EMPLOYMENT TRIBUNALS

Claimant: **Mr M Bennett**

Respondent: **Royal Mail Group Limited**

Heard at: Sheffield On: **12, 13, 14, 15, 16, 19, 20, 21, 22 and 26 June 2017**
10, 11 August and 29 September 2017 (in chambers)

Before: **Employment Judge Brain**

Members: **Mr P Kent**
Mr K Lannaman

Representation

Claimant: Mr S Flynn of Counsel
Respondent: Mr S Peacock, Solicitor

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The Claimant's equal pay complaint brought under the Equality Act 2010 (upon the basis of section 65(1) (a)) fails upon the basis that he was not engaged in like work with his chosen comparator.
2. The complaints brought under the 2010 Act of direct discrimination because of the protected characteristic of race identified in issues A, C, D and G in the agreed list of issues (summarised in paragraph 292 of the reasons below), victimisation in issues A, C, D and G and harassment in issue G were presented within the limitation period prescribed by section 123 of the 2010 Act.
3. The complaints brought under the 2010 Act of direct discrimination because of the protected characteristic of race, victimisation and harassment in issues B, E and F were brought outside the limitation period prescribed by section 123 of the 2010 Act. It is just and equitable to extend time and the Tribunal has jurisdiction to consider them.
4. The Claimant's complaints of direct discrimination under the 2010 Act because of the protected characteristic of race succeed upon issues A, B, C and succeed in part upon issue D (in relation to the grievance raised by him on 21 November 2013 supplemented on 6 December 2013) only. The remainder of issue D and those complaints in issues E, F, G and H fail.

5. All of the Claimant's complaints of victimisation fail.
6. The Claimant's complaint of harassment related to race succeeds identified in issue B. Those in issues E, F and G fail.
7. The Claimant was dismissed by the Respondent on 13 November 2014 by reason of redundancy. Pursuant to the provisions of the Employment Rights Act 1996 he is entitled to a redundancy payment
8. The Respondent unfairly dismissed the Claimant.
9. The Claimant's complaint that he suffered an unlawful deduction from his wages fails. The complaint was brought within the limitation period prescribed by section 23 of the 1996 Act.
10. The Claimant's complaint that the Respondent is liable to compensate him for holiday accrued but untaken as at 13 November 2014 succeeds.

REASONS

1. Following a reading day which took place on 12 June 2017, the Tribunal heard evidence over eight days between 13 and 22 June 2017 inclusive. Helpful submissions were then made by each representative on 26 June 2017. The Tribunal reserved judgment. We now set out the reasons for the judgment that we have reached.

2. The Claimant presented his claim form to the Employment Tribunal on 27 March 2015. Later in these reasons we shall set out the issues in full. Suffice it to say at this stage that the Claimant brought the following complaints:-

   2.1. Unfair dismissal

   2.2. Direct race discrimination

   2.3. Victimisation

   2.4. Harassment (related to the protected characteristic of race)

   2.5. Equal pay

   2.6. Unlawful deduction from wages

3. The claim form also included the following claims which have been withdrawn:-

   3.1. Breach of contract

   3.2. Direct sex discrimination

   3.3. Disability discrimination

4. The Tribunal heard evidence from the Claimant. Following his cross-examination we received evidence from the Respondent. The following witnesses gave evidence on the Respondent's behalf:-

   4.1. Gary Milne. He worked for the Respondent between June 1989 and June 2015. He held various roles during his employment with the Respondent. At the time that he left he was employed as a delivery director.

4.2. Ian Haxton. He is employed by the Respondent as head of HR delivery for East of Scotland and Northern Ireland.

4.3. Bradley Sayers. He is employed by the Respondent and currently holds the post of head of HR – processing, collections and logistics (East).

4.4. Veronica Stevens. She is an employee of the Respondent. She currently holds the post of service manager for appeals which is part of the HR services function.

4.5. Joan Mee. She is an employee of the Respondent and currently holds the post of delivery products deployment lead (West).

4.6. Helen Perry. She is an employee of the Respondent and currently holds the post of special events planner based at the North West Midlands mail centre in Wolverhampton.

4.7. Jon Adams. He is no longer an employee of the Respondent. However, at the material time with which we are concerned he was employed as the Sheffield mail centre plant manager.

4.8. Gail Nimmo. She is an employee of the Respondent and currently holds the post of head of delivery product development based at Tyneside mail centre, Newcastle.

5. The Tribunal was also presented with a witness statement from Erica Wilkinson who currently holds the post of independent caseworker manager within the Respondent's HR services function. In the light of a concession made by Mr Peacock upon behalf of the Respondent (to which we shall come in due course) her witness statement was withdrawn. We shall therefore say nothing further upon it.

6. In addition to the witness statements, the Tribunal was presented with a bundle of documents. The bundle was made up of four lever arch files. On a conservative estimate, the documentation ran to in excess of 1500 pages. (Although the bundles were, of course, paginated this was in places done alphabetically as well as numerically).

7. We shall firstly set out our findings of fact. We shall then go on to consider in more detail the allegations raised by the Claimant and the issues to which those allegations give rise. We shall then consider the relevant law before going on to set out the conclusions that we have reached.

8. The Claimant commenced employment with the Respondent on 8 February 1988. Between 1988 and 1999 he worked as a postman. The Claimant held aspirations to progress his career within the Respondent. To that end he undertook what was described in the letter dated 29 October 1997 at page 106A as "the introduction to OPS management scheme". There was no explanation given to the Tribunal as to what this entailed. It appears from that letter at page 106A of the bundle that successfully undergoing this assessment would lead to a placement upon such a scheme. The Claimant successfully completed an introductory course in supervisory management studies on 2 June 1998 (page 106B). Although the Tribunal was not taken to it during the course of the proceedings, we see from pages 106C and 106D that the Claimant participated in a trainee manager scheme. Presumably with the benefit of this training under his belt the Claimant moved from being a postman

to commence work as a planning projects administrator. He commenced in that role in July 1999.

9. In November 2002 the Claimant raised a grievance about a failure to pay him the appropriate rate for the planning projects administrator role. The Claimant says in paragraph 2 of his second witness statement that "… from 1999 to 2002 I worked as a planning projects administrator which was equivalent to grade LA1. However, the Respondent only wished to pay me as a post person. This *[presumably the post person role]* was an entry level position and lower grade than LA1". 'LA1' stands for 'letters administration'. It is common ground that the 'LA' roles are administrative and thus known as 'non-managerial grades'.

10. In his grievance of November 2002 not only did he complain about the failure to pay him in line with the LA1 grade but alleged that he was being paid less than white female peers undertaking an equivalent role. At paragraph 4 of his first witness statement, the Claimant referred to a colleague named Joanne Howard as a comparator. A copy of the November 2002 grievance was not made available to the Tribunal. For the purposes of the Claimant's complaint of victimisation, it is this grievance which the Claimant says (and which the Respondent accepts) is the protected act (within the meaning of section 27(2) of the Equality Act 2010).

11. The Claimant's grievance was dealt with by an operations programme manager named Mr Southworth. He upheld the grievance and confirmed that the Claimant would be paid as a grade LA1 for the planning projects administrator role but at the lowest increment. The Claimant challenged Mr Southworth upon the basis that the Claimant had been performing the planning projects administrator role for in excess of three years as at the date that he (Mr Southworth) dealt with the Claimant's grievance. The Claimant therefore raised a further grievance. This was upheld and Mr Southworth confirmed (again in November 2002) that the Claimant would be paid at the top LA1 increment.

12. There is no documentation within the bundle about Mr Southworth's dealing with the Claimant's grievances in November 2002. We note that no page references are made to any documentation within Mr Flynn's very helpful chronology of events or within the Claimant's witness statements. There was no challenge to the Claimant's evidence about these matters by the Respondent. We accept the Claimant's evidence about these matters.

13. On 4 December 2002 the Claimant was informed by Keith Kellaway, the area personnel manager that he was to be demoted back to the position of postman. There appears to be no document emanating from Keith Kellaway to that effect dated on or around 4 December 2002 within the bundle. However, within the bundle (at page 106I) is a memorandum dated 10 January 2003 from Mr Kellaway in which Mr Kellaway said to the Claimant that, "I regret to advise you that the line's decision to cease your current LA contract will stand and you will be due to revert to your substantive OPG grade w/e/f 3 February 2008".

14. On 24 January 2003 the Claimant raised a grievance against Mr Kellaway's decision. This is at pages 107 to 113. The Claimant complained that "Mr Kellaway's decision to demote me back to postman does not appear to be a decision based on reason, commonsense or even balanced assessment. Despite my employment record, ability and experience, the clear unrepresentation of black individuals in the administrative/managerial grades, the respect of the senior managers in SFD area and my increasing personal

development he has decided that my talents lie merely as a delivery postman". The Claimant went on to set out his employment history (at pages 108 and 109). In this section of his grievance letter he described himself as a "black man of West Indian origin". The Claimant complained of "cruel and immoral treatment" given that the demotion decision was taken just two weeks after the Claimant's grievance about being placed on the lowest LA1 increment was upheld by Mr Southworth.

15. It appears from the Claimant's email of 30 January 2003 (at pages 114 to 117) that the justification advanced by Mr Kellaway for his decision to demote the Claimant was that he had not passed an assessment for LA1. The Claimant reasoned that his performance in the planning projects administrator role was evidence that he had "more than adequately fulfilled the criteria to be a substantive LA1".

16. On 28 April 2003 the Claimant was reinstated to his substantive position as an LA1 with effect from 3 February 2003. His grievance about Mr Kellaway's decision was upheld by Phil Seymour, people and organisational development adviser. We refer to pages 119 and 120.

17. Unfortunately, the Claimant's problems at the hands of Mr Kellaway did not end there. Notwithstanding Mr Seymour's decision, Mr Kellaway refused to pay to the Claimant the back pay that was owed to him as a result of Mr Seymour's decision. This prompted the Claimant to write to Mr Seymour on 7 May 2003 (page 120A). He also raised the issue with the then Chairman, Alan Leighton (page 120B).

18. The Claimant's account is that with Mr Leighton's support, his back pay was remitted to him in June 2003. He goes on to say at paragraph 7 of his first witness statement that, "I also understand around this time the Respondent had admitted that there were concerns about racism within the business and had expressed intention to address this (page 120C of the hearing bundle)". This is a reference to an article in 'People Management' dated 10 July 2003 in which Mr Leighton was reported as admitting that the Respondent "has the worst race discrimination, harassment and bullying record in the UK". Mr Leighton was quoted as expressing a determination that such should be stamped out. He acknowledged difficulties with this aspiration saying "….but we are only on the first step of a 100 rung ladder". In cross-examination, Mrs Nimmo fairly accepted that the Respondent had an issue with race discrimination at this time.

19. The Claimant's account (at paragraph 8 of his first witness statement) is that Mrs Nimmo "worked in the same close knit regional personnel/HR department team as Keith Kellaway at this time and was a peer of Mr Kellaway. On his leaving, I was aware and had been informed by a former colleague that she was appointed to take over his role and responsibilities". He surmised that Mr Kellaway "would have naturally provided Mrs Nimmo with a handover and given her an overview of the people issues within his area".

20. Mrs Nimmo for her part said, when asked about this by Mr Flynn, that she had no recollection of the Claimant's back pay issues crossing her desk. She did acknowledge that Mr Kellaway was her direct predecessor.

21. On 7 July 2003 the Claimant was appointed to the role of area general manager support South Yorkshire. About this, the Claimant says (at paragraph 9 of his first witness statement) that, "the area later experienced growth and became

South and East Yorkshire. I believe that the grade for this role was SL2 …" The Claimant goes on to say in the same paragraph that "the Respondent again failed to pay me appropriately for this role and my understanding is that my peers in equivalent roles (suggested comparators are Anna Sams (pages 980 to 992), Diane Pickett (pages 838 to 879), Brenda Allan (pages 948 to 979), Gloria Ross (pages 805 to 837) and Helen Perry (pages 880 to 947) were graded SL2 or above and in any event paid higher than LA1 that the Respondent continued to pay me. Disclosure via an internal document in 2016 confirms that Mrs Perry was graded as an MS4 when she was promoted to area general manager support in 2008 (page 908 to 909 line 30, these pages need to be placed side by side, to see transition between date and grade change). Like me, Mrs Perry had previously been an LA1".

22. At paragraph 7 of her witness statement, Mrs Perry says, "I was substantively promoted to a managerial grade when I was appointed to an area manager support role on 1 July 2008. I had a managerial grade role before 2008. I was business centre manager (ML3 grade) for about 18 months until the business centre work was centralised and my local work role went from the template so I had to revert to my original grade". The Tribunal assumes that reference here to her 'original grade' is to LA1 (as, in her email to Mr Peacock dated 7 August 2016 at page 880, she says she was never aware that she had been employed at grade SL2 but considered that she had been at LA1 prior to taking the ML3 role).

23. The letters 'SL' stand for 'secretarial level. The Respondent's case is that like the LA role, SL roles are non-managerial. The letters 'ML' referred to in Mrs Perry's witness statement (at paragraph 7) stand for 'manager level.' The letters 'MS' stand for 'support manager' according to the Royal Mail's list introduced part way through the proceedings. Although perhaps obvious, those roles bearing the initial 'M' are managerial grade posts.

24. We shall look at the circumstances of the comparators named by the Claimant in paragraph 9 of his first witness statement in further detail in due course. The Claimant's concerns about the level of his pay led to him raising a further grievance on 31 March 2004 (page 120D).

25. It was at around this time that Mandy Davenport was appointed to the post of people and organisational development adviser. In that capacity, she wrote to the Claimant on 17 June 2004 (page 122). She said (about the Claimant's concerns around his pay and grade) that, "the current problem as I see it is quite a simple one: your AGM seems to see the role he has tasked you to perform as somehow different to that performed by other people who other AGMs call their personal secretaries. He is empowered to change his template as required, so he can do this. You seem to see the role as no different to others, and if that is the case it follows that the post holder in South Yorkshire should enjoy equitable terms and conditions as others elsewhere". She suggested the commissioning of a "sensible neutral person" to evaluate the Claimant's role and compare it with his peers. Mandy Davenport said that the Respondent would abide by the decision of the neutral evaluator. That said, Mandy Davenport told the Claimant that, "If the job comes out at SL2 we must advertise it because to do otherwise would be unfair to other people who might either be surplus at SL2 level in other business units and so facing redundancy or who might feel qualified for the role. This is normal when jobs are upgraded and hence I can't see why you should consider this either confusing or

disrespectful. It is clear that you were selected for the role on the basis that the AGM thought he wanted it to do was an LA role. If it is upgraded, you would of course be expected to apply and would be able to point to your track record to show you would be a great candidate. Of course if it comes out as LA1, it's yours and I'd expect you to accept this and continue focusing on what you can contribute to the business".

26. Shortly before this email was sent to the Claimant Mandy Davenport sent an email to Nick Morgan. (We assume that he was the manager whom the Claimant was supporting). This is at page 121. She made reference to having spoken to the Claimant that morning and formulated a plan of action to resolve the matter. She said that she would liaise with Glynn Reece about the Claimant's grade in relation to other PAs in terms of pay and grade. She said, "to confirm that the other PAs in the territory are formally *[we interpose here to say that she meant 'formerly']* an SLA grades who were subsequently assimilated to other admin grades eg SL3 to LA1, SL2 to ML5 and SL1 to ML4. SLA grade roles were fazed *[she meant 'phased']* out some four years ago". She suggested that the Claimant be asked to provide a list of activities that he undertakes to support his belief that the area general manager's support role that he was carrying out was "over an above an LA1 role". Miss Davenport went on to request of Mr Morgan that he prepares "a list of activities that you would like your PA to undertake for you, that Mark isn't currently undertaking, which I will also submit for job evaluation. If your requirements make this role a higher grade then we will have to open resource, hopefully Mark will not be bordered *[presumably a euphemism for 'placed in the role']* and Carole H will. I will then place Mark in another LA1 role, ideally out of the area say POS via Morris H". There was more than a suggestion in this email that Mr Morgan was displeased with the Claimant. Miss Davenport acknowledged him to be angry with the Claimant. It is plain from this email that the Respondent seemed set upon the Claimant remaining at LA1 at this stage and resistant to him being employed at a higher grade.

27. At paragraph 10 of his first witness statement, the Claimant says that the email at page 121 shows "the attitude demonstrated and maintained towards me by the local HR department in raising a further grievance relating to my pay and role in comparison to my peers and seeking equality. This exchange demonstrates that the attitude of the Respondent towards me following my November 2002 grievance continued to be one of me having gotten 'too big for my boots' in again seeking equality in comparison to my peers and a stance that ideally this would not be allowed to happen". He goes on to say in paragraph 11 that, "there is no justification for favourable treatment towards another colleague (in this instance 'Carol Hibling a white female') in pursuit of getting me out of the way to another area and maintain me at the lower LA1 grade".

28. On 23 February 2005 the Claimant was appointed to grade SL2 with effect from 7 July 2003 (page 124A). This letter also appears at page 1095. It confirms a variation of the contract of employment by way of 'substantive promotion' to the role of 'AGM Secretary.' There was no evidence led by the Respondent as to how this decision had been arrived at.

29. In his evidence given under cross-examination, the Claimant said that the SL grades had been "debunked" and that the reference to SL2 in the letter of 23 February 2005 was a mistake. The Claimant placed heavy reliance upon

the email from Mandy Davenport of 7 June 2004 at page 121 and in particular her reference to former SLA grades subsequently being assimilated into other grades. The Claimant's case was that SL2 became obsolete at some point prior to 2004 and had become a management grade ML5 (in accordance with her email). It was the Respondent's case that SL2 had not become a managerial grade at any stage.

30. In his evidence given in cross-examination, Mr Milne said that at no stage during the history of the Claimant's employment with the Respondent was he (the Claimant) the holder of a managerial post. He accepted that an administrative role could be re-graded as a management role but that would be on a case-by-case basis. Mr Milne said that this is what occurred in the case of Anna Sams, Diane Pickett and Gloria Ross. As we have said, we shall revert to findings of fact about them in due course.

31. Mr Milne accepted that on the face of the document at page 124A, the Claimant's substantive grade was SL2 and he had been promoted into it. It was then put to him by Mr Flynn that grades LA1 and SL2 did not feature on the Royal Mail's list of acronyms that had been handed to the Tribunal by Mr Peacock. This therefore reinforced the Claimant's case that grades LA1 and SL2 had indeed become obsolete (or "debunked" as the Claimant put it). The Claimant's evidence is corroborated not only by the absence of those acronyms from the list produced by Mr Peacock but also by Mandy Davenport's email at page 121 where she says that SLA grade roles were phased out "about four years ago" (prior to the date of her email in June 2004).

32. We interpose here to say that her reference to 'SLA grades' adds further confusion to the picture. We surmise that she was using the expression 'SLA grades' as shorthand to cover both LA and SL grades that had been in existence prior to 2000. However, the picture is far from clear and matters were not helped by the failure of the Respondent to adduce evidence from anyone who could furnish the Tribunal with a full and comprehensible account of the history of the grading structures.

33. Mr Milne maintained that the Claimant was of an administrative and not managerial grade by reference to the fact that he was represented by the CWU trade union. Members of administrative grades were typically represented by the CWU. Employees in managerial grade positions were typically represented by a different union, the CMA. We refer to page 1181 (which is a glossary of terms used in a document dated 17 May 2010 concerned with 'the Managing the Surplus Framework' and which draws the distinction between CWU and CMA membership). The Claimant's continued membership of the CWU was something to which the Respondent's witnesses continually returned to bolster their argument about the Claimant's status.

34. Mr Milne accepted that what he called "the terminology" of the SL2 grade had "been long subsumed from the days we had secretaries". He commented that "the terminology of SL2 became virtually redundant in my mind". When taken again to the relevant passage from Mandy Davenport's email (page 121), he was unable to enlighten the Tribunal as to the grade to which those who had hitherto occupied SL2 posts were assigned (if not ML5 as suggested by her).

35. Mr Haxton, when giving evidence under cross-examination told us that "in 2013 we still had SL2s working for us". He said he was not aware that those holding an SL2 post had been re-graded as ML5. It was suggested to him by Mr Flynn

that the SL2 grade had become the equivalent of ML5. Mr Haxton said, "no, SL2 is SL2. That is what prompted Mrs Pickett's complaint" (to which we shall come).

36. When shown the relevant passage at page 121, Mr Sayers said that he had never seen the email before. That itself is unsurprising. He went on to say "that's not how it has been reported to me". Presumably, this was in corroboration of Mr Haxton's evidence that SL2 and ML5 grades were different.

37. Mr Haxton set store by the fact that the Claimant was represented by the CWU. However, Mr Haxton did accept that it was not necessary to be a member of the CMA in order to hold a managerial position.

38. Mrs Mee had also, unsurprisingly, not seen Mandy Davenport's email at page 121 before. When it was suggested to her that SL2 had become assimilated to ML5 she said "not to my knowledge". The issue was then clouded further when she said that the "ML5 grade is now obsolete".

39. The Tribunal notes that ML5 does not feature on the list of acronyms from the Respondent and produced by Mr Peacock (although ML3 and ML4 are shown). Mr Haxton was unable to account for the absence of the SL2 grade from the same list of acronyms produced by Mr Peacock in support of his contention that the SL2 grade was not obsolete. He said "SL1 is obsolete but not SL2".

40. Mrs Perry's evidence was that the SL2 grade had become obsolete. This account was supported to some degree by Mrs Nimmo who said that in her time she had never appointed anyone to the role of SL2. That is to say, she had not done so from around the year 2000. That therefore fits with Mandy Davenport's assertion in the email at page 121 that the SLA grades had been phased out four years ago (that being four years prior to 7 June 2004 being the date of her email at page 121).

41. Mrs Nimmo was unable to understand why in that case the Claimant had been appointed SL2 with effect from 7 July 2003. However, she did not share Mandy Davenport's understanding that SL2 was assimilated with ML5. Mrs Nimmo said that "LA and SL were administrative grades represented by the CWU. We didn't assimilate between management and administrative grades".

42. Mr Adams' understanding was that the LA1 and SL2 grades were the same. This evidence contrasted with that of other Respondent witnesses who accepted the Claimant had enjoyed a promotion from LA1 to SL2 on 23 February 2005 (backdated to 7 July 2003). Mr Adams' evidence is at odds with the Respondent's position that it upheld the Claimant's grievance of March 2004 and varied his grade from LA1 to SL2 in order that he could be paid at the same level as his area general manager support peers. If Mr Adams were correct in his evidence, one wonders why it was necessary for the Respondent so to do.

43. In April 2009 the Claimant was appointed to the role of executive assistant/personal assistant to Adrian Lovejoy who at that time held the role of north east regional process director. The Claimant's role was referred to as 'EA/PA' for short.

44. On 18 November 2009 Mrs Perry was appointed to the role of executive assistant. At paragraph 12 of her witness statement she says, "in November 2009, following a further competitive assessment and interview process, I was

offered an executive assistant role. This involved providing managerial grade level support to the regional process director and the regional logistics director *[in her area].* I had to support two operations directors which were deemed to be the busiest director roles". She goes on to say in paragraph 13 that, "the executive assistant role was already graded at MS4 before I was appointed. I was therefore appointed to a role graded at my substantive grade and although I had to take part in an objective assessment and interview process, it was not a promotion". By way of reminder, Mrs Perry's evidence is that she was substantively promoted to a managerial grade (MS4) when she was appointed to an area manager's support role on 1 July 2008 (and before that holding a business centre manager role at ML3 grade for about 18 months and then reverting to LA1 prior to 1 July 2008). The area manager's support role that she undertook from 1 July 2008 was at grade MS4. As we have said, the acronym 'ML' stands for manager level and 'MS' stands for manager secretarial.

45. In contrast to Mrs Perry, the Claimant continued to be graded and paid at SL2. The Claimant says at paragraph 17 of his witness statement that, "the tasks which we were required of both Mrs Perry and I were the same in the sense that we both reported to regional process directors who were operational directors". The Claimant was PA/EA to Mr Lovejoy (and then subsequently Mr Milne). Mrs Perry was PA/EA to Mr Milne when he held the position of regional process director Midlands. Mr Milne then took over the North East director role in early January 2012 after Mr Lovejoy decided to leave the Respondent in November 2011. Mr Milne therefore received support both from the Claimant and Mrs Perry at different stages of his career with the Respondent.

46. In May 2012 the Respondent announced its 'Refocusing Operations Review' ('the Review'). Mr Milne explains (at paragraphs 25 to 27 of his witness statement) that, "the 2012 review implemented changes to the geographical regions. The North East *[of which he had become part by the time of the Review]* was one of 11 regions pre-2012 review. Both Leeds mail centre, which was my work base, and Sheffield mail centre, which was Mr Bennett's work base were originally located in the North East. The previous 11 geographical regions converged into five larger reasons, with associated boundary changes. Post-2012 review, my work base of Leeds stayed within the newly created North Geography, whilst Mr Bennett's work base of Sheffield fell within the newly created East Geography. Resourcing principles were set around the geographical boundary of the Geography. The directors in the newly created North Geography sought to avoid displacement and the associated cost of voluntary severance within our Geography as our priority. This was replicated across each of the five newly created regions".

47. Mr Milne then goes on to give evidence about the portal based preference exercise generated by the Review. He says, "Assessment for placement into the new templated roles was a fairly complex forensic exercise managed through a web based portal. It involved a preference exercise where directly affected members of a defined population completed a preference form. This included a question about whether the affected individual wished to be considered for an offer of voluntary severance. The directly affected members were then required to upload the preference form together with a CV and other relevant information summarising their skills, experience, previous roles, qualifications etc on to the portal".

48. Mrs Nimmo gives similar evidence to that of Mr Milne. We refer to paragraphs 3 and 4 of her witness statement where she says, "During 2012, Royal Mail undertook a re-focusing operations review (2012 review). This was a major re-structuring exercise, which included significant change to the operational management structure within newly created larger geographical regions. Prior to the 2012 review the operation was organised into 11 geographical regions. A consequence of the 2012 review was a 'carve up' and creation of five larger reasons and associated boundary changes".

49. One of the central features of the Claimant's complaint is that he was most unhappy about his situation arising out of the 2012 Review. This focused upon the Claimant not being afforded access to the ring fenced portal roles referred to by Mr Milne. The reason for the exclusion, in essence, was that the Claimant was regarded by the Respondent as being at grade SL2 and thus holding a non-management grade. The portal exercise to which Mr Milne referred was for affected management grades only.

50. From the Claimant's perspective, matters had got off to an encouraging start with reference to this issue when, on 11 July 2012, he received an email inviting him "to return to the portal site and submit both your geographical and functional type preference and also your CV in order for you to be considered in the appointments process". The email (at page 145) was sent from the "re-focusing operations team" from an email address called "re-focusing operations enquiries". The email went on to say that, "managers who choose not to specify preferences will be considered for roles within their current area". Recipients were then given the portal address for the submission of their preferences.

51. The Respondent was in no position to challenge the Claimant's evidence that the email had been sent to him. Gail Nimmo said that it was a generic email. Undoubtedly, she was correct to say so but the fact of the matter is that the Claimant was one of the recipients of it.

52. That the Claimant was an intended recipient of the email at page 145 was reinforced by the contents of an email sent from Mrs Nimmo to Alison Wright and Mr Milne on 13 July 2012 (page 146). Mrs Nimmo said "the PA roles are part of the affected population … ". When taken to this in cross-examination Mr Milne accepted that those holding PA roles were regarded by the Respondent as part of the affected population and thus entitled to participate in the portal exercise. Mrs Nimmo, when asked about her email at page 146 commented that the PAs were indeed affected by the reform programme but that she was "not talking in her email at page 146 about access to the portal".

53. The Claimant was not in fact allowed to access the portal and participate in the process outlined by the re-focusing operations team in the email of 11 July 2012 at page 145. The reason for this was that the Claimant remained graded, according to the Respondent's records, as LA1.

