EMPLOYMENT TRIBUNALS

Claimant: **Ms Caroline Simms**

Respondent: **The Royal College of Psychiatrists**

Heard at: **East London Hearing Centre**

On: **5, 6, 7, 12 and 13 April 2022**

Before: **Employment Judge Russell**
Members: **Mrs B Saund**
Ms J Houzer

Representation
Claimant: **Mr S Jonjo (Lay Representative)**
Respondent: **Mr T Sheppard (Counsel)**

JUDGMENT

1. **The claim of direct race discrimination fails and is dismissed.**

2. **The claim of victimisation fails and is dismissed.**

3. **The claim of unfair dismissal fails and is dismissed.**

REASONS

1. By a claim form presented to the Employment Tribunal on 23 August 2020, the Claimant brought complaints of unfair dismissal, discrimination because of age, race and/or disability. The attached details of the claim were lengthy but not easy to follow. At a Preliminary Hearing before Employment Judge Russell on 11 December 2020, the Claimant accepted that some of the older allegations set out in the particulars of claim were relied upon by way of background only. Before a list of issues could be agreed, I required the Claimant to set out her claim clearly by way of further information. The Claimant complied with this Order.

2. At a Preliminary Hearing before Employment Judge Burgher on 28 January 2022, the Claimant's claims for age discrimination, disability discrimination and harassment

related to disability were all dismissed on withdrawal. Employment Judge Burgher agreed the following list of issues in respect of liability on the remaining claims:

1. Unfair Dismissal

1.1 It is agreed that the Claimant's employment terminated on 8 July 2020

1.2 Has the Respondent established a potentially fair reason for dismissal? The Respondent asserts redundancy or some other substantial reason, namely a business reorganisation carried out in the interests of economy and efficiency. This involves consideration of whether the Respondent had a reduced requirement for employees to undertake work at co-ordinator level.

1.3 Did the Respondent carry out a fair process?

1.4 Did the Respondent engage in genuine and meaningful consultation?

1.5 Was the Claimant offered alternative employment options to slot into or apply for?

1.6 Was the reason or principal reason for the Claimant's dismissal the Claimant's race?

1.7 Was the reason or principal reason for the Claimant's dismissal because she had done a protected act?

2. Discrimination/Jurisdiction

2.1 The Claimant is permitted to rely on the following matters as background to the race discrimination complaints only:

(a) Sonia Walter criticising the Claimant's speed of work and creating difficulties for the Claimant's parental leave request in October 2006;
(b) Sonia Walter's discriminatory application of the departmental office policy requiring two members of staff in attendance prior to January 2012;
(c) Sonia Walter's refusal of the Claimant's one-off request to work from home in January 2012;
(d) Sonia Walter influencing the Claimant not being appointed to 12-month Event Manager maternity cover in February 2015;
(e) Events in 2016/2017; and
(f) Events in 2019.

3. Race (Section 9EA)

3.1 It is agreed that the Claimant's colour is black and that her ethnic origin is black Caribbean.

3.2 The Claimant relies on her white British or white Australian colleagues within the Events Team as comparators for race discrimination.

4. Direct Discrimination (Section 13 EA)

4.1 Did the Respondent treat the Claimant less favourably in relation to the following alleged treatment and if so, was it because of race?

4.1.1 Sonia Walter, Catherine Ayres and Marcia Cummings handling of the Claimant's flexible working request in June – September 2019;

4.1.2 Catherine Ayres' decision to exclude the Claimant when reallocating the Event Manager role for the Claimant to work with the other co-ordinators in August 2019;

4.1.3 Catherine Ayres' changes to the Claimant's role to remove her events to give to Isabel Brindsden and Katie Newton in December 2019;

4.1.4 The Claimant's dismissal which took effect on 8 July 2020 (including not allowing the Claimant to be put on the job retention scheme).

5. Victimisation (Section 27 EA)

5.1 By the close of submissions, the Respondent conceded that each of the following is a protected act:

(a) request for parental leave in February 2017 for care of a disabled child; and
(b) request for flexible working on 20 August 2019.

5.2 Did the Respondent subject the Claimant to a detriment because of a protected act? The Claimant alleges her treatment by Sonia Walters, Catherine Ayres and Marcia Cummings amount to detriments.

5.2.1 Sonia Walker, Catherine Ayres and Marcia Cummings handling of the Claimant's flexible working request in June – September 2019;

5.2.2 Catherine Ayres excluded the Claimant when reallocating the Event Manager role to the Claimant to work with the other co-ordinators in August 2019.

5.2.3 Catherine Ayres' changes to the Claimant's role to remover her events to give to Isabel Brindsden and Katie Newton in December 2019.

5.2.4 The Claimant's dismissal which took effect on 8 July 2020 (including not allowing the Claimant to be put on the Job Retention Scheme).

3. The Tribunal heard evidence from the Claimant on her own behalf. For the Respondent we heard evidence from Ms Sonia Walter (Director of Professional Standards), Mr Paul Rees (Chief Executive), Ms Catherine Ayres (Event Manager) and Ms Marcia Cummings (Director of HR).

4. We were provided with an agreed bundle of documents and we read those pages to which we were taken in the course of evidence. During the hearing, we were provided with some additional documents relating to the applications and selection for appointment in the restructure of Ms Isabel Brinsden and Ms Katie Newton.

Findings of Fact

5. The Respondent is a charity and the professional medical body providing support to psychiatrists and seeking to raise professional standards in its field. Mr Rees was appointed Chief Executive in November 2016 and was the first black Chief Executive of a Royal medical college. Under the oversight of Mr Rees, the Respondent has introduced a number of policies and initiatives designed to demonstrate and effect Mr Rees' personal and professional commitment to equality, diversity and inclusion. These include development and introduction of a set of values which, since 2019, have formed part of the selection criteria used when appointing to senior management roles. Similarly, the Respondent has managed the exit of six senior employees because of behaviour which did not accord with the Respondent's values.

6. The Respondent is a diverse organisation: 70% of its staff are female and 20% are BAME. In recent initiatives, the Respondent has undertaken gender and ethnicity pay audits. The Respondent undertakes mandatory equality and diversity training, including unconscious bias. In January 2020, it recruited an external anti-bullying and harassment associate to give employees confidence that they can safely raise any concerns. There is also an employee assistance programme which provides support on workplace issues and more generally, including for mental health. The Respondent has won a number of external awards, for example in November 2019 it won charity of the year at the European Diversity Awards in recognition of its work in the field of equality, diversity and inclusion.

7. The Claimant was employed as a Finance Assistant from 8 October 2002. After a previous unsuccessful application, the Claimant was interviewed for and appointed to the role of Conference Administrator in February 2006. She was subsequently promoted to Event Co-ordinator in 2010.

8. In December 2011, the Centre for Advanced Learning and Conferences ("CALC") was created by merging two internal teams. CALC is part of the Professional Standards Department and is responsible for developing and delivering educational training and conferences in the field of psychiatry and related specialist subjects. Within CALC, the Head of Events Operations and Head of Business Development reported to the Director of Professional Standards. Three Events Managers and five Events Co-ordinators reported to the Head of Events Operations and the E-learning and Events Intern reported to the Head of Business Development.

9. Event Managers are ultimately responsible for events run by the Respondent and deal with matters such as budgeting, programme generation, speaker management, delegate sourcing and venue and supplier management. On each event they would work

with and be supported by an Events Co-ordinator. The responsibilities of the Events Co-ordinator were:

(i) Undertaking telephone, postal and email bookings from members, including matters such as access and dietary requirements;
(ii) Answering telephone queries about events from members;
(iii) Preparing physical copies of conference packs and/or materials;
(iv) Greeting members on arrival and recording their attendance;
(v) Assisting with time-management on the day of an event, for example ensuring members returned on time from breaks;
(vi) Answering members' queries on the day of the event;
(vii) Covering telephones, enquiries and registrations for colleagues who were out of the office;
(viii) Preparing management reports;
(ix) Training staff on electronic administrative processes;
(x) Developing, maintaining and managing databases; and
(xi) Managing all aspects of event delivery when instructed to do so by Events Managers.

