



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ahmed

**Respondent: City of Bradford Metropolitan
District Council**

Heard at Leeds

**On: 21, 22, 23, 24, 25, 28 November 2022
9 January 2023 (deliberations)**

Before

**Employment Judge Davies
Ms Noble
Mr Roberts**

Appearances

For the Claimant:

Mr Kerfoot (counsel)

For the Respondent:

Ms Hashmi (counsel)

RESERVED JUDGMENT

1. The Claimant's complaints of victimisation were brought within the time limit in s 123 Equality Act 2020.
2. However, those complaints of victimisation are not well-founded and are dismissed.

REASONS

Introduction

1. These were complaints of victimisation brought by the Claimant, Mr M Ahmed, against his employer, the City of Bradford Metropolitan District Council ("the Council"). At the time of the events in these proceedings, the Claimant worked for the West Yorkshire Pension Fund ("WYPF"), employed by the Council. The Claimant was represented by Mr P Kerfoot (counsel) and the Respondent was represented by Ms A Hashmi (counsel).
2. The Tribunal spent the first day of the hearing reading the witness statements and documents. Overnight one of the panel experienced a family emergency and was not able to continue with the hearing. At the start of the second day, the Tribunal gave the parties the choice to continue with a two-member panel, or to reconvene the following day with a new member. The parties did not all agree to a two-member panel, so the hearing adjourned to the third day. The new member read the witness statements and documents

on the second day and the Tribunal started to hear evidence on the third day. That delay meant that the Tribunal had no time to deliberate and reach a decision at the end of the hearing. The parties were warned that it would not be possible for the panel to convene to deliberate until January and that this judgment would be delayed as a result.

3. There was an agreed file of documents, and the Tribunal considered those to which the parties drew our attention.
4. The Tribunal heard evidence from the Claimant. For the Respondent, we heard evidence from Mrs S Mounsey (Team Manager of the Contact Centre at the WYPF), Mr Y Gajra (Assistant Director for Finance, Administration and Governance at WYPF), Mr S Duncombe (Head of Communications at WYPF), Mr H Rahman (Head of Information Technology at WYPF), Mr M Stubbs (Assistant Director for Revenues, Benefits and Payroll at the Council), Ms J Cryer (Assistant Director for the Office of the Chief Executive at the Council) and Mrs S Clarkson (HR Business Operations Officer).

Issues

5. The issues for the Tribunal to decide were agreed with the parties at a preliminary hearing before EJ Parkin and were as follows:

Time limits

- 5.1 Were the matters complained of discriminatory conduct over a period that ended on or after 14 November 2020?
- 5.2 If not, for any complaint about an act or omission that took place before November 2020, is it just and equitable to extend time for bringing the complaint?

Victimisation

- 5.3 Did the Claimant:
 - 5.3.1 Represent and give evidence for a colleague (Mr Yaqoob) in connection with an internal grievance including allegations of race discrimination against Mrs Mounsey and Mr Gajra in 2014; and/or
 - 5.3.2 Propose to and be ready to give evidence for Mr Yaqoob at Employment Tribunal proceedings in 2015, before those proceedings were withdrawn?
- 5.4 If so, the Respondent concedes that he did a protected act.
- 5.5 Did the Respondent fail to appoint the Claimant to a substantive post in the Communications Team between about November 2015 and October 2020, having transferred him from the Contact Centre team?
- 5.6 If so, was it because the Claimant did a protected act or because the Respondent believed he did one?

Findings of fact

6. The Claimant started work for the Respondent as a Pensions Officer at the WYPF Contact Centre in April 2006. Between February 2009 and April 2013 he was seconded to the Council's Customer Relations Team.

7. When he returned to his substantive post in April 2013, there had been a change of management since he left for his secondment. His line manager was Mrs Mounsey, the Contact Centre Manager. She reported to Mr Gajra (then the Business Development Manager) and he reported to Mr Barton (Director). The Claimant was working at Band 6 at that time.
8. The WYPF runs a career progression scheme, which is designed to assist with recruitment and retention. The aim is for people to join the organisation at a lower level and have the ability to develop into senior positions. The onus is on the individual to seek progression within the scheme at appropriate times. They are expected to produce a portfolio of evidence to support their progression.
9. The Claimant gave evidence that he found the atmosphere “toxic” when he returned to the Contact Centre and that a colleague told him on his first day back that Mrs Mounsey had used racist language in the office. We make clear that the Tribunal did not hear evidence about whether that happened and we make no finding about it.
10. Mr Gajra’s evidence was that the Claimant was disengaged from his role when he returned from secondment and did a minimum of work. He said that colleagues were also complaining that the Claimant was generating friction within the team. Mrs Mounsey said that when the Claimant returned to the Contact Centre he had refresher training and training in some changed processes. After a few weeks, they held a 1 to 1 meeting. Mrs Mounsey encouraged the Claimant to start a portfolio and went through the progression documents and processes with him. At their next 1 to 1 meeting, she asked if he wanted to go through the portfolio, but he did not have it with him and said he would go through it at a later date. Mrs Mounsey also raised a concern with the Claimant about the number of processes he had been completing. The team average was 30-40 processes per day, but the Claimant was only doing 2 to 3. He said that he was struggling to understand the processes, so she arranged some more training. He did not improve, and Mrs Mounsey therefore put him on an improvement plan, with a target of completing 10 processes per day. Adjustments were also made following an Occupational Health referral. The improvement plan also covered ways in which the Claimant could improve his customer service, as feedback from colleagues and customers was that he could come across as rude and abrupt. Mrs Mounsey said during the period she managed the Claimant, his time-keeping was poor, he had high levels of sickness absence and he did not follow the sickness absence reporting procedure properly. Again, adjustments were made because of a health condition. Mrs Mounsey said that other team members would report to her that the Claimant was rude and aggressive to them. She found managing the Claimant very difficult from 2014 onwards. When she tried to address issues with him, he would refuse to speak to her. Mr Gajra arranged a meeting for the three of them and the Claimant brought a colleague for support. Mrs Mounsey’s evidence was that as she was speaking and raising some of the issues with the Claimant, he became very angry and started shouting and calling her and Mr Gajra liars. He stormed out of the room. In cross-examination, Mrs Mounsey said that records of 1 to 1 meetings, and other documents were not in the hearing file because they were from 2013 and had not been kept. When asked about the meeting with Mr Gajra, she identified the colleague who attended with the Claimant as Mr Pyrah. She had a clear recollection of the meeting. She acknowledged that the behaviour she described might have been grounds for disciplinary action, but she said that Mr Gajra was just trying to help and get to the bottom of why they were faced with the behaviour they were. She was also a relatively inexperienced manager. Now, she would handle things differently. When he was asked about it in cross-examination, Mr Gajra recalled a

meeting with Mr Pyrah present, and recollected that the Claimant was angry and stormed out. He explained that it was not his approach to resort immediately to disciplinary or grievance action: "In work life you come across disagreements and reactions." He would not instigate such action lightly. He regarded the Claimant as a friend and perhaps that clouded his judgment.

11. The Tribunal preferred the evidence of Mr Gajra and Mrs Mounsey. Mrs Mounsey in particular had a clear recollection and was able to add detail in cross-examination. We found that there were issues with the Claimant's performance, relationships and engagement from the outset of his return to the team. It appeared to the Tribunal that the Claimant lacked some insight into his behaviour and its effect.
12. The Claimant accepted in cross-examination that he was aware of the detailed progression scheme. It did not appear to the Tribunal that he completed the documentation at any stage. His own evidence was that he chose not to complete it because of the way he said his colleague Mr Yaqoob's progression was approached.
13. In June and October 2014 Mr Yaqoob raised grievances. They included a complaint of race discrimination against Mrs Mounsey and Mr Gajra. The Claimant assisted Mr Yaqoob with his grievance (as a witness and in part as a trade union representative). Mr O Ajala (Financial Controller WYPF) investigated the grievances. In a letter dated 24 October 2014 he informed Mr Yaqoob that he had concluded that his grievances had not been raised in good faith and were falsely constructed to victimise his colleagues. He recommended that Mr Yaqoob be permanently transferred to the Finance Team. He had already been temporarily transferred whilst his grievance was being investigated.
14. In September 2014, disciplinary allegations were made against the Claimant. Mr Gajra investigated them. They were about attending a training course at the Elections Unit and working at the local elections on two days in May 2014, while signed off sick from his role as Pensions Officer. On 10 October 2014 the Claimant emailed Mr Barton expressing his concern about Mr Gajra's involvement in the investigation. He said he was suspicious that the meeting had come about because of information the Claimant had shared in the investigation of Mr Yaqoob's grievance. The Tribunal did not see any reply from Mr Barton, but Mr Gajra continued to investigate the matter. Mr Barton conducted a disciplinary hearing on 10 December 2014. Mr Tidswell (Unite) accompanied the Claimant and Ms Brown from HR attended. Mr Barton gave the Claimant a final written warning, on the basis that he admitted working in the Elections Unit while signed off sick.
15. The Claimant's evidence is that Mr Gajra instigated this disciplinary investigation because the Claimant had assisted Mr Yaqoob with his grievance. The Claimant said that Mr Gajra asked him to call him on his mobile phone in the evening of 22 October 2014. When the Claimant did so, Mr Gajra told him that Mr Burton had instructed Mr Gajra to dismiss the Claimant and suggested that the Claimant should resign instead. On 6 November 2014 the Claimant emailed Mr Tidswell to say that "the investigating manager" had asked the Claimant to contact him on 22 October 2014 in the evening and told him that Mr Barton wanted him sacked. He said that the manager had told him that his report would recommend "disciplinary action (dismissal)". In cross-examination, the Claimant was asked what precisely he said Mr Gajra had said to him. He said that Mr Gajra told him that Mr Barton had instructed him to dismiss the Claimant. He asked the Claimant if he wanted to resign. It was friendly, as if he was trying to help the Claimant. He then said that Mr Gajra called him a second time, nearer the hearing, and asked if he was going to resign.