54. The email from Gail Nimmo to Alison Wright and Gary Milne of 13 July 2012 at page 146 to which we have referred in paragraphs 52 and 53 above was in fact prompted by an email from Alison Wright to Mr Milne (copied in to Mrs Nimmo) also to be found at page 146. Alison Wright had asked whether the Respondent was in a position to offer Emma Kealey a role as the Yorkshire delivery director PA. This request prompted Mrs Nimmo to say that the PA

roles were part of the affected population and therefore there was a need to wait (presumably in order that the process may be followed).

55. Miss Kealey had, on 7 August 2007, been notified of a variation to her contract of employment due to a promotion. She was appointed to the position of secretary with effect from 22 May 2007. Her substantive grade was said to be ML5. We refer to page 1291. It appears from page 1231F that she then achieved a further promotion in 2009 to the role of personal assistant at substantive grade MS4 and following the 2012 Review to the role of MS2 Executive Assistant (even though she had not been allowed access to the portal).

56. We see from page 1181 to which we have already referred that employees in jobs from grade ML5 or equivalent were regarded or classed as managerial grades. Mr Sayers, in evidence under cross-examination, agreed with that proposition. It was suggested to Mrs Nimmo during cross-examination that Karen Kealey was appointed to a job at grade ML5 due to the assimilation of grade SL2 with ML5 (as had been intimated by Mandy Davenport on 7 June 2004 (at page 121). Mrs Nimmo said that she "couldn't comment on that".

57. On 16 July 2012 Louise Alexander, head of HR ops and modernisation, sent an email (page 148) to the HR directors of the regions (including Mrs Nimmo). She said that the purpose of the email was, "just to remind you that EAs and PAs in a role working for someone in the directly affected population (eg EA to ROD, PA to process director etc) are directly affected themselves as per the original definition a few weeks back." She went on to say, "information on these individuals was sent in by your resourcing teams at the time as part of the master data to check and so they will have received all the comms to date. The support roles (and profiles) for the new structure are currently on the portal, individuals can preference these roles as a stand alone group and appointments into these roles will be made from the next week onwards, in the same way as the rest of the roles to the process".

58. It was put to Mrs Mee that the import of this email from Louise Alexander was that those performing a PA role (regardless of grade) were part of the affected population and thus entitled to participate in the portal exercise. It was suggested to her by Mr Flynn that from Louise Alexander's email could be inferred that the focus was upon the role as opposed to any individuals' grade. Mrs Mee said that she had not seen Louise Alexander's email. However she went on to say that, "it may have been clearer if the template had been attached which held the grades for PA/EA. They were changed to EA and were managerial grades". This evidence was difficult to understand given that there was no reference in Louise Alexander's email to an attached template (or indeed any attachment).

59. It was suggested to several of the Respondent's witnesses by Mr Flynn that part of the difficulty facing the Claimant and the Tribunal upon the issue of the portal process was that there had been very limited disclosure about it emanating from the Respondent. Mr Flynn's unchallenged suggestion was that aside from pages 174 to 179 inclusive (which were charts of the organisation following the Review) nothing had been disclosed. We agree with Mr Flynn's submission that it is frankly inconceivable that there is no documentation generated by the Review other than the documents at pages 174 to 179. For instance, Mr Milne said there had been discussions between the Respondent

and the relevant trade unions. This makes it all the more surprising that there was no documentation made available to the Tribunal giving an overview of the whole process and how it was meant to operate.

60. On 17 July 2012 the Claimant emailed Mr Milne (and Anna Reed) (pages 151 and 152). With reference to the Review the Claimant said, "As the personal secretary/assistant/support to the North East regional process director (for the last three to four years) my templated role will be clearly and has been directly affected by these boundary changes and rationalisations, and I would appreciate the opportunity to review my available options". He complained that the changes were announced on 30 May 2012 and he had yet to hear anything relating to the next steps and his options. He said, "While I am fully aware that others who also work to the region who have been affected by these changes appear to have received information and updates. I on the other hand have received no formal feedback with regards to where or whether my templated role sits in the future organisational structure. I am sure you can appreciate that this is an unsettling time for many and that these changes are causing a deal of discomfort".

61. There was an issue between the parties as to whether or not the email of 17 July 2012 at pages 151 and 152 was a grievance. It was suggested by Mr Peacock on behalf of the Respondent that the Claimant was simply raising a question (in the first paragraph of the email) as to when formal consultation would be opened with him and that the second paragraph cited above in paragraph 60 was not a complaint. Mr Flynn put to Mrs Mee that the Claimant's position was clear: that he was saying words to the effect "I should be included in the portal exercise". Mrs Mee appeared not to disagree with that proposition but said that the reason that the Claimant was not included was because he was not of managerial grade.

62. When she completed her report of April 2015 (to which we shall come and which is at pages 725 to 745) Erica Wilkinson made reference to the fact that the Clamant had raised a formal grievance in "July 2012". It is not clear whether she was meaning to refer to the Claimant's email of 17 July 2012 or a subsequent one sent on 26 July 2012 (at pages 157 to 158). She may, in fact, have been meaning to refer to both.

63. The latter email followed what the Claimant described as an "informal chat" with Mr Milne which took place on 24 July 2012. In the email at pages 157 and 158, the Claimant says that Mr Milne told him that the selection process for the PA/support roles was "now in full swing". The Claimant says that Mr Milne admitted and acknowledged that the Claimant had been treated poorly. He again complained that there had been no formal consultation with him. He went on to say (in the pre-penultimate paragraph): "As the personal secretary/assistant/support to the North East regional process director (for the last 3/4 years) my templated role will be clearly and has been directly affected by these boundary changes and rationalisations, and as I stated I would appreciate the opportunity to review my available options with the rest of the affected population who perform my role".

64. The Claimant accepted that he did not complain in either of the emails (of 17 and 26 July 2012) of less favourable treatment upon the grounds of race. The Claimant said he had not done so "at the time".

65. In his evidence given under cross examination, Mr Milne denied that he told the Claimant that he had been treated poorly. Mr Milne did acknowledge that the process "had not been good and could have been handled better". Mr Milne said that he had "liaised with Gail Nimmo or Ian Haxton and Brad Sayers" about the matter. He maintained that the Claimant had received the email at page145 in error and "Gail [Nimmo] told me that he was not a managerial grade".

66. Mr Milne was not alone in his opinion that the Review (and in particular the appointment process entailed by it) had not been handled well by the Respondent. There is for example an email from Lisa Glandfield, field operations manager south, of 19 July 2012 (page 154A). This was addressed to a number of individuals and courtesy copied to the Claimant and Brenda Allen, Gloria Ross and Diane Pickett (amongst others). The email opens, "Please forgive the confusion concerning the appointment process, it has been less than clear but the following is now the process as I write this note". The first part of the process is the receipt by the Respondent from those concerned of their CVs by close of business on 23 July 2012.

67. On 30 July 2012 Anne McCarthy, HR director (London region) emailed a number of individuals including Mr Milne (pages 158A-C). This was a list of vacancies still available after the selection process had taken place. (Lisa Glandfield's email of 19 July 2012 had contemplated the completion of the selection process prior to 30 July 2012). There remained to be filled a number of vacancies in the new north geography including the roles of executive assistant to the operations director, executive assistant to the HR director and executive assistant to the delivery director Yorkshire. The latter two were grade MS4. The former was grade B8/B9 (which according to the list of acronyms presented by Mr Peacock was 'business p/contract B8' and 'business p/contract B9').

68. In addition to those three roles were a further two executive assistant roles at grade MS4: these were executive assistant to the head of delivery programmes and executive assistant to the finance director.

69. In evidence under cross-examination, the Claimant said that Diane Pickett, Anna Sams, Brenda Allen and Michael Errington eventually filled four of these executive assistant roles. This the Respondent accepted but upon the basis that none of them except Mr Errington had been allowed to present their CVs on to the portal under the Review process as they had not held managerial grade posts prior to the review. Michael Errington had been allowed to enter the portal because he was a substantive grade ML3 manager. Mr Milne explained that there was no match to the EA templated roles to which Diane Pickett, Brenda Allen, Gloria Ross and Anna Sams were subsequently appointed. (We interpose here to observe that Gloria Ross does not in fact feature on the chart at page 174 for the north geography delivery team but, rather, upon the north geography logistics team at page 175).

70. Mr Milne says, in paragraph 42 of his witness statement that, "in the absence of any 'competition' for those roles *[being the roles currently occupied by Mrs Pickett, Mrs Allen, Mrs Sams and Mrs Ross in Edinburgh, Newcastle, Glasgow and Aberdeen respectively]* the individuals that had supported the directors for many years flowed through into the template executive assistant roles". This was at their substantive grades of SL2.

71. Mr Milne goes on to say in paragraph 43 that in 2013 Diane Pickett and Brenda Allen made successful re-grading applications backdated to September 2012. Gloria Ross made a similar successful re-grading application. Anna Sams did not make a successful re-grading application in respect of her role.

72. In error, the Respondent had disclosed draft witness statements to the Tribunal and to the Claimant. The bundle of witness statements initially presented to us in fact contained the draft statements. These were replaced during the course of the hearing by the final versions of the statements. There was a discrepancy in Mr Milne's evidence between the draft and the final version. The latter at paragraph 41 gives a definitive statement that there was no match to any member of the directly affected population for the executive assistant roles based at Edinburgh, Newcastle, Glasgow and Aberdeen. The draft, in contrast, refers only to there being no match to the EA templated roles for Edinburgh and Newcastle. Mr Milne says that he had little involvement in relation to the roles at Aberdeen and Glasgow. When asked to explain away the discrepancy Mr Milne said that he had discussed the matter with a director named Mr Storey who had explained to him what had happened.

73. Again, the Respondent presented a confusing picture to the Tribunal. In sum however the Tribunal's understanding of the position and our finding is that no one from the affected population permitted to enter the portal applied for or was successfully matched to the EA roles to which we have referred above at paragraphs 67 and 68 identified in the spreadsheet at page 158A. Accordingly, those who had been in fact doing the roles were simply allowed to continue in that capacity. None of those individuals had been permitted to enter the portal (save for Michael Errington). They continued to undertake their work at non-managerial grade SL2. However, following a re-grade application (which appears to be contained in the email to Mr Haxton at page 1248 and is in the form of a simple request for consideration of the correct grading) three individuals (Diane Pickett, Brenda Allen and Gloria Ross) were re-graded to managerial grades.

74. The Claimant accepted, in evidence under cross-examination, that in his email to Mr Milne of 26 July 2012 he did not contend that he was being less favourably or unfavourably treated upon the grounds of race or for having done the protected act in November 2002. When this was put to him by Mr Peacock the Claimant said that he had not made such an allegation "at that time".

75. When giving evidence to the Tribunal, Mr Milne did not consider the document at pages 158B and 158C to be a vacancy list but, rather a "completed list" (by which we understand him to mean a list of allocated positions). He did accept that the three named female incumbents referred to at page 174 did eventually find themselves in those roles at managerial grade (save for Anna Sams who did not make a successful re-grading application). Mr Milne accepted as a fact that no one applied for any of those three roles through the portal process and therefore the present incumbents were "flowed through" (as he put it). The contradictory evidence from the Respondent's witnesses about the status of the list at pages 158B and 158C underscores the Tribunal's concern about the lack of clarity from the Respondent around the whole process.

76. On 30 July 2012 Anne McCarthy, HR director of the Respondent, emailed a number of individuals including Alison Wright and Gary Milne (page 159). This

followed upon a request in order "to understand the overall stats of our work on the re-organisation of the north". She said that 120 people had been "placed". Thirteen had been promoted and the Respondent currently had 31 vacancies. It was suggested to Mr Milne that Anne McCarthy clearly viewed the matter as an ongoing process. Mr Milne replied that the Respondent was not asking people to "apply for roles". The Tribunal was not clear what point Mr Milne was trying to make when he said this. He did not expand upon this comment.

77. On 31 July 2012 Alison Wright emailed Anne McCarthy, Gary Milne and Gail Nimmo (page 162). She referred to "emails for background". It is not clear to which emails she was referring. There is one from the Claimant upon the same page sent to Mr Milne, Mrs Nimmo and Alison Wright on the same day. The Claimant referred to the concerns that he had about the process and his email of 17 July 2012 (at pages 151 and 152). In her email Alison Wright said, "Mark was the support for the NE FD and PD and is based in Sheffield. He is MS4 grade and I believe he can't drive so asking him to move to Leeds isn't an option. I assumed he had been picked up by the east (to support Doug Neal, delivery director?). Looks like he has not been advised formally. Do you know if the east are considering him for an EA role?" *(emphasis added).* Mrs Nimmo replied (also at page 162). She simply said, "Mark Bennett is an LA1 not an MS4".

78. Mr Milne said that Alison Wright had given incorrect information. He maintained the Claimant was not part of the process. It was put to Mr Milne by Mr Flynn that the Claimant and the Tribunal had had no organisational chart presented to them about who was in and out of the process. It was suggested that the Claimant had been excluded by reason of his race. This Mr Milne vehemently denied.

79. Mrs Nimmo was challenged as to the brevity of her reply at page 162. It was suggested that she had simply shut down Alison Wright's enquiry immediately and was not prepared to entertain the Claimant for the available roles. Mrs Nimmo said that she was "just applying the process". She denied that she was motivated to prevent the Claimant, as a black man, from occupying a managerial position.

80. On 31 July 2012 Mr Milne emailed the Claimant (page 163). Mr Milne told the Claimant that he "will by now have received the emails regarding how this [re-organisation] impacts upon you and importantly how the east geography will support you as part of the LA exercise in due course. I have today spoken with Gail who will ensure in my absence that you will not be missed out of the process".

81. The Claimant said that while Mrs Nimmo had got the LA1 grade to which she refers at page 162 "from somewhere" he had not undertaken work at grade LA1 since 2003. He had been undertaking the EA/PA role as assistant to Adrian Lovejoy since April 2009 and had been graded SL2 from 7 July 2003. He expressed surprise at Gail Nimmo's view given that she "was in the business at this time".

82. The Claimant maintained that Gail Nimmo's email to Alison Wright and Anne McCarthy (at page 162) and her view of the Claimant being graded as LA1 was linked to the grievances that the Claimant had raised in 2002 and 2003. In paragraph 30 of his first witness statement, he surmised that Mr Kellaway "would have naturally provided Mrs Nimmo with a handover and

given her an overview of the people issues within area including my fight to be an LA1 against his wishes". He went on to say that, "Veronica Stevens also worked as part of the close knit HR team with Mrs Nimmo at this time in 2003. It is noteworthy to add that when I had been victimised following the protected act, I had referred to the fact there was a clear under representation of black persons in administrative (ie management and senior positions). The rarity, and tiny number employed and visible in office environments in the region plus the high profile escalations of the victimisation to the chairman and Mr Kellaway's unhappiness and refusal to act on the decision, would have made it impossible for Mrs Nimmo not to be aware of my situation, and my fight to be paid and graded appropriately as an LA1 at this time in line with my white female peers".

83. For her part, Mrs Nimmo gives evidence that there was no handover when she took over the people and organisational development advisor role for South and East Yorkshire. This was a new role created by a re-structure and it replaced the personnel manager role previously undertaken by Mr Kellaway. Mrs Nimmo says that she had no recollection of Mr Kellaway mentioning the Claimant to her. He did not mention anything about the Claimant's grievances that arose in 2002 and 2003. Mrs Nimmo was on maternity leave in 2002/2003. When she returned to work to take up her new role she did not have the opportunity of speaking to Mr Kellaway at all as he had already left the Respondent's employment opting to take voluntary service. Her evidence is that the first she knew about the Claimant's grievances from 2002 and 2003 is when they were mentioned to her by the Respondent's solicitors in the course of preparing for these proceedings. When this was put to him in cross-examination the Claimant maintained that Mrs Nimmo "would have" undertaken a handover from Mr Kellaway. This was upon the basis that there was what the Claimant described as a "strong handover culture" within the Respondent and that Mrs Nimmo had made reference (at paragraph 52(c) of her witness statement) to her handing over to a colleague named Joanne Burgoyne upon her change of role.

84. Upon this issue we prefer the evidence of the Respondent. Although the Respondent produced no documentary evidence of the date of Mr Kellaway's departure from the organisation, it is credible and plausible that Mrs Nimmo will recall the dates of her maternity leave and that that caused her to be out of the business at the time of Mr Kellaway's departure. While there is some justification in the Claimant's evidence about a "handover culture" (based upon what Mrs Nimmo herself says in her witness statement) the reality is that the Claimant is left only surmising without evidence that there would have been a handover from Mrs Kellaway to Mrs Nimmo.

85. On 31 July 2012 Anne McCarthy replied to Gail Nimmo's email of the same day. Anne McCarthy's reply is at page 165A (which also replicates the emails that we have seen at page 162). She said that the Claimant "was an LA based in the East and has been providing PA support." It was suggested to Mr Milne that no one corrected Alison Wright's statement of fact in her email of that day to the effect that the Claimant "was the support for the NE FD and PD" (emphasis again added). It was suggested to Mr Milne that this impression was not corrected because in fact that was the Claimant's role: to support two operations directors. This Mr Milne denied. Anne McCarthy went on to say in her email that the Claimant "is a graduate and I think a good guy so an option for Doug [Neal, delivery director] if you are not already sorted." Mr Milne

accepted that Mr Neal was at the same managerial level (in his capacity of delivery director, Notts, Lincoln and South Yorkshire) as the other operations directors.

86. Alison Wright continued to be concerned. On 3 August 2012 she emailed Anne McCarthy (page 165C) to say, "I'm a bit confused as Mark seems to think below that he is not an LA1 as advised by Gail this week. No matter what his grade can you get someone in the east to have a chat with Mark about his options please? I would have expected him to be considered for a support role to a director given his location in Sheffield. How come Doug Neal hasn't picked up Mark as his EA given he is new to role and presumably based in Sheffield?"

87. Anne McCarthy emailed Helen Diksa of HR (presumably in response to Alison Wright's email) on 6 August 2012 (page 165C). Alison Wright was copied in to the email as was Gail Nimmo. Anne McCarthy said that the Claimant "is part of the old NE support staff. You can see from this chain he is feeling a little upset. Mark is based in Sheffield and as such is east resource now. Please can you arrange for someone to talk to him about any plans you have for him. I understand Gail is having some dialogue with him and so you may want to ensure you are all joined up".

88. It appears that Alison Wright's email at page 165C was prompted by an email sent from the Claimant to Mr Milne and copied in to her and Gail Nimmo. This is at pages 166 and 167 and is dated 3 August 2012. The Claimant said, "I am very baffled and extremely disappointed, and saddened by all this. Just to confirm I have not been an LA1 grade for over nine years, yet I am being treated for the purposes of the restructure exercise announced on 30 May 2012, as though I currently perform a role that I last performed nine years ago. An error has clearly been made and I am unfairly disadvantaged as a result. As you know, my position is that my templated role as personal secretary/assistant/support to the north east regional process director (for the last three to four years) has been clearly and directly affected by these boundary changes and rationalisations". Mrs Nimmo acknowledged the Claimant's email on 5 December 2012 suggesting arrangements be made for there to be a discussion about the issues raised. We note that the Claimant mad no reference here to providing EA/PA support to the north east region finance director.

89. Mr Peacock asked the Claimant whether he maintained that the unfair disadvantage that he refers to in his email of 3 August 2012 was by reason of his race. In particular, the Claimant was asked whether it was his position that Mr Milne was "doing this because of race". The Claimant said in reply that he was being less favourably treated than were others. He said that it was Mrs Nimmo who advised Mr Milne that he was grade LA1. He appeared to point the finger at Mrs Nimmo as being behind his less favourable treatment.

90. In her report commencing at page 725 (to which we have made reference already) Erica Wilkinson classified the Claimant's email of 3 August 2012 as a grievance. We again refer to page 727.

91. On 9 August 2012 the Claimant sent a lengthy email to Mrs Nimmo (copying in Alison Wright and Gary Milne). We refer to pages 168 and 170. It followed on from a discussion with Mrs Nimmo of 7 August 2012. Again, this email was classed by Erica Wilkinson as a grievance in the report (at page 727). The gist of the email was consistent with what the Claimant had been repeatedly saying

from May 2012. Firstly, he said that he had not been performing work at LA1 grade for nine years. Secondly, he said he was "clearly a member of the immediate affected population, the line manager who I support has been directly affected by the changes and hence my role is and clearly has already been directly affected by the changes". He recorded that Gail Nimmo informed him that he was not given access to the portal because "I was not a managerial grade and that the managerial grade was being consulted with first". He said that Mrs Nimmo had told him that he was "a CWU grade and that I would be consulted with later". The Claimant recorded Mrs Nimmo's acknowledgment that the Claimant had been performing a role that had been "commonly graded at a higher level for quite some time (three to four years)" prior to the Review.

92. The Claimant then went on to say that Mrs Nimmo had "stated that I had not been forgotten about and that she was checking to see what roles were available in the east geography." The Claimant said in evidence that he attached a sinister interpretation to Mrs Nimmo's reference to him not being forgotten about and he was linking this with the 2002 and 2003 grievances.

93. In evidence under cross-examination Mrs Nimmo denied that she had, as the Claimant contended in his email at page 168, acknowledged that he had been performing work at a higher level than was commensurate with grade LA1. Mrs Nimmo said that no one performing the EA/PA role in the north east region (prior to the Review) was of managerial grade. To corroborate her evidence Mrs Nimmo referred to the example of Brenda Allen.

94. Mr Flynn suggested that this evidence was incorrect. He cited as an example Helen Perry. It will be recalled that she was appointed to the role of area manager support on 2 June 2008 (page 926). This role was graded MS4 with effect from 1 July 2008 (page 927). In November 2009 she took up an executive assistant role. Her evidence is that, "this involved providing managerial grade at level support to the regional process director and the regional logistics director". Thus, she says, "I had to support two operations directors, which were deemed to be the busiest director roles". Helen Perry therefore (by way of reminder) supported Mr Milne in his capacity as process director for the Midlands (prior to him taking over the north east process director role from Mr Lovejoy at which point the Claimant became Mr Milne's EA/PA support).

95. The Claimant's point was that Mrs Nimmo was incorrect to say that others performing the EA/PA role were not of managerial grade and that assertion was disapproved by the example of Helen Perry. Mrs Nimmo maintained that she was correct at least so far as the old north east region was concerned. She surmised that different grading practices may have been employed elsewhere in the country. She accepted that this was not explained to the Claimant at the time and that the only explanation offered to him for him not being allowed to enter the portal was that he was not recorded as holding a role as managerial grade.

96. Upon this issue Mrs Nimmo was taken to Mrs Perry's email of 7 August 2016 (at pages 880 and 881). (This was the email from her addressed to Mr Peacock to which we referred earlier at paragraph 22). It will be recalled that she (Mrs Perry) said that she was not aware that she had ever been graded SL2 which "was an old typist grade which is now an obsolete grade". She said that the area manager's support role was already graded MS4 when she was

promoted into it on 1 July 2008. She said that, "I was aware that other area manager support roles were still SL2s as many of the old typists/secretaries were placed into these roles when the old typist roles became obsolete. I have spoken to the person who had this role previously when it was changed from SL2 to MS4 grade." She told Mrs Perry that this re-grading was at the time that the Midland area "took on mid Wales so we became north west Midlands and mid Wales". The re-grade to MS4 from SL2 for the previous incumbent followed an assessment and interview exercise. Helen Perry said "this was the reason behind the re-grading as our area was substantively increased in size compared to other areas which didn't increase in size".

97. Mrs Perry then referred to her becoming EA/PA to Mr Milne on 18 November 2009. Her grading remained MS4 but the job title changed to executive assistant. She said, "Although I was already an MS4 I had to sit a further assessment and interview for this role along with others who applied. Some EA/PA roles were still SL2s or LAs at this point as this is what they were graded at under the restructure." She then said that SL2 grades supported the support directors (for example HR, finance and quality) which were deemed not to be as busy as were operational directors. Hence, those supporting the latter were, according to Mrs Perry, given the MS4 grading.

98. When taken to Helen Perry's explanation in cross-examination Mrs Nimmo maintained that in the old north east region no one supporting the operations directors or indeed the support directors were graded MS4. It was put to Mrs Nimmo that there was no corroborative evidence for what she had said.

99. On 13 August 2012 the Claimant emailed Mrs Nimmo (copying others including Mr Milne). The email is at page 171. Again, Erica Wilkinson regarded this as a further grievance (by reference to the table at page 727). The Claimant complained of becoming "increasingly confused and concerned". The Claimant's grievance appears principally to have been around the impression he obtained from Gail Nimmo's email to him of 10 August 2012. This email is at pages 171 and 172. Mrs Diksa was now the new HR director for the east geography. It appeared from Gail Nimmo's email that she was passing the matter on to Helen Diksa. It was suggested by Mr Peacock that by doing this Gail Nimmo was in fact dealing with the matter as she had briefed Helen Diksa. The Claimant was plainly unimpressed with this both at the time (the final paragraph of his email of 13 August 2012 at page 171 portraying disappointment that responsibility had been passed on to somebody else) and also before the Tribunal. The Claimant's disappointment with Gail Nimmo's handling of the matter centred upon her maintaining her position that the Claimant was grade LA1 and, as he saw it, passing the buck to Ms Diksa.

100. On the same day, 13 August 2012, an email was circulated (page 173). The subject of the email was "team north: appointment announcement". This was sent from the operations director for the north geography. It was said that, "going forward the three former regions will now be known as "team north" with delivery directors covering certain areas." These were north and east of Scotland, north and west of Scotland, north of England and Dumfries and north of England and West Yorkshire. Gary Milne was appointed delivery director to the latter (although that role was to be covered by another manager on a temporary basis pending Mr Milne working on the "north east mail centre strategy"). The new appointments were to take effect from 1 September 2012.

101. In paragraph 33 of his witness statement, Mr Milne says that he was part of the leadership team that met at the Respondent's officers in Farringdon in London to assess the CVs and other information uploaded on to the portal by the directly affected managerial population for the north geography. No date is given for this meeting nor was the Tribunal told who else was present. We infer however that those named in the email at page 173 were present alongside Mr Milne to assess the attributes of those participating in the portal exercise.

102. At paragraph 34 Mr Milne says, "In headline terms, the way it worked was that we had in front of us the template with the new managerial roles we needed to fill for each of the operational functions in the geography. We assessed the portal information against each role to identify any "matches". This was replicated for the other four geographies across the country." Mr Milne says that it was in this context that Michael Errington was matched against the EA role to which he was assigned (according to the organisational chart at page 174). He had been allowed into the portal being a "substantive grade ML3 manager".

103. Mr Milne tells us that he was the only individual "matched" to the EA roles at page 174. As we know, there was no "match" to the EA templated roles ultimately taken by Diane Pickett, Brenda Allen, Gloria Ross and Anna Sams.

104. The Respondent produced no notes or documentation of the meeting in Farringdon. When asked as to their whereabouts Mr Milne said that he "doesn't know where they are". He also agreed with Mr Flynn's proposition that there was no delineation between the EA/PA role carried out or assigned to Mr Errington on the one hand and to the female employees subsequently appointed to EA/PA roles. As has been said, the female incumbents were, upon Mr Milne's evidence, not part of the portal process being at SL2 grade prior to the review and, as he put it, they were "flowed through". It bears repeating that Mr Milne was confused as to whether the list at pages 158B and 158C was a vacancy list or a list of positions that had been filled.

105. On 17 August 2012 the Claimant emailed Mrs Nimmo and others reiterating his complaints that he had not been permitted to participate in the portal exercise. Mrs Nimmo replied to say that the matter was now being dealt with by Helen Diksa. We refer to pages 180 to 182.

106. As a result of the matching carried out as part of the Review Helen Perry was appointed to the position of event planner at grade MS2. She sent an email to Mr Milne to this effect on 22 August 2012 (page 183).

