



EMPLOYMENT TRIBUNALS

Claimant: Ms J Paul-Christian
Respondent: London Borough of Haringey
Heard at: East London Hearing Centre (by CVP)
On: 5 to 7 October 2022
Before: Employment Judge C H O'Rourke
Members: Mr D Hurrell
Mrs B Saund

Representation

Claimant: in person
Respondent: Ms E Banton – counsel

RESERVED JUDGMENT

The Claimant's claim of race discrimination fails and is dismissed.

REASONS

Background and Issues

1. The Claimant had sought employment with the Respondent as a social worker, in the period July to September 2020. While successful in the recruitment process and offered the position, that was subject to Disclosure Barring Service (DBS) checks. She has three convictions, dating from 1982 and 1983, when she was aged 17 (at the time of interview she was 54), for a range of offences relating to obtaining property by deception and theft. It is common ground that while these convictions were spent, the Respondent was entitled, nonetheless, due to the Claimant's prospective role being to work with vulnerable adults and children, to make further enquiries of her in relation to those convictions, before confirming her appointment.
2. Following a meeting with her, by telephone, on 24 September 2020, the Respondent withdrew the offer ('the DBS meeting').
3. The Claimant, who is of black African race, alleges that this decision (and many other matters related to the process) was direct racial discrimination.

4. A case management order of 7 July 2021 set out the issues in relation to that claim [55], which were further amended by the Claimant in a later email and which amendments were not objected to by the Respondent [that email is contained in a separate bundle provided by the Claimant at her page C5]. At the end of the first day of Hearing, the Claimant was asked to look again at her allegations of twenty-three discriminatory acts, to consider whether all of them were genuinely alleged to be acts of discrimination or were instead assertions as to evidential matters that she considered supported her claim. She confirmed the next morning that she wished to maintain those allegations. The issues we considered, therefore, are set out below:

1.2 Did the Respondent do the following things:

In correspondence before the meeting, and in breach of the Respondent's own data protection and DBS policies:

1.2.1 on 18 September 2020 Mr Faiz Ahmed forwarded the Claimant's DBS data to Ms Ashlea Hartland and Ms Brenda McMahon of HR, knowing that one or other of them would know the Claimant's race;

1.2.2 by email dated 18 September 2020, Mr Ahmed wrongly informed a number of individuals, including Ms Mazher, that the Claimant was 28 years old at the time of the offences, and so stated she would not be getting the job and did not deserve any consideration as a minor;

1.2.3 in the same email, Mr Ahmed made factual errors in summarising the Claimant's offences;

1.2.4 on 21 September 2020, and before meeting her, Mr Ahmed recommended that the Claimant not be employed, because she had shown insufficient 'contrition';

1.2.5 on 23 September 2020 Mr Ahmed forwarded the information above to the Hiring Manager, Ms Anna Wright, along with a previously forwarded email of 18 September 2020;

at the meeting on 24 September 2020:

1.2.6 the Respondent failed to ensure that the DBS lead, Ms Vanessa Silva was present;

1.2.7 Ms Mazher questioned the Claimant's truthfulness in relation to her age at the time of the offences;

1.2.8 Ms Mazher interrogated the Claimant about offences committed as a child;

1.2.9 Ms Mazher asked questions which were not appropriate in the circumstances;

1.2.10 Ms Mazher refused to listen to the Claimant's attempts to explain and to provide context, and/or interrupted her explanation;

1.2.11 Ms Mazher failed to apply the five DBS criteria, as required by the Respondent's own policy;

1.2.12 when the Hiring Manager, Ms Anna Wright, messaged the panel to confirm that the Claimant was under 18 at the time of the offences, the panel did not acknowledge their mistake, in fact Ms Mazher became more hostile;

After the meeting:

1.2.13 in an email to Ms McMahon, dated 24 September 2020, Ms Mazher wrongly stated that the Claimant, as a child, had obtained money by deception;

1.2.14 in the same email she communicated her decision to withdraw the offer of employment and questioned the risk of the Claimant taking an Employment Tribunal claim;

1.2.15 The Respondent withdrew the offer of employment on 30 September 2020, with the reason as recorded in their official authority to appoint form;

1.2.16 in a phone call on around 1 October 2020 Ms Panny Papasavva wrongly told the Claimant that no DBS policy was available;

1.2.17 In an email to Ms Rubina Mazher dated 19 October 2020 Panny requested from Rubina the 'rationale for withdrawing the Claimant's job offer'.