16. Mr Gajra denied this. He said that he was asked to investigate by Ms Brown in HR, in accordance with standard practice. He was a senior manager with overall responsibility for the Contact Centre. It was nothing to do with the Claimant helping Mr Yaqoob. In cross-examination he explained that the evidence did not come to light in May 2014. It was only subsequently that somebody in the Contact Centre told Mr Gajra that they had heard the Claimant worked at the election whilst off sick. Mr Gajra then sought confirmation from HR about whether the Claimant had indeed worked at the election. He did that before any disciplinary investigation was considered because they needed to confirm whether or not it had actually happened. That was why there was a delay. It was put to Mr Gajra that the timing of Mr Yaqoob's grievance and the starting of the investigation was "too close to be a coincidence." Mr Gajra simply disagreed and said that a coincidence was a coincidence. Mr Gajra also denied asking the Claimant to call him on 22 October 2014 or asking the Claimant to resign. He said that they were friends who played football and had social dinners, so a phone call would not be out of order, but that he had not told the Claimant that Mr Barton had instructed him to dismiss the Claimant. He pointed out that dismissing the Claimant was not within his remit as investigating officer.
17. The Tribunal accepted Mr Gajra's evidence that there was no link between the instigation of the disciplinary investigation and the Claimant's participation in Mr Yaqoob's grievance. We accepted his explanation for the delay. The Claimant did, of course, admit the wrongdoing, so this was not an invented disciplinary allegation. We noted that what the Claimant had reported to his trade union representative (that a manager had advised that Mr Barton wanted him sacked) was different from what he said to the Tribunal (that Mr Gajra had told him that Mr Barton had instructed him to dismiss the Claimant). The Tribunal noted that Mr Gajra was investigating the allegation and that Mr Barton was to conduct the disciplinary. It would have made no sense for Mr Barton to instruct Mr Gajra to dismiss the Claimant. It seemed to the Tribunal that the Claimant's perception at the time was that Mr Barton had done something wrong, and that Mr Gajra was trying to be helpful to the Claimant. By the time of the Tribunal hearing, this had changed into an allegation that Mr Gajra had done something wrong. The Tribunal found that there may well have been an informal conversation between the Claimant and Mr Gajra, in the context that they did socialise and speak outside work, and given what the Claimant reported to his trade union representative. It is possible that there was some discussion of the disciplinary process. It is entirely unsurprising that Mr Gajra would no longer recollect that. However, the Tribunal considered it most likely that, as the Claimant perceived at the time, Mr Gajra was trying to be helpful to him. The Tribunal accepted Mr Gajra's evidence that he did not tell the Claimant that he was going to be dismissed or that he had been instructed to dismiss him. We found that this disciplinary process was nothing to do with the Claimant's assistance to Mr Yaqoob. We noted Mr Gajra's evidence that he had no issue with the Claimant supporting Mr Yaqoob, and indeed would see that as his duty as a trade union representative.
18. Mr Yaqoob subsequently lodged an Employment Tribunal claim alleging race discrimination. The Claimant assisted him with that. He provided a witness statement in those proceedings. In the event, Mr Yaqoob withdrew his claim on the first day of the final hearing in November 2015.
19. Mr Gajra and Mrs Mounsey knew that the Claimant was helping Mr Yaqoob with his grievances and Tribunal claim. Mrs Mounsey said that the Claimant was given time off during the working day to attend meetings with Mr Yaqoob about it.

20. The Claimant's evidence was that after Mr Yaqoob dropped his Tribunal claim, the Claimant's relationship with Mrs Mounsey deteriorated even further and the atmosphere in the team hit rock bottom. He said that there was a sense of "triumphalism" and that Mr Ajala said that they had "sorted out" Mr Yaqoob. The Claimant said that Mr Gajra was viewed as untouchable. The Claimant said in his witness statement that he agreed to move teams following a request from Mr Gajra and that Mr Gajra promised to expedite his progression and find him a substantive position in the Communications team. He therefore agreed to move in November 2015. In cross-examination he accepted that Mr Gajra asked him if he "wanted" to move teams, and that the agreement was that they would "find a role" for him.
21. Mr Gajra and Mrs Mounsey said that relationships between the Claimant and the rest of the team had been difficult before and after Mr Yaqoob's grievance, because of the way the Claimant behaved and not because he was helping Mr Yaqoob. Complaints had been made about the Claimant by colleagues. Some female colleagues had said that they found him intimidating. Mr Gajra and Mrs Mounsey both recalled that Mr Gajra offered the Claimant the opportunity to move to the Communications team when Mr Yaqoob was moved to the Finance team, during the investigation of his grievance. Mr Gajra said that this was because of the continued friction within the Contact Centre team and the Claimant's continued lack of application to his role, which meant that his career was not progressing. The Claimant declined, but in November 2015 he asked Mr Gajra if the offer of a move was still available and Mr Gajra agreed to it. Mr Gajra said that he did not promise the Claimant a substantive position or progression within the progression scheme. He told him that the move would open up opportunities for him. He did not guarantee him progression because that would be assessed in accordance with the scheme and looking at the portfolio. Mrs Mounsey was pressed in cross-examination, and it was repeatedly put to her that her difficulties in managing the Claimant were nothing to do with his behaviour but were caused by his assistance for Mr Yaqoob. She repeatedly, consistently and calmly rejected that. She explained that relationships were difficult after Mr Yaqoob's Tribunal claim, because it was quite a nasty process. She said that her relationship with the Claimant improved, because she was a manager and had to get over hurdles. Other members of the team struggled. Likewise, it was repeatedly suggested to Mr Gajra that at this time he was motivated by seeking revenge against the Claimant for his assistance to Mr Yaqoob. Mr Gajra also calmly and consistently disagreed. He pointed out that he remains good friends with Mr Yaqoob himself to this day. He said that his role was to try and find a solution that worked for the Claimant. He was unsettled in his original team, "let's see where we can make him more comfortable." Mr Gajra said that he had gone beyond what he should have done to try and achieve that. He agreed in cross-examination that he had told the Claimant that they would help him with his progression. He explained that he knew from conversations with the Claimant that he did not want to complete his progression portfolio. He knew that Mr Yaqoob had been turned down and he did not want to put himself in that position, so he refused to participate in the process. He thought that a move to a different area would enable him to work with a new manager to complete his portfolio.
22. The Tribunal preferred the evidence of Mr Gajra and Mrs Mounsey. On the Claimant's own evidence, relationships in the team were difficult both before and after Mr Yaqoob's grievance and Tribunal claim. Mr Gajra and Mrs Mounsey gave detailed and consistent evidence about difficulties in managing the Claimant. That evidence was echoed in the evidence of other people who subsequently worked with him, in particular Mr Duncombe and Mr Rahman. Again, it seemed likely to the Tribunal that the Claimant lacked some

insight into his own behaviour and the impact of it. It also seemed likely to the Tribunal that the Claimant had a tendency, deliberately or subconsciously, to misconstrue what people said, so that offers of help and encouragement have been construed as promises, guarantees and/or instructions. The Tribunal found that the Claimant was offered the opportunity to move teams when Mr Yaqoob moved. He then requested a move in November 2015. In his own words, he was asked if he “wanted” to move, he was not requested to do so. The clear understanding was that there was no clear role for him to move to at that stage, Mr Gajra was going to find something. The Claimant’s evidence was that his progression was “outstanding” at that stage, but the Tribunal noted that he had not completed the progression portfolio. We considered it inherently unlikely that Mr Gajra would have promised the Claimant progression in those circumstances, when there was a clear process to follow. That was despite the fact that, ultimately, Mr Gajra did progress the Claimant (see below). We found Mr Gajra’s evidence convincing that he eventually bypassed the system because he did not want the Claimant to lose heart. The Tribunal simply was not persuaded that there was a campaign or vendetta against the Claimant because he had helped Mr Yaqoob. We found that he was difficult to manage and unhappy in his role and that Mr Gajra tried to find a solution by offering him the opportunity to move teams. The Claimant took up that opportunity.