107. On 17 August 2012 the Claimant spoke to Mr Neal. At paragraph 37 of his witness statement the Claimant says that Mr Neal made contact with him "out of the blue" and that he had never met him or spoken to him previously. The email chain generated by this conversation is at pages 185 to 187. The Claimant asked Mr Neal to confirm the grade of the role being offered or suggested in their conversation. Mr Neal then replied and asked the Claimant to confirm his "current status/grade etc". The Claimant replied, "I was the PA/support to the process director for the north east region." Mr Neal said that, "the grade will be your substantive grade reporting to Paul Pemberton who will be my business partner and programme lead for Notts, Lincoln and South Yorkshire".

108. Mr Neal told the Claimant on 31 August 2012 (page 185) that he had "asked the question with the HR team to confirm status so I can come back accordingly". The Claimant's account is that Mr Neal never reverted to him.

109. There are emails in the bundle at page 526 dated 1 August 2014. These were generated by Mrs Mee's subsequent investigation into matters. It appears that Mrs Mee asked Mr Neal for his recollection of events. Mr Neal said, "due to the complexities the complaint was handed to Diane Cashell HR (who has now left the business). I did input we may be able to find role (LA) in programmes but did not materialise and no further conversations were had". It is not clear what was meant by this comment.

110. The Claimant says at paragraph 37 of his witness statement that the evidence is that Mr Neal "was only talking about an LA1 role (page 526). He was not talking about a PA/EA role working to him".

111. At page 189 we see an email from Diane Cashell to the Claimant dated 29 August 2012 informing him that she "was one of the new HR team for east and Helen Diksa has asked me if I can help resolve your current grade and job situation". The Claimant complained to her on 10 September 2012 (following a return from holiday) about that the matter being handed over to somebody else (pages 188 and 189).

112. On 3 September 2012 Brenda Allen, Diane Pickett, Gloria Ross and Anna Sams were all appointed to EA roles. At this stage the Claimant had no meaningful work to undertake.

113. On 11 September 2012 the Claimant raised a further complaint with Mrs Nimmo and Helen Diksa (page 190). Again, this was regarded by Erica Wilkinson as a grievance (page 727). The Claimant complained that:-

- For the purposes of the grading exercise he had been treated as someone graded at LA1. He had not operated at that level for nine years and had been performing the PA/EA role for the north east process director for the last three to four years.
- There were roles that the Claimant could have been moved into but he was not given details of those opportunities.
- He was not considered for his old role in the new structure in the north geography because it was wrongly thought that he could not drive to Leeds. The Claimant said he was able to drive and "I live in Sheffield anyway".
- The Claimant complained that "a manager whose voluntary redundancy request was first accepted was persuaded to stay. His placement into a role has been confirmed at the time I was voicing concerns about the fairness and the legality of the procedure applied to me". This appears to be a reference to Mr Errington who had applied for voluntary redundancy but was instead, as we have seen, placed in an EA role (according to page 174).
- The Claimant complained that, "one of my counterparts who performs my role in another area and who was able to access the portal has secured a promotion to a much higher grade". The Tribunal is not clear to whom this refers. The Claimant does not clarify the matter in his witness statement (in particular at paragraph 39). It is a possible reference, we infer, to Mrs Perry.

114. The Claimant's complaint was acknowledged by Gail Nimmo on 11 September 2012 (page 191). She says that she was "saddened" to receive the Claimant's email. She said that the matter was being dealt with "via Helen Diksa and the team in the east".

115. On 17 October 2012 the Claimant submitted a paternity leave request. Diane Cashell asked Mr Sayers to deal with the matter (page 193). This was upon the basis that Mr Sayers was "currently showing as Mark's line manager on PSP."

116. It was around this time that Mr Sayers, in his capacity as head of resourcing for the east geography as part of the 2012 Review, was asked to liaise with the Claimant and a number of other employees in the east geography to source suitable roles. We refer to paragraph 6 of Mr Sayer's witness statement.

117. Mr Sayers says that he "experienced difficulty from the outset in that Mr Bennett did not want to engage with me. He refused to meet, suggesting this would cause him stress and anxiety". Mr Sayers sent an email to Mr Milne and Mrs Nimmo to this effect on 30 October 2012 (pages 196 and 197).

118. In cross-examination, the Claimant denied being reluctant to talk to Mr Sayers. The Claimant says that Mr Sayers asked him to whom he reports and said that he (the Claimant) said that Mr Sayers had "best check with Helen Diksa and Gail Nimmo". The Claimant says that Mr Sayers made the suggestion that the Claimant revert to work as a post delivery person. The Claimant's account was that this suggestion angered him "as 96% of black employees are postmen".

119. That Mr Sayers made this suggestion is corroborated by the email at pages 196 and 197. We refer to the final paragraph where Mr Sayers informed Gary Milne and Gail Nimmo that "one possible option would be for him to work in the operations" (being the Respondent's term for postmen and women). Mr Sayers confirmed in evidence work in 'operations' meant working as a post delivery person. It was suggested by Mr Flynn that this would be a significant demotion of status having worked for the past few years as EA/PA support to the regional process director. Mr Sayers accepted that the roles were "different". Mr Sayers accepted that the Claimant had told him that he had not worked as an LA1 grade for a period of nine years. He said that he could not recall the Claimant commenting the process had had an injurious effect upon his health as the Claimant was contending.

120. On 16 November 2012 Diane Cashell wrote to the Claimant (page 198). She said that the Respondent had identified a role for him that she believed "to be a good fit for your skills, knowledge and experience". This role was as mail centre manager assistant. It entailed "a direct report to Jon Adams, the plant manager for Sheffield." Diane Cashell said that she would like the Claimant to report to Mr Adams on 26 November 2012. She attached a job description and informed the Claimant that the role was graded LA1.

121. The Claimant considered this to be a demotion. Not only was it at LA1 grade it was also, he said, supporting a plant manager rather than an operations director.

122. A further difficulty for the Claimant (referred to at paragraph 50 of his witness statement) was that the mail centre manager assistant role was based in Sheffield which was a mail centre earmarked for closure within the next 12 months. (In fact, the same situation pertained when the same role was offered to him in March 2013 in Hull and Doncaster) His view, therefore, was that he

was "essentially being given the opportunity to accept a demotion in the knowledge that I would be made redundant within a year". Mr Sayers considered that the mail centre management assistant (MCMA) role was a good match for the Claimant.

123. Mr Sayers said that he could not understand the basis upon which the Claimant sought to link his (Mr Sayers') handling of the matter at around this time with the earlier grievances. Mr Sayers said, "I knew nothing about any grievance 10 or so years previously. I still know nothing about this grievance". He also said that around the autumn of 2012, "I had never met him *[the Claimant]* and had spoken to him on only one occasion briefly". Mr Sayers went on to say that, "my understanding is that the sticking point why Mr Bennett would not accept the role at this time is that it was not a managerial grade role. The difficulty is that all of the information available to me was that he was an administrative grade and we were therefore properly offering him a role at his substantive grade".

124. Mr Sayers explained that "arrangements were made with Jon Adams to hold the vacancy for Mr Bennett whilst we attempted to resolve the situation." Mr Adams gives corroborative evidence to that effect at paragraph four of his witness statement.

125. There was an issue between the parties as to whether or not the Claimant in fact ever fulfilled the MCMA role. The Claimant's case is that he did not. The Respondent's case is that he did hold that position (albeit not until 2013).

126. The Claimant was on paternity leave between December 2012 and January 2013. Before going on paternity leave he had asked Diane Cashell to organise a voluntary redundancy quote (page 199).

127. The Claimant raised a complaint on 7 March 2013 about his treatment generally (pages 204 and 205). In particular, he complained that he had not received the voluntary redundancy quote requested of Diane Cashell. He asked Mr Sayers, Helen Diksa and Mrs Nimmo to progress his early voluntary redundancy request "for the sake of my sanity".

128. In addition to the by now familiar complaints from the Claimant he also raised the question of Mr Sayers seeking to source a lower level LA1 role for him as MCMA to Mr Adams (and similar roles in Hull and Doncaster).

129. It appears that the email of 7 March 2013 was prompted by Mr Sayers' email to the Claimant of 1 March 2013 (pages 201 and 202). This informed the Claimant of Diane Cashell's departure from the business and Mr Sayers' pursuit on his behalf of "an opportunity for you in the Doncaster mail centre in a support role to the plant manager".

130. Mr Sayers responded to the Claimant's email of 7 March 2013 on 10 March 2013 (page 203). He accepted the Claimant's suggestion of a face-to-face meeting. Confusingly, he referred to the Claimant's current grade as NS2 "which is broadly equivalent to an LA1 grade". Mr Sayers accepted this reference to be an error. Grade NS2 does not feature in the list of grades produced for us by Mr Peacock. Mr Sayers appears to have later compounded that error by making a reference (in an email to Joan Mee of 1 September 2014) to the Claimant being at grade NA2. Again, this does not feature in Mr Peacock's list of gradings. Mr Sayers accepted that he had not investigated all

of the Claimant's complaints or the history of the matter and simply went upon what he was told by others about the Claimant's grading.

131. On 13 March 2013 the Claimant replied to Mr Sayers' email (page 210). He now declined the offer of a meeting requesting that all contacts remain by email "giving all of my previous attempts at contacts around these issues". He complained about the lack of process with the voluntary redundancy quote. He recorded that it had been "firmly and clearly established and acknowledged that my "current role" is the permanent templated personal/executive assistant with the north east process and collections director and has been for the last three to four years (nearly five at the current time)". He recorded the Respondent's "recognition and acceptance that PA/executive roles to directors should be and are graded at MS4 and above" and that there is "a distinction made between the PA/executive assistant role and the LA1 role". He also noted what he described as "the overall confusion and insult" around the Doncaster and Hull MCMA roles.

132. The Claimant was in fact undertaking no meaningful work around this time. In evidence under cross-examination he said that he had undertaken no work from August 2012 (other than writing grievances).

133. Mr Sayers asked the Claimant to report to Mr Adams who would provide the Claimant with meaningful work. This request was made in an email of 20 March 2013 (page 213). The email was headed 'VR quote and interim arrangements.' The Claimant replied on 28 March 2013 to say that he had been in touch with Mr Adams (page 213).

134. The Claimant did not in fact do any work under the line management of Mr Adams at this time. He was absent from work due to work related stress between 2 April 2013 and 2 June 2013. The VR quote was provided on 28 March 2013 (page 214).

135. The Claimant says in paragraph 54 of his witness statement that, "my GP confirmed that I was suffering from work related stress (page 216 of the bundle)." This is an email from the Claimant to Mr Adams of 2 April 2013. It is timed at just after midnight. The Claimant informed Mr Adams that he was unable to sleep and that his partner was very concerned about him. At paragraph 54 of his witness statement the Claimant says, "my grievance had still not been addressed by this time and it was evident from the Respondent's offers to me of LA1 grade posts that it would continue to impose the lower LA1 grade upon me and not treat me equally to my EA/PA colleagues". The Claimant accepted that he could have had meaningful work to do from around November 2012 but that he did not take up the opportunity viewing the MCMA role as a demotion.

136. On 2 April 2013 Mr Adams replied (page 217). He said, "I am on leave this week, so could ask you ring or text me daily please as I won't be checking my emails but I am more than happy to remain in contact with you while your away from work".

137. At pages 218 to 219 we see a transcript of text messages between the Claimant and Mr Adams. The Claimant was concerned that Mr Adams was set sending him to ATOS (the Respondent's occupational health providers) very quickly. Mr Adams made this suggestion on 4 April and then 8 April 2013. It was suggested to Mr Adams in cross-examination that he was behaving

oppressively towards the Claimant in wishing to refer him to occupational health so soon after he commenced sick leave and by asking him to telephone or text on a daily basis. Mr Adams accepted that the Respondent's policy is that normally an OH referral would be made after no fewer than 28 days' absence. The Tribunal was referred to the relevant section of the Respondent's sickness absence management policies and procedures in the bundle commencing at page 89E (in particular at page 89L). Mr Adams denied that he was behaving towards the Claimant in an oppressive manner because the Claimant was "rocking the boat" (as Mr Flynn put it).

138. On 16 April 2013 Gerry McDonnell of the east geography resourcing team emailed Helen Diksa and copied in Mr Sayers (page 220A). Mr McDonnell said that following the re-focusing operations programme the Claimant had "failed to secure an appointment and has remained surplus since September 2012. Mark was previously a "director's secretary – NS2" based at Sheffield mail centre". He went on to say that efforts had been made to re-deploy the Claimant but without success. Mr McDonnell requested authority to make a formal offer of voluntary redundancy to the Claimant.

139. It was suggested to Mr Sayers that this indicated that the Claimant had not in fact been re-deployed into the MCMA role working alongside Mr Adams. Mr Sayers said, "I need to understand the context. As far as I am aware we didn't put him any role. I had very limited contact with the Claimant and in March 2013 he was working with John Adams". It was suggested on behalf of the Claimant that the reality was that Mr Sayers' suggestion of 20 March 2013 (page 213) was a request for the Claimant to work with Mr Adams as opposed to an appointment to role and that this was done in order to give the Claimant something meaningful to do. Mr Sayers said he made the suggestion "to make sure the Claimant had a role within the Respondent". We note that Mr McDonnell made reference to the Claimant's grade as "NS2" (thus appearing to repeat Mr Sayers' error around the grading).

140. When Mr Adams was taken to the email at page 220A, he said that it was not his understanding that the Claimant remained surplus. Mr Adams maintained that the Claimant's substantive role was as MCMA to him. This contrasted with what the Claimant was told as late as 25 July 2014 by Steve Leach, HR director north (pages 449 and 450). This was to the effect that the Claimant did not hold a substantive post. Mr Adams maintained that the information contained at pages 449 and 450 was incorrect "according to my understanding".

141. On 17 April 2013 the Claimant raised concerns with Mr Adams about the way his sickness absence was being managed. We refer to pages 221 and 222. He set out the history of contact following 2 April 2013 and then said, "despite the seven updates I have provided, my doctor's note sent last week, confirmation that I wasn't in a position to speak and my check to see if you had received the doctor's note and my regular updates, I am unsure why you have sent me seven text messages over a 13 day period, as I can clearly confirm that this is not assisting my recovery and is making me feel worse. Enough is enough. My partner has noticed that some of your notes and the number of them are causing me distress and are clearly not aiding my recovery".

142. Mr Adams replied on 18 April 2013. He said that his only intention was to support the Claimant in his return to work. We refer to page 223.

143. On 18 April 2013 Mr Adams invited the Claimant to a sickness absence meeting (page 224). The Claimant did not attend that meeting as he felt unable to talk about matters. In the light of that Mr Adams wrote again on 23 April 2013 (pages 225 and 226). Mr Adams suggested referring the Claimant to the Respondent's occupational health provider. He referred to the Respondent's absence management procedures which contemplate such a step as well as interview with a line manager to discuss continued absence. Mr Adams said, "I'm giving you a final opportunity to consent to attend for an appointment with ATOS and I have included a copy of the consent form with this letter. I must advise you that if you fail to provide consent on this occasion by 29 April I will cease your Royal Mail sick pay entitlement, reducing your sick benefit to statutory pay only".

144. The Claimant replied on 27 April 2013 (pages 229 to 231). He complained again about Mr Adams' handling of his sickness absence. In particular he said, "Are ultimatums a standard practice for requesting, agreeing support, and is this the normal timeline for stopping someone's pay whose GP has medically signed them off with stress at work? At no time have I refused consent". He went on, "I have a valid suspicion that the only real focus has been on stopping my pay". He reminded Mr Adams that, "My longstanding concerns about my distress at work over the last 10 months has been raised and well-documented throughout that period, and should you require it, I would advise you to touch base with Helen Diksa, Brad Sayers and Gail Nimmo to acquire more details as these issues and concerns are well covered in my notes to them". The Claimant concluded, "I am firmly focused on making a return to work".

145. A business referral form to ATOS (completed, it seems, by Mr Adams) is at pages 238A and 238B. This is dated 1 May 2013. Mr Adams gives the relevant condition as "stress, work related issues eg bullying and harassment". Mr Adams describes the Claimant as being "in a surplus situation". Mr Adams went on to observe that, "Mark has refused to contact me verbally and has relied on texts and email, he has however contacted his CWU rep verbally to discuss his issues. I've invited Mark to meet with me on several occasions to aid speedy resolution to which he has declined". When taken to this remark (around being surplus) in the referral in cross examination Mr Adams said that there was "a lot of uncertainty".

146. On 2 May 2013 Mr Adams told the Claimant that an ATOS appointment had been made. We refer to page 240.

147. On 2 May 2013 an email was sent from the people system portal of the Respondent to Mr Adams. This is dated 2 May 2013. It refers to an employee change request. The reason for the change was said to be "position change – duty change (non contr chg) effective date 1 April 2014". No evidence was advanced from the Respondent as to what this meant.

148. On 15 May 2013 the Claimant was invited to attend a sickness absence meeting (page 242). This followed the ATOS referral which took place on 3 May (to which we have already made reference).

149. The sickness absence meeting went ahead on 29 May 2013. It was agreed that the Claimant would return to work. He did so on 2 June 2013. In evidence under cross-examination Mr Adams fairly accepted the Claimant wished to return to work and to remain in the employ of the Respondent.

150. On 31 May 2013 the Claimant was sent an offer of voluntary redundancy (pages 244 to 249). The letter said that the "voluntary redundancy offer is not compulsory and you have the option to accept or reject it. If you do not wish to accept this offer you will continue in employment". The explanatory letter is at pages 244 and 245. This refers to Appendix A (which is at page 246) and Appendix B (which is at pages 247 and 248). The document which is at page 249 was for the Claimant's response. Appendix A sets out the offer of voluntary redundancy compensation in the sum of £40,068. The deemed last date of service if accepted was said to be 23 August 2013. Appendix B sets out the terms and conditions of voluntary redundancy.

151. When taken to this document in cross-examination the Claimant said that the offer of voluntary redundancy was unsolicited. This was difficult evidence to understand given that the Claimant had asked for an offer to be made to him for voluntary redundancy on 7 March 2013.

152. The Claimant complained on 5 June 2013 that the offer of voluntary redundancy had been made (page 256). The complaint appears to be about the fact that the offer was sent while the Claimant was absent from work through ill health.

153. The Claimant's intended return to work was delayed. On the Claimant's case this was because the voluntary redundancy offer had been sent to him. He was therefore signed off as unfit by his GP for a further two weeks (page 250). The Claimant complains that the offer of voluntary redundancy "was sent to me two days after my return to work meeting on 29 May 2013 despite me having stated during the meeting that I was determined and focused upon my return to work and re-iterating this with email correspondence (page 257 of the bundle). To receive this correspondence was extremely distressing at this time given my sickness absence and the reason for my absence. My logical conclusion was that this again was one of a series of continuing acts and that the Respondent was continuing to victimise and harass me following the grievance I had raised in 2002 and ultimately my demotion or exit from the business". The Claimant maintained in cross-examination that the voluntary redundancy letter was part of a conspiracy against him by reason of the protected act of November 2002 and was a further instance of discrimination upon the grounds of race. The Respondent's position is that the voluntary redundancy process was not progressed anyway and, as Mr Peacock put it, "it just falls away".

154. On 28 June 2013 the Claimant confirmed that he would return to work on 1 July 2013 (page 259). He planned to return on the basis of the phased stages set out in the ATOS report. The Claimant was assigned work by Mr Adams. Mr Adams says in paragraph 14 of his witness statement that, "Mr Bennett returned to work on 1 July 2013. By this time we had been able to meet and he had attended an OH assist consultation. We were therefore able to put in place a phased return to gradually build up his hours whilst doing meaningful work during the rehabilitation period". Mr Adams goes on to say at paragraph 15 that, "following Mr Bennett's return to work I asked him to work on projects, which included reviewing various mail centre plans with the shift managers and analysing outcomes from a staff survey. Mr Bennett's email to various shift managers of 29 July 2013 provides the headline summary of the project (page 260)."

155. It appeared to be common ground that the work assigned to the Claimant by Mr Adams at this time was important and meaningful work. The Claimant said that he was engaged to analyse an annual survey and he considered it to be important work. The outcomes from the staff survey can be found in the bundle at pages 261 to 262. At page 261A, it is said by the Respondent that "employee engagement is a critical part of Royal Mail group's corporate scorecard". Mr Adams thus commented (agreeing with the Claimant) that the task that he was assigned upon his return to work was an important one.

156. There was no issue that the Claimant undertook this task seriously and conscientiously. He emailed Mr Adams about it on 2 August 2013, 5 September 2013, 6 September 2013, 23 September 2013 and 22 October 2013. The relevant emails are at pages 264 to 267. We need not set out the substance of them.

157. It was not until 8 November 2013 that Mr Adams replied by email to the Claimant. That email is at page 264. Mr Adams apologised "for the slow response". He commended the Claimant upon an excellent piece of work. In evidence under cross-examination Mr Adams suggested that while he had not responded in writing until 8 November 2013 "we would presumably have had conversations about it". Mr Adams did not say this in his witness statement. He excuses his slow response upon the basis that he "was responsible for managing a significant operation at a large mail centre and was constantly under pressure to prioritise my work". He went on to say that "when I had the opportunity to do so I thanked Mr Bennett and set up a meeting to go through it with him in detail".

158. In an email of 5 November 2014 (at pages 645 to 648) (prepared in conjunction with the Claimant's stage three grievance appeal to which we shall come). Mr Adams did not say that there had been any discussion with the Claimant about the project upon which he was working on Mr Adams' behalf. We refer in particular to the pre-penultimate paragraph at page 647.

159. Given the unsatisfactory nature of Mr Adams' evidence upon this issue the Tribunal accepts the Claimant's case that Mr Adams had no substantive dealings with him around the project until November 2013.

160. The next issue chronologically centres upon the publication of an article in the Shropshire Star on 5 September 2013. This refers to the Shrewsbury Royal Mail sorting office and its scheduled closure by March 2014. The headline reads that "Shrewsbury's Royal Mail sorting office is expected to fully close by March next year, it was claimed today". The article then reads, "The gradual closure of Shrewsbury Mail centre …..is ongoing with the process due to be completed in or around six months time – by the end of March 2014". It goes on to say that, "the decision to axe the centre means that mail for Shropshire and mid-Wales will be sorted in Chester, Wolverhampton and Cardiff. The plans were first put forward after it was revealed mail items posted to addresses in the area from other parts of the country had fallen by 24.3% in five years".

161. The relevance of this is to the issue of the extent of Helen Perry's role. Mr Milne said (at paragraph 17 of his witness statement) that, "the Midlands geographical area increased in size with the addition first of mid-Wales and then Shrewsbury *[prior to the Review]*. The Shrewsbury operation and staff were taken into the region with the closure of the Shrewsbury mail centre. The

grade SL2 (PA to director) role at Shrewsbury was absorbed into Helen Perry's role".

162. The Claimant's point was that Mr Milne was incorrect to say that the Midlands geographical area had increased in size prior to the May 2012 Review. He drew support for that proposition from the Shropshire Star article. Mr Milne refuted that. He said, "We do plan a long time in advance" and that work had gone from the Shrewsbury mail centre into the Midlands geographic area well before March 2012 and prior to the Review in 2012. When taken to the Shropshire Star article, Helen Perry corroborated Gary Milne's evidence. She said that the closure of the Shrewsbury mail centre had already happened and the Midlands area at the time had got larger. She said that her workload had increased "from 12 to 23 delivery offices".

163. An article upon the same issue (again appearing in the Shropshire Star) is in the bundle at pages 263C and 263D. This is dated 12 December 2013. The article said that "it will be the end of an era at Shropshire's only Royal Mail sorting office this Christmas" as "it will be the last time the region's festive mail will be sorted there". This was because of the closure of the "historic mail centre" in Shrewsbury at the end of March 2014. Kieran Brittain, the delivery officer manager at Shrewsbury, was quoted as saying that, "the mail centre part of the organisation in Shrewsbury will move off to Wolverhampton, Chester and Cardiff, taking the SY, LD and TF post codes". When taken to this article, Mr Peacock suggested to the Claimant that the March 2014 date was about "shutting the doors" (as it was put). The Claimant said that he did not accept that to be the case. He did not accept Mr Peacock's proposition that a mail centre closure takes place over a period of around seven years. The Claimant accepted that a national mail centre closure programme was in place between 2011 and 2013.

164. Upon this issue, the Tribunal prefers the evidence of the Respondent. The Tribunal found Mrs Perry to be a most credible witness (particularly in relation to the concessions that she was prepared to make in cross-examination around the Claimant's work: we shall come to this issue in due course). She impressed the Tribunal as a very competent individual and we saw no reason to disbelieve her account that the number of delivery officers with which she dealt in all but doubled. Further, the Claimant conceded that a national programme had been in operation between 2008 and 2013 which lends credence to the Respondent's case that mail centre closure programmes do not happen overnight (or over a short time scale).

165. On 21 November 2013 the Claimant emailed Mr Sayers, Mrs Nimmo and Helen Diksa. This is dated 21 November 2013 (pages 295 to 297). He said, "I am writing to you because I continue to be refused, distressed and frustrated about my current position". He said, "As you are probably aware, the regional rationalisations (from 11 regions to five) and streamlining of the regional positions were first announced on 30 May 2012. It is now 20 November 2013 and no consultation has ever been provided to me". We shall not set out a précis of the rest of the Claimant's complaints. By this stage, the Claimants complaints were following a familiar path. On the same day the Claimant escalated the matter to the Respondent's chairman's office (pages 297A to 297D).

166. On 5 December 2013 Sue Lester, service team leader in the employee relations case management team emailed the Claimant (pages 305 and 306). She said that because of the nature of the Claimant's grievance and complaints of 21 November 2013 it was appropriate to use the Respondent's bullying and harassment procedure rather than the grievance procedure. Sue Lester made reference to the Claimant and Karen Neely of the same department to this effect. Sue Lester went on to say that, "the purpose of this letter is to advise you that unless you agree to co-operate with an investigation carried out under the bullying and harassment procedure including attending an interview in line with the process then your allegation will be considered as withdrawn and not investigated". She called for the Claimant to reply by 12 December 2013.

167. The Claimant had in fact by this stage emailed Karen Neely on 4 December 2013 following a telephone discussion. The Claimant said in that email (at page 304A) that, "you tried to persuade me to change my grievance complaint to a bullying and harassing complaint. I made it resolutely clear that I wanted it to remain a grievance complaint. This is not up for debate. As previously advised I would like my grievance complaint to be investigated."

168. On 6 December 2013 the Claimant emailed Sue Lester (page 305A). He said, "I would like to clarify that I feel there has been a campaign where I have been discriminated on the grounds of race. Please investigate my grievance in accordance with statutory grievance procedures". He then attached details of his complaint of discrimination on the grounds of race (pages 307 to 310). In cross-examination the Claimant confirmed that the grievance referred to at page 306 was an "add on" to that which had been sent on pages 297A to 297D on 21 November 2013.

169. The Claimant referred us to the Respondent's grievance policy starting at page 80A. In particular page 80C contains the Respondent's definition of a grievance for the purposes of its policy. This provides that "grievances can vary from minor day to day issues, for example concerns over holiday requests being denied, to more serious matters such as allegations of discrimination or health and safety breaches. More generally, the policy provides that a grievance is a genuine concern or complaint that an employee has about their work or employment".

170. The Respondent's position was that there was a separate bullying and harassment procedure. The Tribunal were not taken to such a procedure although an extract of it is in the email to which we refer later at paragraph 175. In cross-examination, Mrs Nimmo accepted that Sue Lester was incorrect to say what she had at page 305 at least in the context of the Claimant's grievance about the 2012 Review. The Tribunal accepts the Claimant's case that allegations of discrimination also fall within the grievance policy that we find within the bundle. It is difficult to see how there can be any other sensible interpretation of matters given the passage that we have just cited. It was suggested that the threat to or requirement of the Claimant to co-operate with an investigation under the bullying and harassment procedure was inappropriate. Mrs Nimmo said that she "could not comment on how they *[presumably those dealing with the matter within the employee relations case management team]* came to that conclusion."