10. It is not in dispute that the role of Event Co-ordinators also including organising a few events of their own, generally smaller conferences that did not involve external venues or complex budgets. Up until 2012, the Respondent paid its staff under NHS pay scales by reference to specific bands and annually increasing increments. Since 2012, NHS pay scales are no longer applied and jobs are evaluated by HR to determine the appropriate pay band. The Tribunal finds that it was this relatively small but important management responsibility which gave the Event Co-ordinator job a higher salary banding and range. The Claimant did not in practice manage any events personally. Immediately prior the restructure of the team, the Claimant was at the top of her pay band at £39,500 per annum.

11. At the outset of the Claimant's employment, she and Ms Walters enjoyed a purely social relationship as colleagues as they did not work in the same team. When the Claimant joined the conference team, the relationship changed as Ms Walters became her line manager but they were still friendly and socialised at work-related events. The Tribunal accepts the evidence of Ms Walter that she ceased to socialise with all staff when she became pregnant around 2007 but that her working relationship with the Claimant remained supportive and amicable.

12. The Claimant was absent on maternity leave between 23 April 2006 and October 2006. As part of the background to the claims, the Claimant says that Ms Walter criticised the speed of her work on her return to work and created difficulties for her parental leave request in October 2006. In cross-examination, the Claimant accepted that work had built up in her absence and Ms Walter asked the Claimant to complete the process of up-loading booking information onto the on-line system promptly after bookings were received to ensure up to date information about events was available. The Tribunal do not consider that this could reasonably be interpreted as a criticism of the Claimant's speed of work. The Claimant's October 2006 parental leave request is not in the bundle and there is insufficient evidence to support the allegation that Ms Walter was difficult about it.

13. The Tribunal considers it significant, in any event, that the next background complaints occurred in January 2012, almost six years later with no suggestion of

intervening problems in the working relationship between the Claimant and Ms Walter. The 2012 matters are said to be the discriminatory application of the policy requiring two members of the staff to be in the office and the refusal of a one-off request to work from home in order to be present for a delivery. The Tribunal finds that these are isolated episodes of disagreement between a line manager and an employee with a further three year gap before the next background complaint in 2015. Such disagreements are not unusual between managers and those they manage. Neither the 2006 nor 2012 incidents were raised as a formal complaint by the Claimant at the time and there is no evidence of others being treated more favourably. Four issues in nine years does not suggest that there was a significant problem in the working relationship between the Claimant and Ms Walter and nor, we find, does it safely permit any adverse inference to be drawn when considering the matters in 2019 which are part of the complaint before us.

14. In February 2015, Ms Ayres encouraged the Claimant to apply for a 12-month maternity cover Event Manager position. Ms Ayres and other colleagues helped the Claimant to prepare her CV and practiced interview questions with her to increase her prospects of success. Three candidates were interviewed by a panel comprising Ms Walter, Ms Cummings and the then Head of Business. The Claimant was not successful. The Claimant's case to this Tribunal is that her results were marked more harshly in order to reject her application and appoint a white candidate. The Tribunal does not find the Claimant's evidence plausible as it is inconsistent with her contemporaneous conduct. She made no complaint at the time that the process was unfair (let alone an act of race discrimination). Instead, on 20 February 2015, the Claimant thanked her colleagues and Ms Ayres, stating that even though she had not got the job they had given her the skills to go forward and think more confidently about herself. Ms Ayres' email in response makes clear that she was disappointed that the Claimant had not been successful. Far from being something which would reasonably lead the Claimant to believe that she would never be successfully appointed to a new role, as she now asserts, the Claimant regarded it at the time as a positive experience in professional development.

15. In or about October 2015, Ms Ayres successfully nominated the Claimant for an 'Employee Recognition Award', praising her work at the International Congress in 2015. Further, the Claimant was permitted an extended period of leave between 7 December and 23 December 2015 to attend the funeral of her grandmother in Jamaica. In evidence, the Claimant accepted that until July 2016 she enjoyed a good working relationship with Ms Ayres who was supportive of her health and personal issues. The only examples of the alleged negative change which the Claimant could provide were the subsequent absence of a phased return to work and the requirement to produce an order of service for a funeral she attended the day after her return from extended sickness absence. The Tribunal deals with each below.

16. The Respondent's flagship event, Congress, takes places in or around July every year. It is a particularly busy time for CALC as all members of the team are involved in events and, as a result, nobody is allowed to take leave during and immediately before Congress. The Claimant had been heavily involved in Congress in the years to 2016 and her work was appreciated by Ms Walter, as evidenced by her contemporaneous thank you emails.

17. In early 2016, the Claimant had been asked to work as a "super user" in the project team for the new NG database which the Respondent was introducing. Although the Claimant could not recall it due to the passage of time, the Tribunal accepts as credible

and plausible Ms Ayres' evidence that she allocated some of the Claimant's 2016 Congress tasks to another Event Co-ordinator, Ms Shah, due to the Claimant's increased workload due to the NG project. Ms Ayres also discussed with the Claimant her concern that the latter did not seem to be herself. Their working relationship at that point was sufficiently close that the Claimant shared with Ms Ayres information about her personal circumstances and her workload which were causing her stress. Ms Ayres suggested that the Claimant take a period of extended leave after Congress to rest and relax. This is consistent with contemporaneous emails in which Ms Ayres suggested a way in which the Claimant could book the leave without it appearing to be more than 10 days, a period that would require permission from a more senior manager.

18. On 31 August 2016, the Claimant informed Ms Ayres that she had been signed off work due to stress related problems for a month. Further sick notes were obtained by the Claimant who did not return to work until 12 December 2016. The Claimant's case is that during her sickness absence she was pressured to return to work by persistent contact from Ms Ayres and Ms Cummings so that she was not given a reasonable time to recover. Such was her distrust of the Respondent, the Claimant decided to refuse permission to contact her GP.

19. The Respondent has a sickness absence policy which provides amongst other things for health review meetings after a period of 10 days' or more continuous absence. The purpose of the meetings is to discuss possible adjustments and support for employees with a view to returning to work. The Claimant attended a health review meeting with Ms Ayres and Ms Cummings (HR) on 14 November 2016. Up until this date, the contemporaneous documents show that contact between the Claimant and Ms Ayres/Ms Cummings was very limited, largely limited to the provision of updated fit notes and arranging the health review meeting. In a letter dated 7 November 2016 setting up the health review meeting, the Respondent goes to great lengths to make clear that the purpose of the meeting was to discuss the Claimant's health, any adjustments that may be required to facilitate a return to work in any capacity and to provide support. The Respondent proposed monthly keeping in touch meetings with alternative venues offered. The Claimant was informed about the group income protection scheme and possibility of confidential counselling through the employee assistance programme. Far from pressuring the Claimant to return to work or engaging in persistent contact, the Claimant's manager and HR were proactive in supporting her throughout this period and trying to maintain effective communication to avoid her becoming isolated from the workplace. The letters were sent by Ms Cummings who is herself black Caribbean and against whom the Claimant confirmed that she makes no allegation of race discrimination.

20. At the health review meeting on 14 November 2016, contemporaneous notes were taken and provided to the Claimant at the time, the Claimant said that the cause of her stress was a combination of personal and work related issues. The Claimant was again made aware of the counselling and financial support available to her. There was a discussion about the Claimant's workload and Ms Cummings explained that when the Claimant was ready to return to work, she would have a phased return with a lighter workload and that the NG database super user work would be removed from her. Ms Cummings explained that it was important to maintain contact and asked how regular the Claimant would like this to be. This is entirely inconsistent with the Claimant's case that she was being pressured to return. The Claimant was provided with an overview of what had been happening in the department in her absence and was made aware of social work-related matters such as the Christmas party to which she was invited.