23. All of that is the background to the Claimant’s complaints of victimisation. We note at this stage that moving the Claimant to a different team without having identified a role for him was the root of the problems that followed. The Claimant should not have been moved in that way. However, as we have explained, the Tribunal had no doubt that was done with good intentions to help the Claimant.
24. We deal at this stage with a number of emails Mr Gajra sent the Claimant, identifying possible job opportunities for him. In March 2016 he forwarded an email about a vacancy for a Policy Research Officer in the Leaders Office. It was specifically to be cascaded to participants in the Future Leaders course, which included the Claimant (see below). In July 2018 he forwarded an email about roles in the Local Government Finance department at the Ministry of Housing, Communities and Local Government. The last paragraph of the email mentioned that there was a vacancy in the pensions team and that they were looking to bring someone in with existing local government pension scheme expertise. Mr Gajra forwarded the email with the comment, “Something you might be interested in ... particularly the last sentence?” The Claimant’s response was striking – he asked, “What do you mean the last sentence, I might have missed something.” It must have been obvious that Mr Gajra was referring to the role that required expertise in local government pensions, but the Claimant was for some reason questioning or challenging Mr Gajra. Mr Gajra referred to both of these emails in his witness statement. He also sent an email on 1 October 2019 forwarding a link to some roles with West Yorkshire Fire and Rescue Service, with the comment, “Not that I’m trying to get rid of you but you may be interested in this post.” The Claimant’s counsel sought to place significance on the fact that this email was not mentioned in Mr Gajra’s witness statement, and suggested that what Mr Gajra had written was trying to dispel the impression that he was trying to get rid of the Claimant. Mr Gajra said that this was just the language he used with friends, he had written exactly the same to another colleague recently. He was just trying to help the Claimant. The Tribunal accepted that evidence. We could see nothing untoward in the entirely commonplace wording of the email. Mr Gajra was simply forwarding jobs of potential interest to the Claimant, as he did with others. On this occasion he included a moderately light-hearted comment that he was not trying to get rid of the Claimant.

25. When the Claimant joined the Communications team, his manager was initially Ms Gregory. From June 2016 it was Mr Duncombe. Mr Duncombe was new to WYPF. He was based in Lincoln and travelled across to Bradford about once per week. He therefore was not involved in, and had no knowledge of, the history. There is no dispute that throughout his time in the Communications team the Claimant was never formally given a substantive post in that team. His contract continued to identify him as a Pensions Officer until he successfully applied for promotion to a new role elsewhere in the Council and moved on in November 2020. The essence of the Claimant's complaint in the Tribunal is that the reason he was not appointed to a substantive post in the Communications team throughout that period was that he helped Mr Yaqoob with his grievances and Tribunal claim. A number of possible posts or roles were identified or discussed during the period, namely:
- 25.1 Communications Support Officer;
 - 25.2 GDPR implementation;
 - 25.3 Fire Services pension scheme;
 - 25.4 IT Programme Manager;
 - 25.5 Pension funds risk.
26. When the Claimant was first transferred to the Communications team, it was not to a substantive job role. Mr Gajra said that he asked managers to identify suitable work for him. He was essentially allocated task-based duties to begin with.
27. Shortly afterwards, in 2016, the Claimant successfully applied for the first year of the Council's Future Leaders Programme, a new initiative to identify talent and develop staff. Mr Duncombe's evidence was that this lasted 12 months, although the Claimant stayed on longer to assist with the further development of the programme. Between that and his duties as a trade union representative, he was spending about 80% of his time away from the Communications team.
28. When the Future Leaders Programme ended, Mr Duncombe said that he gave the Claimant different pieces of work to do and small projects or areas of responsibility, such as being involved in the low pay forum, taking responsibility for meeting room bookings and refreshments, and creating a responsible investment area on the website. The Claimant would frequently raise with him the fact that he did not have a substantive post in the team.
29. Mr Duncombe said that there were issues with the Claimant's time-keeping and the quality of his work. Some tasks he would complete to an excellent standard and others, which he considered less interesting, he would complete to an average standard. Other members of the Communications Team found the Claimant difficult to work with. They reported to Mr Duncombe that he could be argumentative and confrontational. Mr Duncombe was asked about this in cross-examination, and he gave specific examples. He explained that in six years managing the team, the only person whose behaviour led to complaints was the Claimant.
30. Mr Duncombe said that during his period managing the Claimant he was not aware of the fact that he had supported Mr Yaqoob with his grievances and Tribunal claim. It was never discussed with him by the Claimant, managers or anybody else in the team. That evidence was not challenged and the Tribunal accepted it.

31. At some point in 2017 the Claimant expressed an interest in taking the lead on implementing the then forthcoming General Data Protection Regulations (“GDPR”). The Claimant’s evidence is that Mr Rashid had suggested this. The Claimant raised it with Mr Gajra. Mr Gajra refused to allow him to participate and refused his request to carry out data protection training and exams. Mr Gajra’s evidence was that he set up and led the WYPF working group that oversaw the preparation and quality assurance for the introduction of the GDPR. A senior manager (or representative) from each part of WYPF was invited to be part of the working group. Mr Gajra said that he felt it was necessary to have senior managers involved, who had the authority to make timely decisions. The Claimant was not senior or experienced enough for such a crucial role. Mr Gajra confirmed that in cross-examination. He said that there were no junior employees involved. He wanted managers who could make decisions involved because there was a short time to implement a big piece of work. Mr Gajra said that he was not aware of the Claimant submitting a request to attend any external GDPR training course. The Council was running its own internal GDPR course, which the Claimant could have attended free of charge. The Tribunal noted that in his June 2017 appraisal, Mr Duncombe wrote that the Claimant was interested in developing his data protection knowledge and working towards a qualification or accreditation. There was no evidence of the Claimant taking that further after June 2017. The Tribunal accepted Mr Gajra’s evidence about the reasons why the Claimant was not involved in the GDPR implementation working group. They were nothing to do with the fact he had helped Mr Yaqoob.
32. The Claimant also referred to a role assisting Ms Scargill, the Fire Manager. He said that he offered to assist Ms Scargill with her workload and was promised that a job profile would be put together, but that never materialised. It seemed to the Tribunal that in fact this evolved into the development of the Communications Support Officer, to which we now turn.
33. During 2017, Mr Gajra, Mr Duncombe and the Claimant worked on developing a substantive job role of Communications Support Officer (“CSO”). It was Mr Gajra’s idea. He spoke to Ms Scargill and Mr Duncombe over time. There is no doubt that this was developed with the Claimant in mind. The Claimant anticipated that he would be appointed to the role and so did Mr Gajra and Mr Duncombe. On 10 February 2017 Mr Gajra emailed a draft job specification to the Claimant and Mr Duncombe. The Claimant responded on 17 February 2017. He made some amendments to part of the role, and expressed the hope that it would be graded at SO2 as a minimum. The role, of course, had to go through the Council’s job evaluation/grading system. It was evaluated as Band 8 to SO1 in July 2017. The process of devising and grading the role evidently took many months. During that time the Claimant was mainly performing duties in accordance with the role profile. The Tribunal noted that in June 2017 he had an appraisal with Mr Duncombe. Mr Duncombe noted that the Claimant was interested in undertaking the IPPM qualification once the job profile was finalised and was also interested in developing his data protection knowledge and working towards a qualification or accreditation. The Claimant was to continue to engage with Council projects while the future role was developed. On 12 October 2017 the notes of the monthly Communications Team meeting recorded that the Claimant was now part of the team and would be more focussed on work relation to fire service pensions. After that, he began producing monthly fire client reports.
34. However, the Claimant was not appointed into the CSO role. That role was advertised in early 2018. Two people applied, including the Claimant. The other person was appointed

to the role. The Claimant's case is that Mr Gajra deliberately prevented him from being appointed to the role because of his previous help for Mr Yaqoob.