171. In the grievance document itself at pages 307 to 310 the Claimant recited the history of matters. This had now become a well trodden path. He also raised

issues about his misgivings concerning Mr Adams' management of him. In particular, the Claimant focused upon Mr Adams' management of the Claimant's sickness absence, the issue around the return to work meeting of 29 May 2013 and (from the Claimant's point of view) the unwelcome early voluntary redundancy quote, Mr Adams' management of the Claimant following his return to work and the Claimant's engagement upon the analysis of the employee opinion survey. He also complained that upon return from annual leave on 11 November 2003 "to my amazement I discovered that my job title had been changed via the people finder (an online contact system that is viewed publicly by all persons in the business) to projects administrator". The Claimant's enquiries showed that this was done by Mr Adams. The Claimant concluded that, "since submitting my initial grievance in July 2013, there has been a campaign of discrimination on the grounds of race against me". The Claimant also said, "I feel victimised for submitting a grievance complaint". *(We interpose here to say that it is not clear to which grievance the Claimant was referring. However, it is not in dispute that the only grievance constituting a protected act in these proceedings is that of November 2002).*

172. Sue Lester emailed the Claimant again on 9 December 2013 (page 311). She reiterated her position that, "claims of racial discrimination are investigated under the bullying and harassment procedure (not the grievance procedure as per your request)." Her position remained as set out in her email of 5 December 2013. The Claimant was given until 12 December 2013 to reply and was told, "if we do not receive your agreement to co-operate by then your allegation will be recorded as withdrawn". Mrs Nimmo made the same concession about Sue Lester's position on 9 December 2013 as she had about that of 5 December 2013: see paragraph 170.

173. The Claimant replied on 11 December 2013 (pages 312 and 313). He maintained his position and said that he had no intention of withdrawing his formal grievance complaint. He considered that to be appropriate as, "the main thrust and root cause of my grievance relates to the handling of my job role, profile and status following the major restructure that took place in May 2012".

174. On 12 December 2013 Sue Lester emailed the Claimant again. She maintained her position given that the Claimant had specifically mentioned bullying and harassment and discrimination upon the grounds of race. The Claimant emailed on 19 December 2013 (page 315) to say, "I am gravely concerned. The continuing insistence on picking and choosing three to four words out of four thousand somehow ignoring the entirety of my grievance and the elephants in the room, does not seem to suggest a desire, intention or willingness to carry out a full, fair and impartial formal grievance investigation". The Claimant thus maintained his position.

175. On 24 December 2013 Adrian Buckley, Appeals and Tribunals service manager north emailed Helen Diksa (page 317A and 317B). Mr Buckley said that the Claimant, "has continued to try to insist that his complaint be investigated under the grievance procedure. We on the other hand have said given his choice of language around harassment, victimisation and race that it is proper to the B and H procedure. I had originally intended to just shut it down if he did not agree but having seen his repeated emails I believe he would just divert this to the CEO positioning it as him being denied an investigation so to this end I have appointed an appeals manager (Julie Fisher) to investigate his claims under the B and H. We will write to him to invite him to a meeting and if he does not

attend then we will investigate in his absence and if he has exaggerated or made up allegations then a finding of bad faith will be open to us". The relevant part of the bullying and harassment procedure is at page 317B which concerns complaints not made in good faith and which may then expose the complainant to disciplinary action up to and including dismissal.

176. The chronology advanced by the Claimant's counsel refers to this email having initially been provided to the Claimant in redacted form. The redacted version is at page 317. As a general point, the Claimant had made a subject access request under the Data Protection Act 1998. The Respondent's position was that those documents within the bundle (of which there are many) appearing in redacted form were properly so presented to the Claimant pursuant to the principles under the Data Protection Act 1998. When disclosure in the Employment Tribunal proceedings took place then unredacted copies of those documents were sent to the Claimant by reason of the application of the different principles pertaining to disclosure as part of the litigation process. As a general proposition we accept the Respondent's position as to the reasons for the redactions to many of the documents within the bundle. However, there are instances where the Respondent's reliance upon exemptions under the Data Protection Act 1998 is less convincing. We shall consider this issue in further detail in due course.

177. We accept the Claimant's position that the Respondent wished him to pursue matters under the bullying and harassment procedure. This was because were his allegations to have been unfounded it opened up the possibility (and we put it in a higher than that) of disciplinary action against the Claimant for having raised a bullying and harassment allegation in bad faith. That option was not something open to the Respondent under the grievance procedure. At any rate, the Tribunal was not drawn to anything within the latter procedure entitling the Respondent so to do.

178. The Claimant's grievance was assigned, as we have said, to Julie Fisher. We refer to page 332A. This is in fact an email of 27 February 2014 containing an up date on the case. It records her having invited the Claimant for interview via a special delivery letters on 13 and 20 January 2014. She said that the Claimant had not attended. She sent a further letter on 27 January 2014. She then received an email from the Claimant's trade union representative saying the Claimant was not withdrawing the grievance. However, the Claimant complained of feeling pressured into turning his grievance into a bullying and harassment complaint.

179. Further, the Claimant was at this stage off sick with work related stress. The Claimant had commenced a further period of sickness related absence on 6 January 2014. He did not return to work at any stage thereafter. Julie Fisher's letter to the Claimant of 20 January 2014 is at page 231. The trade union representative's email of 23 January 2014 (to which Julie Fisher refers at page 332A) is at page 323. Richard Isdell, the CWU area processing representative, maintained that the Claimant wished his case to be heard as a formal grievance.

180. Mr Buckley continued to monitor progress. On 17 January 2014 (page 318A) he said, "Mark Bennett is I believe a manager so not sure why the CWU are writing in on his behalf". With reference to the Claimant's preferred choice of procedure Mr Buckley said, "I suspect given the nature of his claims he does

not want to run a bad faith finding risk". It was Mr Buckley's intention to shut down the grievance complaint should the Claimant continue not to co-operate. That never came to pass in fact as the CWU had by then come on the scene as acting for the Claimant.

181. Sadly, Mr Buckley has passed away. The Respondent did not call any witnesses to explain the basis of Mr Buckley's belief that the Claimant was a manger. However, the fact of that belief has obvious significance. However, that at least someone within the Respondent thought that Mr Buckley's belief was erroneous is apparent at page 319 where we see an email from "director HR operations" to "head of HR – process logistics and support (Jennifer Skila) to the effect that the Claimant "is an LA – that is his issue that he wasn't considered a manager at the last restructure". Jennifer Skila sent an email to that effect to Karen McKay, head of employment policy on 20 January 2014 (page 320A).

182. On 4 February 2014 the management of the Claimant's absence was transferred to Veronica Stevens (page 326). The Claimant was reassured by her that the Respondent was concerned about his well being. When taken to this in cross examination the Claimant was unimpressed. He said that Veronica Stevens and John Adams were "tag teaming". Mrs Stevens said in her letter at page 326 that it was inappropriate for John Adams to continue to manage the Claimant's absence given that the Claimant had raised a grievance against him. In an email of 6 February 2014 (at pages 328 and 329) the Claimant mentioned that Mr Adams had in fact been managing the absence after 6 January 2014 anyway and which post dated the grievances of 21 November 2013 and 6 December 2013.

183. On 28 February 2014 Mr Buckley emailed Helen Diksa and Jennifer Skila (page 334A). He had received an update from Veronica Stevens. This was in the context of events referred to at paragraphs 6 and 7 of Mrs Stevens' witness statement.

184. There she says that the Claimant had responded to her email of 6 February 2014 in which he said he hoped to meet with her on 25 February 2014. Mrs Stevens was unavailable that day but proposed the next day and offered the Claimant the support of occupational health. She says that the Claimant requested an appointment be scheduled with occupational health for week commencing 24 February 2014. A telephone appointment took place on 27 February 2014 but the Claimant withdrew his consent for the referral during that consultation.

185. Mr Buckley's observation on this development (at page 334A) was that occupational health "did not want to entertain his view that he should be left alone and was not fit to come back to work which he clearly did not like so he withdrew his consent during the consultation ending the route to gain a medical opinion which rather helps us going forward".

186. The Claimant complained that the Respondent was exhibiting a hostile approach to him evidenced by the email at pages 334A and that at pages 317A and 317B of 24 December 2013 to which we have already referred at paragraph 175. This hostile approach was set against the background of the Claimant being signed off as unfit for work. Mr Buckley concluded his email at page 334A by saying, "now in the light of no medical opinion Veronica will invite (then instruct) him in for the MI and if he refuses we will cease pay and

commence conduct. If he attends we will obtain the barriers to return and respond in writing potentially starting a dismissal for SOSR if he cites relationship breakdown which he seems to be doing. At the same time Julie will invite him in for the third time for his B&H (he still wants it to be a grievance I suspect owing to the risk of bad faith) if he does not attend Julie will investigate the issues raised in his various emails in his absence and reach a finding to close out his claim that he has outstanding issues".

187. Plainly, Mr Buckley could not be asked why he adopted this approach to matters. Mrs Nimmo could shed no light on matters when she was asked by Mr Flynn.

188. On 5 March 2014 Veronica Stevens wrote to the Claimant. She told him that occupational health had withdrawn the referral given that the Claimant refused to consent to assessment at the appointment on 27 February 2014. We refer to page 338. The Claimant took issue with the suggestion that he was not co-operating in an email of 5 March 2014 (page 339). He said that he was on the call with Angela Whitehead of ATOS for 40 minutes. She told him that the session had not been completed within prescribed timescales which was the reason it had not been logged as being completed. He found the call to be unsupportive.

189. On 21 March 2014 the Claimant emailed Veronica Stevens with an update as to his health. This is at pages 3443A and 343B. He again took issue with the suggestion that he had not co-operated with ATOS. He reported "feeling very tense and anxious and not sleeping well".

190. An absence review meeting had taken place on 13 March 2014. We refer to paragraph 9 of Veronica Stevens' witness statement.

191. Veronica Stevens' evidence was that she experienced difficulty engaging effectively with the Claimant over his sickness absence. She says at paragraph 11 of her witness statement that, "By 24 April 2014 the situation had reached the point where I felt Mr Bennett was not co-operating with my efforts to support him. I therefore sent him a detailed letter setting out my concerns and giving him the opportunity to reflect on his engagement with me, with the support of his CWU representative, Richard Isdell (page 370)."

192. On 24 April 2014, she told him that his sick pay was to end on 25 April 2014.She had told the Claimant that she may take such action in an email of 16 April 2014 (page 363). Veronica Stevens concluded this email saying, "if for any reason from tomorrow I form the view that you are not co-operating fully with the management of your absence I will give consideration to stopping your Royal Mail sick pay until such time I am satisfied that you are prepared to carry out all reasonable measures to allow me to manage your absence". The prelude to this email was correspondence between the Claimant and Mrs Stevens (in the bundle at pages 345 to 362). There is no need for us to rehearse the detail of that correspondence. Suffice it to say that Mrs Stevens was growing concerned about the Claimant's co-operation (or lack of it) with the Respondent's management of his absence. This then culminated in her stopping the Claimant's sick pay.

193. The Claimant did send to her a report from Sheffield Occupational Health Advisory Services dated 11 April 2014 (pages 355 to 356). Mrs Stevens said that she could not accept that report "as I am unaware what questions were

posed and have concerns that some of the information you have told them is incorrect". Adele Taylor (occupational health advisor), had said in that report that, "Mark is clearly stressed by these events and his recent dealings with ATOS. Occupational health do not seem to have been helpful. We have discussed what might be helpful in moving things forward, and it would seem sensible to agree the contents of the referral/consent form with Mark prior to another telephone assessment with ATOS". She went on to say, "I think in terms of progressing his grievances it is important to ensure that the circumstances around Mark's loss of role in 2012 are fully addressed, and that Mark is provided with a full written explanation of the decision making process that was in place, including why he was not allowed to apply for a role he says he was doing for several years, and details of the post he was to be allocated to instead". She said that the Claimant was currently actively working with his health practitioners and recommended that contact from the Respondents should be kept at a minimum "for the next couple of weeks" so that the Claimant may make the most of his treatment and concentrate on recovering to enable a return to work to take place.

194. It is suggested to Mrs Stevens by Mr Flynn that she adopted an unsympathetic approach towards the Claimant influenced by Mr Buckley. She denied that she was aware of the sentiments expressed by Mr Buckley to Helen Diksa on 24 December 2013 (page 317A). She said that Mr Buckley had just asked her to be the Claimant's contact to manage his sickness absence. She said that she had nothing to do with the Claimant's grievance or the investigation into it. It was suggested to her that the unsympathetic approach was exemplified in the threat in the email of 16 April 2014 to give consideration to stopping the Claimant's sick pay. Mrs Stevens said that it had "got to a stage where he wasn't co-operating". It was drawn to her attention in that context that the Claimant had replied to Mrs Stevens' email of 16 April 2014. His reply is dated 22 April 2014 (pages 368 and 369). He complained of being exhausted and very stressed. He complained of inaccurate information being sent directly to ATOS ahead of a revised appointment scheduled to take place on 17 April 2014. He maintained he was too unwell to attend that appointment.

195. As we say, on 24 April 2014 Mrs Stevens wrote to the Claimant (pages 370 to 374). She set out a detailed history of matters from her prospective. She succinctly summarises these in paragraph 12 of her witness statement. The points she made are:-

- That by this stage the Claimant had been absent for just under three months. The Respondent did not have occupational health guidance to assist her efforts in managing the Claimant's absence. She considered there to be no credible reason why the Claimant had not attended for one of the "many scheduled appointments" (we interpose here to say that as well as the appointment scheduled on 27 February 2014 to which we have already referred, a further appointment was scheduled on 2 April 2014 and then on 17 April 2014).
- That Mr Isdell had attended the OH assist practice in order to support the Claimant for a face-to-face consultation on 7 April 2014 (this being another scheduled appointment that the Claimant had arranged). However, the Claimant said he would not be attending just a few minutes prior to the scheduled time.

- The Claimant had declined to attend absence management meetings arranged for 11 February, 26 February, 5 March, 3 April and 15 April 2014.

196. Mrs Stevens concluded her letter: "I have formed the view that you are not prepared to carry out reasonable measures to allow me to manage your absence. As such I am now from 25 April 2014 holding your Royal Mail sick until you fully engage in this process". It was put to Mrs Stevens that curtailing the Claimant's sick pay with no or minimal notice was inappropriate in the circumstances where the Claimant had intimated feeling exhausted, anxious and depressed to the point of questioning whether the Respondent was seeking to make him feel suicidal (page 348).

197. On 28 April 2014 Veronica Stevens updated Jennifer Skila (page 380B). Mr Buckley was copied in. Reference is made to an email sent by the Claimant's partner on his behalf on 26 April 2014 (at pages 375 to 379). Mr Buckley maintained his belief that the Claimant was raising complaints in bad faith (pages 388 to 388D).

198. On 1 May 2014 Veronica Stevens wrote to the Claimant (page 407B) to inform him that she had "considered the matter as a whole and had decided to restore your pay retrospectively due to the reasons given". This appears to be a reference to an email from Richard Isdell complaining that the decision to suspend the Claimant's pay was "out with the procedure". That email is at page 400. Mr Isdell had raised a similar complaint on 29 April 2014 (page 392).

199. The Claimant did not attend the absence review meeting that had been scheduled for 1 May 2014. Mrs Stevens had been notified of this in advance by the Claimant. Arrangements were made for this meeting to take place on 19 May 2014.

200. The Claimant's partner's emails commencing at page 375 (referred to in paragraph 197 and also copied at page 381) was effectively a grievance addressed to the chief executive of the Respondent about Veronica Stevens' handling of the absence management. A more succinct but similar grievance was also sent on 1 May 2014 (page 402). This was responded to by Ricky Macaulay, director of process and collections (page 404). He said that he was content that Veronica Stevens had managed the Claimant's absence correctly. He considered that it had been appropriate to replace John Adams with Veronica Stevens by reason of the Claimant making a complaint against him (Mr Adams).

201. The minutes of the sickness absence review meeting of 19 May 2014 are at pages 408 to 411. It appears from the file note at page 406H that the Claimant initially refused to attend the meeting with Mrs Stevens. However, it seems that in the end he agreed so to do.

202. Mrs Stevens says in paragraph 14 of her witness statement that the Claimant "told me he felt a long way off any return to work and was struggling to attend meetings. We agreed to meet again in four weeks". From the minutes, the Claimant made it clear in the meeting that he was not feeling good and suggested that by way of support the Respondent ought to listen to him. The Claimant became tearful during the course of the meeting. The Claimant's partner was allowed to be present. It is recorded that she said that, "this (tears) is what I have to put up with night after night after your contact". She said that, "you don't seem to understand. Mark is really ill and he is getting intervention

through his GP and is getting his medication and counselling is ongoing". The Claimant said that, "it is unfortunate that RM [Royal Mail] have not addressed the loss of my PA to a regional director role. Veronica, you don't seem to be listening but I have been raising this since 2012 to no avail".

203. On 5 June 2014 the Respondent sent a letter to the Claimant (pages 415 and 416). This concerned the 'Continued Efficiency Programme' ('CEP'). This was a process separate from the 2012 Review which lay at the heart of the Claimant's complaint. The CEP was described in the letter by the Respondent as being "the best way to secure the continued provision of the universal service and the future provision of good quality jobs". It went on to say that, "on 25 March 2014 we announced the start of a formal consultation with our unions on a proposal to reduce the number of roles at Royal Mail". The letter went on to say to the Claimant that "as a CWU admin employee" he was being asked to complete an enclosed form to indicate whether or not he wished to be considered for voluntary redundancy under the CEP scheme.

204. Mrs Stevens says in her witness statement that the CEP took place in 2014 and "was a major re-organisation focused on modernising and improving efficiency across the Royal Mail business. As part of the programme the business undertook a voluntary severance exercise". She went on to say that the letter addressed to the Claimant of 5 June 2014 was one that was "generated centrally from a standard template and sent to many other employees who fell within both the managerial and administrative population". It was suggested to Mr Stevens that the Claimant should not have been sent this letter as it was addressed to CWU administrative staff and that this was part of a plan to be rid of the Claimant.

205. It was suggested to the Claimant by Mr Peacock that there was nothing sinister in this letter and that he had received it because according to the Respondent he held a CWU grade and was without a templated role. Further, the letter simply invited an expression of interest in voluntary redundancy. The Claimant complained that the letter was unsolicited "and not linked to my role". We presume that the Claimant was here referring to his EA/PA role.

206. On 11 June 2014 Adele Taylor prepared another report (page 421). This was addressed to Mr Leach. He referred to the Claimant having lost confidence in Mrs Stevens' management of him.

207. On 27 June 2014 Mrs Stevens wrote to the Claimant (page 433) to say that, "after a discussion with my line manager it has been decided that the management of your current absence would be passed back to the north operational region. Joan Mee will manage your absence going forward and will be in contact with you shortly". Neither Mrs Stevens nor Ms Mee explained why there was a change of sickness absence management. It is not clear whether this was prompted by the second occupational health report prepared by Adele Taylor.

208. Mrs Mee says in her witness statement that, "it was clear from the outset I had inherited a complex and contentious situation". She said that Julie Fisher had been appointed to hear the bullying and harassment complaint but had been unable to meet with the Claimant. In addition to the complaint against John Adams, Ms Mee found herself dealing with additional complaints that had arisen since (in particular about Veronica Stevens). All of this was against the background of the 2014 CEP.

209. On 19 June 2014 Linda Bellos wrote to the Respondent (pages 427 and 428). She appears to have been instructed by the Claimant to advance his discrimination complaint.

210. On 27 June 2014 the Claimant sent the email which we see at page 432. This appears to have been addressed to those handling the continuing efficiency programme exercise. The Claimant maintained that he was not part of the affected population as he was not an LA grade nor was he a post person. The CEP team replied on 27 June 2014 (page 434) to the effect that he was not part of the directly affected population but had been given the opportunity to state a preference for voluntary redundancy. The Claimant was told that if the form was not returned it will be assumed he did not wish to pursue matters further.

211. On 18 July 2014 the Claimant raised a grievance "about the decision to revert me to company half pay" and about veronica Stevens' treatment of him. We refer to page 443. He asked for "the exceptional mitigating circumstances experienced" to be taken into account. Mr Idsell made a similar request upon behalf of the Claimant (page 444).

212. On 18 July 2014 the Claimant asked for a voluntary redundancy quote "for the sake of my sanity and health". This email (at page 447) was addressed to Mr Leach. Mrs Mee said that it was this email that led to the meeting that was held on 28 July 2014.

213. Ahead of that meeting, Karen Scott on behalf of Mr Leach emailed the Claimant (pages 449 and 450). Mr Leach said, "I would like to reinforce that all communication issued to you regarding the CEP process are consistent for all affected employees, as opposed to an indication that the business is keen for you to leave as referenced in your email. It is important given you do not currently hold a substantive position, that you engage in this process and discuss your preferences with Joan". The Claimant appears to have been receiving mixed messages at this stage as to whether he was part of the affected population. We contrast Mr Leach's email at page 449 with that to which we have referred at page 434 referred to at paragraph 210.

214. The minutes of the absence review meeting of 28 July 2014 are at pages 451 to 456. The Claimant's partner and Mr Isdell were present along with Ms Mee and a note taker.

215. At paragraph 12 of Mrs Mee's witness statement she sets out what she describes as "the headline list of issues we discussed". She summarised matters as follows:-

- The Claimant did not consider that he was "in a fit state" to meet with Julie Fisher to discuss the bullying and harassment complaint.
- He was not prepared to see OH assist due to his live complaint against their adviser.
- He did not believe he had been supported sympathetically by Mrs Stevens.
- He believed there had been confusion over his grade which had led to his exclusion from the portal process as part of the 2012 Review.
- He had asked Mr Leach to arrange for a voluntary severance quote.
- He was concerned that he had reverted to half rate sick pay due to ongoing sickness absence.

- He was not in a position to consider a return to work.

216. The Tribunal considers that Mrs Mee has given a fair summary of the issues raised at the meeting. In addition we note that:-

- The Claimant complained that Mr Leach had shared emails addressed to him and marked "strictly private and confidential" with others (page 451).
- The Claimant had been informed by the Respondent that he was not directly affected by the continuing efficiency programme exercise. We presume this to be a reference to the email at page 434.

217. In evidence under cross-examination Mrs Mee said that she considered the Claimant to be surplus and that he found himself in that position because he had rejected alternative roles offered to him. Voluntary redundancy was therefore an option open to the Claimant as it would be for any other surplus employee.

218. She accepted that the other roles offered to him (the MCMA roles) were at LA1. She was taken to the screenshot of the Claimant's "transaction history" at pages 1219 to 1229. In particular, at pages 1222 to 1223 the "transaction history" shows the Claimant moved from grade LA1 to SL2. The "transfer reason" was given as promotion.

219. Mrs Mee said that she had sought advice about this "similar to Brad [Sayers]". Her evidence was that the advice that she got was that SL2 was equivalent to LA1. This advice was obtained from "HR service". That she had undertaken these enquiries was something omitted from her witness statement. Her evidence that the Claimant was at grade SL2 contrasted with that from others in the Respondent who maintained the Claimant to be at grade LA1. She accepted that there was no documentary evidence in the bundle to show that two grades were equivalent. Mr Flynn then took her to the email that we saw at page 121 indicative of the fact that SL2 had been assimilated into grade ML5. Mrs Mee said that this was not the case "to my knowledge". She said that the ML5 grade was obsolete. The picture became even more confused when Mrs Mee was taken to the glossary of terms used in the document at page 1181: (that being the glossary of terms used in the managing the surplus framework to which we have referred already). There is no reference to grade SL2 in the section dealing with administrative grades. In contrast, there is reference to grade ML5 in the section concerning managerial grades. By way of reminder, this document is dated 17 May 2010. Mrs Mee accepted what was said on the face of the document before commenting that she had "no experience of this happening".

220. At the conclusion of the meeting of 28 July 2014 Mrs Mee asked the Claimant to leave the sick pay issue with her. We can see from the passage towards the end of page 454 that she said that she would "try and get an answer this week on your pay".

221. On 31 July 2014 the Claimant was sent the CEP voluntary redundancy quote. This is at page 458. The quote was in the sum of £43,849.80.

222. On 31 July 2014 Joan Mee emailed the Claimant. She said that she would update him with regards to the pay issue "as soon as possible". Mr Isdell sent her a reminder on 6 August 2014 (page 463). This was acknowledged by Mrs Mee the same day. She said that she was going to look into the matter

"and respond to him in due course". The Claimant emailed Mrs Mee on 7 August 2014. He said that he was, "very distressed and anxious. Still no update on my pay".

223. A further voluntary redundancy quote was sent on 7 August 2014 (page 468). As with the one at page 458, this was upon the basis that the Claimant was surplus under the continued efficiency programme. The second quote was in the same amount as the first.

224. On 4 August 2014 the Claimant had emailed Mr Leach concerning the sick pay grievance. This led to Karen Scott replying on behalf of Mr Leach on 8 August 2014 to the effect that Mrs Mee was investigating matters (page 470). The Claimant replied on 10 August 2014 (page 472). He said, "At the meeting, Joan advised me that she did not have the authority to take a decision on my sick pay and that she would prompt you to respond. I have received no response from you or Joan regarding my grievance about sick pay". He went on to say, "having received no response from you for three weeks this has compounded my stress". An email in similar terms was sent to Mrs Mee on 13 August 2014 (page 475).

225. On 14 August 2014 Mrs Mee emailed the Claimant (pages 476 and 477). Upon the sick pay issue she said, "as discussed you are now on half pay, and whilst you outline there are extenuating circumstances to extend this I will consider this alongside the other points raised". Mrs Mee also set out her understanding of the issues raised with her by the Claimant on 28 July 2014 and which required investigation. We shall not set them out here as they are similar in terms to the summary that Mrs Mee provided in paragraph 12 of her witness statement which we have referred to above.

226. On 21 August 2014 Mr Isdell emailed Mrs Mee to complain about the handling of the sick pay issue (page 491). At this stage, over three weeks had elapsed following the absence review meeting of 28 July 2014.

227. On 21 August 2014 the Claimant complained to Mrs Mee that he was feeling "much worse following our absence review meeting". He said that the pay reinstatement issue (as he described it) had still not been resolved. He said he could not understand Mrs Mee's "apparent confusion" as to what was discussed on 28 July 2014 and why she felt the need to email him with a summary of the points to be investigated. We refer to pages 493 and 494.

228. On 4 September 2014 the Claimant accepted the Respondent's voluntary redundancy offer. The Claimant's signature is at page 505. The covering letter dated 21 August 2014 at pages 497 and 498 says that voluntary redundancy is offered but is not compulsory and that the Claimant had the option of accepting it or rejecting it. Should he choose to reject it he would continue in employment. The offer was said to be open until 4 September 2014 after which it would expire. The compensation was in the sum referred to in the earlier quotes. Upon acceptance of the offer, the Claimant's notice period would be deemed to commence with effect from 21 August 2014. His last day of service would therefore be 13 November 2014.

229. Appendix B (at pages 503 and 505) set out the terms and conditions of voluntary redundancy. These provide amongst other things that "payment of relevant sums is in full and final settlement of all and any claims you may have against [the Respondent]".

230. On 2 September 2014 the Claimant emailed Stephen Ede. He is the VS and transitions manager. The Claimant complained about "the less favourable terms applied to my VR offer". Mr Peacock asked the Claimant for the basis of this contention. In evidence under cross-examination the Claimant said that he had been told that he was not part of the population affected by the continuing efficiency programme. This is a reference to the email at page 434. However, he was then told subsequently that he was surplus upon requesting the voluntary redundancy quote on 18 July 2014 (page 447). Mr Ede explained that the letters that the Claimant was sent (being those at pages 458 and 468) were in standard form (page 519). Mr Ede sent that email on 2 September 2014 and extended the expiry date for acceptance of the offer to 11 September 2014. As we know, the Claimant did not in fact need to avail himself of the extension of time offered by Mr Ede as he accepted the offer on 4 September.

