubt what the tribunal's conclusion was.

75. As for the reasoning supporting it, that is to be found in some detail in the narrative findings at paragraphs 35-44. The findings are, first, that the matter was referred to Mr Pannu on 1 December 2014, because of the claimant's difficult behaviour and that the fact that it was escalating. Reports were made that the claimant had raised concerns about the circumstances in which he had left the respondent, his pension and an issue relating to bond executions. Mr Pannu first spoke with Ms Pierre and received from her an account of her meeting on 1 December with the claimant.

76. Mr Pannu was in contact with the claimant from 3 December (the claimant says it was 2 December, but the difference of a day does not matter) and a meeting was arranged. The claimant sent Mr Pannu a two page document beforehand, which was before the tribunal and which I too have seen. It does not, objectively viewed, contain any allegation of discrimination. The tribunal noted that Mr Pannu did not understand any of the complaints to be about discrimination or to make reference to race or nationality. The tribunal then said it had "seen those documents and accept that it is an accurate and fair conclusion for him to have reached".

77. The tribunal went on to accept Mr Pannu's evidence that the claimant did not make any allegation of discrimination at the meeting that followed on 8 December. He did not, the tribunal accepted, suggest that any actions had any relation to his race or nationality. The tribunal went on to record Mr Pannu's evidence of his subsequent discussions with Ms Pierre to obtain her response to the issues the claimant had raised. Mr Pannu was satisfied with her explanation, supported by certain emails she forwarded to him.

78. On the specific passage in Mr Pannu's note saying: "[h]ow could I go against [Ms Pierre] and [Mr Gelis] they live in West London large houses. I live in East London a low paid Bulgarian immigrant", the tribunal stated at paragraph 42 that it accepted Mr Pannu's understanding that "any reference that the Claimant made to being Bulgarian was in the context of his perceived inequality between a low paid, (as he described it) Bulgarian immigrant living in East London and rich people such as Ms Pierre living in large houses in West London".

79. It is clear from Mr Pannu's note and from the words he recorded that it was the claimant and not Ms Pierre or Mr Gelis (who are both French) who raised the issue of Bulgarians being at a disadvantage compared to more highly paid Western Europeans. If the claimant had said to Mr Pannu that Ms Pierre and not he had invoked the inferior ability of Bulgarians to wield power and influence within the respondent by comparison to Western Europeans working there (whether or not more highly paid), that could have been a statement attributed to Ms Pierre with a racial content that could have formed the subject of a complaint amounting to a protected act.

80. But the claimant did not, on the evidence before the tribunal, in his conversation with Mr Pannu, attribute any such remark to Ms Pierre. He was plainly reporting to Mr Pannu his own feeling of disadvantage vis-à-vis Ms Pierre and Mr Gelis because of his origin and

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nationality, as well as his lower pay when compared to theirs. That is not a complaint of discrimination by someone else and cannot be a protected act. The tribunal was right so to decide, on the evidence.

81. I therefore reject the claimant's submissions on this final aspect of the appeal.

B

Conclusion

82. For those reasons, I am of the view that none of the remaining grounds of appeal has merit and the appeal is therefore dismissed.

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