35. Mr Gajra denied that. His evidence was that he found out in January 2018 on advice from HR that it was not going to be possible to slot the Claimant into the new role and a recruitment process would have to be followed. That was because the Claimant was at Band 6 and the new role would have been significantly higher. Council policy was clear that staff could not be appointed to a higher graded post without a competitive selection process. Mr Gajra said that this was out of his hands. The Tribunal saw emails between Mr Gajra and the Respondent's HR department, starting in October 2017. On 4 October 2017 Mr Gajra emailed Mr Pullan (Assistant HR Officer) to tell him that the Claimant's job role had changed and to ask for a new contract to be issued and his pay to be changed. Mrs Clarkson (Mr Pullan's manager) replied on 26 October 2017, asking for confirmation that the Claimant had moved into the role via a recruitment and selection process. Her evidence was that Mr Pullan asked her for advice and she queried it with Mr Gajra. Mr Gajra replied on 15 November 2017 to say that the Claimant had been moved out of the team his Pensions Officer role belonged to. He had been working in the Communications team supporting the new fire business in a new job for nearly 18 months, but without a proper job title and profile. That had now been created, hence the need to assimilate the Claimant into the post.
36. There was then a meeting between Mr Gajra, Mrs Clarkson and Ms Cowell, Senior HR Business Partner. Mrs Clarkson's evidence was that Mr Gajra said that he wanted to create the role of CSO and move the Claimant into it. They told him that this was against the Council's policy and the spirit of its commitment to equal opportunities. Mrs Clarkson's evidence was that the Claimant was not a displaced employee because he had a substantive post as a Pensions Officer. His post had not been deleted from the structure in his area. She explained in cross-examination that managers are not supposed to create roles for employees. They are supposed to identify a business need, create a profile to do the work and advertise the post fairly to give all employees the opportunity to apply or be redeployed into it. The Tribunal accepted Mrs Clarkson's evidence about the advice she gave and why she gave it. In cross-examination, counsel explored with Mrs Clarkson the advice she would have given at the time the Claimant moved to the Communications team. That does not assist the Tribunal. Mrs Clarkson did not advise at that time. She said that they were trying to deal with a situation that should have been dealt with differently 18 months earlier. We accepted her evidence that, given the situation with which she was presented, she advised that if this was a new post it had to be treated as such and advertised.
37. Mrs Clarkson's evidence was that when she advised Mr Gajra, she was completely unaware of Mr Yaqoob's race discrimination complaint and of the fact that the Claimant had supported him with it. Mr Gajra did not explain that to her. It was suggested to Mrs Clarkson more than once that she had included things in her witness statement that Mr Gajra wanted her to include. She disagreed and said that she could not recall the last time she spoke to him. The Tribunal found Mrs Clarkson to be an experienced and principled HR advisor, who understood the Council's policies and the reasons for them, and who advised accordingly. The Tribunal accepted her evidence about these matters. We had no doubt whatsoever that Mr Gajra had had no involvement in the preparation of her evidence. The much more likely explanation why some things were in Mrs Clarkson's statement and not in Mr Gajra's, is that both witnesses were being asked to recall events from four or five years ago.

38. In cross-examination Mr Gajra gave clear and insistent evidence that he tried to put the Claimant into the CSO role. He said that he was “thwarted” by HR. He said that he regarded HR advice as something he was expected to follow, “Otherwise, why go to them for advice?” He said that this was different from giving the Claimant his progression, because that was an internal WYPF matter. Mr Gajra was asked about the meeting with Mrs Clarkson and Ms Cowell. He had not referred to it in his witness statement and it was suggested to him that it had not taken place. He disagreed. He recalled detail about it – the senior management team was present and it was primarily to discuss this issue. Mr Gajra wanted to know more information. Some of the other senior managers, Mrs Kitchen and Mrs Blackburn (who was not at the meeting), objected to the Claimant being put in the role without a process. That was part of the reason for seeking advice. He had not sought HR advice earlier because he did not think it would be an issue slotting the Claimant into a role he had been doing for 18 months. The Tribunal accepted that evidence. Mr Gajra’s disappointment at not being able to slot the Claimant into the CSO role was evident.
39. The Tribunal had no hesitation in finding that Mr Gajra developed the CSO role with the Claimant in mind, intended him to be slotted into it and did his best to secure that outcome. It was only after HR advised him that the role had to be advertised that he reluctantly agreed to that. This was nothing to do with the fact that the Claimant had helped Mr Yaqoob with his grievance and Tribunal claim. The undisputed evidence was that Mr Gajra spent much of 2017 developing the role. The contemporaneous emails show that he gave instructions to HR that the Claimant should be slotted into the role, and pushed back when a query was raised. The Tribunal noted Mr Duncombe’s evidence that Mr Gajra was trying throughout 2017 to create a role that the Claimant could be slipped into; Mr Gajra led the creation of the job profile and Mr Gajra instructed payroll to put the Claimant in the job. There was no suggestion at any stage that the job was not being created for the Claimant in Mr Duncombe’s team. We also noted Mrs Clarkson’s evidence that Mr Gajra was trying to help the Claimant but that he took the HR advice on board and went on to advertise the role. Fundamentally, the Claimant’s contention that when he advertised the role in 2018, Mr Gajra was victimising the Claimant because of his assistance to Mr Yaqoob in 2014/2015 made no sense. Mr Gajra was aware that the Claimant had helped Mr Yaqoob when he created the job and when he gave firm instructions that he should be slotted into it. The idea that when HR told him at the end of that process that the role had to be advertised he seized on that so as to victimise the Claimant for that assistance was fanciful and frankly nonsensical.
40. Much was made in the cross-examination by the Claimant’s representative of occasions when managers had stepped outside formal processes, in particular Ms Cryer identifying a role into which the Claimant could be assimilated in 2020 (see below). However, it did not follow that because Ms Cryer stepped outside process on that occasion (or because Mr Gajra stepped outside the progression process in March 2018), the reason Mr Gajra did not step outside the HR process in relation to the CSO role was to victimise the Claimant. For the reasons we have explained, the Tribunal had no hesitation in finding that that was not the reason.
41. The CSO role was advertised on the Council’s website in February 2018 with a closing date of March 2018. The Claimant applied. The two applicants were interviewed by a panel chaired by Mr Duncombe. His evidence was that on paper the Claimant was the stronger candidate, but that at interview he performed terribly. His answers were poor and lacked detail. He came across as though he did not really care about the process. The other candidate performed extremely well and had obviously prepared thoroughly. The

interview scoring documentation suggested that the Claimant's performance was not "terrible" but was not as good as the other candidate's, and the other candidate was on any view, therefore, the higher scoring candidate. She was offered the role. Mr Duncombe was completely certain that the Claimant's background assisting Mr Yaqoob had no bearing on his failure to be appointed to the CSO role.

42. In cross-examination it was suggested to Mr Duncombe that after the Claimant had been unsuccessful, Mr Duncombe told him that the other applicant did not even meet the essential criteria for the role. Mr Duncombe disagreed. He clearly recalled that the Claimant said to him that the Claimant was not eligible and did not meet the criteria. Mr Duncombe believed that she met the minimum shortlisting criteria and that was his reply. The Tribunal accepted his clear evidence. The Tribunal had no hesitation in finding that the Claimant was not appointed to the CSO role by the panel because the other candidate performed better. We accepted Mr Duncombe's evidence about that.
43. Soon after the Claimant was unsuccessful in his application for the CSO role, Mr Gajra and Mr Duncombe met with him. The Tribunal had no doubt that they were all frustrated and disappointed that the Claimant had not been appointed to the role. Mr Gajra suggested that if another vacancy arose within six months, the Council process would permit the Claimant to be appointed without it being necessary to advertise the role. He suggested that they could look at creating a second post and that the Claimant could be slotted into a role in that way. Mr Duncombe's evidence was that the Claimant did not think that was viable. Mr Gajra said that the Claimant refused. The Claimant said that he heard nothing about it.
44. The Tribunal preferred the evidence of Mr Duncombe and Mr Gajra. It seemed to us that after his experience with the CSO role, the Claimant was not prepared to proceed with any opportunity without a written job profile and some sort of "guarantee." That was a theme of the events that followed. Managers were trying to develop roles for the Claimant, but that required him to do work without a written job profile initially, with a view to developing and formalising a role. Perhaps for understandable reasons, he was not prepared to do that. That put managers in a difficult position, because without going through such a process it was difficult for them to formulate and justify a new job role. It seemed to the Tribunal that the Claimant was also reluctant to take on a new role at the same grade and believed he should be working at a higher grade. That was reflected in some of the written documents and also, for example, in Mr Duncombe's clear oral evidence.
45. On 29 March 2018 Mr Gajra approved the Claimant's progression to band 7 and back-dated that to 1 December 2016. He did so without the Claimant completing his portfolio in accordance with the process. The Tribunal found that he did so because of what had happened with the CSO role. Mr Gajra said that this was a WYPF process, so he was able to depart from the procedure in a way that he could not depart from a formal Council procedure. The Tribunal accepted his evidence. We found that Mr Gajra was trying to do his best for the Claimant.
46. The Claimant continued to do task-based pieces of work in the Communications team. Mr Duncombe gave evidence that the workload of WYPF increased during the period 2016 to 2020. It grew from having 2 pension funds and 4 Fire and Rescue Authority funds to administer, to having 4 pension funds and 23 Fire and Rescue Authorities. Mr Duncombe said, and the Tribunal accepted, that the Claimant had been doing monthly reporting for the Fire and Rescue Authority clients. This was not part of the CSO role, so he continued

to do that from March 2018. He also continued to be responsible for managing hospitality requirements. Moving into summer 2018, conversations started to happen about the Claimant working in the IT team. Mr Duncombe supported the Claimant in pursuing those possibilities. Although he continued to be the Claimant's immediate line manager after that, there was no opportunity within his team to create a substantive role for the Claimant.