231. On 8 September 2014 the Respondent acknowledged receipt of the Claimant's acceptance of the offer of voluntary redundancy. The letter was signed by Mr Ede (page 543A).

232. On 12 September 2014 Mrs Mee sent to the Claimant her grievance findings. These are at pages 554 to 560. Chronologically, the steps taken by her in the lead up to her report shall now be outlined at paragraphs 233 to 238.

233. The Claimant had been told by Mr Leach on 22 August 2014 that Mrs Mee had been appointed to hear all aspects of his grievance (page 509). The Claimant was told that she had authority to make decisions over the sick pay issue.

234. On 29 August 2014 Mrs Mee said (page 516) that, following her email of 22 August 2014 (apparently not in the bundle), as she had heard nothing further from him she was proposing to commence her investigations into his grievances. She did this at stage 2 of the Respondent's grievance procedure. We refer to page 516. In that email mention was made of two positions becoming available in Chesterfield for which the Claimant was being considered under the MTSF [*'managing the surplus framework']* process. An arrangement was made for the Claimant to be interviewed about the roles on 17 September 2014. As the Claimant was currently signed off as sick by his GP she told him that "it is important that I receive a medical opinion on your attendance at interview for these positions and also if we may need to make any reasonable adjustments to enable you to attend". In evidence under cross-examination the Claimant said that he was "baffled" by this development. He accepted that Chesterfield was a reasonable travelling distance from his home but could not understand why the Respondent had made this suggestion given that he was on long-term sick leave. The Respondent's position was that were the Claimant to decide not to move forward with the voluntary severance then he would have remained in employment. A suitable role would have to be identified for him and the Chesterfield vacancies had been matched against his skills.

235. On 1 September 2014 Mrs Mee asked the Claimant for further information about two of the issues that she was investigating: details of the complaint against ATOS; and evidence with regard to his complaint against Veronica Stevens. We refer to page 517. In evidence the Claimant said that he was not pleased to receive this request given that Mrs Mee had got all of the information about his complaints already and had told him on several occasions that she was dealing with the sick pay issue.

236. It was Mrs Mee's appointment to consider the Claimant's grievances that led to her raising the enquiries of Mr Sayers and Mrs Nimmo to which we have already referred and which appear in the bundle at pages 523 to 528 concerning Mr Sayers' and Mrs Nimmo's earlier involvement with the Claimant.

237. On 8 September 2014 Mrs Mee sent an email to the Claimant indicating her intention to review all of the evidence and offering him a final opportunity to put forward anything he wished her to consider (page 542). She also asked him to provide consent to enable her to refer him to OH assist for occupational health guidance. The Claimant did not respond. Rather, there is an email from the Claimant's partner to Mrs Mee of 9 September 2014 (page 545). This simply says that, "Mark is still extremely tense and not sleeping or eating. I will continue to keep you updated". It is not clear whether this was in response to Mrs Mee's email of 8 September 2014.

238. On 12 September 2014 Dave Nightingale (CSC employee relations case management) wrote to the Claimant (page 549) to acknowledge receipt of notification from ACAS that the Claimant had made a request for early conciliation. Plainly, this was a step taken by the Claimant just several days after he had signed and returned the terms and conditions of voluntary redundancy to which we have referred above. Mrs Mee said about this that "the contradiction is an obvious one and must have been obvious to Mr Bennett." Mr Nightingale said in the letter that "we are not aware that you have raised a complaint under any of the Royal Mail's internal processes." This is a difficult observation to understand given the history of matters.

239. Mrs Mee's grievance findings at stage 2 of the Respondent's grievance procedure are at pages 555 to 560. She dealt with seven grievances in all. We shall take them in turn.

240. The first grievance was that the Claimant was not allowed to apply for roles using the portal process during the 2012 restructure. Mrs Mee said, "I can confirm that you are not an LA grade and that you are SL2 grade. I can also confirm that the EA role to the processing director for the north east was graded at MS4 in the re-focusing operations review in May 2012 which meant that your grade of SL2 was not included in the process in line with the resourcing principles." Therefore, because the Claimant was graded at SL2 he was not eligible to apply for any roles under that process. She held that he was treated in line with the "resourcing principles with regards to the review of 2012". As a result, she said, the Claimant was "made surplus and captured in the LA population as this was a grade that it is broadly equivalent to yours. You were also advised by Brad Sayers in March 2013 that it was not possible to promote people from secretarial/admin roles to managerial roles and confirmed again that the PA role you had been covering had become a managerial grade."

241. The second complaint was against Mr Adams regarding his management of the Claimant's current period of sickness absence. Mrs Mee said that Mr Adams denied that he asked the Claimant to contact him daily by text. We have dealt with this issue already at paragraphs 136 to 142. She held that Mr Adams' request to meet with the Claimant was normal managerial procedure. None of the Claimant's complaints against Mr Adams were upheld.

242. The third request dealt with the Claimant's complaint about ATOS. Mrs Mee was unable to investigate this fully because the Claimant had not provided her with consent to obtain his full ATOS file. Based upon what the ATOS

employee's line manager told Veronica Stevens (to the effect that correct process had been followed) this grievance was not upheld.

243. The fourth grievance was the complaint against Mrs Stevens emailed to Mr Leach on 18 July 2014. This arose (at least in part) out of an email of 17 April 2014 (page 106). The allegation was that Mrs Stevens had referred in a conversation with OH assist to the Claimant as "being black and very difficult". Mrs Stevens denied having said this. The email is from OH assist and records 'the manager' *(presumably Mrs Stevens)* referring to the Claimant as being resistant to the Respondent's position that the grievances were within the remit of the bullying and harassment policy. The email says '……(client is black). Client generally been very difficult in general.' This grievance was not upheld.

244. The fifth grievance concerned the continuing efficiency programme. She considered that these matters had been dealt with in the earlier correspondence to which reference is made in box 5 on page 560.

245. The sixth grievance was in connection with the Claimant's pay situation. She considered that the Claimant was being paid correctly and that there were no extenuating circumstances.

246. The seventh grievance was described thus: "during our meeting on 28 July 2014 you raised that 97% of the issues were within the letters received from Linda Bellos." Mrs Mee confirmed that two letters had been received by the Respondent from her and that Mr Leach had responded to them. She believed that all of the issues raised by her had been dealt with in reply to the Claimant's first grievance that she was considering (summarised at paragraph 240 above).

247. In evidence under cross-examination the Claimant considered himself to be vindicated by Mrs Mee's findings upon the first grievance to the effect that he was not an LA grade and was an SL2 grade. He contrasted this finding with the Respondent's earlier insistence that he was grade LA1. Mr Peacock put to the Claimant that the Respondent's position was that nonetheless this was still a non-managerial grade.

248. The following emerged from the cross-examination of Mrs Mee upon her grievance findings:-

248.1. That she had not investigated the Claimant's complaint that he was being paid less than Helen Perry.

248.2. Mrs Mee had found herself considering a large file of papers. She could not recall having seen the Claimant's email to Mr Milne of 17 July 2012 (at page 151) in which he complained that his role was directly affected by the 2012 review and thus he was part of the affected population.

248.3. She said that she had seen the email from Mr Adams to the Claimant at page 217 whereby Mr Adams asked the Claimant to ring or text him on a daily basis.

248.4. She had no recollection of the email correspondence to which we have referred between pages 264 and 267 evidencing (on the Claimant's case) Mr Adams ignoring the Claimant. She said that she had based her decision about the Claimant's complaint against Mr Adams upon the basis of what Mr Adams had said to her. She denied that her attempts to investigate his complaints were inadequate or constituted stone walling of the Claimant.

249. On 18 September 2004 the Claimant raised a grievance about the Respondent's failure to deal with his grievances "since 2012". He said that he had lost confidence in Mrs Mee's ability to conduct a fair and thorough investigation and accused her of trivialising "race hate comments by Veronica Stevens". He complained about the handling of the sick pay issue. We refer to page 569. At page 571 is a complaint that the Claimant's grievances should have been dealt with at stage 1 and that Mrs Mee had "seen fit to hold and produce a response at stage 2".

250. On 1 October 2014 Mr Buckley emailed Mrs Mee (page 576A). He informed her that the Respondent was withholding the voluntary redundancies monies upon the basis of the contact that the Claimant had made with ACAS.

251. On 1 October 2014 Mr Latimer, appeals case work manager, wrote to the Claimant to say that he had been asked to hear his appeal at stage three of the Respondent's grievance procedure. We refer to page 578. The Claimant complained that he (Mr Latimer) was of a lower grade than Mrs Mee and reported to Mr Buckley and it was thus inappropriate for him to hear the appeal. It was suggested on behalf of the Respondent that it was appropriate form him to handle the appeal as he was based outside the region and had no connection to the Claimant or anyone else. The Claimant said that he was aware that Mr Latimer worked alongside Mr Buckley. The Claimant raised a complaint on 9 October about the appointment of Mr Latimer as appeals manager (pages 583 and 584).

252. Mr Latimer invited the Claimant to attend a stage 3 appeal hearing on 21 October 2014 (pages 586 and 587). As an alternative the Claimant was invited to provide written grounds of appeal. In reply on 14 October 2014 the Claimant informed Mr Latimer that he remained unfit to discuss his issues. He therefore was proposing to present written submissions.

253. On 14 October 2014 the Claimant served the Respondent with a questionnaire under the Equality Act 2010. This is at pages 598 to 626. The Claimant complained of direct discrimination, victimisation and harassment related to race and sex. As we can see at page 616 he raised a number of questions about the demographic profile of the Respondent's workforce. He also raised a number of other complaints about his treatment which we need not set out in detail here. The Tribunal was not taken to the details of questionnaire by the parties.

254. As invited, the Claimant presented his appeal submissions on 27 October 2014. These are at pages 638 to 642.

255. He contended that the findings at stage 2 of the process were perverse. He asked upon what basis it had been determined that he was SL2 grade. He asked why he had not been determined to be MS4 grade when his permanent full time role was as EA/PA to the regional process director. He complained of having been underpaid and identified Helen Perry as his female comparator. The Claimant also appealed against Mrs Mee's findings about John Adams and Veronica Stevens. He complained that Brenda Allen had acquired an executive assistant post after the review process had been completed pursuant to the 2012 Review without submitting a CV as part of the portal process. He complained about the Respondent's invitation to him to apply for voluntary redundancy and of having been given little time to decide whether "to bring my 25 year career with Royal Mail to an end". He said that grievances of 17 July

2012, 3 August 2012, 9 August 2012, 13 August 2012, 11 September 2012, 27 November 2013, 28 April 2014, 1 May 2014, 18 July 2014, 27 August 2014, 3 October and 13 October 2014 had been ignored. He also complained about the Respondent's handling of the sick pay issue.

256. Having received no acknowledgement or replies to the questionnaire served under the Equality Act 2010 the Claimant sent it again on 24 November 2014 (page 655).

257. On 27 November 2014 the Claimant raised a further grievance (pages 659 to 662). He contended there to be a campaign of discrimination against him and of victimisation. The contents of the grievance repeat some of the complaints that the Claimant had raised before. We shall not go into the detail of this grievance.

258. On 1 December 2014 Mr Latimer sent to the Claimant to the stage three grievance appeal outcome. This is at pages 663 to 666. Mr Latimer's findings were as follows:

258.1. He rejected the Claimant's equal pay complaint upon a comparison of his pay with that of Helen Perry upon the basis that she was substantively promoted on 1 July 2008 to the grade of MS4 with the job title of area manager support. She remained at pay grade MS4 (as Mrs Perry herself said) when her job title became executive assistant on 18 November 2009. That was the case until 1 February 2013 when she was appointed to MS2 grade with a job title of special events planner which is her current role and grade. Mr Latimer therefore found her to be senior to the Claimant in terms of her length of service and promotion to a management grade. In contrast, Mr Latimer concluded that, "the papers do show that [the Claimant] was appointed to an SL2 graded role ie AGM secretary on 7 July 2003. However there are no further papers to suggest that [he] was ever appointed to any other grade beyond that date". He remained on substantive pay grade SL2 between July 2003 and November 2013 according to the "archived records". Mr Latimer said that, "while Mrs Perry may have been performing a similar role ie PA to a processing director, her substantive grade at the time in question was MS4".

258.2. Mr Lattimer looked into the history of Brenda Allen's employment. He found that she was employed by the Respondent as a typist in 1981 and was re-graded as a personal secretary in February 1985. She was subsequently re-graded as an SL2 and held that grade at the time of the restructure in 2012. He found that she was performing an EA role at her substantive grade of SL2 in the new north region following the restructure in 2012. He found that in 2013 a review was undertaken of EA/PA roles in the north region and as a result such roles were re-graded to MS4. Mrs Allen and three other individuals who were all performing EA/PA roles at SL2 grade submitted CVs and, were successful with their grievances and thus were appointed to the new MS4 graded EA/PA roles.

258.3. The reason for the Claimant's exclusion from what Mr Latimer called "the CV selection exercise in 2012" was the fact that he was not a management grade and therefore did not meet the criteria for inclusion in that process.

258.4. He found that the Claimant had not been denied an opportunity of applying for promotion. He discovered that the Claimant had in fact applied for the role of EA/PA support to the process and collections director in the west region. The Claimant had been shortlisted for that position but had not been selected. Had he been successful then the Claimant would have been re-graded from SL2 to MS2.

258.5. Mr Latimer held that the Claimant was not of managerial grade upon the additional basis that he was represented throughout by the CWU.

258.6. Mr Latimer did not uphold the Claimant's complaint against Mr Adams. He did question Mr Adams' request to the Claimant to make daily contact with him but found Mr Adams to be "overly cautious and/or protective in this instance in requesting daily contact". He did not find there to be anything malicious or untoward in Mr Adams' approach.

258.7. Mr Latimer did not uphold the Claimant's complaint against Veronica Stevens. He took into account her explanation and in particular that she had made reference, when asked by OH assist, to the fact that the Claimant is black. Mrs Stevens said that she only responded to the question being asked and did not refer to the Claimant as "being black and very difficult". In the absence of documentary evidence to substantiate the Claimant's complaint Mr Latimer did not uphold it.

258.8. Mr Latimer did not uphold the Claimant's complaint upon the sick pay issue. He could see no basis for the Claimant's belief that his absence should be regarded as exceptional.

258.9. Mr Latimer dealt with a complaint raised in the Claimant's grievance of 13 October 2014. This was in connection with a failure to pay the Claimant a 25 year long service award entitlement. Mr Latimer found that such an award had not been made "for a number of years now".

258.10. Mr Lattimer considered that given the nature of some of the Claimant's complaints it would have been appropriate to investigate issues under the Respondent's bullying and harassing process. However, Mrs Mee dealt with everything under the grievance procedure at the Claimant's request.

259. At page 652 we see a letter dated 8 November 2014. This advises the Claimant that, "you have received notification that voluntary redundancy is no longer available to you. As a result, your employment with Royal Mail Group Limited continues". This letter was sent to the Claimant by Jillian Griffiths, HR business partner. It was accepted by the Respondent that this letter was incorrectly dated and it was in fact sent on 8 December 2014. That that is the case is self evident from the reference in the letter to the Claimant being in receipt of Mr Latimer's decision 3 December 2014. That would of course have been impossible were the letter to have been correctly dated 8 November.

260. On 8 December 2014 the Claimant emailed the Respondent (pages 690 to 694). He complained that he had been unfairly dismissed by the Respondent without reason "after 26 years of loyal service". He also complained of harassment, discrimination and victimisation. In response, John Millidge, group HR director, emailed the Claimant on 5 January 2015 (pages 700 and 701). It was contended by Mr Millidge that the Claimant had not been dismissed. He said, "I understand that you have had discussions about an offer of voluntary

redundancy but you have declined to sign the paperwork to release that payment to you".

261. On 7 January 2015 Len Watson (head of pay services) wrote to the Claimant (pages 702 to 706). This referred to the Claimant's last day of service as 13 January 2014. This was the date included upon the enclosed P45.

262. On 24 April 2015 Erica Wilkinson wrote to the Claimant (pages 722 and 723). She made reference to her earlier letters of 27 February and 6 March 2015 inviting him to meet her in order to discuss why the Claimant was "not communicating with the business". She said that she had, "carefully considered all the circumstances of your case and my decision is that you will be dismissed with notice". The last day of service was given as 25 April 2015.

263. Her reasons for dismissing the Claimant are set out in documents at pages 724A to 752. It is this document that contains the chronology commencing at page 727 to which we have referred on several occasions. We can see from the chronology (as it continues on pages 729 and 730) that after 13 November 2014 there was correspondence from Jillian Griffith to the Claimant around sick pay entitlement and sickness absence. Mrs Wilkinson's decision to dismiss the Claimant was upon the basis that the Respondent had no reasonable prospect of knowing when the Claimant would be fit to return to work and in what capacity and that the Respondent could not be satisfied that he intended to return to his employment with the Respondent in the foreseeable future.

264. We now need to say something further about Mrs Perry's roles with the Respondent. She set out a summary of her career history in the email to Mr Peacock of 7 August 2016 (page 880). We have made reference to this already. It may be helpful to repeat the salient points that she makes in her email:-

- She started work for the Respondent in February 1984 as a postal worker. She worked as a counter clerk. She says, "I think (this) was an equivalent pay rate to LA1".
- She left Post Office Counters Ltd in order to take up a position in what she describes as the "Royal Mail letters part of the business". She thinks this was "much earlier than 2003". This transfer was to salary grade LA1 "which was an equivalent grade to counter clerk".
- She then progressed to business centre manager "which was an old ML3 grade". She did this for around 18 months until the business centres were centralised. She then picked up a sales support role working to the sales executive. This was on grade LA1.
- On 1 July 2008 she was substantively promoted to grade MS4 working as area manager support. She says that "this role was already MS4 when I was promoted into the role". As we have already said, she was recruited into this position through an assessment and interview process.
- Mrs Perry says that this role was already MS4 when she was promoted into it. She says that other area manager support roles were still SL2 "as many of the old typists/secretaries were placed into these roles when the old typing pools became obsolete". She goes on to say, "I have spoken to the person who had this role previously when it was changed from an SL2 to an MS4 grade".

- She says that the reason behind the re-grading was that her area absorbed the SY and TF post code areas and thus substantially increased in size compared to other areas.
- On 18 November 2009 she became EA/PA providing managerial grade level support to the regional process director and regional logistics director. This followed a competitive assessment and interview process.
- She says that, "some EA/PA roles were still SL2s or LAs at this point as this is what they were graded at under the re-structure. I remember this as the girl who did PA to the HR director was only graded as SL2. There was a reason for this, the business deemed the operational directors roles to be more demanding than support director roles".
- On 1 February 2013 she became special events planner at grade MS2. This followed the 2012 Review.

265. Her witness statement very much reflects the contents of her email at page 880. She gives some page references in her witness statement. Her acceptance of the offer of the area general manager support role at grade MS4 (and on 2 June 2008) is at page 926. Confirmation of the formal promotion to grade MS4 in that role (with an effective date of 1 July 2008) is at page 927.

266. Unfortunately, she has been unable to locate her job description following her appointment to the EA/PA role on 18 November 2009. That said, she makes reference in paragraph 14 of her witness statement to the 'executive assistant to director' role profile and the 'PA to director' role profile. These are at pages 1230 and 1231 respectively. She says in paragraph 15 of her witness statement that, "whilst I recognise these appear to relate to the roles following the change to five geographical regions arising from the 2012 review, the 'executive assistant to director' role profile is a fairly accurate summary of the role I undertook supporting two directors in what was at the time one of the largest Royal Mail regions". She goes on in paragraph 16 to say by way of contrast that "'the PA to director' role profile does not fully or fairly reflect what was involved with my executive role supporting both the process director and the logistics director across a region that included the West Midland, mid Wales and Shropshire post codes".

267. Mrs Perry identifies three fundamental differences between her and the Claimant. The first of these was that they were of different grade. The second is that she supported two operational directors. The third is that she had to go through a competitive assessment process both for her area manager support role and then subsequently the EA/PA role. Her evidence in relation to the latter is that merely supporting the north east regional process director as did the Claimant does not necessarily entail or require being paid at grade MS4. She says that, "the grading of a role depends on a host of factors including for example: terms and nature of the work, responsibility and autonomy, skills and knowledge, geographical coverage etc". She also points to the fact that she supported both Mr Milne (in his capacity of process director) and Mr Eady (in his capacity as logistics director).

268. The following emerged from the cross examination of Mrs Perry:-

- She never was paid at SL2 grade.

- She believed that SL2 was an obsolete grade which merged with and became LA1. When asked for the source of her information about this she simply said that she "saw it happen".
- She was unaware that the Claimant was LA1 and had been promoted to SL2 and given a pay increase. She said that she was not aware of that and thought the two roles were equivalent. She said that equivalence took place around "10 years ago, I cannot say exactly".
- It was suggested that when the Claimant started to support Mr Milne when he moved into the north east director role in early January 2012 it would be expected that the Claimant would be graded MS4. Mrs Perry agreed with this but qualified it by saying that that would only be the case if he were supporting two operations directors. When pressed, she accepted that the distinguishing feature that she had highlighted in the fifth paragraph of her email at page 880 was not the fact of working for two operations directors but, rather, working for an operations director as opposed to a support director.
- She accepted there to be no reference in the documents at pages 926 and 927 to the fact of her supporting the logistics director. She nonetheless maintained that she was supporting both Mr Milne and Mr Eady. Her evidence was that each was competing for her time to the extent where she struggled to balance home and work life issues.
- She was asked whether the document at page 1230 (being the "executive assistant to director" role profile) was pre or post the 2012 Review. It was suggested by Mr Flynn that it was post-Review given that the role was provisionally graded as MS2. Mrs Perry said that she "didn't know exactly". However, the key accountabilities "roughly" reflected what she was doing when working as an EA/PA to Mr Milne and Mr Eady. This gave rise to some confusion and following an adjournment Mrs Perry's evidence was that the document at page 1230 reflects her current role which she said was more onerous than her previous one.

269. The Claimant had drafted his own job description. This was exhibited to his witness statements. He was not cross-examined or challenged as to its accuracy. Some time was spent during Mrs Perry's cross-examination comparing and contrasting the Claimant's job description and the role profile at page 1230. The following emerged from this phase of the cross-examination:-

- By reference to the first competence in the "key accountabilities" section at page 1230, Mrs Perry agreed that this correspondended with the second and ninth competencies identified by the Claimant in the key accountabilities passage of his job description. Mrs Perry qualified this answer by saying, quite fairly, that she did not know what the Claimant actually did. However, she fairly said that if the Claimant did do the work that he identified in the second and ninth bullet points of his key accountabilities section then broadly their roles in this respect were comparable.
- It was suggested that the point numbered two on page 1230 corresponded with the first and sixth bullet points in the relevant section of the Claimant's job description. Mrs Perry said that she chaired conference calls from the company operations directors upon a daily basis and "from that managed the actions" to ensure that the mail centre was clear as to the work pattern.

- She agreed that the third bullet point in the key accountabilities section at 1230 corresponded with the second bullet point of the Claimant's document.
- She agreed that the fourth numbered competence at page 1230 corresponded with the sixth bullet point of the Claimant's document.
- She agreed that the fifth competence at page 1230 corresponded with the seventh and tenth bullet points of the Claimant's document.
- She agreed that the fourth, fifth and sixth numbered work tasks at page 1230 corresponded with the fifth, ninth and eleventh bullet points of the Claimant's document.
- She agreed that the seventh numbered task at page 1230 corresponded with the Claimant's eleventh and fifteenth bullet points.
- She agreed that the eighth numbered accountability at page 1230 corresponded with the Claimants eleventh bullet point in his document.
- She agreed that the ninth accountability at page 1230 corresponded with the Claimant's fourth bullet point.
- She agreed that the tenth key accountability at page 1230 corresponded with the Claimant's seventeenth bullet point.
- She agreed that the eleventh key accountability at page 1230 corresponded with the eighteenth bullet point of the Claimant's document.
- She agreed that the twelfth key accountability at page 1230 corresponded with the Claimant's nineteenth bullet point.

270. Under questioning from the Employment Judge, Mrs Perry confirmed that when working as EA/PA to Mr Milne and Mr Eady it is her evidence that she did all of the key accountabilities numbered one to twelve at page 1230.

271. Mr Milne's evidence was that "in headline terms" the Claimant provided administrative rather than executive support. Mr Milne then sought to contrast the tasks undertaken for him by the Claimant with those of Mrs Perry. He gives some "headline examples" of the differences in paragraph 16 of his witness statement. These were:-

- That Mrs Perry had delegated access to his emails with authority to make executive decisions arising out of emails on his behalf.
- She was expected to participate with him at meetings rather than solely deal with the administration. She also had delegated authority to represent him in his absence.
- She chaired the daily operational conference calls to include where appropriate delegating appropriate actions and work to his director reports on his behalf and producing a key points summary arising from calls and meetings together with action plans to move matters forward to conclusion.
- She had responsibility for presenting key management data for reports required at key stakeholder meetings.
- She was the first point of contact to add a filter before any decisions were required by him at director level to ensure that only key matters were referred to him.

- She was empowered to engage in direct contact with internal and external stakeholders on his behalf.

272. Mr Milne also pointed out material differences in the extent of the role. This relates to the geographical size of the Midlands area with the addition of mid Wales and Shrewsbury. Also, he said that Mrs Perry was supporting both him and Mr Eady.

273. The following emerged from the cross-examination of Mr Milne upon this issue:-

- According to his LinkedIn profile, he held the post of processing and engineering director – Midlands between September 2008 and November 2011 before taking that same role in the old north east region between November 2011 and April 2012. He was then appointed head of operations (which he described not as a promotion but as a change of title) following the review. According to the LinkedIn profile he was "head of operations – process and collections north".
- The Claimant was not considered for any of the roles listed at page 158A (assigned to the north region and/or based in Leeds). The reason for this appears to have been that Sheffield where the Claimant was based was, under the new structure, part of the east geography. The roles on pages 158B were assigned to the newly created north geography. Mr Milne accepted this to be the case notwithstanding that, although based in Sheffield, the other towns covered by the old north east region (and serviced by the Claimant) now fell within the new north region. Mr Milne was unable to assist as to where that criterion was set out in writing. It also appears to be contrary to the invitation issued to all of the affected population to submit their CVs into the portal (at page 145). Mr Milne was unable to refer the Tribunal to any policy document or criteria concerning allocation of roles within the newly created regions.
- Notwithstanding what was said by Mr Milne (at paragraph 12 of his witness statement) to the effect that the Claimant was unwilling to travel away from Sheffield, he conceded that the Claimant "sometimes" did travel away from Sheffield. Mr Milne said that, for example, he would travel to Newcastle (once every three months).
- Mr Milne accepted that the Claimant was barred "by geography" from moving from his workplace within the new east geography to a workplace (such as Leeds) within the north geography. He conceded that the document at page 145 "could have been clearer" but said that this geographical bar was "well understood".
- Mr Milne was unable to support what he was saying about the respective roles carried out for him by Helen Perry and the Claimant by reference to any job descriptions, there being none in the bundle.
- He said that the EA/PA roles effectively evolved depending upon what the operations director required of their own EA/PA. He accepted that he had not produced any notes of meetings he had had with Helen Perry at which he set out her role.
- Mr Milne maintained that Helen Perry's role differed from that of the Claimant "by a country mile". Mr Milne was taken to evidence in the bundle of the Claimant undertaking executive level work. For example, there was

reference in an end of year review carried out for the year ended 31 March 2008 (commencing at page 124J1) making reference to the Claimant delivering "a high standard of secretarial and executive support" to Mr Pearson. Mr Milne said in answer to this that it "depends upon your understanding of executive support". When giving evidence under the cross-examination, the Claimant himself had drawn us to this appraisal which continues at page 124J2 to rate the Claimant as a high performer. The Claimant drew our attention to page 138 which was a similar assessment or rating of him on the part of Mr Lovejoy.