21. There was a dispute of evidence as to whether or not the Claimant refused a phased return to work at the review meeting on 14 November 2016. On balance, the Tribunal find that the Claimant did refuse a phased return as she mistakenly thought that it would lead to a reduction in pay. This is consistent with the fact that when the Claimant was assured at the subsequent health review meeting on 20 January 2017 that her pay would not be reduced, she said that she would like a phased return and the Respondent immediately agreed.

22. Following the meeting, the Respondent reviewed the Claimant's workload by comparing it with the workload of the other two Co-ordinators at a fixed point earlier in the year. Whilst the Claimant may disagree with some of the details of the assessment, the Tribunal finds on balance that Ms Ayres and Ms Cummings were genuinely trying to check whether the Claimant's workload was excessive and to take steps to reduce it, and support the Claimant, on her return to work.

23. Shortly before she was due to return to work on 12 December 2016, the Claimant asked Ms Ayres whether she could take 13 December 2016 as annual leave to attend a funeral. Ms Ayres replied that:

> "**Obviously as this is for a funeral, the time-off will of course be granted, but after the event, please provide supporting evidence to HR, perhaps a copy of the Order of Service would be best. Please note that for anyone returning from extended leave, requests for time off are not normally considered within the first few days back**."

24. The Claimant's case is that this demonstrated distrust, undermined her confidence and created a threatening environment as there was no policy which required provision of evidence or prevented leave requests being considered upon return from lengthy sickness periods. On balance, the Tribunal accepts that there was no formal policy but finds that Ms Ayres' approach was entirely reasonable in the circumstances. The same approach had been applied to Ms Ayres who had previously been asked to provide supporting evidence to HR. The Claimant had been off work for over three months and was requesting leave after only one day back. There is no evidence that any other employee had been, or would be, treated any differently. There could be no doubt that the leave request was granted and it is entirely appropriate and sensible for the Respondent to ensure that some evidence is maintained on the HR record as to the exceptional reason for granting leave so soon after a return to work. The request falls a long way short of suggesting that Ms Ayres did not trust the Claimant or was creating a threatening environment. Quite the contrary, contemporaneous emails show that Ms Ayres took great care to ensure a welcoming environment for the Claimant on her return.

25. At the health review meeting on 20 January 2017, Ms Ayres and Ms Cummings discussed with the Claimant her current health and the progress of her return to work. The contemporaneous notes of the meeting record that a phased return had previously been discussed with Ms Ayres and the Claimant had said that she did not want one due to the financial implications. Ms Cummings explained that during a phased return, any days not worked were treated as sickness absence and would be paid as such. The Claimant said she would think about it and subsequently requested a phased return to work which was immediately agreed. This is consistent with our finding above that it was the Claimant who initially declined the offer of a phased return and later changed her mind when it was clear that there would be no loss of pay.

26. The health review meeting also considered the Claimant's workload and what tasks would be reallocated. The Claimant said that she did not consent to a medical report but would attend an Occupational Health meeting. Ms Cummings made it clear that whilst she understood that the Claimant was a private person, it would be harder for the Respondent to support her without full information. At a further health review meeting on 1 March 2017, Ms Cummings again said that she wanted to support the Claimant but that was made more difficult by the Claimant not being very communicative although she had provided consent for an Occupational Health report by this date.

27. In late January 2017, the Claimant and Ms Ayres discussed the Claimant's desire to take 13 days' annual leave over the Easter school holidays. The Claimant's evidence is that she gave Ms Ayres the specific dates and Ms Ayres orally agreed the leave but requested the Claimant make a formal application. Ms Ayres' evidence is that there was a general discussion about the Claimant's intention to apply for annual leave but no specific dates were given and so she requested a formal application. The Claimant submitted her application on 8 February 2017 requesting 15 days' holiday (from 28 March to 17 April 2017). On balance, the Tribunal find that this was no more than a mis-communication between the Claimant and Ms Ayres. Ms Ayres' response to the Claimant indicated that she would be receptive to a leave request but she had not formally granted permission nor could she without checking the events calendar. However, the Claimant genuinely believed that permission had been or would be granted and had already booked flights and accommodation.

28. Ms Ayres met the Claimant to discuss her request and confirmed by email dated 13 February 2017 that she would not be able to approve the request in full due to the Claimant's workload. In particular, the Old Age Faculty conference ended on 24 March 2017 and required post-event work, there was an event closing date for submissions on 26 March 2017 and preparatory work for the Addictions Faculty conference on 27 and 28 April 2017. Ms Ayres stated that she appreciated the importance of the leave and wanted to support the Claimant and so proposed a compromise of 8 days' leave from 29 March to 10 April 2017.

29. The Claimant did not reply until 14 March 2017, just two weeks before the first day of the annual leave that she had requested. The Claimant was disappointed as she believed that the dates had been agreed in principle and she had already secured flights at a promotional fare and paid a substantial deposit for accommodation. She disagreed with Ms Ayres' assessment of her work commitments and was confident that she could do the required work before going on leave. The Claimant explained her need for the dates she had proposed and the alternative dates given by Ms Ayres were unsuitable due to the need to provide care for her disabled son. If she could not take 10 to 13 April 2017 as annual leave, the Claimant asked for unpaid parental leave instead. The Respondent accepts that this request for parental leave was a protected act.

30. The Claimant's case is that following this email, the unpaid parental leave policy was removed from the intranet as an attempt to disadvantage her. Even if for some reason the policy could not be found on the intranet, the Tribunal finds that the policy continued to apply, was well known to the Claimant (who had just relied upon it) and was accessible in hard copy. It does not seem plausible that the Respondent would have deliberately removed the policy in the circumstances and the Tribunal does not regard the matter as being of significance.

31. As the period of leave requested exceeded 10 days, it needed to be authorised by Ms Walter as the more senior manager. Ms Ayres sought advice from HR and copied her email to Ms Walter. There were a number of drafts of the eventual response included in the bundle before the Tribunal and we find from these that the Respondent carefully considered the needs of the business and the needs of the Claimant and sought to arrive at a compromise solution. In her response sent on 20 March 2017, Ms Ayres explained more fully the business need reasons for refusing the initial request and making clear that parental leave is requested in the same way as annual leave, with the Respondent having the right to decline a request or require time to be taken on different dates. In conclusion, Ms Ayres said that she understood the Claimant's childcare predicament but the needs of the business meant it was not possible to grant the full period of leave. One additional day was authorised.

32. The Claimant remained unhappy and set out more fully in her email of 21 March 2017 the reasons why she needed the full period. In this email, the Claimant said that she was being discriminated against because of her son's disability and her caring commitments. She made no reference to race discrimination.

33. The impasse was eventually resolved as the Claimant arranged for a colleague to cover her duties during the additional period of annual leave. On 24 March 2017, Ms Ayres confirmed that the cover arrangements were acceptable and the full period of leave requested was authorised. Ms Ayres said that her decision had been entirely based on workload, denied discrimination and noted that the Claimant's initial leave request had not mentioned her child. Ms Ayres said that if the Claimant believed that she had been discriminated against for any reason, she could find the grievance procedure on the intranet. The Claimant did not raise a grievance.

34. Further health review meetings took place on 8 May 2017 and 3 August 2017. By the date of the last meeting, the Respondent had received an Occupational Health report which recommended that the Claimant be provided with a quiet room, have a stress risk assessment and work from home for two days a week. The first two recommendations were agreed in principle. The Respondent did not agree to two days a week working from home due to workload requirements but did agree to trial one day a week, as had been suggested by the Claimant's GP. However, the Claimant was told that due to the nature of her role, the particular day would have to be subject to discussion with Ms Ayres on a weekly basis. The Claimant could not think of anything else that the Respondent could do to support her.