1.2.17a In a subsequent email dated 22 October 2020, in response to what Ms Mazher had sent Panny on 20 October 2020, Panny informed Rubina that the officially completed 'authorisation to appoint or terminate' form dated 30 September 2020 did not provide enough information and outlined the 5 criterion that should have been considered during that safeguarding meeting.

1.2.17b in around October/November 2020, Ms Mazher forwarded the Claimant's DBS to a number of people, including the Director of Children's Services, as well as inaccurate information of the Claimant's juvenile offences;

1.2.18 Ms Mazher wrongly stated in an email of 27 October 2020, when forwarding her revised 5 criterion rationale for withdrawing the Claimant's job offer that the Claimant 'had told her in the meeting of 24 September 2020 that she had cashed people's benefit cheques', and made further inaccurate statements in relation to the offences, as well as maligning her personal and professional competence;

1.2.19 in the same email, Ms Mazher questioned the Claimant's professional competence;

1.2.20 Ms Papasavva failed to deal with the Claimant's complaint in a timely manner (however the Claimant confirmed during the Hearing, as she did not seek to cross-examine Ms Papasavva on this and the following complaint that they were withdrawn);

1.2.21 Ms Papasavva failed to uphold any point raised in the Claimant's complaint (as stated above, withdrawn).

1.3 Was that less favourable treatment?

1.3.1 The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

1.3.2 If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

1.3.3 The Claimant relies on a hypothetical comparator.

1.4 If so, was it because of race?

1.5 Can the Respondent show an alternative, non-discriminatory reason for the treatment?

The Law

5. Section 13 Equality Act 2010 (EqA) states:

Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) to (4)

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) to (8)

6. Section 136 EqA states:

Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

7. **Madarassy v Nomura International Plc [2007] ICR 867 EWCA** provided guidance on the burden of proof as follows:

(a) the Claimant must establish on the balance of probabilities, facts from which to conclude, in the absence an adequate explanation that the Respondent had discriminated against them. This means that there must be a 'prima facie case' of discrimination including less favourable treatment than a comparator (actual or hypothetical) with circumstances materially the same as the Claimant's, and facts from which the Tribunal could infer that this less favourable treatment was because of the protected characteristic;

(b) if this is established, the Respondent must prove that the less favourable treatment was in no sense whatever on the grounds of race (or other protected characteristic).

The Facts

8. We heard evidence from the Claimant. On behalf of the Respondent, we heard evidence from Mr Faiz Ahmed, a former Head of Assessment, who took part in the DBS meeting; from Ms Rubina Mazher, the Head of Children's Services, who also took part in the meeting (and who both were involved in the decision to withdraw the job offer) and Ms Panny Papasavva, an HR Operations Manager, who investigated subsequent complaints of the Claimant's.
9. We set out the following brief uncontentious chronology, as follows:
- a. July (all dates 2020) – the Claimant applied for the role of Newly Qualified Social Worker;
 - b. 28 August – following a recruitment process, she was offered the role by letter, which explained that it was subject to DBS checks [181];
 - c. 2 September – she provided a completed self-declaration form, setting out her criminal convictions and providing some background to them [197];

- d. 21 September – Mr Ahmed refers to an earlier email of his (18 September), in which he wrongly states that the Claimant’s age at the time of her convictions was 28 (when she was in fact 17) [205];
 - e. 24 September – the Claimant attended a meeting (intended to be on video, over Teams, but due to connectivity problems, conducted by phone) with Ms Mazher and Mr Ahmed, to discuss her DBS report [131];
 - f. 30 September – the Claimant’s job offer is withdrawn;
 - g. 5 October – the Claimant makes a written complaint [221-233], which is handled by Ms Papasavva;
 - h. 27 October – Ms Mazher responds to Ms Papasavva’s queries as to the rationale for her decision [239];
 - i. 29 October – further complaints are made by the Claimant, relating to alleged DBS policy violations, her previous Subject Access Request and the Respondent’s delay in dealing with her complaints [245];
 - j. 20 November – Ms Papasavva responded to the Claimant’s complaints, effectively rejecting them [257], following which the Claimant entered into ACAS Early Conciliation and presented her claim of 7 March 2022.
10. The Claimant’s allegations were wide-ranging, covering matters such as to whom her DBS data should or shouldn’t be sent; factual errors made by Mr Ahmed and Ms Mazher as to her age at the time of the convictions and the number of those convictions; who should, or shouldn’t have attended the DBS meeting; whether the Respondent’s DBS policy was followed; whether she was misinformed as to the existence of a DBS policy and whether her subsequent complaints were dealt with in a satisfactory and timely manner. In fact, however, the core of her claim was that Ms Mazher and Mr Ahmed, based on their mistaken belief, in the meeting, as to her age at the time of the convictions and also the number of those convictions, conducted a hostile interview with her, in which they challenged her truthfulness, asked inappropriate questions and refused to listen to her explanations. She alleges that based on their stereotypical, ‘*subliminal*’ views as to ‘*tropes*’ about ‘*angry black women*’, they came to an unjustified conclusion that as (in their perception) she was unable to behave in a calm manner, in what they described as a ‘*non-hostile environment*’ [239], they doubted her ability to remain calm under challenging circumstances, as a social worker, when supporting children in need of protection and therefore that it would not be safe to appoint her. She contends that their handling of the meeting and the subsequent withdrawal of the job offer were acts of direct discrimination because of her race.
11. It is unfortunate that at the case management stage the Claimant had not been encouraged to focus on this core issue and to consider whether the other allegations she made really advanced her case, or, instead, merely clouded the issues. During her evidence and at the conclusion of the first