- Mr Milne denied that the Claimant had delegated email access and that he was the first point of contact for senior stakeholders on behalf of Mr Milne. Mr Milne was challenged upon this evidence, in particular as to why he would require those tasks and level of assistance from Mrs Perry on the one hand and yet not require it from the Claimant on the other. Mr Milne was unable to satisfactorily explain his position. He also had no meeting notes to evidence what had been discussed between him and the Claimant as to his expectations of him when the Claimant became his PA.

- Mr Milne was taken to further examples of the Claimant's work. For example, at page 142 we see an email from Mr Milne to other managers in which Mr Milne says that the Claimant was on annual leave that day. This left him "in the hot seat" (the inference being that the Claimant was the usual occupant of that position). Mr Milne accepted that the Claimant would organise conference calls but, unlike Mrs Perry, he would not chair them. Mr Milne was taken to an email at page 144C around a "process conference call" scheduled for shortly after the date of the email of 14 March 2012. It was suggested that this evidenced the Claimant taking individual action to ensure that everyone knew what to do. Mr Milne denied this. He said that the Claimant would "capture the issues directed by me". It was suggested to Mr Milne that the actions directed by the Claimant on 14 March 2012 led to the production of the weekly performance reports such as those at pages 144P to R. Mr Milne accepted that the Claimant "would collate for example the "safety pack"". He described this as "a secretarial role".

- In a similar vein, Mr Milne was taken to an email from Hugh McGuire of the Respondent's chairman's office. This appears to be a testimonial addressed to the Claimant about the quality of his work. Mr Milne considered this to be about the risks register. He said that all managers had a risks register which was managed by LA1s. Mr Milne maintained his position when taken to the email on the following page at 126B. This was an email from Mark Russell, industrial and employee relations support manager, to the Claimant of 27 July 2009. This appears to have been in answer to an invitation from the Claimant to Mr Russell to give feedback on the Claimant's handling of the north east region's submission. Mr Russell said, "the general way in which you have asked questions and responded to different requests for information has been excellent and this has resulted in a consistently high standard of IR reporting". It was suggested to Mr Milne that this testimonial evidences work going beyond simple collation. Mr Milne said that he "didn't know the Claimant then". Mr Russell refers to the Claimant asking questions. It is thus self evident, it was suggested, that the Claimant's task went beyond simply collation and secretarial work.

- A further example was put to Mr Milne. This was an email from Nick Briggs, regional logistics planning manager of 4 May 2010 concerning the launch of the transfer of lotus notes to Microsoft Outlook. Mr Milne denied this to be an executive level role. He said that the Claimant had "facilitated information". This is difficult to reconcile with Mr Briggs' reference to the Claimant working on his own initiative to keep everyone up to date and him being supportive. It also refers to the Claimant giving a presentation on proposed timescales. Mr Milne said that this was the Claimant simply facilitating information "going backwards and forwards".
- Mr Milne was taken to the document at page 144G2. This was an email from the Claimant about the Respondent's financial performance in which he gives pointers to a mail centre manager about what needs to be done. It was suggested that this was executive level work. Mr Milne said that this was "not performance coaching" but simply the Claimant's observations. He said it was not the Claimant's role to coach people.
- Mr Milne was taken to the document at page 138B2. This is email traffic in March 2011 concerning Mr Lovejoy's travel arrangements. It was suggested that it was part of the Claimant's role to assist and arrange travel. Mr Milne said that his role was "merely to ensure a room was booked and travel was ordered on the system".

274. It was suggested to Mr Milne by Mr Flynn that he was set upon down playing all of the work that the Claimant had undertaken for him. Mr Milne replied "not at all".

275. Upon the question of the extent of Mrs Perry's role, Mr Milne conceded that there was nothing within the letter of 18 November 2009 (at page 928) to indicate that Helen Perry was appointed as EA/PA to the logistics director as well as the operations director. Mr Flynn made the same point about Helen Perry's email to Gary Milne of 22 August 2012 (in which Mrs Perry informed him but not Mr Eady that she had "landed the MS2 event planner job"). The Claimant's point was that any email in like terms had not been sent to Mr Eady as may have been expected if she was working as his EA/PA.

276. It was the Claimant's position that Mrs Perry did not carry out a dual role but in any event he also assisted others than Mr Lovejoy and Mr Milne. He referred, for example to the email at page 165A. We have in fact referred to this already. It is the email from Alison Wright to Ann McCarthy copying in Gary Milne and Gail Nimmo. Alison Wright there said that the Claimant was the support for the finance director and processing director of the old north east region. Mr Milne said that Alison Wright had given incorrect information in that email. He had to concede that Gail Nimmo had not corrected her about the roles carried out by the Claimant (the only correction being about the Claimant's grade).

277. Finally, it was put to Mr Milne that the volume of work in the Midlands area had declined. There was evidence of this from a press release dated 4 October 2011 the headline of which was "Royal Mail's rationalisation and modernisation continues in the Midlands". Mr Milne fairly accepted this to be the case. He said that "because of the decline the role of EA became more challenging and we were expected to do more".

278. The Claimant gave evidence in chief about the executive managerial work carried out by him from 2003. He referred to an email at page 123A of 29 July

2004 around the Claimant's handling of what he describes as "high profile customer complaint". He also referred to the email at page 124AA (of 15 August 2012) around assistance given by the Claimant to Mr Leighton in preparation for a BBC interview. Mr Leighton advocated recognising the Claimant's achievements by way of extending an invitation to him to attend an 'awards for excellence' event to be held on 7 June 2007 (page 124C). He set up a mail centre recycling group (page 124L). He also refers to undertaking the training to which we referred earlier in these reasons.

279. The Claimant introduced into evidence Mr Milne's LinkedIn profile to which we referred earlier. He compared it to that of Mr Lovejoy which is at pages 139C and D. The Claimant observed that Mr Lovejoy held an operations director position as did Mr Milne.

280. The Claimant introduced into evidence the documents at pages 144C to 144F and 144P to 144R to which we have just referred evidencing the executive level work he was undertaking. Similarly, he introduced the documents at pages 124AA and 126A. We refer in particular to paragraph 12 of his witness statement. We make similar observations in connection with the documents to which he refers in paragraph 13 of his witness statement (being those at page 138A and 144G2). In addition, he says that he took part in the meetings and effectively took and managed compliance against the actions citing in support the documents at pages 144J to 144O (being an action plan following on from a process team meeting held in June 2012).

281. The Claimant (in paragraphs 16 and 17 of his witness statement) takes issue with the Respondent's contention that the post codes managed by the Shrewsbury mail centre were merged with the Midlands region prior to the turn of the year 2013/14. He highlights the decline of mail volume in the Midlands mail centre (at pages 138C and 138D to which we have just referred). He also says that the South Yorkshire region experienced growth in 2007/2008 taking on further post codes such that it eventually became known as the South and East Yorkshire area. In connection with this development he highlighted the document at page 127 which appears to be another appraisal rating the Claimant's performance highly. The appraisal was carried out for the 2007/2008 review.

282. In paragraph 19 of his witness statement the Claimant took us to pages 794 and 797 and the Respondent's futile efforts to obtain job descriptions for the roles with which we are primarily concerned. His evidence, as we know, is that the executive assistant job profile referred to in Helen Perry's witness statement (and in the bundle at page 1230) "does reflect my tasks and activities at the contemporaneous time".

283. The Claimant sets out in paragraph 6 of his witness statements the differences between the remuneration paid to him and that paid to Mrs Perry. We need not descend into the detail. Suffice it to say, however, that there is a significant difference of just short of £6,000 per annum.

284. In paragraph 20 of his second witness statement the Claimant makes reference to what he describes as an "internal documents" dealing with diversity issues. The Tribunal is not clear of the provenance of these documents which are described in the index to the bundle as "Royal Mail document re ethnicity distribution" and "Royal Mail document re unconscious bias in recruitment" respectively. Page 89A deals with the former. About ethnicity, the document

says, “overall, Royal Mail’s ethnic profile is representative of the UK workforce. Around 10% of our employers are from ethnic minorities. However, we recognise that ethnic minorities are not adequately represented among our management population. We are seeking to address this. In the coming year we will focus on improving our recruitment processes and advertising campaigns to attract more people from diverse ethnic backgrounds. We are also investigating options for a career development programme. We continue to work with Race for Opportunity to strengthen our progress in this area”. The statistics on this page show that 0.9% of senior managerial employees are black and 2% of managerial employees are black.

285. The latter document deals with issues of conscious and unconscious bias. It says, “that to help ensure equality of opportunity when it comes to filling roles at Royal Mail, we have conducted a detailed analysis of our recruitment and promotion processes and identified the possibility of unconscious bias playing a role. Such bias can act as a major barrier to inclusion, not least because those making decisions are unaware that those judgments are being unduly influenced. We have developed an E-learning tool that is designed to make managers more aware of their potential biases and help to avoid those biases influencing their decisions. In 2014/15, the tool is being deployed across all our hiring managers who have responsibility for ensuring that the recruitment and promotions process is fair and transparent. We will subsequently role it out across all managers”.

286. When this material was placed before Mr Milne he conceded there to be what Mr Flynn described as “a significant statistical deviation”. Perhaps surprisingly in view of the contents of the document at page 89B Mr Milne denied there to be an issue with unconscious bias. When asked if he was suggesting that the report of which we have an extract is wrong Mr Milne appeared to change his view saying that “the facts are the facts”. He went on to say that, “we had a lot of long servers and training was undertaken to reflect the communities we serve. I tirelessly recruited from different parts of the community … and have won awards”. He also intimated that he had dismissed those who had committed acts of racist behaviour.

287. Mrs Nimmo was taken to the data from the Respondent’s demographic survey carried out in 2011 that we see at page 89DB. Mr Flynn asked the Tribunal to take judicial notice of the fact that according to the 2011 census 3% of the UK population is black. Upon that basis, black employees were unrepresented at managerial and senior managerial level (the proportions being 0.98% and 1.96% for senior management and management roles respectively) in comparison to the general population. When confronted with these statistics Mrs Nimmo accepted there still to be a problem within the Royal Mail with diversity issues. Delving down into the statistics further only one black employee held a managerial post in the north region. It was suggested that there was a determination to “keep black people out” (as Mr Flynn put it). This Mrs Nimmo denied.

288. Having given our detailed findings of fact we now turn to consider the issues in the case and the relevant law to which these issues give rise. At the outset of the hearing an agreed list of issues was handed up to the Tribunal by the parties. It is right to observe that each party’s pleaded case has evolved during the course of the proceedings.

289. We observed in paragraph 3 of these reasons that the Claimant's claim form included three complaints which had been withdrawn. Those claims, as set out in the grounds of claim at pages 13 to 22 were of breach of contract, direct sex discrimination and disability discrimination.

290. In its grounds of resistance (at pages 27 to 33) the Respondent pleaded that the Claimant was dismissed on 25 April 2015. As was alluded to in paragraph 5 the Respondent subsequently withdrew its position that the Claimant had been fairly dismissed by Erica Wilkinson in April 2015.

291. The Respondent presented its response to the Tribunal on 29 April 2015. An amended response was presented on 8 July 2015 which may be found at pages 36 to 44. In contrast to the first version of the Respondent's response the amended pleading deals in some detail with the Claimant's equal pay claim. The Respondent pleaded that the reason for the difference in pay between the Claimant and Helen Perry was that EA/PA roles supporting the operational directors were deemed to be more demanding than those supporting the support directors. It was pleaded that Helen Perry supported both the process director and logistics director hence why she was given the MS4 grading. The Respondent goes on to say that, *"The SL2 grades supported the support directors ie HR, Finance, Quality which were not deemed to be as busy roles as the operational directors. The delivery director also had an MS4 support as that was an operational director."* The Respondent made no reference in its ground of resistance or amended grounds of resistance to a material difference between the Claimant and Helen Perry being the size of the geographical area being serviced by those operations directors whom she was supporting (to which we refer at paragraphs 160 to 164).

292. We now set out the allegations. We shall simply summarise the allegations, there being no purpose, it seems to us, in setting out within these reasons the entirety of the agreed list of issues which runs to some 14 pages. In summary therefore these are the allegations and issues to be determined by the Tribunal:-

292.1. Issue A: This is an alleged failure on the part of the Respondent to properly pay the Claimant. This allegation is made upon the basis that the Claimant was paid at an SL2 grade from 1 July 2008 until his dismissal (on the Claimant's case) on 13 November 2014. This involves four different causes of action: direct race discrimination; victimisation; equal pay; and unlawful deduction from wages.

292.2. Issue B: This concerns the Claimant's allegation that he was denied access to the ring fenced roles as part of the 2012 Review. This allegation gives rise to complaints of: direct race discrimination; victimisation; and harassment related to race.

292.3. Issue C: This relates to the Respondent making offers to the Claimant of various roles at grade LA1 following completion of the 2012 Review. This raises allegations of: direct race discrimination; and victimisation.

292.4. Issue D: This relates to an alleged failure upon the part of the Respondent to address the Claimant's grievances. This gives rise to complaints of: direct race discrimination; and victimisation.

292.5. Issue E: This concerns the Respondent sending an offer of voluntary severance to the Claimant on 31 May 2013. In relation to this matter the Claimant complains of: direct race discrimination; victimisation; and harassment.

292.6. Issue F: This relates to an alleged lack of support of the Claimant from Mr Adams. This gives rise to complaints of: direct race discrimination; victimisation; and harassment.

292.7. Issue G: This relates to an allegation that the Respondent targeted the Claimant with voluntary severance as a grade LA1 employee. The Claimant complains that this gives rise to issues of: direct discrimination; victimisation; and harassment.

292.8. Issue H: This relates to the issue of whether or not the Claimant was dismissed on 13 November 2014 and if so whether the Claimant was dismissed upon the grounds of redundancy. The Claimant says that he was dismissed and that his dismissal was unfair. He also says that the dismissal constituted: direct race discrimination; and victimisation.

292.9. Issue I: This issue gives rise to the question of whether the Claimant was dismissed on 13 November 2014 and if so whether the reason for dismissal is redundancy.

292.10. Issue J: The Claimant complains that the Respondent is liable to compensation him for holiday entitlement accrued but untaken when he was dismissed on 13 November 2014.

293. There is no issue raised by the Respondent that the equal pay complaint within issue A was presented to the Tribunal in time. The same goes for the complaints of race discrimination and victimisation in issue H. Jurisdictional issues as to whether the complaints of direct race discrimination, victimisation, harassment and the unlawful deduction from wages claim were brought in time are raised by the Respondent in relation to issues A, B, C, D, E, F and G.

294. We now turn to a consideration of the relevant law. We shall start firstly with the Claimant's equal pay claim. Sex discrimination in relation to contractual terms is governed by Chapter 3 of Part 5 of the 2010 Act which is entitled 'Equality of Terms'. The 2010 Act thus preserves the distinction between sex discrimination in contractual terms and sex discrimination in all other work related matters. Sex discrimination in relation to non-contractual matters is covered by the provisions in Chapter 1 of Part 5 of the 2010 Act.

295. Chapter 1 of Part 5 of the 2010 Act in broad terms makes unlawful within the workplace the prohibited conduct referred to in Chapter 2 (which includes that with which we are concerned of direct discrimination, harassment and victimisation) by reason of the protected characteristics (to be found in Chapter 1 of Part 2 and which extends to and includes race). In relation to the Claimant's discrimination complaints other than that of equality of terms therefore the direct discrimination, harassment and victimisation complaints are to be considered by reference to the provisions of Chapter 1 of Part 5 which makes unlawful the relevant prohibited conduct within the workplace.

296. For the purposes of his equal pay complaint, the Claimant must point to an actual comparator of the opposite sex who is doing like work, work of equal value or work related as equivalent to that which he was doing.

297. In this case, the Claimant brings his equal pay claim upon the basis that he was undertaking like work and work of equal value to a female comparator. The latter claim was stayed pending the outcome of this hearing.

298. The work of the Claimant and his chosen female comparator (in this case Helen Perry) will involve like work if the work is the same or broadly similar and any differences that exist are not of practical importance in relation to the terms of their work having regard to the frequency with which differences between their work occurs in practice and the nature and extent of the differences.

299. Work is of equal value if it is not like work or work that has been rated as equivalent under a valid job evaluation study. The latter does not arise in this case. Work which is not like work or work rated as equivalent will be work of equal value if it is equal in terms of the demands made on the Claimant and the comparator by reference to factors such as effort, skill and decision making. The Tribunal is not concerned at this hearing with the Claimant's equal value complaint.

300. It is not in dispute that the Claimant fulfils the statutory requirement that he was employed at an establishment in Great Britain and that he and Mrs Perry were in the same employment. Thus, were the Tribunal to be satisfied that the Claimant and Mrs Perry were doing like work and that she has a term in her contract that is more favourable than the equivalent term in the Claimant's contract then the burden will pass to the Respondent. It will be then for the Respondent to show the reason for the less favourable term, that the reason is material and that the reason is not the difference of sex (in the sense that it is not directly discriminatory).

301. There are cases where an employer may put forward a material factor to explain a pay differential that is not directly discriminatory and in which the Claimant argues that as a result of that factor those of one sex doing equal work (whether like work or otherwise) are put at a particular disadvantage when compared to those of the opposite sex doing the same work. If such arises then the employer will have to show objective justification for its actions in order to defeat an equal pay claim. In this case, the Claimant accepts that if the Respondent's case on material difference is accepted as pleaded then the Claimant takes no issue that the material difference is related to sex by way of having an adverse disparate impact upon men thus calling for the Respondent to show objective justification.

302. There are two significant parts to the definition of like work which we referred to above (and which is set out at section 65(2) of the 2010 Act). The first of these is that the Claimant's work must be the same or if not the same then broadly similar to that of his comparator (Mrs Perry). The second limb is that the difference if any between the work undertaken by the Claimant on one hand and the work undertaken by Mrs Perry must not have been of practical importance in relation to the terms and conditions of employment. Tribunals must consider these two parts or limbs separately when deciding whether a woman is employed on like work with a man (or *vice versa*).

303. It follows therefore that the initial focus in a like work claim is on the nature of the work being done by the Claimant and the comparator and whether this is the same or broadly similar. It is not necessary that the two jobs under comparison must be identical. The work only needs to be broadly similar. It is no part of the Tribunal's function or duty to get involved in a minute or pernickety examination of differences which when set against the broad picture are of little significance. Tribunals are called upon to exercise a broad judgment.

304. Once it is shown that in general terms the work is of a broadly similar nature then the Tribunal must go on to consider the details of the Claimant's and comparator's job and enquire whether any differences between them are of practical importance in relation to the terms and conditions of employment. When comparing job differences Tribunals should consider the frequency or otherwise with which any of such differences occur in practice and the extent and nature of the differences. The Equality and Human Rights Commission's Code of Practice on Equal Pay notes in this regard that differences such as additional duties, levels of responsibility, skills, the time at which the work is done, qualifications, training and physical effort could all be of practical importance. The emphasis at this stage is not so much on the nature of the jobs done by the Claimant and his comparator but on the differences in the tasks and duties that they respectively perform.

305. Examples of practical importance can include such matters as differing or additional duties, the time when work is carried out, flexibility, responsibilities, skills, qualifications and training and physical effort.

306. Should the Claimant show that he has been engaged on like work with Mrs Perry then it will be presumed that any difference between the Claimant's salary and her salary is due to the difference in sex. This presumption may be displaced should the Respondent establish the defence provided for in section 69 of the 2010 Act. Under that provision, a sex equality clause will have no effect if the employer can show that the difference in pay is due to a material factor reliance upon which does not involve direct or unjustified indirect discrimination. Essentially, what the Respondent has to show (assuming the Claimant to be successful in establishing that he is engaged in like work) is that notwithstanding that the work of Mrs Perry and the Claimant is of equal value (in a sense of being like work) she was being paid more than was the Claimant for a particular reason that has nothing to do with the fact that she is a woman and he is a man. The factor put forward as the reason for the pay differential must be genuine and not a sham or pretence, material (in the sense of being significant and relevant and causative of the variation), not due to sex discrimination and be a material difference (that is to say, a significant and relevant difference between the man's case and the woman's case). Factors which may be considered material may include such matters as: market forces and related factors; geographical differences; skills, qualifications and vocational training; experience and length of service; and responsibility and potential.

307. Turning away now from the equal pay claim, we move on to look at the complaint of direct race discrimination. Direct discrimination occurs where because of a protected characteristic (in this case the Claimant's race) a complainant is treated less favourably by another than that other treats or would treat comparators (actual and/or hypothetical). The Tribunal must therefore

consider whether the Claimant has been less favourably treated than was or would be a comparator in materially similar circumstances and if so whether that less favourable treatment was upon the grounds of the relevant protected characteristic (being in this case the Claimant's race). The focus therefore must be on why the Claimant was treated as he was. Was it upon the proscribed ground or was it for some other reason?

308. All of the characteristics of the Claimant which are relevant to the way his case was dealt with must be found also in a comparator upon his direct discrimination complaint. However, the circumstances do not have to be precisely the same. They must however not be materially different. One has to compare like with like. The treatment of a person who does not qualify as a comparator because the circumstances are in some material respect different may nevertheless be evidence from which a Tribunal may infer how a hypothetical statutory comparator would be treated. Inferences may be drawn and one permissible way of judging a question such as that is to see how non identical but not wholly dissimilar cases were treated in relation to other individual cases.

309. If the discrimination alleged is inherent in the act complained of there is no need to enquire further into the mental process, conscious or unconscious, of the alleged discriminator. However, in cases where the discrimination is not inherent in the act complained of as it does not by its nature strike at the protected characteristic, the act complained of may be rendered discriminatory by the motivation, conscious or unconscious, of the alleged discriminator. A Tribunal must ask itself what the reason for the alleged discriminator's act was and if the reason is that the Claimant possessed a relevant protected characteristic then direct discrimination may be made out. Discrimination may be conscious or subconscious.

310. We now turn to the harassment complaint. There are three essential elements: unwanted conduct; that has the prescribed purpose or effect (of violating the complainants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him; and which relates to the relevant protected characteristic (of, in this case, race). In many cases there will be a considerable overlap between these elements. For example, the question of whether the conduct complained of was unwanted will overlap with the question of whether it created an adverse environment for the employee.

311. A stand alone claim of harassment does not require a comparative approach in contrast to claims of direct discrimination. It is not necessary therefore for the Claimant to show that another person was or would have been treated more favourably. Instead, it is simply necessary to establish a link between harassment on the one hand and in this case the Claimant's race on the other.

312. Unwanted conduct can include a wide range of behaviour including spoken or written words of abuse. That unwanted conduct must have the effect or purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant. Accordingly, conduct that is intended to have that effect will be unlawful even if it does not in fact have that effect. Conduct that in fact does have that effect will be unlawful even if that was not the intention. Therefore, a claim brought on the basis that the unwanted conduct had that purpose involves an examination of the perpetrator's intention. A claim brought upon the basis that that was the

effect of the alleged perpetrator's behaviour involves a consideration of the perception of the complainant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect. The test therefore has both subjective and objective elements to it. The objective aspect of the test is primarily intended to exclude liability where a claimant is hypersensitive and unreasonably takes offence. Importantly, however, the Tribunal must consider whether it was reasonable for the conduct to have that effect on that particular claimant.

313. Finally, in order to constitute unlawful harassment, the unwanted and offensive conduct must be related to a relevant protected characteristic which in this case is race.

314. We now turn to the victimisation complaint. A claimant seeking to establish that he has been victimised must firstly show that he has been subjected to a detriment and secondly that that was because of a protected act. The Tribunal must therefore consider whether the Claimant was subjected to a detriment because he had done a protected act or because the Respondent believed he had done one or more protected acts. If there is detrimental treatment but this was due to another reason then the victimisation claim will not succeed. If a complainant establishes that he has done a protected act and that he has suffered a detriment at the hands of the employer a *prima facie* case of discrimination will be established if there is evidence from which a Tribunal can infer a causal link. For example, if the detriment is suffered shortly after the protected act occurred this might raise an inference of victimisation requiring the employer to prove that the protected act was not the reason for the treatment in question.

315. By section 136 of the 2010 Act, if there are facts from which the Tribunal could decide in the absence of any other explanation that a person contravened a provision of the 2010 Act then the Tribunal must hold that the contravention occurred. However, that provision ceases to apply if the alleged discriminator shows that it did not contravene the provision in question. This provision applies to any proceedings relating to a contravention of the 2010 Act (including all of the contraventions alleged in this case by the Claimant).

316. By section 136(4) the burden of proof provisions to be found in section 136 apply to a complaint about a breach of an equality clause or rule. In relation to that claim, as we have said, it is for the Claimant to show that he was engaged upon like work with Mrs Perry who has a term in her contract more favourable than the Claimant had in his whereupon the burden passes to the Respondent to prove the reason for the less favourable term, that is it is material and that the reason is not the difference of sex.

317. The function of the Tribunal is therefore to consider all of the evidence and decide whether there are facts from which the Tribunal could decide in the absence of any other explanation that the alleged discriminator contravened the relevant provision of the Equality Act 2010. Should the Tribunal determine that there are facts from which it can infer discrimination and there is no explanation from the discriminator then the Tribunal must uphold the complaint.

318. We now turn to the Claimant's complaint of unfair dismissal. This is a statutory complaint brought under the Employment Rights Act 1996 (at Part X). As the Claimant had worked for the Respondent for in excess of two years he had the

statutory right not to be unfairly dismissed. It is for the Claimant to show that he was dismissed.

319. There is no dismissal where the employer and the employee agree to terminate the employment contract. The question of whether the employee was dismissed is a question of fact. Situations that are presented as a voluntary redundancy may on examination will turn out to be dismissals. There is still a dismissal for redundancy if the employee agrees to the employer's proposal of redundancy or if the employee volunteers for redundancy or even if the employee persuades the employer to dismiss him or her. Thus, in **Optare Group Limited v TGWU** [2007] IRLR 931, the EAT held that three employees who volunteered to leave their posts at the start of a redundancy exercise were in fact dismissed. However, the result may have been different had there been evidence that the employees were anxious to leave and had expressed this wish independently of or prior to a redundancy situation arising.

320. The question is one of causation: that is to say, who really terminated the employment or who was responsible for instigating a process resulting in the termination of employment. In circumstances of employees volunteering for redundancy it may be held that in truth the cause of the termination of the contract of employment was that they were volunteering to be dismissed. That may be a commonsense application of the key causation question that arises.

321. Once the complainant establishes that he has been dismissed, then it will be for an employer to show that the dismissal was for one or more of the statutory permitted reasons. In this case, the Respondent pleaded (at page 44 of the bundle) that the Claimant was dismissed for a substantial reason of a kind such as to justify the dismissal of the Claimant.

322. Should the Respondent satisfy the Tribunal that it had available a statutory permitted reason for the dismissal of the Claimant then the Tribunal will go on to consider (the burden being neutral) whether or not the Respondent acted fairly and reasonably in treating that substantial reason as a sufficient reason to dismiss the Claimant in all the circumstances of the case. The Tribunal will therefore have to determine whether the Respondent entertained a reasonable belief that it had available a substantial reason for the dismissal of the Claimant and that such belief was formed after carrying out as much investigation into the matter as was reasonable in the circumstances of the case. The Tribunal will then go on to consider (the burden again being neutral) whether the decision to dismiss fell within the band of reasonable responses. The Tribunal must consider the reasonableness of the employer's conduct and not simply whether the Tribunal consider the dismissal to be fair. The Tribunal must not substitute its decision as to what was right for that of the employer. The function of the Tribunal is to determine whether in the particular circumstances of the case the decision to dismiss the employee fell within the range of reasonable responses. If the dismissal falls within the band then the dismissal is fair. If the dismissal falls outside the band it is unfair.

323. The Claimant also seeks a statutory redundancy payment. It is the Claimant's case that he was dismissed by the Respondent in law and that dismissal was because of redundancy. By section 139 of the Employment Rights Act 1996 an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (amongst other things) the fact that the requirements of the business for employees to carry out

work of a particular kind have ceased or diminished or are expected to cease or diminish.