35. Contemporaneous emails show that Ms Ayres explored the process for booking a quiet room for the Claimant as agreed at the meeting. The Tribunal accepts the Claimant's evidence that in the year following the final health review meeting, she worked from home on only 11 days. However, there is no contemporaneous record of any complaint being raised by the Claimant about not being permitted to work from home more often. Rather than trying to block working from home, the emails suggest that Ms Ayres proactively tried to support the Claimant. One example is her email on 22 January 2018 when she asked the Claimant to let her know details of appointments or leave requests so that they could book in working from home and quiet room days for her.

36. There were no recorded difficulties arising between 3 August 2017 and 12 June 2019 when the Claimant submitted a new flexible working request to work from home every Friday. The Tribunal considers it significant that the Claimant and Ms Ayres worked

together without apparent material disagreement for almost two years. We accept Ms Ayres' evidence that during this period they enjoyed a successful working relationship. This is consistent with an exchange of emails on 25 March 2019 when the Claimant asked for flexi leave at short notice to attend her son's school assembly as he was to receive an award. Ms Ayres congratulated the Claimant and her son, saying of course she must go, to enjoy it and tell them all about it when she came into the office. The Claimant thanked her. The tone and content of the emails evidence a cordial professional relationship and Ms Ayres' willingness to support the Claimant and be flexible when workload permitted it. There is no evidence that any request for leave, flexible working or working from home was refused by Ms Ayres during this period.

37. On 12 June 2019, the Claimant sent a flexible working request to Ms Walter, copied to Ms Cummings and Ms Ayres. The Claimant asked to work from home every Friday because of her disability of long-term depression. The Claimant did not rely on her caring commitments for her disabled son and, although the Respondent knew her son was disabled, it had no reason to believe that this was part of the Claimant's reason for the request. The Respondent did not acknowledge in writing receipt of the application. However, this was a very busy time of the year as Congress was due to start on 1 July 2019 and the Claimant was absent on compassionate leave from 21 to 27 June 2019. In any event, whilst sharing a lift to Congress, Ms Walter verbally told the Claimant that the Respondent would reply to the request in due course.

38. A meeting took place on 10 July 2019, attended by Ms Walter, Ms Ayres and the Claimant, to discuss the Claimant's flexible working request. The Claimant was asked four questions: why she had applied, how would working from home help, what measures would she put in place and how would the team be affected. The Claimant's responses were brief. She made it clear that the request was to help her wellbeing (with no reference to her son), she would be contactable by phone and email, would be flexible to attend events and change work patterns as required and stated that the larger size of CALC and technological advances meant that working from home was more practicable than before.

39. By letter dated 25 July 2019, Ms Walter declined the request as a flexible working arrangement but agreed to make a reasonable adjustment under the sickness policy given that the reason for the request was the Claimant's ill-health. The Claimant would be allowed to work from home one day a week on an ad hoc basis, where the needs of the business permitted, with a review after 3 months. The Claimant was made aware that there may be some weeks where working from home was not possible and the dates would be allocated at the beginning of each month by Ms Ayres as her line manager. This was the same arrangement as applied to Ms Walter in the brief period when she could work from home before her promotion to Director of Professional Standards in July 2019 – there was no set day of the week and she had to ask permission in advance from her line manager. Similarly, the email sent on 9 July 2019 confirms that Ms Walter agreed the same arrangement with Michelle Braithwaite, a black Caribbean Events Manager – she could work from home one day a week, on an ad hoc basis, with dates being sent in advance at the beginning of the month for Ms Walter's approval.

40. The Tribunal accepts as plausible and reliable the evidence of Ms Ayres that if granted as a flexible working request, there would need to be a permanent change to the Claimant's terms and conditions of employment as Event Co-ordinator. Ms Ayres was seeking to treat all members of staff fairly and equally; if a fixed working from home day

were permitted for the Claimant, other members of the team could make a similar flexible working request which could be unfair to refuse. However, if working from home was permitted as a reasonable adjustment for health reasons it could be justified based on individual circumstances and would not create a precedent if other Event Co-ordinators requested working from home one day a week.

41. The Tribunal bears in mind that this was at a time before the Covid-19 pandemic when home working was not as prevalent as it has become. Working from home for Events Managers and Co-ordinators was very unusual given the demands of the role and the perception that you needed to be present in the office to deal with enquiries in particular. Between 2012 and 2019 when Ms Walters managed the team, only 0.5 days in total was permitted for working from home. On balance, we find that the Respondent carefully and fairly considered the request but decided that the nature of the Events Co-ordinator role was not consistent with a permanent fixed one day a week from home, especially a Friday which was one of the most popular days for events. The Respondent reached its decision by balancing the needs of the business for flexibility based upon workload and the events calendar and the health needs of the Claimant.

42. In an email sent on 8 August 2019, the Claimant set out a number of dates which she suggested be worked from home for the period to the end of November 2019. None of those dates was refused by Ms Ayres.

43. The Claimant appealed against the decision on 20 August 2019. In her grounds of appeal, she said that the primary reason for the request was her own disability but that since the initial request there had been a change in her requirements to care for her disabled son. The Respondent concedes that this was a protected act. In her appeal, the Claimant also complained that the flexible working policy had been deleted from the intranet following her application as an underhanded attempt to try to prevent her from asserting her employment rights.

44. The appeal was heard by Ms Cummings and the outcome was sent to the Claimant on 22 October 2019. Her appeal was partially upheld to the extent that she should be given more advance notice of when she could work from home rather than being allocated dates at the beginning of each month. Ms Cummings was less concerned about creating a precedent but more about using the appropriate policy to address the needs of the individual employee concerned and balanced them against the needs of the business. This is the paradigm example of the duty to make reasonable adjustments for disabled employees and was an entirely appropriate approach. Ms Cummings explained in her evidence that there had been a change in IT system as a result of which a number of policies had not been carried over. The Tribunal accepts this credible and plausible explanation and finds on balance that the flexible working policy was not deliberately deleted, it was an entirely innocuous administrative issue affecting all employees.

45. On 7 November 2019, the Claimant was signed off work by reason of an earlier injury to her hand. Ms Ayres questioned whether the fit note provided applied only to the Claimant's second job with Tesco and not the Respondent. The Claimant provided a new fit note to Ms Ayres. The fit note was not signed by the GP and HR contacted the GP directly to ask for a signed copy. The Tribunal finds on balance that this was a simple administrative action and not, as the Claimant suggests, an indication that the Respondent did not trust her and/or was trying to catch her in some form of wrongdoing.

46. Following Ms Walter's appointment to Director of Professional Standards on 24 July 2019, the post of Head of Events Operations became vacant. Ms Ayres applied for and was appointed to the interim position with effect from September 2019. She retained her responsibilities as Events Manager and this led to a review of her responsibilities to see what could be shared in order to make the combined role manageable. The Tribunal prefers the evidence of Ms Ayres to that of the Claimant as to the nature and extent of the duties transferred to Ms Brinsden and Ms Newton. Ms Ayres line managed both women as she did the Claimant. The handover of duties did not affect that position. There is no evidence in the bundle, or indeed detail in the Claimant's statement, of any specific management task which either undertook beyond their existing responsibility for managing some of their own small or internal events as part of their job as Events Co-Ordinator. The Claimant expressed no desire at the time, or even in her witness statement, to undertake any part of Ms Ayres' role and did not manage her own events. At the date of the hand-over of administrative tasks to Ms Brinsden and Ms Newton, there was no indication that there would be a restructure of CALC which would delete all Event Co-Ordinator roles. For all of these reasons, we reject the Claimant's evidence that she was told that she would be reporting directly to Ms Brinsden and Ms Newton or that they took over any management aspect of Ms Ayres' Events Manager role.