day of hearing, she was asked how, even if we the Tribunal were satisfied that (for example) '*in a phone call on or around 1 October 2020, Ms Penny Papasavva wrongly told the Claimant that no DBS policy was available*' (1.2.16 of the List of Issues) she would be able to prove to us, on the balance of probabilities that such alleged action was less favourable treatment than would have been afforded a non-black African hypothetical comparator and was because of her race, she was unable to provide any suggestions. She seemed to imply that many of the allegations she made were either (from her perspective) simply evidence of errors or unco-operative behaviour from the Respondent, or that the '*discriminatory behaviour stemmed from these breaches*'. As stated, she was asked to revisit these allegations overnight, but maintained them the next day.

12. We remind ourselves, applying s.136 EqA and the guidance in **Madarassy** that the initial burden of proof rests on the Claimant to establish a *prima facie* case (i.e. based on first impressions and accepted as correct, unless proved otherwise) of less favourable treatment because of her race. We go on now to deal with both the core of the Claimant's case (the DBS meeting and the decision to withdraw the job offer), but also deal briefly with the balance of her claimed acts of discrimination, using the paragraph numbering in the list of issues:

1.2.1 There was no evidence to support the assertion that Mr Ahmed forwarded the Claimant's DBS to Ms Ashlea Hartland and Ms Brenda McMahon, knowing that one or other of them would be aware of the Claimant's race (with the implication that they would have given him this information and thus counter his evidence that he didn't know the Claimant's race, as he had never seen her face-to-face). This was purely speculation on her part and is therefore dismissed.

1.2.2 Mr Ahmed accepted that he had wrongly calculated the Claimant's age at the time of the convictions, assuming it to be 28, not, in fact, 17 and also accepted that based on that misconception, he had reached an initial conclusion that there might be less mitigation to be attributed to a 28-year-old than to a minor [email 18 September - 205]. His evidence was clear, however that all that meant was that, at that point, until the DBS meeting took place, he was '*unable to offer the candidate a role*', based purely on the paperwork. In closing submissions, the Claimant asserted that Mr Ahmed had already made up his mind, but having been informed by a person unknown that he couldn't proceed on that basis, without having the DBS meeting, he held the meeting to 'rubber-stamp' his decision. However, there was no evidence to support that suspicion on the Claimant's part and which was adamantly denied by Mr Ahmed. The Respondent's DBS Policy also indicates that such a meeting is a requirement in these circumstances [104]. There is also no evidence that Mr Ahmed was aware of the Claimant's race when these events occurred. He said he had never met her face-to-face (which was true), there was no evidence he had made such enquiries of others, her name and voice/accent did not indicate any particular ethnic or racial background and she had chosen not to disclose her race on the equal opportunities' questionnaire provided to her. We are satisfied that his calculation of the Claimant's age was simply an error, if a very careless one and nothing to do with her race. It would indeed, if done

deliberately, as an act of discrimination, be a very curious choice of discrimination, when the incorrect information could be so easily be disproved.