47. Involvement with the IT team appears to have stemmed in part from the Claimant's friendship with Mr Rahman, who was IT Manager and then, from December 2018, Head of IT. There was no dispute that the two were friends out of work. We deal at the outset with Mr Rahman's credibility. In cross-examination, there were parts of his evidence that were confused and inconsistent. His answers were sometimes inconsistent with the Respondent's grounds of resistance or the documentation. He said that there were other documents and emails, but they were not in the file. The Tribunal assessed those inconsistencies carefully. However, we did not find that Mr Rahman was dishonest or trying to cover up wrongdoing. He came across as an entirely genuine witness, doing his best to assist the Tribunal with events from four or five years ago, and who was doing his best at the time to assist his friend to improve his situation at work. He was hurt and upset by the Claimant's complaints about him. We approached his evidence with some caution, because his recollection plainly was not always accurate, but we did not regard him as untruthful.
48. The Claimant said that in 2018 Mr Gajra asked him to do some work in the IT team. Mr Gajra agreed. WYPF had acquired lots of new Fire Service clients and that meant work was needed to integrate data from their systems to the WYPF system. Some of that work was relatively low-level data mapping that could be done without a high level of IT expertise. Mr Gajra thought that doing such work could develop into more of a role in the IT team. He said that the Claimant was initially willing to do the work.
49. The Claimant's evidence was that he agreed to do the work, but it was then taken away from him because a relative of Mr Gajra, Mr Patel, was appointed to do the job instead. Mr Gajra and Mr Rahman disagreed. Mr Rahman said that the Claimant did not turn up to do the work on the day he was supposed to. He initially agreed to do the work, but then said that he needed the job first, then he would do the work. Mr Gajra confirmed that his understanding was that the Claimant did not do the work he had agreed to do. Mr Gajra and Mr Rahman said that Mr Patel was not Mr Gajra's relative and that the work Mr Patel was appointed to do was quite different from the work the Claimant had been asked to do. Mr Rahman explained that Mr Patel was an experienced IT professional. He had previously worked for the Council for 10 years and was doing contracting work at this time. Mr Rahman told Mr Gajra that he had six pension funds merging with the WYPF and needed more resources. Mr Gajra suggested that he had a quick interview with Mr Patel and he did so. Mr Patel took on a casual contract for a couple of months. His work was higher level work and had no relation to the work the Claimant was going to do. The Claimant was going to do lower level work along with another Pensions Officer, involving spreadsheet data mapping.
50. The Tribunal preferred the evidence of Mr Gajra and Mr Rahman. They gave a clear and consistent account about Mr Patel's role and the work offered to the Claimant. The evidence about the Claimant agreeing to do the work but then insisting on having an agreed job role first was consistent with evidence about his approach more generally. The Tribunal did not think that the Claimant was offered or promised a job role that was then taken away from him. He was asked to help with some IT tasks, with the hope that this

might develop into more, but he was not willing to do the tasks on that basis. We noted that the Respondent's grounds of resistance said that the Claimant was unwilling to do the tasks asked of him so an IT specialist was engaged, but we accepted Mr Rahman's evidence that that was incorrect. He had not been involved in the preparation of the grounds of resistance, which are generally prepared in a short timescale before the evidence has been collated or the witness statements taken.

51. The Claimant's evidence was that around this time Mr Rahman told him that he would be a great asset to the IT team and repeatedly requested him to work in the team. On 13 August 2018 he sent him a draft job profile for a Programme Manager. He did so because he intended the job to be for the Claimant. He insisted that the Claimant study and obtain a Prince 2 project management qualification, as a requirement of doing that job, so the Claimant studied and obtained the qualification. During 2018 and 2019 Mr Rahman repeatedly promised him the vacant Programme Manager role. However, when the Claimant chased that up with him in 2019, Mr Rahman told him that Mr Gajra had told him that he would not allow the Claimant to be considered for any job within WYPF. That led to an altercation, which we deal with below.
52. Again, Mr Rahman's account was different. Mr Rahman said that some years ago the Claimant had mentioned to him that he was looking for a better role within the Council. Mr Rahman suggested to him, as a friend, that he should learn a technical skill and obtain some qualifications, which would help him get a better job. He suggested project management because that did not require any specific expertise. The Claimant asked for his advice about what qualification he should do and Mr Rahman gave the Claimant a list of suggestions. He could not now find the email he had sent because he had deleted his emails in accordance with the Council's policies. The Claimant chose Prince2. That was funded by WYPF.
53. Mr Rahman accepted that he had sent the Claimant a draft job profile for the Programme Manager. He said that he had sent him a number of job profiles, so that the Claimant could help him with the grammar etc. The Claimant was an experienced trade union representative and knew about job profiles. There was to be a re-structure in IT and the job profiles came from Mr Mayat, who worked at the Council and was known to Mr Rahman. The idea was to look at what roles the Council had and consider whether they should be included in the WYPF IT team. Mr Rahman's evidence about the job profiles was confusing and to some extent inconsistent with his witness statement and the grounds of resistance. Part of the confusion was because there was evidently only a partial set of the relevant emails in the Tribunal file. The specific email sending the Programme Manager role was not included. Mr Rahman said that none of the emails in the file had come from him – he no longer had them – he thought they had come from the Claimant. He was clear that there were multiple emails and also conversations with the Claimant, who was his friend at the time. The file included a draft of the Head of IT role profile, with suggested changes in grammar and improved wording made by the Claimant and sent to Mr Rahman in July 2018. It appeared to the Tribunal that Mr Mayat had sent Mr Rahman a range of possible job profiles and Mr Rahman had asked the Claimant to help him to adapt some of those profiles for use in the WYPF IT restructure. He was asking for the Claimant's help with grammar and also with wording, because of the Claimant's trade union experience and because the Claimant was his friend.
54. It was unclear whether Mr Rahman had also sent the Claimant the Programme Manager role separately because of the Claimant's interest in that role. The Claimant said that he

was sent it in August 2018, but he did not provide a copy of the email. Mr Rahman could not remember whether he sent him the role at that time. The Tribunal found in those circumstances that he did. However, this did not mean that Mr Rahman had promised the Claimant the role of Programme Manager and the Tribunal found that he had not.

55. Mr Rahman was clear that he could not offer or promise the Claimant the role of Programme Manager because there would have to be a recruitment process. The Claimant understood that. The Claimant confirmed in cross-examination that he knew that there would have to be a recruitment process. Indeed, his evidence was that he told Mr Rahman that. He said that Mr Rahman was very keen and wanted him on board. That is different from offering or promising him the role. It is clear on the Claimant's own evidence that he understood that Mr Rahman could not simply give him the role. The Tribunal found that no offer or promise of the role was made and the Claimant knew that to be the case.
56. The IT restructure took place in late 2018. Mr Rahman applied for and was appointed to the Head of IT role. Nobody was appointed to the Programme Manager role.
57. The Claimant said that he had applied to do the ITIL training course in March 2019 as part of his preparation for doing that role. Mr Rahman disagreed. He said that he did not suggest that the Claimant do the ITIL course. It was a very basic course. The Claimant's request to do the training was turned down. His application form said that the training would last 5 days and the cost was £1500. Mr Gajra's evidence was that the request was turned down by the management team because the training was not relevant to the Claimant's role. The Tribunal accepted that evidence. This was expensive training lasting five days. The Claimant did not have a role in IT. The Claimant did the course himself at his own expense.
58. The Claimant also said that he did the CISSP course because Mr Rahman had encouraged him to do so to obtain a role in the IT team. Mr Rahman disagreed. He said that the CISSP course was a very specialised course requiring years of proven IT experience. He was very surprised when he saw a CISSP book on the Claimant's desk. The Claimant told him he was just reading it because it was interesting to him. The Tribunal preferred Mr Rahman's evidence.
59. It seemed to the Tribunal that Mr Rahman was trying to be encouraging to the Claimant, as a friend, and to give him some advice about how he might achieve his wish for a better job. He suggested that he obtain a project management qualification in that context. No doubt he discussed possible roles in the IT team he managed as well. But he did not advise him to undertake specific IT training courses, with a view to being appointed to any specific role or otherwise. Mr Rahman had detailed knowledge of all the courses and did not consider any of those the Claimant had undertaken were appropriate for him. The Tribunal found that he would not have suggested or recommended them. Rather, the Claimant took it upon himself to try and obtain some IT qualifications, with a view to pursuing IT opportunities at WYPF.
60. In August 2019 when the Claimant had obtained his ITIL qualification, he spoke to Mr Rahman about the vacant Programme Manager role. His evidence is that Mr Rahman told him that Mr Gajra had said that the Claimant would not be considered for any job at WYPF. The Claimant took this up with Mr Gajra, who told him that he had not said that to Mr Rahman. He called Mr Rahman into the meeting, so that he could clarify. When Mr Rahman came in, he said that he had not told the Claimant that Mr Gajra had told him the

Claimant would not be considered for any job at WYPF. The Claimant said that he accused Mr Rahman of lying. Mr Rahman stood over him with his chest out and said that he was not having this. Mr Gajra told Mr Rahman to leave and the meeting finished.