47. In or around December 2019, the Events Co-ordinator supporting Emma George, an Events Manager, left the Respondent's employment. The Claimant and Ms Ayres met on 18 December 2019 to discuss the need to provide Co-ordinator support to Ms George and it was agreed that the Claimant would provide such support. This is consistent with Ms Ayres' email of 6 January 2020, in which she said that she was grateful that the Claimant had agreed to work with Ms George "for now" as she was well placed to do so given her excellent knowledge and experience of NG database, organising complex events and previous work together on Congress posters. This is not consistent with the Claimant's evidence that she was told that it would be a permanent arrangement. The email also sets out the events currently on the Claimant's schedule which would need to be reallocated and the person who would be assuming each of the Claimant's responsibilities supporting those events. The tasks on NG database and website contacts were passed to Ms Ayres, whereas queries and fees were passed to Ms Brinsden or Ms Newton. The Tribunal finds this consistent with Ms Ayres retaining the management aspects of the Events Manager role with the Events Co-ordinators on a par with the Claimant taking the administrative duties. Neither was put into a Events Manager position by this temporary reallocation of duties.

48. The Claimant's case is that at the meeting on 18 December 2019, Ms Ayres told her that a department restructure was to occur in the near future, that she was placing the Claimant with Ms George in order to secure her role when the restructure happened, leading the Claimant to believe that she would be taken out of any redundancy pool. Ms Ayres denies this. The Tribunal find it highly implausible that Ms Ayres would give the Claimant an assurance that her job would be safe in the restructure. As set out below, Ms Walter was responsible for developing the restructure plan which was formulated by late December 2019 and which involved the deletion of all Events Co-ordinator roles. It was not within Ms Ayres' power to secure the Claimant's employment and the temporary provision of support to Ms George did not affect the position that all Events Co-ordinator roles were to be deleted. Moreover, such an assurance would have been in breach of the Respondent's policy and procedures for dealing with redundancies and restructures. Ms Ayres struck the Tribunal as a witness who clearly took care to act in accordance with proper process and the limits of her authority (for example in the request for extended

holiday which required approval by a more senior manager). The Tribunal finds on balance that no such assurance was given.

49. At around this time the Head of Exams unfortunately suffered a heart attack. Exams are a particularly important part of the Respondent's work to maintain and uphold high professional standards. It was a business imperative that somebody be appointed to cover the exams position without delay. Ms Walter considered the resources within her broader department and decided that the current Head of Business Development and e-Learning, Ms Karla Pryce, was best placed to provide cover as she had formerly been Head of Exams. Ms Pryce is black Caribbean. It was then necessary to appoint interim cover for Ms Pryce's business development responsibilities. Ms Walter appointed Ms Brinsden in an acting up capacity between 1 February 2020 and 31 March 2020. Ms Walter chose Ms Brinsden because she had previously worked very closely with Ms Pryce in business development and had experience developing programmes and income generating initiatives. Neither Ms Pryce nor Ms Brinsden had been required to apply for the cover positions and nobody else within CALC had been given the opportunity to act up. The Tribunal finds that this was due to the urgency of the need and the short period of cover anticipated.

50. Upon her appointment as Director in July 2019, Ms Walter had begun to look at the structure of the Professional Standards department generally. Her focus turned to CALC in or around October 2019 and her restructure plan was formulated by late December 2019. She considered the job descriptions for the existing jobs and worked out what the Respondent needed to improve future performance. The Tribunal accepts Ms Walter's evidence that she did not take into account the performance and skills of the people currently in post as they could leave their employment anytime; this was not about people but about the roles. Ms Walter's view was that having two "head" positions was inefficient. The Head of Business Development decided the content of events and the Head of Events Operations was responsible for their delivery. Neither had proper sight of what the other team was doing and nobody really knew who was in charge. Ms Walter believed that the annual Congress had grown beyond all recognition, raising the profile of the College and that a new structure would improve their professionalism and efficiency and enable it to undertake work which it was currently turning away. The income which the Respondent could generate was limited by NHS training budgets and the number of places and events which it had capacity to run. Moreover, any profit generated by the events would be passed to the Respondent's general funds for charitable works and so there was no budget to hire more people. In short, Ms Walter wanted to create a structure which would better enable the Respondent to put on a greater number of events for a greater number of people and thereby generate greater income but with the same overall budget.

51. The restructure plan produced by Ms Walter was not limited to CALC but also considered Scotland, London and Eastern Division and the International Unit. In respect of CALC, Ms Walter stated that having the Head of Business Development and e-Learning working in part in the CALC team led to inefficiency and a duplication of work. The restructure proposed that all CALC activities would sit under a single Head of Events with the role of Head of Business Development and e-Learning being deleted. Instead, there would be a new Head of e-Learning role within the e-Learning team.

52. In addition, all three Co-ordinator roles were deleted and instead there would be three Event Administrators, a Congress Manager, an Event Manager and an Event

Development Administrator. The key difference between the new Events Administrator job and the previous Events Co-ordinator job was that the new role would include no requirement to manage any events, even small or internal, as before. Consistent with its approach to CALC, the restructure also deleted the Co-ordinator role in the London and Eastern Division. The rationale set out in the restructure plan was that:

> "**the current arrangements are not making best use of the Co-ordinator roles which are too senior for simple administrative tasks and not senior enough to take on greater ownership of the divisions activities to alleviate pressure on the London and Eastern Division Manager**."

53. Whereas the Co-ordinator role was evaluated at pay band 3, the new Manager roles were pay band 4 and the new Administrator role was pay band 2. Attached to the restructure were the job descriptions for the new roles. Having carefully considered the content, the Tribunal finds that the new Events Administrator job roles do differ materially from the Event Co-ordinator role in content and not just pay band. The purpose of the Co-ordinator role includes the provision of organisational support and the key responsibilities require training staff, monitoring and managing payments and, crucially, managing all aspects of event delivery when instructed to do so. By contrast, the Administrator role is limited in purpose to the provision of administrative support to the Development Manager and has no management element. The language used and the key responsibilities of the new role make clear that it is a more junior role, with very task-based functions upon the instruction of the Events Development Manager and reporting to the Event Managers (rather than the Head of Events as with the previous Co-ordinator role). In her statement, the Claimant herself described the Event Administrator role as a demotion.

54. Ms Walter accepted in evidence that the restructure was designed to mean that there were more people not fewer employed within the CALC team but that had to be delivered within the same set budget. The deletion of the Co-ordinator role would save the money required to afford the additional headcount whilst also providing greater efficiency. The new administrative role could increase the amount of labour-intensive support required on events (handling phone calls, making bookings, printing name labels) such that the Respondent would be able to expand the number of events it offered and managed.

55. On 25 February 2020, all affected employees attended a group consultation meeting which advised them of the aims and effect of the restructure. Each employee was invited to individual consultation meetings. The Claimant's first consultation meeting took place on 5 March 2020. Again the rationale for the restructure was explained as was the process which would be followed. Ms Walter made clear that the decision to delete all Co-ordinator roles was not personal but due to business need to provide greater administrative support to Managers. The Claimant questioned this need as she provided only administrative support already and neither Event Manager had expressed concern about lack of support.

56. The Claimant was told that she could be slotted into one of the new Administrator roles as there were sufficient vacancies to guarantee her the job. The Administrator salary of £25,692 was significantly lower that the Claimant's existing salary of £39,500 per annum which would be protected for six months. The Claimant was also told that she was entitled to apply for any of the new Manager roles. All new roles would be ring-fenced for affected employees, so that they would not be competing against external candidates or

internal candidates whose jobs were unaffected by the restructure. If the Claimant did not express an interest in the Administrator job and/or apply for the Manager jobs, then there would be a second consultation meeting at which redundancy payments and notice would be discussed. All of this information was confirmed in writing to the Claimant by email dated 16 March 2020.