1.2.3 The Claimant asserts that Mr Ahmed did, in the same email, make '*factual errors in summarising (the) offences*'. In this hearing, the Claimant drew the (correct) distinction between 'convictions' and 'offences' (i.e. that a number of offences can be (as they were in this case) listed as one conviction) and correctly challenged Ms Mazher's confusion, in her evidence, on this point. It is interesting therefore, however that even in her own list of issues, the Claimant herself refers to 'offences', when she presumably means 'convictions'. It is the case that she committed three offences in her first conviction, in October 1982; one offence in her second conviction, in March 1983 and five offences in her third conviction, in June 1983. Accordingly, therefore, we see no major factual errors in Mr Ahmed describing the '*offences*' as '*similar in nature*' (nearly all, less two, being obtaining goods by deception), or '*recurring in pattern*', being approximately three or five months apart.

1.2.4 The Claimant alleged that by stating in his email of 21 September [205] that she had not shown sufficient '*contrition*', Mr Ahmed was ruling out her employment, before meeting her. However, we accepted Mr Ahmed's evidence on this point that this was a typographical error on his part, when he had meant to state '*based on the level of conviction I am ...*'. Support for this conclusion is based on his earlier email, which made no mention of contrition, instead focusing on the nature of the convictions/offences. Also, the DBS meeting had not taken place by this point, so he wasn't in a position to consider the issue of 'contrition'.

1.2.5 The Claimant complained of Mr Ahmed copying Ms Wright into these emails (which he did). It seemed that the rationale for the Claimant's complaint in this respect was that she did not consider Ms Wright to be an employee in the HR department of the Respondent, but instead to be working for an outsourced organisation. This was, in our view, a complete 'red herring' on the Claimant's part, which had no bearing on her claim. Ms Wright was clearly working for the Council, whether outsourced or not, with her email address and title clearly indicating that she wrote on behalf of the Respondent and was entitled to receive the information sent by Mr Ahmed. Even if not, we query how such communication could be regarded as discriminatory and which question the Claimant was unable to answer.

1.2.6 The decision by Ms Mazher not to have the DBS 'Lead' attend the meeting was alleged to be contrary to the Respondent's own policy' and discriminatory. The policy states that the DBS Lead 'will' attend such meetings [104]. Ms Mazher pointed out that it doesn't say 'must attend' and she considered that as a very senior manager herself she did not need that person to attend, as she was doing so. While perhaps, technically, a breach of the policy, it would be far from unusual for senior managers to occasionally decide that they did not need to follow its requirements strictly and we note, also, at this point, in late 2020, due to the Covid pandemic, there were very many demands on local authorities that may have required some 'corner-cutting'. In any event, however, there is no evidence

whatsoever that that decision was motivated in any way by the Claimant's race. As to Ms Mazher's state of knowledge of the Claimant's race, she gave very straightforward evidence (and which she was not shaken on) that she did not know the Claimant's race, either before or at the DBS meeting and that therefore such consideration can have formed no part of her decision-making. The Claimant did assert that Ms Mazher had taken part in a role-play during her recruitment process and while she had not seen Ms Mazher (presumably as it was being conducted only by audio), she was entirely confident that she recognised Ms Mazher's voice from that role-play. Ms Mazher's evidence was that while she had been nominated to take part in that role-play she had opted out, due to pressure of other work and arranged for a colleague to attend in her place. While the Claimant attempted to provide documentary evidence to the contrary, that evidence was inconclusive and we concluded therefore that we had no reason to doubt Ms Mazher's evidence on this point.

1.2.7 and 12. The Claimant said that Ms Mazher questioned the Claimant's truthfulness at the meeting, as to her age at the time of the convictions. Both Ms Mazher and Mr Ahmed were adamant in evidence that prior to the meeting, Mr Ahmed having realised his error in respect of the Claimant's age being 28, had notified Ms Mazher of that fact and that therefore they knew her correct age when they started the meeting. The Claimant said in her statement (5) that Ms Mazher asked her her age at the time of the last offence and when she answered '*17 and a half*', said, sternly and unequivocally, '*no, you were over 18 at the time of your last offence*'. The Claimant also pointed to a message that had been sent to Mr Ahmad, on the day of the meeting, from Anna Wright, at 12.23 stating that '*all the convictions are under 18 by the way – I just double-checked the DBS*' [208]. Unfortunately, neither party was able to satisfy us as to when the meeting was scheduled to start and there was no documentary evidence provided to show its arrangement and therefore it is unclear to us as to when, in relation to the timing of the meeting, this message was received. Mr Ahmed said it was shortly before the meeting and that he wouldn't have been looking at his computer or phone in the meeting. Ms Mazher said that from her recollection she had been informed of the mistake '*well in advance of the meeting*'. She was challenged as to the apparent conflict between hers and Mr Ahmed's recollection of these timings and she said that these events were some time ago and she couldn't be sure. Ms Banton also pointed out in submissions that the reference is to 'double-checking', implying that an earlier check had been done. On balance, we think it possible that there was some discussion as to the Claimant's age, at least initially, in the meeting, but based more on whether or not the Claimant was just over or under the age of 18 at the time of the offences, not whether or not she was 28. This is borne out by the Claimant's account in her letter of complaint, only a couple of weeks later [228]. Perhaps the message from Ms Wright clarified the point (the Respondent describing it in their bundle index as '*MS Teams Instant Messaging chat – during meeting*'), but that by that stage, the meeting had not got off to a good start, with the Claimant considering that she was being challenged unfairly and therefore perhaps being perceived as defensive, or aggressive, by the Respondent's managers, or indeed, perhaps with some justification, actually being defensive or aggressive. We note that the Claimant has had these convictions 'hanging