324. We need also to say something about the time limit issues that arise in some of the discrimination complaints. By section 123 of the 2010 Act proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. For the purposes of section 123 conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided upon it.

325. As the issue of time limits goes to the question of the Tribunal's jurisdiction it is incumbent upon the Tribunal to consider whether any of the Claimant's claims are time barred and if so whether it is just and equitable to extend time to enable the Tribunal to consider them.

326. If claims have been presented out of time the Tribunal has a very wide discretion to determine whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant. However, time limits are exercised strictly in employment cases. There is no presumption that time should be extended on just and equitable grounds. It is for the Claimant to persuade the Tribunal that it is just and equitable to extend time. The exercise of discretion is thus the exception rather than the rule. In exercising our discretion we may have regard to the check list contained in section 33 of the Limitation Act 1980. This governs the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all of the circumstances of the case and in particular: the length and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any requests for information; the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate advice once he knew of the possibility of taking action. The relevance of some or all of these factors depends upon the individual case and Tribunals do not need to consider all of the factors in each and every case.

327. In his submissions, Mr Flynn reminded the Tribunal that direct evidence of discrimination is very rarely available. It is the difficulty faced by complainants in proving acts of discrimination (particularly of direct discrimination) that led to the drafting of section 136 as we have outlined. Therefore, a Tribunal's conclusion that a contravention of one or more of the provisions of the Equality Act 2010 has occurred may be based upon inferences of discrimination drawn from the primary facts and circumstances. Such inferences are crucial in discrimination cases given the unlikelihood of there being direct, overt and decisive evidence that a Claimant has been less favourably treated because of a protected characteristic (or, as the case may be, harassed by being subjected to unwanted conduct related to a protected characteristic or victimised by a reason of having done a protected act). Tribunals therefore have a wide discretion to draw inferences of discrimination where appropriate. Inferences must however be drawn from actual and not assumed findings of fact.

328. In his submissions, Mr Flynn urged upon the Tribunal the drawing of adverse inferences against the Respondent upon the basis of:-

328.1. The statistical data (referred to in particular at paragraphs 284 to 287 of these reasons).

328.2. The Respondent's acknowledgement of a longstanding problem of race discrimination within the Respondent (referred to at paragraphs 18 and again at paragraphs 284 to 287).

328.3. The absence of documentation around the 2012 Review (a matter to which we refer at paragraphs 59, 75 and 100 to 104).

328.4. The lack of satisfactory evidence or clarity around the grading system in place and the procedure for regrading (a matter to which we referred in paragraph 23, 31 to 42, 69 to 71, 81, 88, 130, 138, 139, 219 and 240).

328.5. The absence of any clarity around the SL2 grade (see paragraphs 26, 28, 29, 31, to 42, 81, 82 and 88).

328.6. The need for the Claimant to apply to the Tribunal for a specific disclosure order (as was granted when the matter came before Employment Judge Forrest on 2 July 2016).

328.7. The redaction of documents.

329. The latter was an issue to which we made reference earlier (see paragraph 176). On 24 July 2015 Kate Watkinson, information rights and governance manager, wrote to the Claimant (page 57WW). This was in answer to a subject access request ('SAR') made by the Claimant on 16 June 2015. In that letter, she gave six reasons for the redaction of information from documents to be disclosed to the Claimant pursuant to his SAR. These reasons were:-

329.1. That an individual is entitled to a copy just of their personal data and not to any other information that may be contained in the document.

329.2. By application of that principle, in some cases personal information within documents "has being extracted and provided in a separate document".

329.3. There had been a redaction of what the Respondent considers to be a business or operational information which is not personal data about the Claimant.

329.4. Information has been redacted where it is considered to be someone else's personal data.

329.5. Some of the data fell within the legal professional privilege exemption.

329.6. Some of the data fell under an exemption from subject access provisions if disclosure would be likely to prejudice the conduct of any business or other activity.

330. Mr Flynn referred to a number of examples where information had been redacted not falling within any of those six exemptions. Those were:-

330.1. The email from Alison Wright asking whether the Claimant was being considered for the EA role with Mr Neal (referred to in paragraph 85 of these reasons).

330.2. The email of 24 December 2013 in which Mr Buckley refers to his intention to shut down the Claimant's grievance and in which he raises the possibility of bad faith findings against the Claimant (referred to at paragraph 175).

330.3. The email from Mr Buckley of 17 January 2015 in which he states his belief that the Claimant was a manager (referred to at paragraph 180 of these reasons).

330.4. An email from Mr Adams to Mr Buckley of 24 January 2014 in which the line "can you offer some support managing this absence please, we have work migrating next week and I am struggling to find time" is removed rather than redacted. This is by reference to pages 324 and 324A.

330.5. An email from Mr Buckley of 28 February 2014 referring to a plan to cease paying the Claimant's pay and looking to institute conduct proceedings against him (referred to at paragraph 186 of these reasons).

330.6. An issue around the email from the voluntary severance team on 16 September 2014 to Mr Ede (pages 563 and 563A).

331. Mr Flynn submits that had the Claimant not made a specific disclosure request and had the same not been granted by Employment Judge Forrest then the Respondent would have continued to withhold the redacted information. He submitted that in the circumstances it was appropriate to draw adverse inferences against the Respondent.

332. Mr Flynn also drew the Tribunal's attention to the Respondent's failure to reply to the Claimant's Equality Act questionnaires. We refer to paragraphs 253 and 256. It is the case that the statutory questionnaire procedure was repealed on 6 April 2014. Mr Flynn says that nonetheless ACAS guidance points out that the Tribunal may look at whether a Respondent has answered questions and how they have answered them as a contributory factor in making their overall decision on the questioner's discrimination claim. In our judgment, the issue goes further than was submitted by Mr Flynn.

333. The statutory questionnaire procedure which was to be found at section 138 of the 2010 Act was repealed pursuant to section 66 of the Enterprise and Regulatory Reform Act 2013. Section 66(2) provides that the repeal did not affect section 138 for the purposes of proceedings that related to a contravention occurring before that section (section 66 of the 2013 Act) came into force on 6 April 2014.

334. As some of the Claimant's complaints (particularly issues A, B, C, D and F) related to contraventions occurring before 6 April 2014 then section 138 of the 2010 Act still pertains. Section 138(4) provides that a Tribunal is entitled to draw an inference from a failure by an employer to answer the questions posed within eight weeks of service or from an evasive or equivocal answer. The drawing of the inference to be drawn by a failure to reply to a questionnaire or late or evasive replies to a questionnaire is a matter for the Tribunal's discretion. A Respondent's failure to answer a questionnaire does not automatically give rise to a presumption of discrimination.

335. Mr Flynn also prays in aid the Respondent's alteration of its pleaded position. This is a matter to which we referred above. Further, Mr Flynn also urged the Tribunal to draw an adverse inference against the Respondent by reason of its

letter of 12 September 2014 at page 549 to which we refer at paragraph 238. By way of reminder, the Respondent (after having been contacted by ACAS) told the Claimant that the Respondent was not aware that the Claimant had raised any complaint under any of the Respondent's internal processes. Mr Flynn says that this was an example of the Respondent's high handed and oppressive approach to the Claimant in circumstances where Erica Wilkinson had identified the Claimant having raised nine grievances in her document which is in the bundle at pages 727 and 728.

336. We now turn to our conclusions. We shall start with the first allegation (Allegation A) which centres upon the contention that the Respondent failed to properly pay the Claimant. Central to this allegation is the Claimant's case that he was undertaking management work and not administrative work. The Claimant claims that he was wrongly paid between 1 July 2008 and 13 November 2014 upon which basis he brings his equal pay claim. The former date is the date upon which Mrs Perry obtained her promotion to a managerial grade (MS4) when she was appointed to the area manager's support role. This was the same role that the Claimant had been doing from 7 July 2003. The latter date is of course, on the Claimant's case, the date of his dismissal.

337. Throughout the whole of this period the Claimant was grade SL2. Mrs Perry was grade MS4. Grade SL2 (in the Claimant's case) and grade MS4 (in Mrs Perry's case) therefore pertained in relation to the period that each of them carried out both the area manager support roles and EA/PA roles.

338. The Tribunal heard little evidence from either side about the area general manager's support role. The Claimant's unchallenged evidence was that he was carrying out the same work in undertaking this role as was Helen Perry when she acquired an equivalent position in a different area on 1 July 2008. The Claimant also gave unchallenged evidence that the Respondent had been unable to acquire the relevant job description for the area general manager's support role. We refer to paragraph 14 of the Claimant's witness statement. In the circumstances, we accept the Claimant's case that he and Helen Perry were carrying out the same role when they performed the work of area manager support. In truth, the Claimant can do no more than say that he believed he was carrying out the same job function as was Helen Perry. The Respondent produced no evidence to the contrary.

339. Upon the Claimant's equal pay claim, we find that the Claimant and Mrs Perry, when carrying out their EA/PA support roles, were undertaking work that was the same or broadly similar. Mrs Perry accepted that, upon the basis that the Claimant's job description that he had prepared for the purposes of these proceedings was an accurate description of his work, there was considerable overlap between what the Claimant said he was doing and what she did when working as an EA/PA support for Mr Milne and Mr Ede. As we say, the Claimant's evidence as to what he was doing was effectively encapsulated within the job description that he had prepared for this case and he was not challenged upon it. The Claimant also produced ample material from which the Tribunal may infer that he was carrying out executive tasks akin to those carried out by Mrs Perry. We refer in particular to paragraphs 264 to 271.

340. The next question that arises therefore for the purposes of the equal pay claim is whether there were any differences of practical importance between the work being undertaken by Mrs Perry on the one hand and the Claimant on the other.

341. We do not hold that the geographical area covered by Mrs Perry's work was a difference of practical importance. We accept the size of the West Midlands area did increase as we found in paragraphs 160 to 164. However, that must be set in the context of Mr Milne's acceptance that the workload in that area decreased and the Claimant's unchallenged assertion that the area being covered by him increased in size. We refer to paragraphs 277 and 281.

342. Where we do find there to be a difference of practical importance was that Helen Perry was acting as EA/PA support for two operations directors and the Claimant only for one. As we have said, we accept as a fact that Mrs Perry was supporting two operations directors. We found her evidence generally to be credible and see no reason to disbelieve her account of how this was impacting upon her work/life balance. In truth, the Claimant's account that he too was supporting two operations directors appeared to rest entirely upon one email from Alison Wright (that being the one dated 31 July 2012 referred to in paragraph 77). It is significant that in his first witness statement the Claimant refers to his appointment as EA/PA to Mr Lovejoy only. Had the Claimant been involved in supporting two operations directors upon a day to day basis we would have expected this to feature much more prominently than it did in his evidence in chief. Upon that basis, we find as a fact that there was a difference of practical importance between the Claimant upon the one hand and Mrs Perry upon the other. That difference of practical importance was that the Claimant was supporting one operations director and Mrs Perry two. Thus, she had greater responsibility than did the Claimant and had additional duties to him.

343. It follows therefore that the Claimant has not established that he was engaged in like work with Mrs Perry and upon that basis the equal pay claim (based upon like work) must fail. That renders otiose for the purposes of the like work claim the issue of whether the Respondent in any event had a good reason and a material factor explaining the less favourable treatment. However, this issue will be of relevance to the Claimant's equal value claim should such be pursued. In this regard, there is much merit in Mr Flynn's point the reason that the EA/PA role carried by Mrs Perry was graded as MS4 was because she was supporting an operations director (as opposed to supporting two operations directors). Therefore, it was the fact of the role of who she was supporting that was the key reason why the role was graded MS4. The role that she was undertaking would have been graded MS4 had she only been supporting one operations director. Therefore, the fact that she was supporting two operations directors is not a material factor that explains the difference between the Claimant's pay and Mrs Perry's pay.

344. We so find upon the basis of the Respondent's pleading in the amended grounds of resistance at page 39 cited at paragraph 291. In particular, the Respondent said that the operational directors' roles were more demanding of the EA/PA support staff than was the case for those doing the support directors' role. Hence, as Mrs Perry supported both the process director and the logistics director, she was given an MS4 grading. It was accepted by the Respondent's witnesses (particularly Mrs Perry at paragraph 268) and seems clear from the pleaded case that the distinction to be made is not supporting two rather than one operations directors but rather supporting an operations director as opposed to a support director. It follows therefore that Mrs Perry supporting two operations directors was not the material reason for the difference in pay between her and the Claimant.

345. We agree with Mr Flynn that an adverse inference may be drawn against the Respondent upon this issue given that it sought to bolster its case that there was a further (unpleaded) material difference in terms of the geographic area being serviced by Mrs Perry in comparison with the Claimant. That the Respondent sought to bolster its material factor defence by reference to this factor (which in any event we do not find persuasive) is a matter in respect of which an adverse inference is drawn against the Respondent by the Tribunal.

346. We now turn to the Claimant's complaint of direct race discrimination brought under issue A. It follows from our findings of fact that the Claimant was less favourably treated than was Mrs Perry. The Claimant was deemed to be a non managerial grade and was therefore paid less than was she between 1 July 2008 and 13 November 2014. The question for the Tribunal therefore was the reason why this was the case.

347. The Respondent's case simply boils down to the fact that the Claimant was a grade SL2 and thus properly paid as such. The Respondent's case is that that was the reason why he was paid less than was Mrs Perry. This was also the reason why he was paid less than was Diane Pickett, Brenda Allen and Gloria Ross after their re-grade.

348. The weakness, it seems to us, of the Respondent's position is that this explains what was done (in that the Claimant was graded SL2 by the Respondent who continued to treat him as being of a non managerial grade) as opposed to <u>why</u> it was done. No one from the Respondent was able to satisfactorily explain why the Claimant remained at grade SL2 rather than being granted ML4 grading when he was appointed as EA/PA to Mr Lovejoy or later when he raised his grievances following the 2012 Review. Mrs Nimmo's assertion that there were geographical differences in practice as to how EA/PAs were treated accounting for the difference was unsubstantiated (as the difference in treatment between the Claimant and his comparators rested not upon that factor but that the Claimant was not managerial grade) and was not pleaded as a reason why there was a difference in treatment anyway. Were the Respondent to be correct in its assertion, a complaint for equal pay and sex discrimination could be defeated by the simple expedient of grading female members of staff differently from male staff in circumstances where they were doing the same job. What would have to be explained in such a case is the <u>reason why</u> the female staff was graded and treated differently.

349. The Respondent's position was in part that a post could only be re-graded following a 'formal process'. The Respondent cited the example of Diane Pickett, Brenda Allen and Gloria Ross who had, it seems, applied to have their roles re-graded (as we saw by reference to paragraphs 69 to 71 and 73). No documentary evidence was produced for the benefit of the Tribunal by the Respondent to illustrate the process that was undertaken in the re-grading exercise that benefited these three comparators or the regarding process generally. It seems that in essence all that happened was that a grievance was raised by one of them which was investigated and their roles were re-graded. No one was able to explain satisfactorily as to why the Claimant did not benefit from a similar process when he raised his complaints and grievances after the commencement of the 2012 Review. No one was able to explain the basis upon which the Claimant remained at SL2 rather than be granted ML4 status once he acquired the EA/PA support role.

350. The lack of transparency upon this issue was compounded by the wholly unsatisfactory nature of the Respondent's evidence around the grades. The Respondent did not call any evidence from anyone who was able to give a coherent explanation as to the Respondent's grading system and the history of that system.

351. To these findings must be added a number of features from which the Tribunal draws an adverse inference against the Respondent. The first of these is the striking statistical data coupled with the magazine articles to which we have referred around the Respondent's issue with race discrimination and conscious or sub-conscious bias against promoting black people to managerial and senior managerial positions. Secondly, that there was such an issue within the Respondent was demonstrated by how the Respondent treated the Claimant. There was strong resistance to promoting the Claimant coupled with a wish for him to revert to being a postman. We refer to paragraphs 13 and 14, 26 and 27, 79, 88 and 89 and 118 and 119. Such showed, in our judgment, the adoption by the Respondent of the stereotypical view it (or at any rate some within the organisation) held of the roles that it was considered should be occupied by black employees.

352. Thirdly, there was plain and undisguised hostility exhibited towards the Claimant. In particular, the Respondent was set upon a course of diverting the Claimant from his entitlement to have issues heard under the Respondent's grievance policy to having them dealt with under the bullying and harassment policy. On any view, this was being done with a view to setting up the Claimant to fail and in order that bad faith allegation may be brought against him. We refer to paragraphs 166 to 170, 172 to 178, 186 and 196.

353. The fourth issue in respect of which an adverse inference is drawn against the Respondent arises from Mrs Stevens' handling of the sick pay matter. It seems extraordinary that she should have decided to withdraw the Claimant's sick pay with practically no notice. We refer to paragraphs 182, 185, 186, 188, and 191 to 198. This is in the context of what appears to us to be a wholly gratuitous reference to the Claimant's ethnicity in the email to which we refer at paragraph 243. That the Claimant is black was a matter that was plainly for some reason troubling Mrs Stevens and in respect of which she felt the need to comment in her dealings with ATOS. There was no satisfactory explanation for this reference.

354. Fifthly, we agree with Mr Flynn that an adverse inference may be drawn against the Respondent upon the subject access request issue to which we referred above. On any view, at least some of those references were damaging to the Respondent and the redactions do not fit within any of the exemptions or exclusions referred to by Kate Watkinson.

355. Sixthly, a Tribunal is entitled to draw an inference from a failure by an employer to answer the questions posed within an Equality Act questionnaire within eight weeks of the date of service pursuant to section 138(4). As a matter of law, this provision is still applicable, some of the the causes of action to which the questionnaire was directed arising prior to 6 April 2014. The Respondent advanced no explanation for its failure to engage with the Claimant's Equality Act questionnaires.

356. There are additional features. Emma Kealey, in her capacity as Yorkshire Delivery PA, was grade ML5. Mandy Davenport said in her email at page 121

that ML5 (a managerial grade) was that into which SL2 grades had been assimilated when they (SL2) was phased out. We refer to paragraphs 26 and 55. Further, the Claimant was considered by some within the Respondent to be part of the affected population. We refer to paragraphs 50 to 52. The Claimant was considered by Anne McCarthy to be a potential EA/PA support for Mr Neal following the 2012 Review (paragraph 85 and 86). Even Mr Buckley considered the Claimant to be a manager (paragraphs 180 and 181). In the circumstances, it seems extraordinary that the Claimant was regarded as LA1 as part of the 2012 Review, that being a role that he had not fulfilled from 2003 when he achieved his promotion and was then graded SL2.

357. Taking into account all of these factors, the Tribunal is satisfied that the reason why the Claimant was paid less than was Mrs Perry and his other three female comparators and continued to be regarded as being of administrative rather than managerial grade was by reason of race. It is the case that the Claimant was treated the same in the sense of being at the same non-managerial grade as Mrs Pickett, Mrs Allen and Mrs Ross to the point at which they were re-graded. However, there was no satisfactory explanation as to why he was treated less favourably following their re-grade, the explanation that they applied by way of grievance simply begging the question as to why the Claimant was not similarly treated when he raised his and in any case still leaving the Respondent in the position of not being able to explain the less favourable treatment in comparison to Mrs Perry. It is not enough to simply say that the reason that the Claimant was paid less was because he was of an administrative grade. That simply begs the question as to why he continued to be so graded notwithstanding his appointment to what we have determined was a managerial position as EA/PA support to Mr Lovejoy and as area general manager support before that.

358. Finally upon issue A we turn to the victimisation complaint. There is no dispute that the Claimant did a protected act. We refer to paragraph 10 of these reasons. The difficulty for the Claimant is in showing a causal link between his undertaking of that protected act in November 2002 on the one hand and the actions of the Respondent from July 2008 onwards in respect of which we have found the Respondent liable for race discrimination. In reality, there was little if any evidence that in the actors in the events with which we have been principally concerned were aware of the 2002 grievance. As we have said, the Claimant's attempts to show a link by reason of Mrs Nimmo's involvement were based upon nothing more than surmise. We have determined as a fact that she was unaware of the fact of the Claimant's protected act. We refer in particular to paragraphs 82 to 84.

359. The direct race discrimination and victimisation claims relevant to issue A have been brought in time. The less favourable treatment of the Claimant (by reason of the failure to afford him a managerial grade and pay him accordingly in comparison to Helen Perry and the other three female comparators) was a continuing act occurring upon each day of the Claimant's employment from 1 July 2008 until 13 November 2014. The Respondent's policy of failing to accord the Claimant a managerial role was applied each time he was paid. We agree with Mr Flynn's submission that this is particularly so where the Claimant challenged his grading repeatedly after May 2012. Accordingly, the Tribunal has jurisdiction to entertain the Claimant's direct race discrimination complaint as it has been brought in time.

360. It follows for the same reasons that the victimisation claim has been brought in time (albeit that on the merits that claim has failed). This is by application of the same principles as for the direct race discrimination complaint. The Claimant's case is that he was not properly paid consequent upon doing the protected act. It must follow therefore by parity of reasoning that this too is a continuing act (upon the Claimant's case) and therefore has been brought in time.

361. In the alternative to the equal pay claim, the Claimant has brought a complaint that he has suffered an unlawful deduction from wages. This is a complaint brought under Part II of the Employment Rights Act 1996. By these provisions, an employee has the right not to suffer unauthorised deductions from the total amount of the wages properly payable to him or her. It appears to be the Claimant's case that it was an express and/or an implied term of his contract of employment that he would be paid in accordance with the Respondent's grading and salary pay scales. For the avoidance of doubt, we hold that this claim has been brought in time as it is the Claimant's case that he suffered a series of deductions up to and including the date upon which his contract of employment terminated.

362. We have seen examples of letters sent to the employees by the Respondent confirming a variation of that employee's contract of employment. We refer, for example, to Miss Kealey (paragraph 55) and Mrs Perry (paragraph 44). Indeed, the Claimant himself received a letter confirming a variation to his contracts of employment on 23 February 2005 (when he was appointed to grade SL2 with effect from 7 July 2003). We refer to paragraph 28.

363. The difficulty for the Claimant with the unlawful deduction of wages complaint is that there is no letter from the Respondent confirming an express variation of the contract of employment to a managerial grade. Further, we can see no basis upon which to imply such a term into the contract of employment. There is no evidence giving rises to such implication by way of custom and practice. In fact, the evidence is to the contrary as it appears to be the practice of the Respondent to confirm contractual variations in writing. There is no room for implication by reason of business efficacy. The contract is efficacious upon the basis of an administrative grade. It is not so obvious that the Claimant should be afforded a managerial grade that such a term should be implied without saying. There was no submission from Mr Flynn to this effect.

364. It follows therefore as a matter of contract the Claimant was being paid the sums properly payable to him contractually. That being the case, the Respondent has made no unauthorised deductions from the Claimant's wages and therefore the unlawful deduction of wages claim fails and stands dismissed.

365. We now turn to issue B which is around the denial of access by the Respondent to the Claimant to the ring fence roles as part of the 2012 Review. We have seen that it is the case that the Claimant was not allowed to participate in the portal exercise by submitting his CV for consideration. This gives rise to complaints of direct race discrimination, victimisation and harassment.

366. We have found as a fact that Diane Pickett, Brenda Allen and Gloria Ross were not permitted to enter the portal. We refer to paragraphs 69 to 73 in particular. Therefore, those three comparators were not treated more favourably than was the Claimant who was also not allowed to enter the portal process. Therefore, this direct race discrimination claim in so far as it is founded upon the basis of

those three comparators fails as the Claimant and those three were treated the same.

367. On any view, the Claimant was less favourably treated than was Mrs Perry. Mrs Perry was allowed to participate in the portal process. The Claimant wasn't. The question, therefore, is the reason why the Claimant was so less favourably treated.

368. The Respondent's case is that the reason why the Claimant was not allowed to participate in the portal process was that he was not a managerial grade employee whereas Mrs Perry was. That argument suffers from the same flaw that we highlighted in relation to Allegation A: that this explains what was done but not why it was done. Again, no one from the Respondent was able to satisfactorily explain why the Claimant was appointed to SL2 in 2005 in circumstances where that grade was (at least in the view of Mrs Nimmo and Many Davenport) (by reference to page 121) obsolete at that time and assimilated into management grade ML5. Further, as we have seen in the case of Miss Kealey, secretaries were appointed to a management grade (ML5). On any view, the Claimant was working at a higher level than was a secretary. We have seen by reference to the document at page 1181 that ML5 was classed as a managerial grade in 2010.

369. Additionally, matters had got off to an encouraging start for the Claimant when on 11 July 2012 he received an email inviting him to submit his CV into the portal and express his preference. We refer to page 145 (paragraph 50 of these reasons). Gail Nimmo also said that those carrying out PA roles were part of the affected population as were their line managers. We refer to paragraph 52. This was also the view of Louise Alexander (paragraph 57) and Alison Wright (paragraph 85).

370. Compounding the Respondent's difficulties was the lack of explanation as to why the Claimant had not been given the opportunity of applying for the available roles set out in the list at page 158 in circumstances where Diane Pickett, Brenda Allen and Gloria Ross were. Although, as we have said, we accept that those three were not allowed to participate in the portal process the fact remains that they were allowed to apply for roles that were available on that vacancy list, some if not all of which would have been suitable for the Claimant (both geographically and as falling within his capabilities). Further, there was another example of an employee who had not been allowed to participate in the portal process being afforded access to a managerial grade vacancy. We refer to the example of Miss Kealey and her appointment to the MS2 executive assistant role following the 2012 Review.

371. Rather than being afforded an opportunity to apply for those roles, the Respondent sought to assign the Claimant to roles graded as LA1. We refer to the issues of the MCMA role (in particular around paragraphs 120 to 125). Diane Cashell reference to that role being graded as LA1 is also puzzling given that the LA1 grade does not feature upon the Respondent's list of acronyms produced by Mr Peacock. Further, the Claimant had not worked at LA1 grade from the time of his promotion to SL2.

372. As with Allegation A, none of the Respondent's witnesses were able to give a satisfactory and coherent explanation as to why the Claimant was denied access to the portal in May 2012. The Respondent constantly fell back upon the argument that the Claimant was an administrative grade. Given the long

history of this matter and the nature of the work that the Claimant had been doing (particularly from April 2009) this simply begged the question as to why he was not given managerial grade status.

373. The Respondents also fell back upon the argument that it was not possible to promote from administrative to managerial grade without some sort of formal process. However, no one was able to explain what this was or demonstrate how the Claimant's case (where he had raised grievances about the matter in 2012) was any different to that of Mrs Pickett and her two colleagues who had achieved a re-grade following the raising of a grievance. The lack of any satisfactory or coherent explanation about any of this from the Respondent coupled with the statistical data, the overt hostility to the Claimant, the wish on the part of some within the Respondent for him to revert to an operational grade, the public acknowledgement of a significant issue with race discrimination and conscious and subconscious bias, the ignoring of the Claimant's Equality Act questionnaires and the SAR issue give of only one conclusion: that the reason that the Claimant was denied access to the portal when his white comparator Helen Perry was not was by reason of the Claimant's race. We agree with the Respondent that the other three female comparators did not have access to the portal and thus were not treated more favourably than was the Claimant upon this aspect of the matter.

374. For the same reasons as with Allegation A, the victimisation claim fails. In short, we found as a fact that Mrs Nimmo was unaware of the 2002 protected act and none of the other actors on the Respondent's side had any knowledge of the protected act nor were they influenced by it.

375. We find that the complaint of harassment in relation to issue B succeeds. On any view, denying the Claimant access to the CV portal exercise was unwanted conduct. The Claimant plainly wanted to participate in it and was prevented from doing so. We find that this was done with the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. It is difficult to conclude anything other given the evident wish upon the part of the Respondent to see the Claimant return to postal operative duties or work at grade LA1 and the hostility directed at the Claimant at the time the Respondent was seeking to have his grievance dealt with under the bullying and harassment rather than the grievance policy. Even if we were to be wrong to hold that the unwanted conduct was done with that purpose then we to hold that it may reasonably be considered to have had that effect upon the Claimant.

376. For the same reasons as we have found in the Claimant's favour upon the direct race allegations in Issues A and B we find that the unwanted conduct suffered by the Claimant was related to his race. Although a harassment claim does not, of course, depend upon a comparator exercise it is enlightening and instructive to contrast the way in which the Claimant was treated with how the Respondent treated Karen Kealey, Helen Perry, Diane Pickett, Brenda Allen and Gloria Ross.

377. We agree with Mr Peacock's submission that, as the 2012 Review was substantially completed by 31August 2012 and the Claimant knew that he was surplus, from then his complaints under Issue B had been brought outside the relevant time limit. The claim is therefore significantly out of time. The

Claimant did not invoke the early conciliation process for a period of in excess of two years from the date of the conclusion of the portal process.

378. We have made factual findings that the Claimant raised grievances about the process in July, August and September 2012. According to Erica Wilkinson's chronology at page 727 no fewer than five grievances were raised by the Claimant around this time. We have then seen how the Claimant's case was passed from one person to another and matters culminated in a lengthy period of absence from work for the Claimant due to work related stress (between April and July 2013). We have seen how following his return to work the Claimant was complaining about his position being unclear and how he had an unhappy time working under John Adams. The Claimant then raised his further grievance in November 2013 which led to the correspondence from Karen Nealey in which she tried to persuade him to change his grievance complaint to a bullying and harassment complaint (for nefarious reasons on the part of the Respondent). The Claimant then commenced his final period of sickness absence on 6 January 2014 and did not return to work. It was not until 12 September 2014 that the Respondent properly addressed the Claimant's grievances.

379. There was no submission from Mr Peacock to the effect that the cogency of any of its evidence has been affected or its position prejudiced in any way by the delay. That the Respondent took over two years to properly deal with the Claimant's grievances is significant particularly in circumstances where Mr Buckley was expressing the intention of simply shutting it down.

380. It is also necessary upon a consideration of time limit issues to stand back and look at the bigger picture. True it is that as a discreet issue the 2012 Review exercise had a relatively short shelf life (albeit with significant continuing consequences for the Claimant). This must however be set against the context of all that had happened to the Claimant during his employment including the strenuous efforts that he had had to make to vindicate his position in 2002 and 2003 to which we refer in the early part of these reasons. In circumstances where: there has been no prejudice of the Respondent by reason of the Claimant's delay in bringing Issue B to the Tribunal; the Claimant affording the Respondent every opportunity to deal with his grievances in a timely fashion; the Respondent's treatment of the Claimant in relation to the 2012 Review being consistent with how the Claimant was treated generally it is in our judgment just and equitable to extend time to vest the Tribunal with jurisdiction to entertain Issue B. This conclusion pertains to the direct discrimination, victimisation and harassment complaints to which Issue B gives rise.

381. We now turn to Issue C which concerns the allegation that the Claimant was offered various roles at grade LA1 following the 2012 Review. We have found as a fact (and it is not in dispute) that this is in fact the case. This allegation runs very much hand-in-hand with issue B and the same conclusions follow.

382. His white comparators (Helen Perry, Diane Pickett, Brenda Allen and Gloria Ross) were offered managerial grade roles. The Claimant was not. He was offered roles at grade LA1. This in itself is difficult to understand given the lack of clarity around the status of the LA1 grading and the fact that the Claimant had not worked at that grade from 2003 and had been working as EA/PA support performing executive level work from April 2009. Coupled with all of the other issues that have been aired in these conclusions this calls upon

the Respondent to give a much better explanation than the one that it managed. It is difficult, frankly, to see why the Respondent was so set against appointing or giving the Claimant the opportunity of applying for a managerial grade role when there appeared to be such little difficulty affording the opportunity to his white female comparators (three of whom were, like the Claimant, excluded from the portal) and where he had been carrying out a managerial roles from 2003.

383. It is difficult to escape the conclusion, in these circumstances, that there was conscious or subconscious bias against the Claimant as a black man. While it is perhaps encouraging to see public recognition and acknowledgement by the Respondent of the problems that it has there is no getting away from the fact that of its own admission the Respondent has an issue with race discrimination. What Mr Flynn (with justification) describes as the '*striking statistical data'* at page 89DB had as its practical manifestation in this case the views of some within the Respondent's management that the Respondent would be best served by the Claimant working as a postal operative. We refer in particular to the views of Mr Kellaway at paragraph 13 and Mr Sayers at paragraphs 118 and 119. Mr Sayers' suggestion that the Claimant, who had worked capably as EA/PA support for an operations director from 2009, should revert to postal duties is quite remarkable and telling. Mr Sayers' views were being expressed in October 2012, some eight or nine years following similar sentiments having been expressed by Mr Kellaway and Mandy Davenport (at paragraph 26).

384. In summary, the Claimant was, after the conclusion of the 2012 Review, offered roles that were on any view subordinate to that which he had been carrying out from April 2009 (and indeed before then). The same was not case for Karen Kealey. The three female white comparators (Mrs Pickett, Mrs Ross and Mrs Allen) were regraded following the raising by Mrs Pickett of a straightforward grievance addressed to Mr Haxton.

385. The Respondent's resistance to the Claimant occupying a role commensurate with that of EA/PA to the operations director prior to the 2012 Review was not properly explained. On the facts, the Claimant was plainly less favourably treated than was his white comparators. Adverse inferences are drawn against a respondent for the same reasons as with Allegations A and B. The conclusion therefore is that the Claimant was offered various roles at grade LA1 and was less favourably treated than his white comparators by reason of his race. That complaint is upheld. The complaint was brought in time as the attempt to place the Claimant into alternative roles was a continuing act which pertained until the contract of employment was terminated.

386. Although in time for the same reasons, we find that the victimisation complaint fails. It fails for the same reasons as with Allegations A and B.

387. We now turn to issue D which concerns the Respondent's alleged failure to address grievances. We find as a fact that the Claimant did raise grievances in: July 2012 (paragraphs 60 to 65 and 80); August 2012 (paragraphs 90 to 92); September 2012 (paragraphs 113 to 125); 7 March 2013 (paragraphs 127 to 133); 21 November 2013 (paragraphs 165 to 181); 26 April 2014 (paragraphs 200, 215 and 243); July 2014 and August 2014 (effectively being one grievance about the sick pay issue: paragraph 211, 215, 224,226 and 245). He also raised further grievances after Joan Mee's grievance report. Those other grievances were raised in September 2014 (paragraph 249). We make this

finding upon the basis of Erica Wilkinson's chronology at pages 727 to 729 where she plainly identifies those documents which she classes as a grievance.

388. There was no grievance report prepared by the Respondent until that of Joan Mee on 12 September 2014.

389. Mr Peacock, in his submissions, contends that there was no failure to address the grievances raised prior to Joan Mee's report. He submits that action was taken by the Respondent after each of the Claimant's emails that were classified by the Respondent as a grievance. Although not culminating in a grievance report as such some action was taken in answer to each of them. We shall not set out the detail of Mr Peacock's submission here. It is to be found principally at paragraphs 115 to 157 of his written submissions. We also refer to the factual findings in relation to each at paragraph 387. In sum: efforts were made by the Respondent to address the issues raised in July, August and September 2012; Mr Sayers sought to address the March 2013 grievance and offered to meet the Claimant; the grievances of April 2014 and July and August 2014 were addressed in Mrs Mee's report of September 2014. There was thus no significant delay in dealing with the latter three grievances given the context of such a complex case.

390. There is therefore much merit in Mr Peacock's point. However, a greater difficulty for the Claimant is that there is no evidence from which the Tribunal may conclude that the way in which the Respondent dealt with the Claimant's grievances contravened the 2010 Act (by reason of direct race discrimination and victimisation).

391. The Tribunal was not presented with any evidence of any actual comparator of a different race who had raised similar grievances and whose grievances had been dealt with differently and more favourably than was the Claimant's set of grievances. There was also very little evidence from which may be constructed a hypothesis as to how a hypothetical white comparator raising similar grievances to the Claimant would have been treated. There was nothing to suggest that the Respondent would have dealt with the situation differently for anyone of a different race. This position is to be contrasted with that for issues A, B and C where there was ample evidence of more favourable treatment of actual comparators.

392. We make this finding in relation to all the Claimant's grievances save for that of 21 November 2013 (supplemented on 6 December 2013). This was the grievance that prompted Mr Buckley and others to seek either to shut it down altogether or divert the Claimant into the bullying and harassment procedure with a view to then being able to level an allegation of bad faith against the Claimant. We found that this overt hostility to the Claimant was a feature in respect of which an adverse inference should be drawn against the Respondent upon issues A, B and C and it follows logically therefore that there is ample material from the factual findings around how that grievance was handled by the Respondent to infer that this was upon the grounds of race and that a hypothetical white comparator who raised a similar grievance would not have faced such hostile dealings. On any view, trying to divert the Claimant from a legitimate path and then delaying the hearing of his grievance until the following September was a failure to properly address it. Again, the Respondent has failed to explain adequately why it took the approach that it did in relation to this particular grievance.

393. The handling of that grievance concluded with Mr Latimer's stage 3 grievance outcome on 1 December 2014. It follows therefore that this aspect of the Claimant's claim was presented to the Tribunal in time and the Tribunal has jurisdiction to entertain it.

394. For the same reasons as before, the victimisation complaint is dismissed. For the avoidance of doubt, the Tribunal has jurisdiction to entertain it, it having been presented in time.

395. In conclusion therefore Issue D is upheld in part in relation to the grievance of 21 November 2013 only.

396. We now turn to Issue E which centres upon the sending of the offer of voluntary severance to the Claimant on 31 May 2013. The Claimant's submission is that he first requested a voluntary redundancy quote in November 2012. There was no reason why that could not have been actioned when requested. Rather, the request was actioned when the Claimant was about to return to work following the period of sickness absence commencing on 2 April 2013. The Claimant invites the Tribunal to infer that the reason for the sending of the voluntary redundancy quote was that the Respondent was unwilling to investigate the Claimant's complaint about his grading issue for fear that he may be able to prove that he should have been graded at MS4 and should have had access to the CV portal system. This should be seen in the context of the Respondent being unwilling to appoint black managers.

397. By reference to paragraphs 126 and 127, we see that before going on paternity leave the Claimant had asked for a voluntary redundancy quote. This had not been received. He repeated the request on 7 March 2013. We also observed at paragraph 151 that the Claimant's evidence that the offer of voluntary redundancy was unsolicited was difficult to understand given that the Claimant had asked for an offer to be made to him on 7 March 2013.

398. We recited some of the terms of the offer at paragraph 150. We agree with Mr Peacock that the terms of the letter were benign and were such that no pressure was placed upon the recipient who was free to accept or reject it. The Claimant's complaint (at page 256 referred to in paragraph 152) is that the offer was sent while the Claimant was absent from work through ill health. The Claimant did not intimate that he considered that the sending of the offer was a discriminatory act on the part of the Respondent. The Claimant's position appears to be that he did not wish to have any contact with the Respondent during the period of his convalescence. This would appear to be the reason why the Claimant did not chase the voluntary redundancy quote that he had asked for in November 2012.

399. Indeed, this is very much the sentiment of the Claimant's evidence in chief in his witness statement recited at paragraph 153. That is to say, he was upset to have received the offer during his sickness absence. He does go on to say that his logical conclusion that the Respondent was seeking to victimise and harass him following the grievance he had raised in 2002 and that the Respondent was seeking his demotion or exit from the business.

400. The offer was not accepted by the Claimant (at this stage). As Mr Peacock put it therefore the offer 'simply fell away'.

401. Again, a difficulty for the Claimant is that there is no evidence of any comparator of a different race whose voluntary redundancy request or process

was differently followed. There is also very little from which the Tribunal may draw an inference that a hypothetical comparator of a different race would have had their voluntary redundancy process dealt with better. In any event, we agree with Mr Peacock that the reason why the voluntary redundancy letter was sent to the Claimant was because he had requested it. There was an unfortunate delay in progressing the request. However, it was eventually issued by HR services in Chesterfield and signed by somebody who had not met the Claimant or had any previous dealings with him. It does stretch the Tribunal's credulity that we should be asked to accept that the sending of such a letter, innocuous in its terms in that it simply invited the Claimant to participate voluntarily in a process with continued employment should he choose not so to do, was part of a conspiracy against the Claimant. For these reasons, the direct race discrimination complaint arising out of Issue E stands dismissed.

402. For the same reasons as with Issues A, B, C and D the victimisation complaint is also dismissed.

403. The harassment complaint arising out of Issue E also stands dismissed. It is difficult to see how the sending to the Claimant of a letter that he himself has requested can constitute unwanted conduct. The harassment complaint arising out of Issue E therefore falls at first base.

404. Issue E was of short lived duration ending with the sending of the letter and non acceptance by the Claimant. On any view therefore it has been presented out of time. However, given that it is part and parcel (on the Claimant's case) of a bigger picture we hold, for the same reasons as with issue B, that it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider it.

405. We now move on to Issue F which centres upon the alleged lack of support for the Claimant from John Adams. We agree with the Claimant that he at no stage was appointed to the role of MCMA to Mr Adams. There is no letter from the Respondent confirming a contractual variation to this effect. That therefore is a departure from the Respondent's practice where there has been such a variation and is telling against the Respondent. Mr Adams himself said on 1 May 2013 that the Claimant had been surplus since the end of the 2012 Review. We refer to page 238A. Mr Adams also had other assistants as we can see from pages 269, 273, 277 and 647. We reject Mr Adams' evidence before the Tribunal that the Claimant was one of two assistants supporting him. That assertion founders upon the rock of there being no letter from the Respondent to the Claimant appointing him to the MCMA role.

406. We found as a fact that the Claimant was assigned meaningful work by Mr Adams but that Mr Adams was slow to respond to the Claimant. We refer in particular to paragraphs 155 to 157. Mr Adams' explanation for the slow response was that he was busy managing a significant operation at a large mail centre.

407. Upon this issue, the Claimant also prays in aid Mr Adams' handling of the Claimant's sickness absence about which we made factual findings at paragraphs 135 to 149. There is much merit in Mr Flynn's point that Mr Adams had concealed his conduct from Joan Mee when he told her (when she subsequently investigated matters) that he did not and would not suggest the Claimant make daily contact with him while off sick. That clearly contradicts the email from Mr Adams at page 217 asking the Claimant to ring or text him daily. The misleading of Mrs Mee in this respect by Mr Adams redounds against Mr

Adams' credit which credibility point corroborates our finding that at no point was the Claimant formally appointed as MCMA reporting to Mr Adams.

408. That said, in favour of Mr Adams is his acknowledgement of the quality of the Claimant's work. This is at odds with Mr Adams being set upon a course of treating the Claimant less favourably by reason of his race.

409. A further difficulty that presents for the Claimant with this allegation is that there is no evidence as to how Mr Adams treated or would have treated others of a different race in similar circumstances. There is no evidence before the Tribunal as to how Mr Adams had handled anybody else's sickness absence. We accept the Claimant's point that Mr Adams' approach was heavy handed and contrary to the Respondent's procedure. However, there is an evidential gap absent any evidence that Mr Adams treated or would have treated a comparator of a different race in accordance with the Respondent's policy and procedure or at any rate more leniently.

410. Similarly, there was no evidence before the Tribunal as to how Mr Adams dealt or would have dealt with a comparator of a different race undertaking an important project for him. The only evidence that the Tribunal had upon this issue was from Mr Adams himself who said he was extremely busy at the time and could not therefore pay any or any sufficient attention to the project upon which the Claimant was working. The inference from this evidence is that Mr Adams would have found himself in the same position had somebody of a different race been working upon the same project or a different project under his supervision.

411. In the circumstances therefore we hold that Mr Adams did not treat the Claimant less favourably upon the grounds of race and the direct race discrimination claim to which Issue F gives rise fails. Similarly, the victimisation complaint fails. There was simply no evidence that Mr Adams was aware of the protected act or in any way influenced by it at the instigation of anyone else who was aware of it.

412. Issue F also gives rise to a harassment complaint. We accept the Claimant's case that Mr Adams' conduct in effectively ignoring him for several months was unwanted conduct. However, we accept that this unwanted conduct was not undertaken by Mr Adams for the purposes of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Mr Adams was not motivated to act towards the Claimant with that purpose in mind but rather because he was simply too busy with other demands upon his time. We can however accept that Mr Adams' conduct in ignoring the Claimant could reasonably be said to have had that effect. However, we hold that that conduct was not related to the Claimant's race but rather related to Mr Adams' pressure of work.

413. Accordingly, Issue F fails upon its merits. Inferences pointing away from Mr Adams behaving towards the Claimant by reason of his race include the fact that Mr Adams was party to arranging for the Claimant to have the opportunity of taking the MCMA role and keeping that role open for him. Mr Adams also arranged for the Claimant to return to work upon a phased return to work basis.

414. Upon the question of jurisdiction we agree with Mr Peacock that the issue with Mr Adams is a discreet issue. It was part of a course of conduct that came to an end when Mr Adams gave to the Claimant feedback about the project upon

which the Claimant had been working for him on 8 November 2013. The claim was therefore presented out of time. However, for the same reasons as before the Tribunal extends time so as to vest the Tribunal with jurisdiction to entertain that complaint.

415. We now turn to issue G which concerns alleged targeting of the Claimant with voluntary severance as a grade LA1. This centres upon the Continuing Efficiency Programme aimed at employees using the Managing the Surplus Framework. The Claimant's complaint is that the Respondent treated him as LA1 when he was sent various offers of voluntary severance over the relevant period. The Respondent accepts treating the Claimant as non managerial grade and accepts that it was immaterial whether this was upon the basis of SL2 or LA1. The Claimant says that by treating him as a member of the directly affected LA1 population during the CEP voluntary severance exercise he was subjected to less favourable treatment because of race.

416. As Mr Peacock puts it at paragraph 211 of his submissions, issue G goes back to the fact that the Claimant's substantive grade was not MS4 or any other managerial grade. That is the reason why the Claimant was invited to express her preference as part of the CEP exercise. We made relevant factual findings about this at paragraphs 203 to 205, 210, 212 and 213. As we said at paragraph 228, this voluntary redundancy exercise was similar to the previous one that had been undertaken in that it was not compulsory and the Claimant was given the option of accepting it or rejecting it. As we observed at paragraph 212, the Claimant had asked for the voluntary redundancy quote "for the sake of his sanity".

417. It is difficult, frankly, to understand the basis upon which the Claimant says that he was targeted with a voluntary severance letter in circumstances where he had asked for it. Had he not asked for it the Respondent would not have provided him with a quote. There was merit in the Claimant's point that he was not part of the affected population as he was not an LA grade. Even on the Respondent's case, he was grade SL2 having achieved the promotion in 2003. However, the reason why the Claimant was provided with the quote was because, although not part of directly affected population, he was being given the opportunity to state a preference for voluntary redundancy upon the basis that no substantive role had been found for him.

418. A difficulty for the Claimant is that there is no evidence of how others were treated in similar circumstances to him. There is no evidence that white managerial grade employees were not given this opportunity. Indeed, if such a comparator were not given such an opportunity it may be considered that the Claimant was being more favourably treated in being given the opportunity of having an offer of redundancy made to him. Upon this basis therefore the Tribunal does not uphold the direct discrimination complaint arising out of Issue G. There is no evidence that the Claimant was less favourably treated than were or would have been comparators of a different race nor any evidence upon this issue from which to draw an adverse inference against the Respondent that any such less favourable treatment was by reason of race. Further, we find that the making of an offer of voluntary register was no detriment anyway.

419. The complaint of harassment to which Issue G gives rise fails at first base. It is difficult to see how the Respondent furnishing the Claimant with a quote which the Claimant himself requested constitutes unwanted conduct.

420. For the same reasons as before, the victimisation complaint fails. The Tribunal sees no basis upon which to draw a causal connection between the protected act in November 2002 on the one hand and the sending of the voluntary quote to the Claimant during 2014 on the other.

421. We hold that all three of these complaints were presented to the Tribunal in time. The issue around the voluntary severance did not, as we find, end on 4 September 2014 when the Claimant accepted it. This is because the Respondent took the view that the Claimant was in fundamental breach of the agreed terms when he contacted ACAS to commence the EC process. That was a necessary prelude to the Employment Tribunal claims. Therefore, although the claims fail on merit we hold the Tribunal has jurisdiction to entertain them.

422. We now turn to Issue H. This is Claimant's unfair dismissal complaint. The first issue to which this claim gives rise is whether or not the Claimant was dismissed.

423. Mr Peacock's submission, in essence, is that **Optare** and other cases may be distinguished upon the basis that *"the circumstances in which the Claimant was invited to express a preference and in which he moved forward with the signature of the VR agreement was not part of a redundancy exercise. RMG has no compulsory redundancy policy as agreed collectively with the CWU".*

424. Mr Flynn says at paragraph 119 of his submissions that, *"throughout this case, the Respondent has sought to perpetuate the myth that there are no redundancies in the Royal Mail Group. This is quite clearly wrong".* He then goes on to cite section 139(1)(b)(ii) of the 1996 Act. Mr Peacock responded in oral submissions to say that there is no *"myth"* around the issue of compulsory redundancy. There are no compulsory redundancies within the Respondent at the Claimant's grade. The Claimant's employment would have continued had the Claimant not volunteered to go.

425. We have found as a fact that following the 2012 Review, the Respondent's requirements for the Claimant to carry out work of a particular kind (that being working as EA/PA to the North East Region process director) had ceased. That was because pursuant to the 2012 Review there was no longer a North East region process director. Plainly therefore there was no need for an employee to support the incumbent of that role. The Claimant was thereafter surplus. He was never re-deployed into a substantive role.

426. Neither representative drew to the Tribunal's attention any authority upon the issue of voluntary redundancy in a circumstance where an employer operates a no compulsory redundancy policy. We therefore agree with Mr Peacock that this case may be distinguished factually from **Optare** and the others referred to in the extract of the IDS Employment Law Handbook upon redundancy helpfully supplied to us by Mr Flynn.

427. In our judgment, the proper approach is to stand back and consider the question as to who really terminated this contract of employment. The Managing the Surplus Framework (at page 1194) says (in Appendix 5) that one of the criteria for offering voluntary redundancy is that there is a legitimate and

demonstrable redundancy and that the employee is a surplus employee. On any view, the Claimant fits within this criterion. His substantive role was redundant as part of the 2012 Review. Thereafter, he was surplus. The alternatives which were found for him by the Respondent were, in our judgment reasonably, not deemed to be so by the Claimant as on any view they represented a demotion.

428. While it was for the Claimant to express an interest in voluntary redundancy it was the Respondent in its capacity as employer that instigated the CEP under which the voluntary redundancy preference exercise was undertaken. This therefore emanates from the Respondent. In circumstances where an employer says to its affected employees, *"you are surplus and you may therefore volunteer to go by reason of redundancy upon payment of a sum of money, but if you do not you will continue in employment"* it cannot, in our judgment, be held other than that the termination of the employment relationship is at the behest of the employer. It is the employer who, in these circumstances, is responsible for instigating the process resulting in the termination of employment. Absent the process instigated by the Respondent and the fact that the Respondent made the Claimant's role redundant, the Claimant would have been in no position to volunteer for redundancy in the first place. It follows, therefore, in our judgment that the Claimant was dismissed by the Respondent.

429. The reason for the dismissal was redundancy. This is a statutory permitted reason for the dismissal of an employee. It is not the permitted reason pleaded by the Respondent. The Respondent maintained until part way through the hearing before the Tribunal that the Claimant had been later dismissed by Erica Wilkinson for a substantial reason. This was upon the basis that the Respondent had no reasonable prospect of knowing when the Claimant would be fit to return to work and in what capacity and that the Respondent could not be satisfied that he intended to return to him employment with the Respondent in the foreseeable future.

430. The Tribunal does not have to accept the employer's stated reason for the dismissal of an employee. The general approach taken by Tribunal is to discover the real reason by the dismissal by examining all of the facts and beliefs that caused it. We therefore hold there to have been available to the Respondent a potentially statutory fair reason because of redundancy.

431. The next question that arises therefore is whether the Respondent acted fairly in the circumstances in treating redundancy as a sufficient reason for the dismissal of the Claimant taking into account the equity and substantial merits of the case and all of the circumstances including the size and administrative resources of the Respondent's undertaking.

432. Where dismissal is for redundancy the Tribunal must be satisfied that it was reasonable to dismiss the Claimant upon that ground. General considerations of fairness in the context of a redundancy dismissal give rise to issues around consultation, consideration of selection criteria and of alternative employment.

433. Mr Flynn submits that the dismissal was unfair for want of consultation with the Claimant regarding the structure. There was no individual consultation with the Claimant nor would we have expected there to be with a heavily unionised workforce. We have observed that there was a paucity of material before the Tribunal upon the question of the 2012 Review and in particular consultation

with the unions about it. While the burden upon the issue of reasonableness is neutral the fact remains that the material upon which basis to satisfy the Tribunal that there was adequate consultation is entirely in the hands of the Respondent. The Tribunal cannot therefore be satisfied that there was adequate consultation with the Claimant's representatives about the 2012 review.

434. Even if we were wrong upon that conclusion, then it is inescapable that the Respondent acted outside the band of reasonableness in preventing the Claimant from accessing the portal to obtain a suitable alternative employment and also prevented him from accessing suitable alternative employment outwith the portal. The Claimant was not afforded the same opportunities as were his white female comparators to land commensurate positions in managerial roles following the 2012 Review.

435. In the circumstances therefore it is our judgment that the Claimant was unfairly dismissed. Leaving aside the question of consultation there was simply no or no adequate consideration of suitable alternatives for the Claimant of commensurate weight with the role that he had been carrying out when providing support to Mr Lovejoy and Mr Milne. There were available vacancies as we have seen but the Claimant was simply not considered for them or given the opportunity to apply for them. The unfair dismissal complaint therefore succeeds. Dismissal of him thus fell outside the range of reasonable responses of the reasonable employer in these circumstances.

436. It is also the Claimant's case that the dismissal was a further act of victimisation and an act of direct race discrimination. The former can be disposed of upon the same grounds as previously. The victimisation complaint to which Issue H gives rise therefore stands dismissed.

437. We hold that the dismissal itself was not an act of race discrimination. True it is that but for the earlier acts that we have found to be tainted by discrimination the Claimant would not have been dismissed. Had he not been denied access to the ring fenced roles he would probably have found himself in the continued employment of the Respondent in a similar capacity to those of his white female comparators. However, the dismissal itself was, in our judgment, the result of the Claimant volunteering for redundancy. This was effectively a dismissal as we have found. However, had the Claimant not pursued the application then he would have remained in the employ of the Respondent as part of the surplus population. A comparator of a different race who volunteered for redundancy pursuant to the Managing the Surplus Framework would also have been allowed to go and (as we find) treated as dismissed. There is nothing therefore from which to infer that the act of dismissal was tainted by discrimination.

438. We now turn to Issue I. This is the Claimant's claim for a statutory redundancy payment. This can be easily disposed of. We have found that the Claimant was dismissed on 13 November 2014. The dismissal was because he was surplus, his substantive role having gone as part of the 2012 Review. He is therefore entitled to a statutory redundancy payment.

439. Issue J centres upon holiday pay. We find the Claimant to have been dismissed on 13 November 2014. Therefore, he is entitled to be compensated for any holidays he accrued but which were untaken as at the effective date of termination.

440. The matter shall now be listed for a remedy hearing. The parties may consider it to be useful for there to be a private Preliminary Hearing before the Employment Judge to consider case management issues to which the remedy hearing gives rise and/or in connection with the stayed equal value claim. To that end therefore the parties are required to submit dates of their availability to attend such a private Preliminary Hearing. Dates of availability shall be submitted for the four calendar months following the date of promulgation of these reasons. Dates of availability shall be submitted within 21 days.

Employment Judge Brain

Date: 3 October 2017