57. On 13 March 2020, Ms Cummings sent the Claimant additional information which she had requested in the first meeting and reminded her that she could be slotted into an Events Administrator role.

58. By email dated 19 March 2020, all affected employees including the Claimant were advised of the vacancies within the new restructure. The Information Pack attached included the application form and stated that the closing date was 26 March 2020. The Claimant did not apply for any of the new roles. Her evidence was that because she had been unsuccessful in her application in 2015, she had no faith in the process.

59. On 2 April 2020, Ms Cummings confirmed that Ms Brinsden had been appointed as Events Development Manager and Ms Newton was the new Congress Manager. In her email, she also stated that the Claimant, the former Head of the Devolved Nations & Divisions (a black woman) and the Scotland Policy Officer (a white male) would be made redundant.

60. Both Ms Brinsden and Ms Newton made a formal application for their new Manager roles, neither was slotted in even though they were the only two applicants for the two jobs. Each was required to complete a full application form setting out their suitability for the role and attended an interview which comprised a 45-minute interview and a 40-minute psychometric test. Copies of the applications and the interview questions were disclosed at the request of the Tribunal as the hearing progressed. The Tribunal is satisfied that this was a rigorous selection process in which applicants had to provide clear evidence of how they met the required competencies. The questions were not specific to the job an applicant had previously been undertaking but generic, such as asking for an example of a successful event. Being currently in post in an acting up capacity did not guarantee appointment. Ms Ayres had been acting as interim Head since September 2019 but was not successful in her application for the substantive role in the restructure.

61. The Claimant was given notice of redundancy on 15 April 2020, with the effective date of termination being 8 July 2020. The Claimant was informed that she could access the health plan and mental health service for a period of 6 months after the effective date of termination.

62. The Claimant appealed against her dismissal by letter dated 22 April 2020. The appeal was heard by Mr Rees. She complained that there had been no selection process and that the offer of alternative employment was not suitable. She suggested that the new roles had been tailored to Ms Brinsden and Ms Newton. The Tribunal finds that Mr Rees was an appropriate person to hear the appeal. Whilst he was aware of the restructure and had given initial sign-off for it to proceed, he had not been involved in its day to day implementation and therefore approached the appeal impartially. By letter dated 15 May 2020, Mr Rees did not uphold the appeal.

63. As is well known, with effect from 23 March 2020 the Government implemented the first national lockdown due to the Covid-19 pandemic. Businesses were required to adapt

very quickly to a very different working environment, including substantially increased levels of working from home and the introduction of a Job Retention Scheme (commonly referred to as furlough). On 14 April 2020, the Claimant asked if she could be put on furlough and her redundancy be deferred until the expiry of the furlough scheme. The Respondent refused as this was not the purpose of the Job Retention Scheme which was intended for organisations affected by the pandemic who may otherwise need to make employees redundant. The Claimant's situation was different: her redundancy was not due to the Covid-19 pandemic or lockdown but was entirely due to a restructure which was decided before either happened and would have occurred irrespective of the pandemic.

64. There was work available for the Claimant during her notice period despite lockdown. As Ms Ayres described, and as was common with many conference and events businesses, CALC had over a year of events planned in its calendar for which they needed to cancel delegate bookings, refund delegate payments, cancel venue contracts, try to get refunds from suppliers, events speakers, hotel bookings and travel. One of the effects of the pandemic was an increasing use of on-line events and webinars such that the role of the Administrator subsequently expanded and has been revalued with a slightly increased salary.

Law

Unfair Dismissal - redundancy

65. It is for the employer to show the reason for dismissal and to satisfy the Tribunal that it is a potentially fair reason, section 98(1) Employment Rights Act 1996 ('ERA'). Redundancy is a potentially fair reason for dismissal, section 98(2)(c) ERA.

66. Section 139 ERA states that:

> **(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:**
>
> **(a)The fact that his employer has ceased or intends to cease-**
> - **(i) to carry on the business for the purposes of which the employee was employed by him, or**
> - **(ii) to carry on that business in the place where the employee was so employed or,**
>
> **(b)The fact that the requirements of that business-**
> - **(i) for employees to carry out work of a particular kind, or**
> - **(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,**
>
> **have ceased or diminished or are expected to cease or diminish."**

67. In considering whether the Respondent has established that there was a redundancy situation, we must direct our minds to whether there was (i) cessation of the business; and/or (ii) cessation or diminution in the Respondent's requirement for an employee to do the work of Events Co-ordinator. A need to save cost, alone, will not amount to a redundancy within s.139 ERA.

68. In **Williams –v- Compair Maxam Ltd** [1982] IRLR 83, the EAT set out guidelines for considering the fairness of a dismissal by reason of redundancy. We remind ourselves

that these are guidelines only and are not principles of law. The guidelines provide *inter alia* that there should be: (i) as much warning as possible and (ii) consultation about ways of avoiding redundancy, such as the possibility of alternative employment.

69. The guidance in **Williams** does not address a situation where redundancy arises in consequence of re-organisation and there are new, different roles to be filled. Where an employer has to decide which employees from a pool of existing employees are to be made redundant, the criteria will reflect a known job, performed by known employees over a period. Where, however, an employer has to appoint to new roles after a re-organisation, the employer's decision must of necessity be forward-looking. It is likely to centre upon an assessment of the ability of the individual to perform in the new role such as by an interview process, particularly where the new role is at a higher level, **Morgan v Welsh Rugby Union** UKEAT/0314/10/LA.

70. The obligation to consult requires the Respondent to give a fair and proper opportunity to understand the matters about which consultation is taking place to express views and have those views properly and genuinely considered, **Crown v British Coal Corporation, ex parte Price (No. 3)** [1994] IRLR 72.

71. The obligation to find alternative work, again, is an obligation which is subject to the caveat of reasonableness. The employer is not under a duty to take every possible step to retain an employee, simply to do what it can so far as is reasonable, **Thomas & Betts Manufacturing Company v Harding** [1980] IRLR 255.

Discrimination and Victimisation

72. Section 13 Equality Act 2010 provides that a person discriminates against another if, because of a protected characteristic, he treats that other less favourably than he treats or would treat others. Race is a protected characteristic. Conscious motivation is not a requirement for direct discrimination, it being enough that the protected characteristic had a significant influence on the outcome. The crucial question is why the complainant was treated in the way in which they were, particularly in cases where there are no actual comparators identified, **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285.

73. Section 27 of the Equality Act 2010 prohibits victimisation. The Claimant does not need to show a comparator but she must prove that she did a protected act and that she was subjected to a detriment because she had done that protected act. As with direct discrimination, it is not necessary for the Claimant to show conscious motivation, it is sufficient that the protected characteristic or protected act had a significant influence on the outcome.

74. In considering the burden of proof, we referred to s.136 Equality Act 2010 and the guidance set out in the case of **Igen Ltd v Wong** [2005] IRLR 258, CA as approved in **Madarassy v Nomura International Plc** [2007] IRLR 246, CA. This guidance reminds us that it is for the Claimant to prove facts from which the Tribunal could conclude, in the absence of adequate explanation, that the employer has committed an act of unlawful discrimination. The outcome at this stage of the analysis will usually depend upon what inferences it is proper to draw from the primary facts found by the Tribunal. Where the Claimant has proved such facts, the burden of proof moves and it is necessary for the employer to prove, on the balance of probabilities, that the treatment was in no sense

whatsoever on the prohibited ground.

Conclusions

Unfair Dismissal

75. Having regard to our findings of fact and the contemporaneous documents, the Tribunal is satisfied that this was a genuine restructure of CALC and other teams within the Professional Standards department. Ms Walters looked at all roles required by the Respondent and not the individuals currently in post. The Tribunal concludes that whether or not the existing structure was working adequately, Ms Walters decided that a new more hierarchical structure with greater dedicated administrative support would be more efficient and enable to the Respondent to put on a greater number of events for more delegates. This is consistent with the clear difference between the old Events Co-ordinator role and the new Events Administrator roles which was more junior. The restructure was self-funding, there was no budget reduction and its aim was not to save money. Whilst the result of the restructure was an increased number of employees, this was due to the ability to employ the more junior Events Administrators. As a result of the deletion of all three Events Co-ordinator posts, there existed a redundancy situation and this was the sole reason for the subsequent dismissal of the Claimant.