61. Mr Rahman's evidence was that he never told the Claimant that Mr Gajra had said that the Claimant would not be considered for any role at WYPF. He recalled being asked to join a meeting with the Claimant and Mr Gajra when he said that Mr Gajra had not said that. The Claimant had called him a liar. His oral evidence about this was compelling. He said that the Claimant was completely out of control. He was pointing at him and swearing. He called him two-faced and scared him. He told him he would come to his home and break his toes. It was really, very distressing. He was shocked. He was trying to help the Claimant from the start to the end. Mr Gajra said to him that it would be better if he went, and he did. Mr Rahman said that he spoke to their mutual friend, Tahir, afterwards. Tahir counselled him to be calm and said that the Claimant had said this to him as a friend. He should not make it official, so Mr Rahman did not raise a formal complaint.
62. The Tribunal noted that when Mr Rahman was interviewed in January 2020 as part of the Claimant's grievance, he explained that the Claimant told him that he wanted the Programme Manager role. Mr Rahman told him that he needed a degree and experience, which he did not have. The Claimant asked him to discuss it with Mr Gajra so he did so. Mr Gajra told him that he could apply if he wanted to, anyone could apply for anything. Mr Rahman therefore told the Claimant that Mr Gajra had said that if he wanted to apply, he could apply. The Claimant asked him, "will I get a job?" and Mr Rahman told him, "No I don't think you will."
63. The Claimant agreed in cross-examination that he was "outraged" at the time. He said that he did not say that he would come to Mr Rahman's house and break his toes, but he did make personal comments about him, saying that he claimed to be pious but was dishonest.
64. Mr Gajra said in cross-examination that it was "ridiculous" to suggest that he had told Mr Rahman that the Claimant would not be considered for any role at WYPF. He remembered the meeting at which the Claimant and Mr Rahman had an altercation. He remembered that the Claimant told him that Mr Rahman had said that Mr Gajra told him that he would not get any job at WYPF. He categorically denied it, so the only way to corroborate was to call Mr Rahman in, and he did so. Mr Rahman said that he had not said that to the Claimant. The Claimant called Mr Rahman a liar. It got very heated, with both accusing each other. Mr Rahman said that he never offered the Claimant the job; the Claimant got very angry and said that he knew where Mr Rahman lived and would break his legs. Mr Rahman was quite insistent. For his own wellbeing, Mr Gajra sent him out of the room. He did not take disciplinary action against the Claimant because Mr Rahman did not want to take it further. Mr Gajra said that he remembered it very well. It was the first time he had experienced anything like it. If he had not sent Mr Rahman out of the room, it would have got out of hand. It was suggested to Mr Gajra that the only reason Mr Rahman did not follow through on his "promise" to give the Claimant the Programme Manager role was that Mr Gajra had told him that the Claimant was not getting any role in the organisation. Mr Gajra disagreed. He said that there was nothing he wanted more than to put the Claimant in a role. That would be one less stress for him and nothing would have pleased him more. That is why he created the CSO role for the Claimant.

65. The Tribunal found that there was a heated exchange with both Mr Rahman and the Claimant becoming angry and accusing each other. We have explained above why we found that Mr Rahman had not promised or offered the Programme Manager role to the Claimant. We accepted the evidence of Mr Gajra and Mr Rahman that Mr Gajra had not said that the Claimant would not get any job at WYPF. Not only did their evidence corroborate each other, but the Tribunal accepted Mr Gajra's evidence that nothing would have pleased him more than to have the Claimant in a role because it would have made his life easier. It seemed to the Tribunal that it was much more likely that Mr Gajra had said words to the effect that the Claimant could apply for any role and would be considered for it, and that, as he reported in the grievance investigation, Mr Rahman told the Claimant this and gave him his honest view, when asked, that he did not think the Claimant would get the job. The Tribunal found it most likely that the Claimant misconstrued or misunderstood Mr Rahman's comments. Mr Rahman's account to Mr Stubbs (who dealt with the Claimant's grievance: see below), given much nearer the time, was consistent with that. In reaching that view, the Tribunal noted the Claimant's evidence that Mr Rahman had admitted to Mr Mayat that he had offered the Claimant the Programme Manager role. Again, that was inconsistent with the Claimant's own oral evidence, that Mr Rahman could not offer him the role. The Claimant did not call Mr Mayat as a witness. The Tribunal noted Ms Cryer's evidence that when she interviewed Mr Mayat during the Claimant's subsequent grievance appeal, Mr Mayat told her that he was not aware of any job offer made by Mr Rahman to the Claimant.
66. The Claimant complained to Mr Barton in August or September 2019. It was dealt with as an informal grievance. This led to Mr Ajala and Mr Gajra identifying a possible role for the Claimant working on the Pension Funds Risk Register. Again, there was at that stage no vacant job role and it is evident that Mr Ajala and Mr Gajra asked the Claimant to do some work on the Risk Register, with a view to developing a job profile at SO level over six months or so.
67. The Tribunal noted that in emails at the time to his trade union and in his subsequent formal grievance, the Claimant was clear that this was what was being suggested. However, in his witness statement for the Tribunal, the Claimant said that Mr Ajala initially led him to believe he would be given a substantive post working on the Risk Register and that he agreed, then Mr Gajra intervened and the Claimant was asked to work on the Risk Register for 6 months, then 3 months, with no increase in salary and no guarantee of a substantive role. It is clear from the Claimant's emails to his trade union representative at the time that he was unwilling to work on the Pension Funds Risk Register without a confirmed job profile. He talked about Mr Ajala and Mr Gajra trying to "coerce" him into doing the work, and telling him that if he was not comfortable doing it, it would be given to someone else. He concluded by saying that he did not believe they would ask him again.
68. The Tribunal found that Mr Ajala and Mr Gajra were trying to find a role for the Claimant. Again, no actual vacancy existed, so they were looking to develop a role into which they hoped the Claimant could be appointed in due course. However, the Claimant was again unwilling to proceed on that basis. That is why a job role on the Risk Register did not transpire. It was nothing to do with the Claimant's assistance for Mr Yaqoob in 2015. The fundamental difficulty remained: the Claimant had been moved into the Communications team without there being a substantive post for him. The issue was to try and identify a substantive post and appoint him to it in a way that was consistent with Council policies and processes. The Tribunal was struck by Mr Gajra's evidence when asked why he did not go to his manager or HR, to try and get the situation resolved. He said that he was the

person to resolve it. It was not a matter of admitting defeat. He wanted to find a solution. The answer would have been, "If we cannot find a role for him, we have to make him redundant." Mr Gajra said that was not an option. He did not want to do that.

69. The Claimant submitted a formal grievance in November 2019. He said that he had been victimised for carrying out his trade union activities and acting as a witness during a discrimination case. He said that he had moved to the Communications team in November 2015 and had been promised that his "delayed" progression would be completed and a substantive role would be provided. He still did not have a substantive role. He referred to some of the posts and opportunities we have dealt with above, including GDPR, CSO and IT Programme Manager. He complained about the events leading to the altercation in August. He complained about Mr Gajra sending him emails with other job opportunities. The Claimant wanted to be given the Programme Manager role, to have his pay backdated to reflect the CSO salary, and to be reimbursed for the ITIL qualification.
70. Mr Stubbs was appointed to deal with the grievance. There is no complaint in these proceedings about Mr Stubbs's handling of it. The Tribunal noted that Mr Stubbs had a long meeting with the Claimant on 7 January 2020. He interviewed Mr Rahman, Mr Ajala, Mr Gajra and Mr Duncombe at the end of January 2020. Mr Stubbs's conclusion was that the Claimant had not been victimised because of his trade union activities or involvement in the Tribunal case. He did not believe the Claimant had been offered the Programme Manager role. However, he did not believe that the Claimant had been treated appropriately by management. There was no clarity about the role he played at WYPF. He had not been doing the work of Pensions Officer and management efforts to find him a role had failed. While this might be partly down to the Claimant, it was up to management to ensure that he had a role. The Claimant's view that his potential should be rewarded with a more senior role was misplaced. He needed to apply for roles and demonstrate that he had the expertise, skills and experience for them. The grievance was partially upheld because management had not found the Claimant a role for over four years. There was a restructure in WYPF ongoing at that time and Mr Stubbs recommended that management use it to identify a role for the Claimant in line with the Managing Workforce Change policy. Mr Stubbs gave the outcome to the Claimant on 11 March 2020.
71. Mr Stubbs's recommendation was not implemented. Mr Gajra's evidence was that Mr Stubbs's outcome letter was not sent to him. That was Mrs Clarkson's understanding too. Mr Gajra only found out about it when the Claimant himself provided him with a copy. By that stage, he thought that the Claimant had already appealed. He understood that the Claimant was not happy with the recommendation, so pursuing the appeal was his preferred option.
72. The Claimant appealed against Mr Stubbs's decision on 3 April 2020. By then, of course, the coronavirus pandemic had begun and that was the backdrop to the events that followed. He suggested that an appeal to elected members was more appropriate in all the circumstances. The appeal was sent to Ms Lloyd, the Respondent's Director of HR. The Claimant chased Ms Lloyd for a response on 28 May 2020. Ms Lloyd replied, apologising for the delay, which she said was because of the impact of the pandemic. There was correspondence about the Claimant's request for an appeal to elected members, and ultimately Ms Lloyd decided that his appeal would be dealt with by an Assistant Director. On 19 June 2020 she confirmed to the Claimant that Ms Cryer, Assistant Director, Performance, Commissioning and Partnerships, would hear the appeal.