over her head' for thirty-plus years now and that this DBS meeting was one of very many she has had in the past, in respect of other roles of hers, which she perhaps hoped she could now finally put behind her. In that context, within a rapidly deteriorating meeting, whether or not there was any acknowledgment by the managers of any mistake is unlikely to have got matters back on course. If we assume this scenario to be the case and while this would have been clearly very poor and careless management on the Respondent's part, of somebody who had already got through a rigorous assessment process, perhaps unnecessarily heightening tension in the meeting, there still remains no evidence to support the Claimant's assertion that this behaviour was less favourable treatment because of her race. As previously stated, there was no evidence that either manager knew the Claimant's race. Even on the Claimant's evidence there was no indication that she mentioned her race in the meeting. All the Claimant could provide as a rationale for her allegations that the Respondent's conduct of the meeting was racially discriminatory was that, firstly, despite the lack of evidence to support her assertion, the managers did know her race and secondly that while perhaps not overtly discriminatory they had permitted stereotypical, 'subliminal' views as to 'tropes' about 'angry black women' to enter their thought processes, making assumptions both about black people committing crime and black women in particular being aggressive, defensive and unable to control their emotions. As Ms Banton pointed out, however, in closing submissions, there was no evidence before us to support the Claimant's assertions as to the existence of such 'tropes' and that it was not a matter that would be appropriate for us to take 'judicial notice' of (with which we concur), but that even if such tropes existed, both managers categorically denied that they were influenced by them (particularly as they were unaware of the Claimant's race).

1.2.8 to 10 and 1.2.14 to 1.2.15. We group these allegations together as they are all essentially about the same matter, the conduct and subject matter of the meeting and its outcome. While the Claimant complains of being questioned about her childhood offences, she accepted, in cross-examination that because of the role she was hoping to take on, the Respondent was entitled (and indeed obliged) to question her on these matters. What is clear, as previously stated, is that the meeting was a challenging one, which both parties found discomfiting. Ms Mazher said that she '*was quite taken aback by the Claimant's approach to the meeting. The Claimant showed little reflection or acknowledgement as to the part that she played in those convictions, and she showed a defensive and aggressive manner. The Claimant either told us that she could not remember or that she did not want to talk about it. I found this unprofessional and demonstrated a lack of maturity*'. She also said that '*Faiz attempted to calm the Claimant down by assuring her that the meeting and our questions were just standard procedure and we were not there to judge, but to understand. The Claimant demonstrated poor insight, combativeness and a lack of accountability in both the answers that she gave to the questions that we asked her and her refusal to answer some of the questions. I was very concerned about the Claimant's ability to reflect, learn from past experiences and remain calm under challenging circumstances. These are all qualities that are crucial in dealing with children and families in need of our support and protection and therefore essential qualities that were*