76. The Tribunal does not accept the Claimant's case that this was a sham designed to secure her dismissal, far less that it was motivated by race or any earlier protected act. There was a clear business rationale for the restructure even if the Claimant does not agree with it. The effect upon the Claimant was significant and the Tribunal understands why the far reduced salary of the Events Administrator was unattractive to her. Nevertheless, the Tribunal rejects as utterly implausible her case that this restructure, applying across CALC and other parts of the department which were treated in a consistent manner, has been designed to secure the removal of the Claimant. The difficulties which the Claimant asserts caused Ms Walters to design the restructure expressly to remove her as an employee are, we conclude, little more than a series of one-off disagreements which were swiftly resolved with lengthy periods of harmonious and constructive working in between.

77. As for the process adopted, the Claimant was warned that she was at risk of redundancy, was told why this was the case, attended two personal consultation meetings, was informed that she could be slotted into the more junior new role or apply for the more senior Events Manager role. The consultation was meaningful and designed to secure the Claimant's continued employment. In the context of this particular restructure, the Tribunal accepts the Respondent's case that it was not required to apply a matrix selection criteria. This was not a situation where the Respondent was reducing the number of Events Co-ordinators and had to select who to retain, this was a deletion of the entire job role. Accordingly, all Co-ordinator posts were therefore redundant as they were no longer required.

78. The Claimant chose not to apply for the Events Manager role even though she would have stood a good chance of success as there would have been only three candidates for two ring-fenced vacancies. The Tribunal does not accept the Claimant's case that either Ms Newman or Ms Brinsden had an unfair advantage due to the additional work they had undertaken since August 2019. There was no inherent advantage either to Ms Brinsden as a result of her two-month acting up period. Ms Ayres

had been acting as interim Head since September 2019 but was not successful in her application for the substantive role in the restructure. Both Ms Newman and Ms Brinsden were appointed after a robust competitive process which would equally have applied to the Claimant.

79. The Tribunal carefully considered the Claimant's case that she did not apply for one of the Events Manager roles because she had no faith in the process following her unsuccessful application in 2015. The Tribunal does not consider that this was an objectively reasonable assessment bearing in mind that it took her two attempts to be appointed after interview to the Conference Administrator role. Moreover, her contemporaneous reaction to her unsuccessful application in 2015 was positive, saying that the process had helped her gain in confidence and skills for the future. Whilst the Tribunal accept that the Claimant genuinely and subjectively felt that she did not stand a chance, she had substantial and significant recent experience particularly in Congress which would have given her as good a chance as Ms Newman and Ms Brinsden of being successful.

80. For all of these reasons, the Tribunal concludes that this was a dismissal by reason of redundancy which was fair in all of the circumstances of the case. The claim of unfair dismissal fails and is dismissed.

Race Discrimination

81. The Claimant relies upon four detriments as acts of direct race discrimination: the handling of her flexible working request in June to September 2019, exclusion from reallocation of Events Manager duties in August 2019, changes to her role in December 2019 and her dismissal (including refusal to put her on furlough).

82. Dealing first with the flexible working request, the request was made at the busiest time of the year in the CALC calendar. The request was verbally acknowledged by Ms Walters and a meeting to discuss it was held within 28 days of the request. The Claimant initially did not rely on her caring responsibilities for her son but solely on her own disability. The Respondent properly sought to understand her reasons for applying, how working from home would help and how it would work in practice. Although declined as a flexible working arrangement, the Claimant was permitted to work from home one day a week on an ad hoc basis. The fact that this was permitted as a reasonable adjustment was perfectly sensible: the reason given was disability and the agreement was individual to the Claimant to support her mental health. Whether the concern was that it would set an unwanted precedent which may lead to problems treating the other Events Co-ordinators fairly if they made a similar request or that this was a positive recognition that as a disabled employee the Claimant required more favourable treatment by way of reasonable adjustment, it had nothing whatsoever to do with the Claimant's race. An objectively reasonable employee could not have any sense of grievance in being granted the arrangement as a reasonable adjustment rather than a flexible working request as it was a distinction without difference.

83. The Claimant wanted to have a set day working from home each week. This was not permitted and the adjustment was more limited – one day a week on an ad hoc basis where the needs of the business permitted and as allocated by Ms Ayres at the beginning of each week. The Tribunal concludes that this more limited agreement is capable of being a detriment. However, the Claimant was not treated less favourably than any other

employee in this regard. The same arrangement applied to Ms Walter in the brief period when she could work from home before her promotion to Director of Professional Standards in July 2019 – there was no set day of the week and she had to ask permission in advance from her line manager. Similarly, the email sent on 9 July 2019 confirms that Ms Walter agreed the same arrangement with Michelle Braithwaite, a black Caribbean Events Manager – she could work from home one day a week, on an ad hoc basis, with dates being sent in advance at the beginning of the month for Ms Walter's approval. In practice, as seen from her email sent on 8 August 2019, the Claimant also sent an email to her line manager with proposed working from home dates and there is no evidence that any were refused.

84. The Tribunal also considered whether a hypothetical comparator, an Events Co-ordinator making the same request based upon their own disability or caring responsibilities, would have been treated more favourably. As we set out in our findings of fact, the request was made at a time when working from home was not as prevalent as it has become. Working from home for Events Managers and Co-ordinators was very unusual given the demands of the role and the need to be in the office to deal with enquiries. The reason for refusal was entirely based upon the Respondent's assessments of the needs of the business balanced against the needs of the Claimant. A hypothetical employee in the same or not materially different circumstances but of a different race would have been treated in exactly the same way.

85. As set out in our findings of fact, the appointment of Ms Ayres as interim Head of Events Operations from September 2019 led to a review of her responsibilities. There was no appointment of an interim Events Manager to cover her substantive role, rather she retained the management aspects and more administrative tasks were allocated to Ms Brinsden and Ms Newman. Ms Ayres continued to line manage both women and the Claimant as before. Ms Brinsden and Ms Newman continued to manage their own small events as before; the Claimant did not, again as before. As a matter of fact, the Event Manager role was not reallocated and the Claimant was not excluded as alleged in the list of issues. The Claimant expressed no desire to take on additional duties at the time. We conclude that the reallocation of administrative duties in August 2019 was not a detriment and, even if it were, it had nothing whatsoever to do with the Claimant's race.

86. On 18 December 2019, it was agreed that the Claimant would provide interim support to Ms George following the departure of her own Events Co-ordinator. This was not, we have found, a permanent arrangement. The contemporaneous email reallocating the Claimant's existing events makes clear that Ms Brinsden and Ms Newman were assuming only administrative duties on these events. This was a straightforward reallocation of administrative event support duties between employees at the same level. It neither benefited Ms Brinsden or Ms Newman nor disadvantaged the Claimant particularly as all three Events Co-ordinator roles were to be deleted in the restructure. It was entirely due to short term staffing issues and nothing whatsoever to do with race.

87. Ms Brinsden's acting up role lasted from 1 February 2020 until 31 March 2020. It arose due to the ill health of the Head of Exams and the need to ensure adequate cover for such a significant role. Ms Pryce who was selected to provide cover is black Caribbean like the Claimant. She was chosen without a competitive process as she was the best suited due to her experience and nobody else was given the opportunity to act up in the role. Similarly, Ms Brinsden covered for Ms Pryce because Ms Walters deemed her most suitable due to her previous close work with Ms Pryce in business development and

experience developing programmes and income generating initiatives. The Tribunal rejects the Claimant's case that this arrangement was designed to benefit Ms Brinsden or disadvantage the Claimant in the restructure. It had nothing to do with race whatsoever and was entirely due to business need and the urgent need to provide cover by employees best able to step into the roles at short notice.

88. As we have concluded above, the reorganisation was not a sham but a genuine attempt to increase efficiency in the CALC team. The strategic move to more dedicated administrative support and the removal of the grey area created in the Co-ordinator role applied not only to CALC but also to the nations and regions departments. The Claimant was not the only employee made redundant as a result and it was not only black employees who lost their jobs. The decision to delete the Co-ordinator role was not based upon any of the individuals in post. In his submissions, Mr Jonjo relied upon the fact that the Claimant was the only employee with mental health issues and a child with special needs. However, neither is a protected characteristic relied upon in this claim and, in any event, neither played any part in the reorganisation decision. For reasons already set out, neither Ms Brinsden nor Ms Newton were given a "head-start" in applying for the Events Manager role. The Claimant could have applied and had as good a chance of appointment as either but she chose not to do so as a result her circumstances were materially different from those of Ms Brinsden and Ms Newton.

89. In his submissions for the Claimant, Mr Jonjo submitted that the lack of financial need or other operational factors such as office move or customer complaints suggested that this was a sham restructure designed to dismiss the Claimant. He further relied upon what he said were improper consultations and vague selection criteria as indicators of bad faith by Ms Walters in deciding to restructure. The Tribunal has not accepted that these are criticisms which are well founded in fact. The Claimant has failed to prove primary facts from which we could find that she was discriminated against.

90. As for the refusal to put her on furlough and defer redundancy, the Claimant was not selected for redundancy for any reason connected with the pandemic. Her situation fell outside of the purpose of the Job Retention Scheme. There was a lot of work for the Claimant to undertake during her notice period despite the lockdown, more so given the need to cancel at short notice previously planned events and move in due course to on-line training. There is no evidence before the Tribunal that any employee in CALC or any of the other redundant employees from the restructure were put on furlough. Whilst it is understandable that the Claimant would have wanted to remain in employment for as long as possible, the refusal improperly to use the furlough scheme as the means of doing so was nothing whatsoever to do with her race.

91. In reaching these conclusions, the Tribunal had careful regard to the submissions on behalf of the Claimant and the matters relied upon as background in order to see whether they permitted any inferences to be drawn which would support the Claimant's case. The Claimant was the only employee with mental health problems and disabled childcare. However, all witnesses maintained and we have accepted that they did their best to support the Claimant subject to the business needs. In his submissions, Mr Jonjo asked us to consider the position of a hypothetical white woman with mental health problems and a disabled child and whether they would have been treated more favourably than the Claimant. The Tribunal is satisfied that they would not.

92. The Tribunal does not accept the Claimant's case that the relationship between her and Ms Walter had deteriorated to the point where Ms Walter is said to have created an entire sham restructure to remove her. The matters relied upon in 2006 and 2012 long pre-date the 2019 flexible working request and restructure and are entirely unrelated to either. There was a six year gap between these first three background matters without any further difficulties relied upon and each is an isolated disagreement about a discrete issue. The Claimant was not appointed in 2015 but made no contemporaneous complaint, had been supported by Ms Ayres and at the time saw the process as positive in terms of her professional development. Looked at holistically, there were four issues in nine years of employment which is not, in our view, material from which we could safely draw any adverse inference of a problem in the working relationship far less that race was a material factor.

93. The list of issues relies upon the very broad categories as "events in 2016/17" and "events in 2019" as further background. As these were not particularised, the Tribunal has made detailed findings of fact in order carefully to consider whether any inferences should be drawn. We conclude that they should not. During the Claimant's sickness absence in 2016 and on her return to work, the Respondent treated the Claimant like the valued member of staff she was: providing support and information, ensuring that she felt part of the team and considering practical adjustments for her return. Whilst there was undoubtedly a disagreement about the extended annual leave request in 2017, this was a perfectly ordinary dispute about a request for an unusually long period of annual leave which was ultimately agreed by compromise. The reason for the disagreement was the competing need of the Respondent to cover events and the need of the Claimant for leave due to her domestic circumstances. The Claimant was ultimately granted this leave as she had previously been granted extended leave.

94. The Tribunal has found that Ms Ayres acted for entirely non-discriminatory reasons and her decision was entirely based upon the busy workload. Once the workload could be covered, the leave request was approved. There is no evidence to suggest that the Claimant would have been treated any differently had she been white. The Claimant relied upon leave taken by Ms Emma George, a white comparator, when she was allowed to step down from an event to celebrate her 50th birthday. However, Ms George was an Events Manager (not a co-ordinator like the Claimant) and there was no evidence of the length of the leave, the needs of the business or whether, like the Claimant, there was an agreement that a colleague cover her duties on the event. For all of these reasons, the Tribunal does not accept that this is evidence from which we could infer that the Claimant was treated less favourably because of race on this occasion, far less to infer later discrimination in the four alleged detriments which we have considered in turn.

95. Finally, the "events in 2019" start with the flexible working request in June 2019 as we have found that there were no recorded difficulties arising between 3 August 2017 and that date. In addition to the four detriments which form part of the claim, the Tribunal did take into account the contact by HR with the Claimant's GP for a signed fit note. The Tribunal has found, however, that it was a simple administrative action and not, as the Claimant suggests, an indication that the Respondent did not trust her and/or was trying to catch her in some form of wrongdoing.

96. The Respondent is a racially diverse employer with a track record of concrete action to support equality and diversity. Ms Cummings who was involved in much of the contact with the Claimant from late 2016 is black Caribbean. One of the comparators, Ms

Braithwaite, is also of the same race. Ms Pryce who is also black Caribbean was treated in the same way as Ms Brinsden in being offered a short-term albeit important cover role without competitive appointment when the Head of Exams became unwell. Looked at holistically, the conduct of the Respondent both in the detriments and the background matters had nothing whatsoever to do with race.

97. For all of these reasons, the claim of direct discrimination fails and is dismissed.

Victimisation

98. As the suggestion that any of the four detriments relied upon were caused by a protected act was not put to the witnesses or initially addressed in submission by Mr Jonjo, at the conclusion of the case the Tribunal asked whether the Claimant still pursued this claim. After some time to take instructions, Mr Jonjo confirmed that she did. He submitted that following her initial request for parental leave in February 2017 and subsequent complaint in March 2017, the Claimant was continuously treated unfairly until the termination of her employment and furthermore that the restructure was a sham which happened as a direct result of the protected acts.

99. The Tribunal does not accept the submissions of the Claimant. Firstly, we have not accepted that the Claimant was treated unfairly from February 2017. Secondly, the dispute about extended leave was resolved by way of compromise when a colleague agreed to cover the Claimant's duties. Thirdly, there were no further difficulties until 2019 when a request for flexible working (the second protected act) occurred. Fourthly, the Respondent handled the 2019 request in a manner which was entirely appropriate and granted it as a reasonable adjustment for sound reasons unrelated to the protected act. The request based upon childcare was only made during the appeal process and it initially relied upon the Claimant's disability. The request was granted as a reasonable adjustment and there is no evidence to suggest that the Respondent regarded it as being in any way negative. We have not accepted that the flexible working policy was deliberately deleted, it was an IT migration issue. Finally, it is totally implausible that a wide ranging restructure affecting the entire CALC team and other parts of the Professional Standards department which led to redundancies of other employees was engineered because the Claimant had made a flexible working request which had been granted as a reasonable adjustment.

100. The Claimant has not proved primary facts from which we could find, or infer, that the detriments relied upon were in any sense whatsoever by reason of her protected acts. The claim of victimisation fails and is dismissed.

Employment Judge Russell
Dated: 22 August 2022