73. At the same time, a review of the WYPF remuneration and structure was underway. On 5 August 2020 the Claimant was told that he had been assimilated into the role of Pensions Officer (band 5-8) in the new structure. He appealed on 12 August 2020. He said that he had been moved from his substantive post five years earlier and should not be assimilated into the Pensions Officer role. He referred to Mr Stubbs's recommendation that a role be identified for him in the restructure.
74. Ms Cryer took steps to arrange a grievance appeal meeting with the Claimant in September 2020. Eventually, it took place on 8 October 2020. At the Claimant's request, Ms Cryer then met Mr Mayat on 27 October 2020 (we have referred to this above). On 29 October 2020, Ms Cryer emailed the Claimant with the outcome of his grievance appeal. She said that the remit of the grievance process did not include offering the financial compensation he was requesting.
75. In her outcome letter, Ms Cryer said that she agreed that it was unacceptable that the Claimant had not had a clear job role for a number of years. She said that the reasons were not clear to her. However, she did not believe that he had been victimised because of trade union activities or his involvement in Mr Yaqoob's Tribunal case. She was disappointed that Mr Stubbs's recommendation had not been implemented. She had asked HR and the WYPF to review their new job structure and to identify a suitable role for the Claimant's assimilation. She had been assured that he would be assimilated into the post of Senior Governance and Business Development Officer, with a grade of SO1-PO2.
76. In cross-examination, Ms Cryer accepted that in doing so she stepped outside the normal process to find a pragmatic solution. She said that it was clear to her that the situation was not as it should be. They were looking for a resolution and had the opportunity to look for a vacant role through the assimilation process. She did not agree that this is what should have been done at the time the CSO role was created. She believed that the HR advice given at the time was correct. A new job role had been created that potentially could have been offered to any of the Pensions Officers. The process was clear – the role had to be advertised. At the time of the Claimant's grievance appeal, while Ms Cryer was stepping outside the process to an extent, there was an ongoing assimilation process and a vacant post could be identified within that process.
77. The Claimant replied the same day to say that he rejected the appeal decision. He sent a further email on 26 November 2020 reiterating that he was seeking financial compensation for the difference between his salary and the jobs he said he had been promised, together with the cost of his ITIL exams. He said that he should have been allowed to apply for vacant positions in the restructure on a ring-fenced basis. In his oral evidence, the Claimant said that he was pleased with what Ms Cryer had written. He said that he was pleased with the vast majority, the only issue was that the job had been given to him without discussion or agreement. He was asked whether he thought that his email reflected that and he said that, looking back he could see that it did not, because he was "emotionally involved." He was asked whether he thought that more generally he had a tendency to give an instant, emotional response and he agreed that he did. He said that he felt a huge sense of injustice and looking back he could see that his email did not suggest that he was happy with the grievance appeal outcome. The Tribunal noted that, although the Claimant said that he was happy with the vast majority of the grievance appeal outcome, nobody reading his appeal emails at that time would have understood that to be the case.

78. In the event, the Claimant had applied for a different and more senior role elsewhere in the Council. He left to take up that post on 15 November 2020.
79. Although not included in the list of issues identified by EJ Parkin, the Claimant's claim form included a complaint that he was victimised by not receiving the same backdated pay as colleagues on a comparable grade. That complaint had not been determined or withdrawn and it seemed to the Tribunal that it remained to be dealt with. We heard oral evidence about it from Mr Gajra and Mrs Clarkson. Clearly not all the documents were in the Tribunal file.
80. This issue arose from the re-structure. WYPF management agreed in the course of the re-structure that people's pay would be backdated, as if the re-structure had been implemented on 1 April 2019. The Council policy was that if an employee was appointed in a restructure to a role with a higher upper band, they would be awarded an increment at the time of the re-structure. People not at the top of their band would also ordinarily receive an increment on 1 April in any year. This led to a complicated set of backdating calculations for each individual, depending on their length of service, whether they had been at the top of their band in April 2019 and 2020, and what the effect of the re-structure was on that. By the end of the Tribunal hearing, the Respondent accepted that the Claimant was owed back pay for one year.
81. In her oral evidence, Mrs Clarkson described the lengthy piece of work involved. She and Mr Corbett had to do the calculations. She said that Mr Gajra sent a spreadsheet through and they relied on the information he and his team provided to work out where everybody should be. The Claimant was listed on the spreadsheet as "no change" and that is why he did not receive backdated pay. In his oral evidence, Mr Gajra said that was incorrect. Whilst he provided some information on a spreadsheet, it was HR who put "no change" on the spreadsheet, not him. He thought that the Claimant had slipped through the net.
82. The Tribunal looked at the documents that were included in the Tribunal file. It was clear that the process was far more nuanced and complex than either Mrs Clarkson or Mr Gajra described. It was not a case of Mr Gajra sending instructions and HR implementing them. There were numerous emails between, among others, Mr Gajra, the Claimant (in his role as a trade union representative), Mrs Clarkson and Mr Khan (payroll). The emails include exchanges about the calculations for specific individuals and for groups of individuals, and exchanges about points of principle, such as how a historic career bar should operate. In one email, Mrs Clarkson wrote to Mr Khan on 25 November 2020 that she and Mr Corbett had looked through the Pension Officers individually and asked payroll to increase the salaries of those "we believed were due an increment." Mr Gajra had now confirmed that all staff met the criteria to move up an increment, so Mrs Clarkson said, "I have attached a list of the staff that we originally marked as "no change" but with this additional information ... can you please also award the staff on the list attached an increment too ..." It was clear from this that Mr Gajra's recollection was correct – it was HR who marked some people as "no change", not Mr Gajra.
83. There were numerous emails in late November/early December, trying to ensure that everybody received their backdated pay before Christmas. The Claimant, as trade union representative, was involved in that. On 9 December 2020, as part of that exchange, he said in an email to Mr Gajra that he had still not received his own backdated pay from April 2019 to September 2020 and asked if that was correct. [He did receive backdated pay from September 2020 to November 2020]. Mr Gajra replied to say that he was sure payroll

had been instructed to do the Claimant's. The Claimant sent a further email on 22 December 2020 asking for confirmation that he would receive backdated pay from April 2019 to September 2020 and a further email on 6 January 2021 saying that payroll had advised they were only instructed to pay him from September to November. The file did not include a response from Mr Gajra.