lacking in the Claimant. As a result of the meeting, I did not have confidence that the Claimant was suitable for the post of Social Worker.’ As previously stated, we consider that there was a degree of fault on the Respondent’s part for how this meeting developed, but on balance we accept Ms Mazher’s (supported by Mr Ahmad) account of the Claimant’s general behaviour, which may or may not have had some justification, on her part, but which, we conclude, did lead to the Respondent considering that she would be unsuitable for the role. We note, particularly, in this respect that Ms Mazher very promptly after the meeting (within an hour) summarised her thoughts in an email to another manager [209], stating ‘Both myself and Faiz were quite taken by her approach (blaming everybody and everything — partner being cohesive (sic. coercive?), abusive, controlling, father being abusive, experiencing neglect etc). little reflection or acknowledgment on her part came across. She was getting quite agitated ?? / frustrated (clearly coming across in her voice as we were not able to see her) with me asking about the details of the 5 counts of same criminal acts (deception of property- she was cashing other people’s cheques). Her comments were in the line of — “you don’t understand”, Faiz tried to calm her down and reassured her that it was a routine process of safer recruitment requirements before we confirm employment. We are both very concerned about her attitude and forcefulness in this context (I would have expected someone who has matured (she is 50 now) with her life experiences and offer a clear picture of her circumstances then and now. Could we please seek your assistance in drafting a brief response to say that we are not offering her a contract. Could we do that? Any risks from the candidate taking the LA to ET?’ We consider this account to be the one most likely to be accurate and even the Claimant herself accepted that if a candidate of any race had behaved in a manner perceived by the Respondent to be of this nature, that person’s dismissal would be justified. We reiterate our findings above as to the Claimant failing to link these events to her race. Ms Mazher’s query, to HR, as to a potential employment tribunal claim would be entirely rational in the circumstances and which many employers would consider a possibility, in a wide range of scenarios.

1.2.11 It is incorrect that Ms Mazher failed to apply the ‘five DBS criteria’, set out in the Respondent’s policy [104]. There are in fact six and the Respondent witnesses’ evidence indicated that they were all considered, less the irrelevant questions as to whether or not the offences were committed outside the UK, or whether there was any chance of re-offending (it being clear there was not). The nature of the offences, the length of time since when they were committed, whether one-off, or a pattern, the Claimant’s circumstances at the time and her ‘*degree of remorse*’ were all considered, or were at least attempted to be considered, subject to the degree of co-operation offered by the Claimant.

1.2.13 The Claimant sought to rely on the entirely technical distinction between her offences being related to obtaining ‘property’ by deception, as opposed to ‘cash’, as was stated by Ms Mazher [209], but we saw no particular relevance to that distinction, or that, in any event, it could be related to her race.

1.2.16 As admitted by Ms Papasavva, she mistakenly told the Claimant, in a phone call on 1 October 2020 that no DBS policy was available. There is no evidence whatsoever that she did so for any discriminatory reason.

1.2.17 and 1.2.17a. The fact that Ms Papasavva, following receipt of the Claimant's complaint, asked Ms Mazher to provide her rationale for her decision to withdraw the job offer, would be entirely routine in such circumstances, in order that Ms Papasavva could respond to the complaint and cannot, in any event, be an act of discrimination. It is also entirely routine for her to point out that the form completed by Mr Ahmed, recommending that the offer be withdrawn, did not provide enough information and is purely a communication of fact of that decision [216]. Mr Ahmed stated that the purpose of the form was purely to alert HR to the decision, in order to cease any administrative arrangements (such as pay etc.) and was not intended to set out the rationale. Again, neither the request from Ms Papasavva, nor Mr Ahmed's completion of the form can be acts of discrimination.

1.2.17b. The Claimant agreed, in cross-examination that the DBS policy permitted the Respondent/Ms Mazher/line managers to '*share DBS disclosure information on a need to know basis ...*' [102]. While she considers that inaccurate information may have been provided as to her offences, she has not specified what such inaccuracy is and we have already noted that (apart from the initial mistake as to her age) other alleged inaccuracies were trivial. In any event, there is no evidence that any such disclosure was connected to her race.

1.2.18. It's *possible* that Ms Mazher may have made an assumption about the cheques used by the Claimant to obtain property by deception, being other '*people's benefit cheques*' [email responding to complaint 239] (although she was adamant that she said this only because that is what the Claimant told her), but we consider this to be a minor detail and again the Claimant was unable to link any such comment to her race.

1.2.19. It is incorrect to assert, as the Claimant does that Ms Mazher questioned her '*professional competence*' in the same email. Her criticisms don't relate to professional competence, but to the Claimant's alleged reluctance to accept responsibility, to provide details and to her general behaviour and attitude in the meeting.

Conclusions

13. We conclude therefore, in general that while there may be criticisms of the Respondent's handling of the Claimant's recruitment process and which may have contributed to the Claimant's behaviour at the DBS meeting, that she has failed to establish a prima facie case that she suffered any less favourable treatment than a non-black African comparator, on the grounds of her race.

14. For these reasons, therefore, the Claimant's claim of direct race discrimination fails and is dismissed.

Employment Judge O'Rourke

11 October 2022