84. The Tribunal noted that on 2 December 2020 Mrs Clarkson had in fact emailed Mr Khan (copied to Mr Gajra and Mr Corbett) saying that the Claimant had been assimilated to the post of Senior Governance & Business Development Officer from 1 September 2020 but had moved to a new post on 16 November 2020. Mrs Clarkson asked for the Claimant to be paid at the rate of his assimilated post from 1 September 2020 to 15 November 2020. That appears to have been her instruction. In cross-examination she was asked whether the fact that the Claimant had gone into a higher grade post had any effect on the increments that would have come with the Pension Officer post. She said that she thought she was expecting something different to happen to him. It was put to Mr Gajra that he had not instructed HR to pay the Claimant his back pay. Mr Gajra disagreed. He pointed out that the Claimant had already left his job, there was simply no reason not to pay him the arrears. The Tribunal accepted Mr Gajra's evidence. The written documents did not support the suggestion that Mr Gajra was giving HR an instruction about who should be paid backdated pay and who should not. It was clear that he and other managers were providing information and Mrs Clarkson was taking decisions and giving instructions to payroll. We found that Mrs Clarkson was simply not remembering accurately two years after the event and that she had given the instruction.
85. The Claimant relied on the fact that his colleague Mr Pyrah, who was at the same grade and spinal point as him, did receive backdated pay for the period 1 April 2019 to 1 September 2020. The Tribunal noted that Mr Pyrah did indeed receive backdated pay. However, we noted that the file of documents included an exchange of emails between him and Mr Khan in December 2020, in which he was chasing his own back pay. Mr Khan finally confirmed to him on 9 December 2020 that it had been paid. The Tribunal also noted that Mr Pyrah was not assimilated into a SO post in the re-structure.
86. The situation, therefore, is that the Respondent now accepts that the Claimant did not receive all the back pay to which he was entitled. It is not entirely clear why that was not paid at the time, but the context was a protracted and complex process over a number of months, with Mrs Clarkson ultimately giving payroll the instructions about who should be paid and for what period. There was no basis for inferring that she gave the instruction she did about the Claimant because of his assisting Mr Yaqoob five years earlier. She did not know about that. There were obvious differences between the Claimant's situation and Mr Pyrah's, namely that the Claimant was assimilated, out of process, into a much more senior role, and that the Claimant then left WYPF. The Tribunal found that the Claimant's assistance for Mr Yaqoob had nothing whatsoever to do with the failure to pay him back dated pay five years later.
87. This claim was presented on 13 February 2021. Early conciliation took place between 6 October 2020 and 5 November 2020. Complaints about something that happened before 14 November 2020 are potentially outside the time limit, unless those things formed part of a course of conduct that ended on or after 14 November 2020.

Legal principles

88. Claims of victimisation are governed by the Equality Act 2010. The Equality and Human Rights Commission's Code of Practice on Employment is relevant to victimisation claims and the Tribunal considered its provisions. Under s 27 Equality Act 2010, a person victimises another if he subjects him to detriment because he does a protected act. A protected act includes giving evidence in connection with proceedings under the Equality Act 2010; making an allegation that somebody has contravened the Equality Act 2010; and doing any other thing for the purposes of, or in connection, with the Equality Act 2010.
89. The burden of proving victimisation is governed by s 136 Equality Act 2010. The Tribunal had regard to the authoritative guidance about the burden of proof in *Igen Ltd v Wong* [2005] ICR 931. That guidance remains applicable: see *Royal Mail Group Ltd v Efofi* [2021] ICR 1263. In essence, the guidance outlines a two-stage process. First, the complainant must prove facts from which the Tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of victimisation. That means that a reasonable Tribunal could properly so conclude, from all the evidence before it. The second stage, which only applies when the first is satisfied, requires the Respondent to prove that it did not commit the unlawful act. However, as the Supreme Court again made clear in *Efofi*, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish victimisation. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.
90. The protected act need not be the only or even the main cause of the detrimental treatment; it must be an effective cause: see e.g. *London Borough of Islington v Ladele* [2009] IRLR 154, EAT.
91. The time limit for bringing claims of discrimination in the Employment Tribunal is governed by s 123. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. A distinction is drawn between a continuing act and an act that has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, such a practice will amount to an act extending over a period: see *Barclays Bank plc v Kapur* [1991] ICR 208, HL. The concepts of policy, rule, practice, scheme and so on are examples of when an act extends over a period. However, the focus of the inquiry is not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, including the Claimant, was treated less favourably: see *Hendricks v Metropolitan Police Commissioner* [2003] ICR 530, CA.
92. In determining whether there is conduct over a period, the question whether the same or different individuals are involved in each alleged act will be relevant but not conclusive: *Aziz v FDA* [2010] EWCA Civ, 304. If any of the alleged acts relied on in asserting conduct over a period is not established on the facts or is found not to be discriminatory, it cannot form part of conduct over a period: *South West Ambulance Service NHS Foundation Trust v King* EAT 0056/19.

Application of the law to the facts

93. The Tribunal's detailed findings of fact are set out above. We can deal with the issues much more briefly, because to a very substantial extent they turn on the findings of fact.
94. We begin with the question of time limits. The claim form was presented on 13 February 2021. Early conciliation started on 6 October 2020 and ended on 5 November 2020. A complaint about anything that happened on or before 14 November 2020 was therefore not presented within the Tribunal time limit, unless there was conduct over a period that ended after that date.
95. The Tribunal found, as explained above, that the failure to pay the Claimant his full backdated pay following the restructure in 2020 was not victimisation. The Claimant cannot therefore rely on that to bring the remainder of his victimisation complaints within the time limit, as part of a course of conduct over a period.
96. However, we concluded that the failure to put the Claimant into a substantive post from November 2015 onwards amounted to conduct over a period for the purposes of s 123. We found that this was not a one-off act that had continuing consequences, but an ongoing state of affairs. Although there was a decision in 2015 to move the Claimant out of his substantive post, that was not the end of it. After that, as explained in detail above, consideration was given to a number of job roles or potential job roles, none of which led to the Claimant being successfully appointed into a substantive post. The course of events including the Claimant bringing an informal grievance, then a formal grievance and at each stage the Respondent identified and acknowledged the need to get the Claimant into a substantive post, but that did not take place. This was a continuing state of affairs in which there was a failure to put the Claimant into a substantive post.
97. The Tribunal found that that state of affairs came to an end when the Claimant left WYPF on 15 November 2020 to start his new role with the Council. We did not accept that it came to an end on 29 October 2020, when Ms Cryer notified the Claimant of the outcome of his grievance appeal. The Claimant was not appointed to the post of Senior Governance and Business Development Officer on that date. Rather, he was told that an assurance had been given that he would be assimilated into that role. Given that he had not been appointed into a substantive post following Mr Stubbs's decision, nor indeed as a result of his informal grievance to Mr Barton, the Tribunal found that this assurance did not bring the continuing state of affairs to an end. That would have happened when he was substantively appointed to the post, but that was superseded by his leaving for a new role.
98. That brings us to the complaints of victimisation. This is a case where the Tribunal has been in a position to make clear findings on the evidence about the reasons for the Claimant's treatment. As explained in detail above, we had no hesitation in concluding that the failure to appoint the Claimant to a substantive post, and the failure specifically to appoint him to the five identified roles addressed in the findings, had nothing whatsoever to do with his assistance for Mr Yaqoob or the doing of any protected act. We do not repeat those findings of fact here; they speak for themselves. The Tribunal did not find it necessary to approach any of these complaints by reference to the burden of proof.
99. In outline:

- 99.1 Any potential role in the Fire Services pension scheme was subsumed within the CSO role.
 - 99.2 The reason the Claimant was not appointed to the CSO role was that HR advised that it must be advertised and subject to a recruitment process, and the other candidate performed better during that process.
 - 99.3 The reason the Claimant was not appointed to a role implementing GDPR was that he did not have sufficient seniority. Only senior managers from each service area were involved, because of the need to implement a substantial piece of work quickly, which required people with authority to take decisions to be involved.
 - 99.4 The Claimant was not offered or promised the role of IT Programme Manager and Mr Gajra did not say that the Claimant would never be appointed to that (or any) role. The Claimant never applied for the role of IT Programme Manager.
 - 99.5 Mr Ajala and Mr Gajra wanted to try and develop a role for the Claimant working on the Risk Register. He was not offered or promised a substantive post. He was not willing to work on the basis that they would look to develop a role over 3 or 6 months, with the aim of appointing him into it.
 - 99.6 The Claimant was not paid one year's back pay following the WYPF restructure, but that was on Mrs Clarkson's instruction, and she did not know that the Claimant had helped Mr Yaqoob in 2015.
100. Fundamentally, the issue was created when the Claimant moved out of his substantive post in 2015, without a post to move into. From that point onwards, the Respondent was in the position of having to try and identify a post and appoint the Claimant into it, without falling foul of Council policies. The Tribunal shared the view of Mr Stubbs and Ms Cryer that there were shortcomings in the way his situation was handled, and we could well understand that being without a substantive post for so long must have been very difficult for the Claimant, albeit we found that latterly the Claimant did not help himself by refusing to take on work without a guarantee of a substantive post. But the situation seemed to the Tribunal to stem from a well-intentioned move of teams that should not have taken place as it did. The crux of the Claimant's case – that from that point Mr Gajra lay behind a five-year campaign of victimisation designed to punish the Claimant for helping Mr Yaqoob – was simply not made out. The fundamental difficulty with that contention was the effort Mr Gajra went to in order to create the CSO role and appoint the Claimant into it without any selection process. That was clearly his wish and intention, and he gave instructions for it to happen. It was only the intervention of HR that prevented it from taking place. The Tribunal was entirely satisfied that neither at that stage, nor any subsequent stage, was Mr Gajra trying to keep the Claimant out of a substantive post. On the contrary, he wanted the Claimant in a substantive post. Nor was Mr Gajra trying to avoid the Claimant being paid back pay in 2020.

Employment Judge Davies

10 January 2023

For the Tribunal Office: