EMPLOYMENT TRIBUNALS

Claimant: **Mr. Farooq Ali**

Respondent: **Derby City Council**

Heard at: **Nottingham**

On: **17th, 18th, 19th, 20th & 21st July 2017**

Before: **Employment Judge Heap**

Members: **Mr. J Akhtar**
Mr. C Tansley

Representation
Claimant: **In person**
Respondent: **Ms. K Jeram - Counsel**

JUDGMENT

Judgment having been given orally at the hearing, written reasons are now given accordance with Rule 62(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

RESERVED REASONS

BACKGROUND

1. This is a claim brought by Mr. Farooq Ali (hereinafter referred to as "The Claimant") against Derby City Council (hereinafter referred to as "The Respondent"). Principally, the claim concerns the withdrawal of an offer of employment made to the Claimant by the Respondent and also the terms of a reference given in connection with that offer of employment by an employee of the Respondent, Beverley Parks, during the course of the recruitment process.

2. The Claimant presented his claim to the Employment Tribunal by way of a Claim Form received on 26th August 2016. The complaints pursued by the Claimant at the point of presentation of the Claim Form were disability discrimination, discrimination on the grounds of religion or belief, victimisation and breach of contract with regard to what the Claimant later referred to as a "perfected contract of employment".

3. Following presentation of the claim, the matter came before Employment Judge Britton for consideration on two occasions. The first of those occasions was at a Preliminary hearing for the purposes of case management and the second concerned an application made by the Respondent to strike out the claim on the basis that it was said that it had no reasonable prospect of success or, in the alternative, the Respondent sought a Deposit Order as a consequence of the Claimant being permitted to continue with the claim.

4. As we shall come to further below, those applications were ultimately dismissed by Employment Judge Britton at an open Preliminary hearing which took place on 13th January 2017. At that stage, it is clear that he spent a significant amount of time and effort seeking to assist the Claimant with the clarification of his claims. In consequence of that position and the discussions had at the Preliminary hearing, the complaint of disability discrimination was withdrawn by the Claimant as was the complaint of breach of contract. The remaining discrimination claim was distilled into a complaint of victimisation only contrary to Section 27 Equality Act 2010 and all remaining claims were dismissed upon withdrawal[1].

5. Employment Judge Britton, having assisted the Claimant in identification of the victimisation claim that he wished to pursue, went on to consider the application of the Respondent to strike out the claim or, in the alternative, for a Deposit Order. As we have already touched upon above, he dismissed both of those applications. Detailed reasons were given and recorded in his Judgment and accordingly we need not rehearse those here.

THE CLAIMANT'S POSITION

6. As we have already observed, the sole claim remaining before us was now one of victimisation following the hearing before Employment Judge Britton. At the outset of the hearing before us, we sought to clarify with the parties in the usual way the issues in the claim. That included discussion as to the specific complaints of victimisation which were alleged. In this regard, we clarified with the Claimant whether the sole complaint which he brought in the circumstances was one of the withdrawal of the job offer or whether this also encompassed, as it appeared to us it might potentially do, the content of the reference in addition. The Claimant confirmed that he sought to complaint about both of those matters.

7. Whilst Ms Jeram on behalf of the Respondent not unreasonably makes the point that the Claimant had not previously appeared to expressly indicate that he was also complaining about the content of the reference itself as being an act of victimisation and this his witness statement did not touch upon that matter at all, she took a pragmatic stance given that this was arguably alluded to in the orders of Employment Judge Britton.

8. It appeared to us that the Orders made by Employment Judge Britton could certainly be read as interpreting the claim as also being put in that way and therefore we determined that we would deal with both allegations of victimisation in the course of the hearing. It was therefore against that background that we determined the claim.

[1] See paragraph 1 of the Judgment of Employment Judge Britton on 13th January 2017.

9. It is the Claimant's case that in consequence of a grievance which he raised concerning discrimination on 14th August 2006, he was given an adverse and unfair reference by Beverley Parks. Beverley Parks, as we shall come to, was within the management team in which the Claimant was employed in 2005/2006 during an earlier spell of employment with the Respondent and who had been implicated, if not expressly named, in the Claimant's 2006 grievance.

10. It is the Claimant's case that in giving an unfair and negative reference for a position which he applied for approximately 10 years later for another post with the Respondent, Beverley Parks was motivated, either consciously or subconsciously, by the 2006 grievance. It is the Claimant's case that in consequence of that reference, the job offer was withdrawn.

11. Alternatively, it is the Claimant's case that the withdrawal of the job offer itself was an act of victimisation. He contends in this regard that the decision makers were aware of his 2006 grievance and the fact that it had contained allegations of race and religious discrimination. He contends that the decision makers and others supporting them acted in concert and were motivated to withdraw the job offer by the fact that he had done a protected act so as to protect the integrity of the Respondent.

THE RESPONDENT'S POSITION

12. The Respondent accepts that the Claimant did a protected act when he raised the grievance on 14th August 2006. However, it is not accepted that that grievance had anything to do with the treatment of which the Claimant complains.

13. Taking first the issue of the reference, it is set out by Ms. Jeram in her helpful skeleton argument that the Respondent's position is that this reference cannot amount to a detriment. Whilst the Claimant was not pleased with the content of the reference, his objection to it is nothing more than an unjustified sense of grievance given that the content of the reference was fair and accurate. That is to say it is the Respondent's position that the reference was essentially fair comment.

14. As to the withdrawal of the offer of employment, the Respondent accepts that that would be to the Claimant's detriment. However, it is contended that the decision to withdraw the job offer had nothing at all to do with the reference or indeed the Claimant's grievance.

15. In this regard, it is contended by the Respondent that the reason for the withdrawal of the job offer was on the basis that legislative amendments had been tabled which would abolish the Local Safeguarding Children Boards with whom the role that the Claimant had been offered would be based. Thus, it is said that those changes removed the need for the post for which the Claimant had been offered. Therefore, says the Respondent, that is the reason that the Claimant had the offer of the role withdrawn and nothing to do with either the fact that he had done a protected act in 2006 or otherwise the content of the reference from Beverley Parks.

16. Moreover, it is the Respondent's case that the decision maker (Andrew Smith) had no idea that the Claimant had done a protected act at the time that he made the decision to withdraw the offer of employment. He cannot therefore on

the Respondent's case have been motivated, either consciously or subconsciously, by the 2006 grievance.

17. Insofar as the Claimant's complaint regarding the terms of the reference given by Beverley Parks was concerned, the Respondent contends that any such claim has been presented outside the time limit provided for by Section 123 Equality Act 2010 and therefore that the Tribunal has no jurisdiction to consider it.

THE ISSUES

18. In consequence of the position of the parties as outlined above, the following issues fell to be determined during the course of the hearing:

(i) Did the Respondent subject the Claimant to the following treatment falling within Section 39(3) Equality Act 2010, namely:

- The provision by Beverley Parks of an adverse reference?
- The withdrawal of the offer of employment in the role of Policy & Development Officer?

(ii) If so, did the Respondent subject the Claimant to detriment in treating him as complained of above?

(iii) If so, did the Respondent subject the Claimant to any proven detriment because he had done the protected act relied upon?

(iv) Whether any complaint made by the Claimant has been presented outside the statutory time limit provided for by Section 123 Equality Act 2010 and therefore the Tribunal may not have jurisdiction to entertain the complaint unless:

- The earlier conduct forms part of a course of conduct extending over a period; or

- The Claimant persuades the Tribunal that it is just and equitable to consider the complaint out of time?

THE HEARING AND WITNESSES

19. We must observe here our concerns in relation to the Claimant's preparedness for these proceedings. It appears to us that the Claimant was, for the most part, woefully unprepared. Whilst he has been throughout the course of the proceedings a litigant in person, we should observe that he is far from without a legal background of knowledge. In this regard, as indeed he told Employment Judge Britton, he is a qualified Barrister. He has completed a law degree and also the vocational aspect of training in order to become a Barrister. He has also undertaken an extensive mini pupillage with a London set of chambers. Prior to that, his application form for the role which is in contention in these proceedings records that at some stage or another, he was also a trainee solicitor and therefore presumably had also completed the Legal Practice Course or similar. The Claimant comes to the proceedings, therefore, with it is fair to say a greater degree of legal knowledge and experience than the vast majority of litigants in person.

20. Whilst we acknowledge that the Claimant has not yet practiced as a Barrister, and therefore was unused to appearing before Courts and Tribunals, he nevertheless, we observe, must have a fair degree of legal experience and knowledge. Despite that, the Claimant appeared to us to be woefully unprepared at times. This included the fact that he had not brought with him a complete bundle of documents, despite that having been provided to him a number of weeks prior to the hearing by the Respondent. It was only on the third day of the hearing that it emerged that the Claimant had essential pages of the hearing bundle which he was referring to in cross-examination missing. We were able to remedy that position for him but it was of concern to us that that was not a matter that the Claimant had noted before and that he had not come prepared with a full bundle of documents to the hearing itself.

21. It further appeared to us that on occasions the Claimant appeared to be reading documents or parts of documents within the hearing bundle for what seemed to be the first time. At the very least, there were a significant number of documents that he appeared unfamiliar with. To some degree the same appeared to be the case with some of the Respondent's witness statements.

22. We have attempted to assist the Claimant insofar as it is permissible to do so in order to ensure that he was placed on as equal footing as possible with the Respondent, who was represented by experienced Counsel. We are also grateful to Ms. Jeram for her own assistance as proffered on a number of occasions to the Claimant throughout the course of the hearing to assist him in clarifying his claim and in locating relevant documents and making relevant points, particularly in the course of his cross-examination of the Respondent's witnesses.

23. During the course of the hearing, we heard evidence from the Claimant on his own behalf. We also heard evidence from the following individuals on behalf of the Respondent:

(a) Beverley Parks - a Housing Benefit Service Manager, former second line manager of the Claimant and author of the contentious reference;
(b) Mark Sobey - Board Manager for the Derby Safeguarding Children Board with whom the Claimant had sought employment;
(c) Helen Jackson - a Recruitment Adviser within the Respondent's Human Resources ("HR") Directorate.
(d) Andrea Cauldwell - a Recruitment Team Manager within HR and the direct line manager of Helen Jackson;
(e) Nina Martin - the then Head of Service Children's Quality Assurance and a member, at the time, of the Derby Safeguarding Children Board.
(f) Andrew Smith - Strategic Director of People Services and a member of the Derby Safeguarding Children Board.

24. We make our observations in relation to matters of credibility in relation to the witnesses from whom we have heard below.

25. In addition to the witness evidence that we have heard, we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings and also to the oral submissions made by the Claimant and the oral and written submissions made by Ms. Jeram on behalf of the Respondent.

26. Despite the parties having assisted, insofar as possible, with regard to timetabling there was nevertheless insufficient time within the five day hearing as listed to give an ex-tempore judgment and reasons in the usual way. Whilst time therefore did not afford us the ability to provide full reasons, as a Tribunal we agreed and took the relatively unusual, but in this instance necessary, step of delivering our judgment on the claim but reserving our reasons for that judgment. That was on the basis that immediately following the hearing, the Employment Judge was due to take an extended period of leave until the first week in September 2017. There would therefore be insufficient time to prepare a Reserved Judgment for promulgation until, at the very earliest, the end of September 2017. We considered that too long a period for the parties to be expected to await the outcome – i.e. whether they had won or lost - particularly having regard to the fact that this claim was issued as long ago as August 2016. Therefore, we determined that we would take the step of delivering judgment so that the parties knew the outcome at the end of the hearing but of reserving our reasons for that judgment.

27. As embodied within the judgment sent to the parties after the hearing, our unanimous decision was to dismiss the claim in its entirety. We therefore now take the opportunity to set out the full reasons for our having done so.

CREDIBILITY

28. One issue that has invariably informed our findings of fact in respect of the remaining complaints before us is the matter of credibility. Therefore, we say a word about that matter now. We begin with the Claimant. Ultimately, we found to be an entirely unsatisfactory witness. In many areas of his evidence we found him evasive and devoid of a reasonable explanation for many issues put to him in cross examination.

29. For example, his evidence before us was completely lacking in any sort of reasonable explanation for the fact that his witness statement cited a number of what he said to be examples of discriminatory comments made to him during the course of his employment with the Respondent in 2005/2006 but those references did not feature at all in the contemporaneous grievance that he had raised concerning alleged discrimination at the time. That included serious derogatory terms used, such as “Paki” and “Sand nigger”. The Claimant could not provide any reasonable explanation under cross-examination, or indeed otherwise, for the fact that such serious references were omitted in their entirety from his contemporaneous grievance on the very subject of race and religious discrimination but that he was now able to recall them with clarity nearly a decade later. Those references, as Ms Jeram points out, would clearly have been much better examples of discrimination than the ones which did feature in the Claimant’s grievance and to which we shall come in due course. We considered the Claimant’s witness statement in this regard to be considerably exaggerated.

30. The Claimant was similarly also not able to provide any reasonable explanation as to why other significant matters were omitted entirely from his witness statement that nevertheless featured in his oral evidence. His only repeated explanation for those various matters was that those must have been omissions or drafting errors. We remind ourselves again here that the Claimant has not insignificant legal training, which doubtless would have included training in relation to drafting skills. We considered his explanations to be rather more

convenient than accurate.

31. We also take into account, as again we shall come to in due course, that there was a serious error or omission on the Claimant's application form for the role with which we are concerned. At the very best, this demonstrated in our view, and as we shall come to further below, a serious lack of diligence or candour on the part of the Claimant when applying for the position in question but one that he appeared unwilling to acknowledge as being in any way problematic during cross examination.

32. We should also observe that it appeared to us that the Claimant's case appeared to us to be based on somewhat shifting sands. His position as between the evidence he gave in cross examination and the position which he adopted in cross examination of the Respondent's witnesses was often difficult to reconcile. That may be as a result of a lack of preparation but it also appeared to us to belie a lack of candour. Moreover, having apparently conceded certain issues on the basis of the evidence – such as the fact that, as we shall come to, Andrea Cauldwell on the evidence could not have known about his 2006 grievance – the logic of that was immediately ignored when it became plain that this concession unravelled one of the central contentions as to knowledge that the Claimant sought to advance.

33. The above matters were not exhaustive of the reasons why we considered the Claimant to be an unsatisfactory witness but we consider they give a flavour of the issues which led us to form that view.

34. Invariably, as a result of the issues above and his performance as a witness generally, we formed a negative view of the Claimant's evidence and the credibility of what he was telling the Tribunal. We simply did not find him credible, reliable or candid in much of the account that he gave to us.

35. As a result therefore, unless we have expressly said otherwise, we have preferred the evidence of the Respondent's witnesses, whom we found on the whole to be much more candid, consistent and open to the possibility of an alternative view point - including accepting that the Claimant would doubtless be upset about the withdrawal of the role which had been offered to him. All of the Respondent's witnesses from whom we heard gave consistent evidence, both in relation to the content of their witness statement and also the documentation which was before us in the bundle. The questions asked by both the Tribunal and the Claimant in cross-examination were dealt with candidly and in a straightforward manner. The witnesses appeared to take pains to try to assist the Tribunal in dealing with the issues, particularly it has to be said Nina Martin who went over and above what was required in terms of explanations given in response to questions asked of her. She was at pains to seek to assist the Tribunal in understanding the evidence that she was giving and provided us with useful and detailed explanation and examples where necessary. She was in our view a particularly impressive witness.

THE LAW

36. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be.

37. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010") and, particularly, with reference to Section 27.

38. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

> *(1) An employer (A) must not discriminate against a person (B)—*
>
> *(a)in the arrangements A makes for deciding to whom to offer employment;*
>
> *(b)as to the terms on which A offers B employment;*
>
> *(c)by not offering B employment.*
>
> *(2)An employer (A) must not discriminate against an employee of A's (B)—*
>
> *(a)as to B's terms of employment;*
>
> *(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
>
> *(c)by dismissing B;*
>
> *(d)by subjecting B to any other detriment.*
>
> *(3)An employer (A) must not victimise a person (B)—*
>
> *(a)in the arrangements A makes for deciding to whom to offer employment;*
>
> *(b)as to the terms on which A offers B employment;*
>
> *(c)by not offering B employment.*
>
> *(4)An employer (A) must not victimise an employee of A's (B)—*
>
> *(a)as to B's terms of employment;*
>
> *(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;*
>
> *(c)by dismissing B;*
>
> *(d)by subjecting B to any other detriment.*
>
> *(5)A duty to make reasonable adjustments applies to an employer.*
>
> *(6)Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—*
>
> *(a)unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or*
>
> *(b)if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.*

(7)In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a)by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b)by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

39. Section 108 EqA 2010 deals with relationships that have ended and provides as follows:

(1) A person (A) must not discriminate against another (B) if—

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

(2) A person (A) must not harass another (B) if—

(a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and

(b)conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.

(3)It does not matter whether the relationship ends before or after the commencement of this section.

(4)A duty to make reasonable adjustments applies to A if B is placed at a substantial disadvantage as mentioned in section 20.

(5)For the purposes of subsection (4), sections 20, 21 and 22 and the applicable Schedules are to be construed as if the relationship had not ended.

(6)For the purposes of Part 9 (enforcement), a contravention of this section relates to the Part of this Act that would have been contravened if the relationship had not ended.

(7)But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.[2]

[2] The Respondent accepts that **Rowstock v Jessemey [2014] IRLR 368** requires the Tribunal to interpret Section 108 purposively to give effect to EU obligations and therefore that it includes post termination victimisation (see addendum to the skeleton argument prepared by Ms. Jeram).

40. Section 27 EqA 2010 provides that:

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
>
> *(a)B does a protected act, or*
>
> *(b)A believes that B has done, or may do, a protected act.*
>
> *(2)Each of the following is a protected act—*
>
> *(a)bringing proceedings under this Act;*
>
> *(b)giving evidence or information in connection with proceedings under this Act;*
>
> *(c)doing any other thing for the purposes of or in connection with this Act;*
>
> *(d)making an allegation (whether or not express) that A or another person has contravened this Act.*
>
> *(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
>
> *(4)This section applies only where the person subjected to a detriment is an individual.*
>
> *(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

41. In dealing with a complaint of victimisation under Section 27 EqA 2010, a Tribunal will need to consider whether:

a. The alleged victimisation arose in any of the prohibited circumstances covered by Section 39 and/or Section 108 EqA 2010 (which are set out above);
b. If so, was the Claimant subjected to a detriment;
c. If so, was the Claimant subjected to that detriment because he or she had done a protected act.

42. In respect of the question of whether an individual has been subjected to a detriment, the Tribunal will need to consider the guidance provided by the Equality & Human Rights Commission Code of Practice on Employment (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (see paragraphs 9.8 and 9.9 of the ECHR Code).

43. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit, nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

44. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

45. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination.

The ECHR Code

46. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

FINDINGS OF FACT

47. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of this claim. We have inevitably therefore not made findings on each and every area where the parties are in dispute with each other if that is not necessary for the proper determination of the remaining complaints before us. The relevant findings of fact that we have therefore made are set out below.

The Claimant's employment as a Benefits Assessor – September 2005 to September 2006

48. Although, as we shall come to, this claim relates to a withdrawn offer of employment made to the Claimant by the Respondent, the Claimant had in fact had a spell of employment with the Respondent earlier in his career. In this regard, the Claimant commenced employment with the Respondent on 12th September 2005 as a Benefits Assessor. He was at that time under the direct line management of Sallie-Anne Griffiths. Ms. Griffiths was herself directly line managed by Beverley Parks, the then Assistant Housing Benefits Manager.

49. It is fair to say that things did not go well in relation to the Claimant's spell of employment with the Respondent and, indeed, he did not pass his extended probationary period and as a result his employment was terminated in September 2006. The Claimant effectively contends before us that the reason for that termination is not because of his conduct or capability but instead because he was set up to fail by the Respondent and those with line management responsibility of him, and particularly, Sallie-Anne Griffiths and Beverley Parks. He contends now, although it does not form part of this present claim but is presented as background, that there were discriminatory motives at play as regards him not passing his probationary period.

50. However, there is absolutely no evidence at all to that effect. Instead, it is abundantly clear from the evidence before us and we accept without reservation that there were serious shortcomings in the Claimant's conduct and performance during the period of his employment with the Respondent. In this regard, there is ample evidence before us to demonstrate that there were a number of instances of lateness, lack of preparedness and capability issues on the Claimant' part which manifested themselves during the course of his probationary period. There are numerous instances contained within the hearing bundle before us of those matters being prevalent and being addressed with the Claimant throughout the course of his 2005/2006 employment. This included numerous instances of lateness, often without ringing in as he had been persistently instructed to do (see for example pages 83, 84, 90, 94, 95, 96, 98, 101, 102, 104, 107, 109 and 110 of the hearing bundle); lack of preparedness (see for example pages 85 and 108 of the hearing bundle); conduct and failure to follow instructions (see for example pages 85, 104, 108 and 109 of the hearing bundle) and problems with the quality of the work that he was turning out (see for example pages 88, 89, 102, 103, 105, 106 and 109 of the hearing bundle).

51. Those matters were also the reason for two extensions to the Claimant's initial probationary period. Despite those extensions, the Claimant was still unable to reach a satisfactory standard and his employment was accordingly terminated for the failure to satisfactorily complete his probationary period.

52. It should be noted that in addition to the contemporaneous documentation before us demonstrating the difficulties that manifested themselves with the Claimant's conduct and performance during the period of his employment, we find that there is some support for the fact that these were justified concerns with regard to the Claimant's own conduct before us at this hearing. For example, a considerable issue with regard to the Claimant's conduct over the period September 2005 to 2006 was with respect to his timekeeping and the fact that on a number of occasions he was persistently late, including without any excuse or reasonable excuse and without having telephoned ahead to notify anyone that he would not be able to arrive on time.

53. An almost identical issue arose during the hearing before us where the Claimant arrived some 35 minutes late for the commencement of the hearing and only arrived at a point when we were considering whether to dismiss his claim under Rule 56 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. He gave what we considered to be a rather unconvincing explanation for his whereabouts during that period of time and that he had believed the start time for the hearing to have been 10:30 a.m. This did not, however, account for the fact that we had made it clear that the commencement time of the hearing was 10.00 a.m. the day before and, further, even on his own account he would still have been late. The Claimant gave an air of being somewhat unconcerned about that.

54. That position, we find, is almost identical to the events of the Claimant's very first day of employment with the Respondent – a time when one would imagine that he would be going his utmost to make a good impression. On that day, the Claimant nevertheless arrived some 30 minutes late for work. When, understandably, challenged about that position by the Respondent he had contended that his offer letter had provided a start time of 9:30 a.m. Upon the Respondent taking him to the terms of that offer letter, that was a matter that

transpired to be entirely inaccurate. At best, that betrayed a lack of care and preparedness on the Claimant's part. At worst, it suggests a lack of candour. The lateness issue, we are satisfied, continue to be a consistent difficulty during the course of the Claimant's employment.

55. Unsurprisingly, Ms. Jeram pointed out those parallels during the course of her cross-examination of the Claimant. It appears to us to give credence to the Respondent's case, and the contemporaneous documents recording that fact, that timekeeping was a considerable issue at the time.

56. A further issue in respect of which we find ourselves able to draw parallels from that which was recorded by the Respondent at the time and our own observations during this hearing is in relation to the Claimant's preparedness, that being a matter upon which we have already remarked upon. That again was a concern which the Respondent had identified during the course of the Claimant's probationary period in terms of him having failed to prepare for a training session.

57. We have taken into account the fact that the observations of the Respondent are from a decade ago and we would not have found them made out simply on the basis of our own experiences of the Claimant at this hearing. However, what is clear to us is that what the Respondent was contemporaneously recording at the time is not at all out of character from what we have observed of the Claimant for ourselves. We therefore accept that the criticisms of the Respondent as recorded at the time of his employment and the termination of that employment in September 2006 are ones which were honestly held at the time and ones which resonate and are supported by our observations even some ten years later.

<u>The Claimant's grievance</u>

58. Following the Claimant being placed on notice that the Respondent was considering terminating his employment, but before the point of the termination of that employment, the Claimant raised a grievance. It is this grievance upon which the Claimant relies as a protected act in the context of this claim.

59. The Claimant headed that grievance "Formal Grievance Re Race Discrimination And Discrimination On The Basis Of My Religion". Despite that heading, there was in fact somewhat scant reference to any instances which might tend to suggest race or religious discrimination other than general assertions to that effect in little more than three of the 23 paragraphs that made up the grievance. Only one example which might be said to equate to race discrimination appears to be included which was a reference at paragraph five of the grievance where the Claimant contended that negative insinuations had been made at a training session about him eating curries.

60. There was, however, no mention whatsoever of the serious discriminatory behaviour which the Claimant now refers to in his witness statement for the purposes of this claim as examples of the discrimination that he says that he was being subjected to during the period of his employment in the year 2005 to 2006. The matters set out in the Claimant's witness statement in this regard are examples of extremely inappropriate and discriminatory comments. They include

contentions that he was referred to as a terrorist, a "Paki" and a "Sand Nigger"[3] during the course of his employment; that he received *"insulting, abusive and degrading comments about Islam"* and his Muslim faith[4] and that other members of staff had said words to the effect "*Pakis build mosques, open corner shops and takeaways because that's all they can do, thick sods*"[5] and that "*Pakis should fuck off home*".[6]

61. There was similarly no mention, as the Claimant also raises in his witness statement for the purposes of this present claim, that he had raised those matters with his supervisors but that his concerns were dismissed, some training staff joined in with the abuse; that he was told that it would be better not to *"rock the boat"*; that after his complaint the "*tables turned and matters got worse"* and that he had become the subject of *"numerous false allegations*"[7].

62. We accept that the Claimant's witness statement has embellished significantly the events that were described in his grievance and we did not consider the incidents that the Claimant now describes to be an honest account of the events of 2005/2006. The Claimant had presented a lengthy and detailed grievance complaining about the very subject of race and religious discrimination yet, as Ms. Jeram submitted, the most damning examples of how he contends that he was treated in that regard at the time are not mentioned at all in that grievance document nor in meetings where he was asked to further expand on his complaints. The Claimant was not in cross examination able to offer up any semblance of a reasonable explanation as to why those were not matters included in his grievance at the time yet he now appears to have a more accurate recollection of those events some 10 years later. He further could not provide any reasonable explanation for why he prioritised inclusion of references to single mothers being called "slags" and "jokes" being made about handbags being made from the skin of dead babies over those that would appear to indicate strong evidence of race and religious discrimination warranting further investigation. We remind ourselves in this context of course that the very title of the grievance document was "Formal Grievance Re Race Discrimination And Discrimination On The Basis Of My Religion" and yet the instances that the Claimant now says that he can recall to demonstrate an culture of discrimination were demonstrably absent whilst those which had nothing to do with race or religious discrimination somehow found their way in.

63. As Ms Jeram put it to the Claimant in cross-examination, what better place to put the point across as to the discrimination suffered than by including the comments which the Claimant says were made at paragraphs 17 and 20 of his witness statement.

64. As we have observed, the Claimant can offer up no reasonable explanation for that omission nor how it has now come to mind to include the matters in his witness statement a decade on. We do not accept in view of that that the matters now complained of by the Claimant as being indicative of a culture of discrimination and hostile and discriminatory comments in 2005 and 2006 occurred and we did not accept his evidence in that regard. At best, we considered his evidence to be significantly exaggerated to say the least.

[3] See paragraph 17 of the Claimant's witness statement
[4] See paragraph 15 of the Claimant's witness statement
[5] See paragraph 20 of the Claimant's witness statement
[6] See paragraph 24 of the Claimant's witness statement.
[7] See paragraphs 16, 32 and 33 of the Claimant's witness statement.

Termination of the 2005/2006 employment

65. The matters identified by the Respondent during the course of the Claimant's probationary period (and which included matters such as his persistent lateness, failure to follow instructions and quality issues) culminated in a recommendation being made that the Claimant not be confirmed as a permanent member of staff. As we have already observed, by that stage his probationary period had already twice been extended.

66. The Claimant was asked to attend a hearing before a decision was taken regarding the termination of his employment. As part of the preparation for that hearing on the Respondent's part, a management statement of case was prepared (see pages 74 - 89 of the hearing bundle).

67. In the usual way, the management statement of case set out the issues with regard to the Claimant's conduct and performance. Those included the fact that timekeeping was a serious problem; there had been periods of sickness absence; he had an unacceptable error rate in the quality of his work and which impacted upon customers; he had turned up late or unprepared for training; that he had failed to follow instructions and that there were discrepancies in relation to his flexi time. All of those matters are set out comprehensively in the statement of case and we are entirely satisfied that the matters contained therein are all evidenced within the numerous appendices which are annexed to it and to which we have been taken during the course of this hearing. We have already referred to a number of pages in that regard at paragraph 50 above.

68. We are satisfied that there is nothing at all to show that any of those matters were unjustified criticisms of the Claimant and we accept that the statement of case simply set out the concerns that the Respondent had with regard to the Claimant's conduct and performance at that time and which had all been contemporaneously recorded.

69. In addition to permitting the Claimant and his representative to respond to the management statement of case and the issues contained within the same (including offering up evidence of mitigation) the Respondent invited the Claimant to further air matters in relation to his grievance in the context of that meeting. However, the Claimant and his then representative made the conscious decision not to take that opportunity. That was perhaps something of a curious position given that the very first paragraph of the Claimant's grievance had said this:

> *"I have been called to a meeting with yourself, which I have been notified will take place on 17th August 2006 with a recommendation that my contract be terminated at that meeting. I consider this is solely as the result of direct and indirect discrimination against me as a Pakistani (the only Asian worker in my team) and a Muslim, (also the only Muslim in my team)".*

70. One would therefore have thought that if the Claimant believed the motivation for his proposed dismissal to be discriminatory, that he would have seized the Respondent's invitation to discuss those matters further. However, as we have already said, it is common ground that both he and his representative declined to do so.

71. Despite the decision of the Claimant and his representative not to air those matters, the issues raised in the grievance were nevertheless considered by the Respondent in all events when dealing with the question of whether the Claimant's employment should be terminated (see pages 325 of the hearing bundle). That does not appear indicative of a Respondent who was seeking to suppress the issues in the Claimant's grievance as he appears to contend.

72. The determination was made following that hearing was that the Claimant would not be confirmed in post and he was accordingly dismissed by the Respondent. That was confirmed in writing by the Respondent on 15th September 2006 and the relevant part of the Respondent's decision in this regard said this:

> "*It is my reasonable belief, having listened to all of the submissions that the management of the Benefits Section has taken a number of significant steps to ensure that you could improve your performance at work and thereby retain your employment. These steps included training and development, one to one supervision, clear instructions and guidance, extension of the probationary period and a generally flexible approach to the problems that you had encountered or created during the period of your employment. Given that at no time during your probationary period did you make known your domestic difficulties, either as articulated in your grievance or at the Hearing, it is entirely reasonable to conclude that every effort has been made in the circumstances then known, and prevailing, to maintain your employment with the Council. Management could only respond to your conduct and performance on the basis of the information available to them. I have heard no evidence to suggest that you have been treated unfairly or discriminated against in the way that you have been managed, it may be viewed that management have done more than was required to assist you improve your performance.*
>
> *Nonetheless, it would appear that during your probationary period you have failed to improve your performance to the acknowledged standards, failed to follow management instructions and to comply with established processes for attending, reporting, flexible working hours and leave. I note that at the hearing you could offer no excuse for this, save for your pleas in mitigation. I am of the view that in respect of the pressures in your social life relating to family differences, which you claim led to a lack of concentration, can*[8] *adequately explain your failure to perform. At no time during the probationary period do you make any effort to seek advice or counsel from your manager, or access advice and guidance from within the Council, which you had a personal responsibility to do. The Council has made a significant investment in you and has seen little or no return. I am not convinced or persuaded that the arguments put forward by you or your representative are sufficient for me to decide that you should be given a further opportunity.*"

73. The Claimant subsequently appealed against the decision to terminate his employment and an appeal hearing was held before the Employee Appeals Sub-Committee on 19th December 2006. It is notable that at that appeal hearing it was specifically acknowledged on the Claimant's part by his then representative, Mr Weinbren, that the Claimant had failings in respect of both his performance

[8] This is clearly a typographical error and should read "cannot".

and his conduct (see page 330 of the hearing bundle). Despite that clear acknowledgement – and the fact that if it is said that Mr. Weinbren had spoken out of turn then the Claimant did nothing to correct him – the Claimant now appears to dispute any real or significant failings on his part in terms of conduct or performance in these present proceedings before us.

74. After hearing from Mr. Weinbren on the Claimant's behalf, the Employee Appeals Sub-Committee upheld the decision to dismiss the Claimant. That decision was communicated to the Claimant on 22nd December 2006. The relevant parts of that decision said this:

"The Sub Committee took into account the mitigating circumstances you and your representative had made in relation to your personal domestic circumstances. However, the Sub Committee was of the view that the mitigating circumstances you presented did not adequately explain your failure to perform to the required standard in terms of performance and conduct during the whole of the probationary period. Therefore the Sub Committee supported the management belief that during your probationary period you failed to improve your performance to the acknowledged standards, failed to follow management instructions and failed to comply with established processes for attending work, reporting absences, flexible working hours and leave."

75. It should be noted that both the information given to the Claimant at the appeal hearing and also within the letter confirming the decision explained to the Claimant his right to take matters to an Employment Tribunal and even went so far as to set out the date on which he should present a claim (see pages 335 - 337 of the hearing bundle). The Claimant did not present any such complaint relating either to the termination of his employment or otherwise alleging discrimination.

76. It is a cornerstone of the Claimant's case that the Respondent is institutionally racist and Islamaphobic. He contends that this is the case, in his words, from "the top to the bottom" of the organisation. However, there is quite simply nothing to support that proposition, other than the Claimant's own contention that that is the case. Unfortunately for the Claimant's position, however, that is simply not supported by documents to which we have been taken in the bundle and particularly the efforts of the then Chief Executive to engage with the Muslim community and actively encourage them consider the Respondent Council as their employer of choice. That was part of an advertising campaign, including on a local radio station, Radio Irkhlas, and attendances with recruitment literature at local Mosques. There is some suggestion that the Claimant attempted to disrupt or derail the efforts referred to above but it is not necessary for us to make any finding of fact on that point for the purposes of dealing with this claim.

77. What is, however, something of a still unexplained feature of the Claimant's case if his experiences were as he portrays them in his witness statement (and most notably paragraphs 17 and 20 thereof) and his contention that the Respondent organisation is institutionally racist and Islamaphobic, is his continued efforts to try and secure further employment with the Respondent. In this regard, it is common ground that the Claimant had made a number of job applications to the Respondent after his 2006 dismissal. This was to such an extent that, as we have already observed, his name became known to those in Human Resources who dealt with the sifting of job applications. We did not

accept the Claimant's evidence that he was, in essence, seeking to change the culture of the Respondent Council "from within" in applying for roles after his 2006 dismissal. He was not applying for particularly high level roles where such change could have been affected (assuming that it was in fact needed and we have no evidence that it was) and we consider that if his treatment and the culture that he portrayed in his evidence was accurate, it is implausible that he would have continued to make repeated attempts to join that particular employer again had he had experienced the sort of abhorrent treatment that he contended had befallen him. We simply did not find his evidence credible on that point and we did not accept it.

The application for the role of Policy & Development Officer

78. We accepted the evidence of Helen Jackson, a Recruitment Manager within the Human Resources ("HR") Directorate, however, that the Claimant's name was known to her as a frequent applicant for employment. We accept that Helen Jackson had seen a number of applications from the Claimant and we accept that his name had stuck in her mind as a repeated applicant, along with other individuals such as Emily and Evelyn who she named during the course of the hearing before us as being candidates who also made frequent applications for employment with the Respondent.

79. We further accept that Helen Jackson was also aware of the Claimant's name from discussions which had been had with a colleague, Shaleena Cooper, following a telephone call during which the Claimant had sought feedback about why he was not getting through to the shortlisting stage in any of his earlier job applications. During that time, it had been noted that the Claimant had put different employment information on a number of different applications for employment and that was a matter which Helen Jackson was aware of as it was somewhat unusual. She was also aware from having sifted through previous applications made by the Claimant that he was generally not shortlisted for interview.

80. One of the posts the Claimant applied for was the position of Policy & Development Officer - Quality Assurance ("Policy & Development Officer") with the Children and Young People's Quality Assurance Division with responsibility to the Derby Safeguarding Children Board ("The Board"). That was a role for which the successful candidate would be supervised by the Board Manager, Mark Sobey. We accept the evidence of Mr. Sobey that Policy & Development Officer role was a key position and an extremely important role to the Board. It had a crucial role in relation to quality assurance with regard to safeguarding and promoting the welfare of children. One of the responsibilities of the Board in this regard is to ensure the welfare and safeguarding of children within the local authority area and to challenge where necessary the Respondent as a local authority in relation to their endeavours to promote that well-being and safeguarding function.

81. By the time that the Claimant came to apply for the post of role of Policy & Development Officer, his name was already known to Helen Jackson as we have set out above. However, we accept that she knew nothing more about him at that time other than he was a relatively frequent applicant and one that did not often make it through to interview stage.

82. We have seen the Claimant's application for the Policy & Development Officer position. In a matter which in our view affects his credibility, we were not at all satisfied from his evidence that his completion of the employment details section of that application as regards his previous spell of employment with the Respondent was either accurate or candid.

83. In this regard, whilst the Claimant included reference to his 2005/6 employment as a Benefits Assessor with the Respondent, one aspect of the application form required him to set out the reason for leaving previous roles. The Claimant had of course been dismissed from the Benefits Assessor role, a matter of which he was well aware.

84. The application form was completed online and the "reason for leaving" section required the candidate to select an option from a drop down menu. Two of the options on that drop down menu are "End of contract" and "Dismissal or termination of employment". Despite the fact that the Claimant was perfectly well aware that he had been dismissed by the Respondent in September 2006, for reasons for which we have not received a reasonable explanation he did not select "Dismissal" from the drop down menu but instead selected "End of contract".

85. The Claimant's evidence before us initially appeared to seek to justify that particular drop down selection on the basis that his contract had ended at the point that he had been dismissed. That evidence later appeared to shift to a suggestion that he had selected the "End of contract" option in error. We find that unlikely, not least given the apparent change in explanation set out above.

86. Nevertheless, at best this demonstrates a lack of diligence on the Claimant's part and at worst the option selection was downright misleading. We found the Claimant somewhat evasive and lacking in candour in his evidence regarding this particular point.

87. However, the Claimant was shortlisted for the position and invited to interview. That interview was to be with Mark Sobey and Nina Martin, who were both members of the Board. We accept the evidence of Nina Martin that there was some concern in her mind that she particularly wanted to address with the Claimant at interview as to the relevance of his legal experience and therefore his suitability for the Policy & Development Officer role. We also accept the evidence of Nina Martin and Mark Sobey that prior to the Claimant's application being made, he had in fact telephoned them making enquires as to whether his legal experience and qualifications would be sufficient to match the essential criteria for the post. He had been encouraged to apply for the role, however, and informed that those matters would be considered, if appropriate, at interview.

<u>Conditional offer of employment</u>

88. Having been shortlisted, the Claimant attended the interview with Mr. Sobey and Ms. Martin. He interviewed very well and impressed both Nina Martin and Mark Sobey. He allayed any reservations at that stage that Ms. Martin had with regard to his experience and both she and Mr. Sobey determined that they would offer him the position of Policy & Development Officer, subject in the usual way to the necessary checks and references.

89. The interview had taken place on 22nd June 2016 and on the same day Mr Sobey telephoned the Claimant to offer him the Policy & Development Officer position.

90. Thereafter, on or around 23rd June 2016, Mr Sobey sat down to update the Respondent's computer system to confirm that a provisional offer of employment had been made to the Claimant. He was not familiar with that process, however, and sought assistance from Helen Jackson of HR. We accept that it would be commonplace for Ms. Jackson or a colleague to be asked for assistance in such circumstances.

91. Helen Jackson had been responsible for advertising the Policy & Development Officer post and was therefore the appropriate HR recruitment adviser for Mr. Sobey to contact for assistance. During the time that Ms. Jackson was talking Mr Sobey through the process, she asked him who the candidate to whom the offer had been made was. We do not find such an enquiry to have been unusual in the circumstances. Mr Sobey replied that the Claimant was the successful candidate. It is common ground that Helen Jackson responded to that by saying "*Oh really"* in a surprised way. We accept the evidence of Helen Jackson that the reason that she did so was that she was aware that the Claimant was a frequent applicant but that he had not previously got past any of the shortlisting stages, let alone been offered a position. Given that background, she was therefore surprised, not unreasonably, that he was the preferred candidate and had been offered the post.

92. We are entirely satisfied from the evidence before us that there was nothing more sinister to it than that and, indeed, the position was reflected in a later email sent by Mr. Sobey by way of a follow up to the conversation (see page 396 of the hearing bundle). We are certainly more than satisfied that the comment had nothing whatsoever to do with the Claimant's 2006 grievance of which Helen Jackson was not at that time even aware.

93. During the course of the brief discussion between Helen Jackson and Mr. Sobey, she mentioned the fact that the Claimant was a frequent applicant and also that her colleague, Shaleena Cooper, knew more about the situation but that she was aware that there had been applications made by the Claimant which had different employment information on them.

94. We accept that that naturally rang alarm bells for Mr. Sobey and also for Nina Martin when she was later informed about the position by Mr. Sobey. Accordingly, they both wanted to confirm the accuracy around the Claimant's employment history. That led to Mr. Sobey later the same day "mapping out" the Claimant's employment history as he had set it out on his application form. The intention was that the Claimant was to be asked about the matter and therefore given the opportunity to provide any necessary explanations so as to allay the concerns that Mr. Sobey and Ms. Martin had. Given that this was a safeguarding role, we accept that it was essential that any discrepancies were ironed out so that the Board could be assured that the successful candidate did not prove a risk to vulnerable children.

95. Mr. Sobey also raised the issue with Andrea Cauldwell, the Recruitment Manager and Helen Jackson's direct line manager. Andrea Cauldwell was already on notice that Mr. Sobey might contact her to discuss the matter as she had been updated on the conversation by Helen Jackson. Thereafter, Helen

Jackson went on a period of pre-planned annual leave until 4th July 2017 and in her absence the matter was dealt with by Ms. Cauldwell.

96. Mr. Sobey set out in his email that Helen Jackson had expressed surprise about the Claimant being the preferred candidate for the Policy & Development Officer role and had informed him that the Claimant had made a number of different applications for employment with the Respondent that had different information on them. It is clear that Mr. Sobey was, however, keeping an open mind about that position in his comment within the email that:

"…this may or may not be appropriate given applying for different posts, but there is an issue of clarity about factual accuracy around employment history needing to be considered".

97. Mr. Sobey asked Ms. Cauldwell to provide additional information about the Claimant so that he and Ms. Martin could *"have a full understanding of any concerns that exist prior to taking the next step in the recruitment process"*.

98. Andrea Cauldwell replied to Mr. Sobey's enquiry on 28th June 2016 (see page 395 of the hearing bundle). Her response said this:

> "*Hi Mark*
>
> *I have looked at Farooq's application forms.*
>
> *In his application for your post he has included employment details for two positions which he has not referred to in two other applications.*
>
> - ***Independent Board member - Reflection Project Helpline** 4 February 2013 - 26 October 2013 - a voluntary role.*
> - ***Teacher of Arabic and theology - Ikhlas Education Centre** - 24 October 2008 - 24 September 2010 - an unpaid role.*
>
> *The only other discrepancy is that in all three applications his employment end date differs for his employment with **Chambers of Forz Khan**.*
>
> *In his previous two applications he has stated he finished there on 15 May 2015 and 25 May 2015; in the application for your post he has stated his employment end date there was 31 May **2016**. This could be a typing error but is something you could clarify when you take up references.*
>
> *We do encourage applicants to tailor their application forms to meet the criteria of each job they apply for and it may be that Farooq has included the two voluntary roles above as they are more pertinent to the safeguarding role.*
>
> *It is acceptable for you to discuss these issues with Farooq for clarification if you are concerned.*
>
> *Whilst we take up two references as a legal minimum, there is nothing to say we cannot take up more (with the applicants informed consent) if you wish to."*

99. Helen Jackson, Shaleena Cooper and Nina Martin were copied into Ms. Cauldwell's email to Mr. Sobey.

100. In response to the message from Ms, Cauldwell, Nina Martin determined that an internal reference should be requested from the Respondent with regard to the Claimant's 2005/6 Benefits Assessor position in addition to contacting the referees whom the Claimant had given on his application form.

101. Whilst the Claimant is now critical of the decision to take up an internal reference, it is one which we find perfectly understandable in the circumstances. It had come to the attention of Mr. Sobey and Ms. Martin that the Claimant's various applications for employment contained different information and that is a matter which understandably caused them concern. We remind ourselves of course that the application that the Claimant had made was for a safeguarding position and we accept the evidence of Mr. Sobey that this made it even more important to be absolutely certain that there were no legitimate concerns in respect of the successful candidate. We find it perfectly understandable that Ms. Martin would therefore take the decision to obtain an internal reference from the very organisation that had previously employed the Claimant and in respect of whom he was again applying for employment.

102. The Claimant sought to suggest in cross-examination of the Respondent's witnesses that it had been unacceptable to take a reference from a position which had been held some 10 years previously and that there was some policy within the Respondent which determined that that was not a permissible course. The Claimant was not able, however, to take us to any such policy which he contended supported this proposition. At best, we saw reference to the fact that those applying to work in a teaching environment would have more recent references taken up but it is clear that those positions were entirely different to the one for which the Claimant was applying for. We are satisfied from the evidence before us, therefore, that there was no time limitation on the period for which references could be taken up and considered.

103. Given that there were question marks over the content of the employment information within the Claimant's application, we therefore do not find it at all unusual that the Respondent would seek a reference from within their own organisation from a time when the Claimant had previously worked with them. Moreover, as we shall come to shortly, the Claimant was in all events asked by Nina Martin for his permission for an internal reference to be obtained and he gave his unqualified agreement for that to be undertaken. There is no dispute by the Claimant that he gave that authority to Nina Martin in that regard, although we would observe that we find it an unusual position for the Claimant to have taken given that he must have known that there was a distinct possibility any internal reference would be likely to be less than glowing in light of the reasons for his dismissal.

104. Nevertheless, that was not a matter which was mentioned to Nina Martin by the Claimant. It was in fact open for him to do so and to indicate that there may be some problem with the reference. We accept the evidence of Nina Martin that this had in fact occurred with other candidates in the past who had made something of a pre-emptive strike to advise that the references may come back with issues surrounding them. That, we accept, would therefore have also been a point for discussion as it had been in other cases in the past.

105. Therefore, having received the Claimant's permission to obtain an internal reference, Nina Martin directed Andrea Cauldwell to follow this up with the Claimant's former line manager, Sallie-Anne Griffiths. She further directed that the Claimant's other references should also be requested (see page 393 of the hearing bundle). Andrea Cauldwell delegated that particular task to Helen Jackson. There was nothing unusual in that course of events.

106. On 6th July 2016, Helen Jackson wrote to the Claimant making him a conditional offer of employment. Ms. Jackson congratulated the Claimant on being offered the post but made it abundantly clear within the first paragraph of her email to him that the offer was conditional and subject to satisfactory pre-employment checks, including eligibility to work in the United Kingdom, references being obtained, a pre-placement heath assessment taking place and a Disclosure and Barring Service disclosure being received.

107. Ms. Jackson asked the Claimant to arrange an appointment to see her to proceed with the pre-employment checks (see page 398 of the hearing bundle). The email made note of the fact that references would be required. Within her letter there is mention of references needing to cover the last five years if the Claimant was to be appointed to a post in a children's home. It is clear that this was a standard form of wording, however, given that the post that the Claimant had applied for had nothing to do with children's homes. Again, therefore, this is not a situation which prevented the more historical internal reference from being taken up by Ms. Martin and Mr. Sobey.

References

108. As we have already referred to above, Nina Martin had directed that the Claimant's other references should also be taken up in addition to that which was being requested internally from Sallie-Anne Griffiths.

109. One of the references which had been requested by Helen Jackson, acting on the instructions of Andrea Cauldwell, was a reference from Professor Nigel Duncan of the City Law School in London. He had been a tutor of the Claimant's during his time completing his Bar Professional Training Course and had been named as a referee by the Claimant on his application for the Policy & Development Officer post. Professor Duncan was therefore not an employer of the Claimant and instead gave his reference in his capacity as the Claimant's former Law Professor.

110. Whilst some of the earlier Preliminary hearing observations have suggested that the other references obtained in respect of the Claimant other than that which was received internally (and to which we shall come in due course) were in rather glowing terms, we find ourselves unable to agree with that conclusion having looked at the references for ourselves. There were three additional references other than that taken up internally which were obtained. There is the one from Professor Duncan to which we have already referred; there was one from Forz Khan, Barrister and Head of the Chambers at which the Claimant had completed a mini pupillage and also from an organisation by the name Webhelp UK where the Claimant had worked for a brief spell. The latter reference was a factual reference only, limited to job title, dates of commencement of employment, hours of work and wage details and the like. It did not provide any assistance in terms of suitability for the post. The reference

from Professor Duncan was more detailed but it is in our view not an apt description to refer to it as "glowing". It is in our view distinctly average.

111. It is therefore perhaps appropriate here to quote the relevant portions, which said as follows:

> "*Farooq Ali was not an employee of my organisation but a student on a Bar Professional Training Course during the academic year 2013-14. I was his personal tutor and his tutor for a number of skills classes in which he learned to draft documents and give written advice in the form of barrister's opinions. He also studied civil and criminal litigation, professional ethics, alternative dispute resolution and advocacy.*
>
> *Mr Ali was a pleasant young man who got on well with both fellow students and my colleagues. His attendance was good and his preparation for classes was reasonable. I do not have a record of his performance on the course but have no reason to doubt that he will have provided you with accurate details. He certainly developed the analytical and communication skills associated with practice at the Bar and this should stand him in good stead to deal with the matters you describe in your job description. I do not know what experience he has had since completing the Bar course or whether that will fit in specifically to work in the field of child safety.*
>
> *I am aware that Mr Ali had difficulties while on the course as his marriage was in difficulties and finished during the course. This may have had an impact on his performance.*
>
> *I am confident that he has the intellectual capacity and reliability to serve you well as a policy and development officer.*"

112. The Respondent also sought and was provided with a reference from Mr. Forz Khan, Barrister at Law, with whom the Claimant had completed a lengthy mini-pupillage. Given that position, Mr. Khan was also not giving the reference in the capacity of an employer or former employer of the Claimant but as a supervisor of the Claimant during the course of the mini pupillage. That mini pupillage, described by Mr. Khan as irregular and ad hoc, was said to have commenced on 7th July 2014 and ended on 25th June 2016.

113. Mr. Khan's reference was received on 21st July 2016 and was in relatively brief terms. Although it described the Claimant as hard working, devoted, dedicated and smart and gave an indication that Mr. Khan was of the opinion that the Claimant would do his best to fulfil all the requirements of the role and having the potential to undertake it, it did nevertheless raise some question marks over the Claimant's reliability. When asked whether the Claimant was reliable, Mr. Khan had replied only "reasonably so". Again having read that reference for ourselves, it is again perhaps best described as distinctly average and is far from a glowing recommendation of the Claimant. We accepted the evidence of Mr. Sobey that he did not view either reference a particularly impressive.

114. The Respondent had also received of course the Webhelp UK reference which was received on 15th July 2016 but, as we have already observed, that was limited to a short factual reference.

The internal reference from Beverley Parks

115. In the meantime, there was of course the question of the internal reference which had been requested from Sallie-Anne Griffiths as the Claimant's former line manager in his 2005/6 Benefits Assessor position. Upon receipt of the reference request, Sallie-Anne Griffiths had sought advice from Beverley Parks, her own line manager, about providing the reference. We accept the evidence of Ms. Parks that Sallie-Anne Griffiths told her that she felt uncomfortable in giving the reference as she had been part of the subject matter of the Claimant's previous grievance. We consider that understandable given the circumstances of the termination of the Claimant's employment; the information that would therefore have to be imparted within the reference and the fact that the content of the same would be highly unlikely to be to the Claimant's liking.

116. Sallie-Anne Griffiths accordingly sought advice from Beverley Parks about completing the reference request. Beverley Parks in turn spoke to Helen Jackson for some HR guidance. It was entirely understandable that she would do so given that Helen Jackson was the individual who had requested the reference from Sallie-Anne Griffiths. Ms. Parks explained that Sallie-Anne Griffiths did not want to complete the reference and that she also felt uncomfortable in completing the reference herself.

117. We accept that there was some enquiry by Helen Jackson as to the reason for that and that Beverley Parks informed her in response that there had been an earlier grievance raised during the course of the Claimant's employment. We accept entirely, however, the evidence of both Beverley Parks and Helen Jackson that no further information was imparted as to what that grievance was about and, particularly, that Helen Jackson was not aware nor was she made aware that the grievance had contained an allegation of discrimination.

118. The Claimant has sought to suggest during the course of these proceedings that Helen Jackson (and perhaps also others both inside and outside HR) went away and either searched themselves or though HR contacts for old personnel records or files to discover the content of the Claimant's grievance.

119. We are entirely satisfied that that is mere speculation on the Claimant's part in order to bolster a suggestion that the individuals who he attributes the later decision to later withdraw the job offer had knowledge of the content of his grievance. The Claimant has nothing at all other than mere speculation to support such a contention. We are entirely satisfied that none of the individuals concerned took it upon themselves to seek to access any old records and that in all events even if they had attempted to do so, this would have been a rather cumbersome process of having to request hard copy personnel files stored in an offsite storage facility rather than accessing computer records as the Claimant suggested he thought might have been the case.

120. Helen Jackson asked Ms. Parks to nevertheless complete the reference even though she did not feel entirely comfortable in doing so in order that the Respondent could have the internal reference which had been requested. Beverley Parks, despite her feelings of discomfort, agreed that she would complete the reference as requested.

121. The Claimant is critical of that decision. He appeared to contend before us either that Ms. Parks could have refused to provide the reference or otherwise that she could have tailored this in some way to omit what would later be seen to be the "unfavourable" parts of the reference.

122. With regard to the former, the Claimant did not appear to have considered until it was put to him by Counsel for the Respondent that the refusal itself could have amounted to victimisation. It seems to us that had an internal reference been refused, this would no doubt have set alarm bells ringing for Ms. Martin, Mr. Sobey and the Board and the Respondent would likely have found themselves in the same position if Ms. Parks had refused to provide any reference at all for the Claimant. Moreover, it must also be borne in mind that Ms. Parks remained an employee of the Respondent. She was simply carrying out a reasonable instruction given to her by her employer to produce the reference. We very much doubt that she was in much of a position in reality to refuse.

123. The second suggestion that the reference should effectively have been tailored so as to "miss out the bad parts" we find completely absurd. That is a particularly odd suggestion for somebody with the legal background and qualifications that the Claimant has. To have done as the Claimant appeared to suggest during his evidence would clearly not be so as to provide a truthful and accurate reference. To omit any parts of the reference which the Claimant may perceive as negative would have given only part of the story and would have had potential to cause difficulty, not only for the Respondent but also for the author of the reference itself if it later came to light that the content of the same was misleading. Again we would reiterate we found this to be a most curious suggestion on the Claimant's part.

124. Despite some degree of discomfort on her part, the reference was completed by Beverley Parks and sent through to Helen Jackson on 13th July 2016. It was completed on a pro-forma provided by the Respondent. That document made it clear that completion must be undertaken in a manner which was truthful, accurate and fair. Again, this demonstrates a naivety in the Claimant's suggestion that the reference could and should have omitted any negative content and focused only on the positives.

125. The reference was, on any reading, a far from positive one. We shall come to the main detail in due course but we observe that the Claimant is also critical of other areas of the reference which might be seen as rather less damaging. Those were matters that he put to Ms. Parks in cross examination where it was contended that there had been factual errors or other erroneous information included within the terms of the reference.

126. Those elements of the reference included the dates of employment for the Claimant, the length of time since he had ceased to be employed by the Respondent and his periods of sickness absence. Ms. Parks candidly accepted during cross-examination that she had been in error in completing those particular parts of the reference. Whilst it is clear perhaps that more care should have been taken in that regard, we accept entirely that those were honest mistakes on her part and they were in no way intended to deliberately paint an inaccurate picture of the Claimant or otherwise cast him in a negative light.

127. In any event, those were not the portions of the reference which caused the real difficulty. Those came with the details for leaving, whether he was a reliable member of staff (a query which Ms. Parks answered in the negative) and the reasons for dismissal. Ms. Parks confirmed within the body of the reference that the Claimant had not met the probation conditions to be able to be confirmed in post and that she would not re-employ him. When asked to expand upon the latter point, she said this (see page 434 of the hearing bundle):

> "*The applicant;*
> *Did not meet quality targets*
> *Did not meet productivity targets*
> *Did not carry out instructions regarding attendance in core time and early cover*
> *Poor time keeping*
> *Poor flexi management*
> *Failed to meet the conditions which would have confirm him in post following extended probationary period"* (sic).

128. Those portions of the reference were lifted from the management statement of case which had been prepared prior to termination of the Claimant's earlier spell of employment. Again, having examined those in a significant amount of detail during the course of this hearing, we are satisfied that all of the matters which Ms. Parks recorded in the reference were all matters which had been the cause of concern to the Respondent during the Claimant's prior employment as a Benefits Assessor and that they had been the reasons why he had been dismissed from that employment in 2006.

129. We are also satisfied that on the basis of the evidence before the Respondent at the point that his employment was terminated in 2006, there was ample to demonstrate that the above concerns were both significant and that they justified the Claimant's dismissal. He had, of course, already had his probationary period extended but there remained problems with his capability and conduct thereafter. There was nothing before Ms. Parks at the time of writing the reference for the Claimant in respect of his application for the Policy & Development Officer role that either had or could have changed the position as it was in 2006 when his employment was terminated. In short, therefore, there was nothing before Ms. Parks to cast doubt on the accuracy of the information within the management statement of case which she used to pen the reference. There is nothing unusual in her having used that statement of case as the basis of the reference given that a decade had gone by since the time of the Claimant's original period of employment.

130. We are entirely satisfied that there was no reasonable alternative but for Ms. Parks to complete the reference in respect of the Claimant to set out the reasons why his 2006 employment had been terminated. The content of the reference penned by Ms. Parks in this regard was not only perfectly justified but also entirely necessary. There was nothing misleading at all within those sections of the reference to which we have referred to above and there is no basis to suggest that her completion of the reference had anything to do with the grievance that the Claimant had raised a decade earlier. The reference was simply completed on the basis of the reasons for the termination of the Claimant's employment as a Benefits Assessor and from the management statement of case that had preceded it. There was nothing at all unusual about the reference – it simply reflected the reasons for termination given to the

Claimant a decade previously.

131. We should just observe that the Claimant made a rather odd suggestion during the course of cross-examination of Beverley Parks that a further area of error within the reference was that she had answered the question of whether he had ever been suspected of dishonesty or a breach of trust in the negative within the reference. The Claimant's suggestion appeared to be that because of some of the issues which had resulted in the termination of employment in 2006, Ms. Parks should have answered in the affirmative and therefore her reference was erroneous and misleading. We found that a somewhat odd line for the Claimant to have taken but, contrary perhaps to the picture that he was seeking to convey, it appears to us that if the Claimant is correct in his claim that Beverley Parks was seeking to ruin his chances of securing the Policy & Development Officer role then no doubt she would have seized upon the opportunity to draw his honesty or trustworthiness into question. However, she did not.

132. We are entirely satisfied having regard to the reasons for the Claimant's dismissal in 2006 (again in respect of which we are satisfied that there was more than sufficient evidence in support available at the time) that the reference completed by Beverley Parks simply recorded that relevant information contained within the management statement of case. It was a reasonable reference to provide having regard to the information before her at the time. There is absolutely nothing before us to begin to suggest that Beverley Parks had in mind, either consciously or subconsciously, when determining what to put in the reference the fact that the Claimant had raised a grievance which related in part to her some ten years previously. The Claimant has not been able to take us to anything at all which could even begin to suggest that that was in fact the case, other than his own assertion to that effect, and even upon which he on occasions seemed somewhat less than clear.

133. We should also record that it seems to us that there is no particular discernable reason why Ms Parks would have taken against the Claimant for his having previously raised the grievance. The grievance had been investigated and it was not upheld. Beverley Parks had been informed of that and told that no further action would be taken in respect of it. She did not therefore face any disciplinary action; damage to her own career or any other issue arising from the grievance. At worst, it was no doubt a nuisance and upsetting at the time but by the time that she came to give the reference of course that was provided some ten years on.

134. Moreover, we accept the evidence of Beverley Parks that had the Claimant been appointed to the Policy & Development Officer role, she would in all likelihood have had no contact with him. He would have been based in an entirely different directorate and building at the Respondent Council. She had no contact with the Safeguarding Board nor any responsibility for it. She was highly unlikely to ever come across the Claimant given that position and the size of the organisation but we accept her evidence that even if she had, she would not have had any difficulty exchanging a greeting with him and any employment for him within the Respondent in those circumstances was therefore not of interest to her.

135. As such, we accept that it was neither here nor there to Ms. Parks if the Claimant was appointed to the Policy & Development Officer role or not insofar as her own position was concerned and we do not accept the Claimant's contention that she went out of her way to try and scupper his chances of getting the job.

136. As we have set out above, the reference was sent by Beverley Parks to Helen Jackson by email on 13th July 2016. The email is timed at 10:54. Helen Jackson forwarded that promptly to Mark Sobey at 11:31 on the same date. Mr Sobey forwarded the email to Nina Martin the following day at 11:13. He asked for a discussion about the reference because it quite understandably raised concerns given the content. Nina Martin replied to Mr Sobey and to Helen Jackson at 12:48 that day. She said this:

> "*I know it was 6 yrs ago*[9] *but on the basis of this reference I do not think we want to proceed with this applicant, do you? We can talk later, but Helen please advise.*"

137. On 14th July 2016 at 15:41, Helen Jackson replied to Nina Martin's email providing the advice which she had requested. Her email said this:

> "*Hi Nina*
>
> *Farooq came in yesterday for his pre-employment meeting and I asked him for an email address of the volunteering post he has been doing.*
>
> *I would suggest that we wait until all his references have come in so that it looks like we have taken them all as a whole.*
>
> *I did do a DBS*[10] *form and had a query which I telephoned him about but he hasn't, as yet, come back to me so that will hold things up.*
> *I want to make sure that we do everything as correctly as possible."*

138. The Claimant's position is that the second paragraph of that email is demonstrative of the fact that something untoward was going on behind the scenes; that the decision had already been taken to withdraw the job offer and that Helen Jackson was seeking to "cover the Respondent's back" by paying lip service to the suggestion that all references had been taken into account.

139. We have considered that particular portion of the email and the evidence of Helen Jackson in respect of it very carefully. We are ultimately satisfied that this email is not the smoking gun that the Claimant contends that it is. We accept it was simply a matter of bad wording by Helen Jackson and that the position that she was trying to convey was that the Respondent should simply wait for all references to be received before any decision was taken in respect of the post and it should not be based solely on the Beverley Parks reference.

140. That is the position as described to us in evidence by Mr. Sobey and Ms. Martin that would have played out in all events and that the references would have been discussed with the Claimant and, in particular, the one from Beverley

[9] In fact that was an error with regard to the dates in the reference and it had in fact been ten years since the Claimant had been dismissed from the Benefits Assessor post.
[10] Disclosure & Barring Service

Parks, before any decision was to be taken. That, we are satisfied would have been the case but for a supervening event with regard to the potential abolition of the Local Safeguarding Children Boards, which we shall come to further below.

141. The Claimant also contended before us, or at least he took such a position during some parts of his cross-examination by Ms. Jeram, that a decision had been taken by Mr. Sobey and Nina Martin at some point between their two respective emails (that is between 11:13 and 12:48 on 14th July 2016) to withdraw the offer of employment to the Claimant and that the reason for that was the reference that had been received from Ms. Parks. That is denied by both Mr. Sobey and Ms. Martin.

142. We accept their evidence on that point. In addition to us having found them both to be credible witnesses, the Claimant quite simply has nothing to support his position that Mr. Sobey and Ms. Martin had had a discussed at some point between the two emails and decided to withdraw the offer. This is mere supposition on his part and there is no evidence at all before us to support that suggestion. In fact, Mr Sobey's evidence, which was consistent throughout and despite being cross-examined extensively on the issue, was that he had left the office for an external meeting very shortly after sending the email to Ms. Martin. He had not spoken to Ms. Jackson, Nina Martin or anyone else either before or after sending that email but had simply left the office to travel straight to his meeting. He had been engaged in that meeting until around 4.00 - 4.30 pm that day and had only accessed his e-mails after the meeting had ended. At that point, he picked up not only Nina Martin's email but also another email, to which we shall come, which threw into question the role for which the Claimant had applied.

143. We are therefore entirely satisfied that there was no meeting or other discussion as suggested by the Claimant between Mark Sobey and Nina Martin which pre-dated the email which Nina Martin sent at 12.48 and, further, we are satisfied that no decision had at that time been made to withdraw the offer of employment to the Claimant or that he otherwise would now not be offered the role.

144. In fact, we were also entirely satisfied from the evidence of both Nina Martin and Mark Sobey that whilst they were obviously concerned in relation to the Claimant's suitability for the role now that the internal reference from Beverley Parks was to hand, that reference alone would not alone have been enough to have made them withdraw the job offer without further consideration. Although that may appear perhaps to fly in the face of the content of Nina Martin's email to which we have referred above, we are satisfied from her evidence that she was seeking advice and guidance from Helen Jackson as to how to proceed and she had certainly not made her mind up about the appointment. Indeed, as we shall come to, it was not ultimately her decision to make. We also accepted her evidence and that of Mr. Sobey that references have in the past been taken up and have given a less than positive impression of a preferred candidate and in those circumstances the way in which matters have been dealt with is to speak to the candidate and seek their input on the issues set out in the reference.

145. We accept that had in not been for the later chain of events to which we shall come, that the step that would have been taken would have been for Mr. Sobey to contact the Claimant and invite him to discuss the reference and to provide any explanations that he may have had in respect of the content of the

same.

146. We therefore accept that this was something which both Mr. Sobey and Ms. Martin had done previously with other applicants where a preferred candidate's references had not been entirely up to scratch and that that would have been their intention also for the Claimant.

147. However, as we have already alluded to above, there was a supervening event which placed the viability of the whole Policy & Development Officer role at risk.

Legislative changes – the Children & Social Care Bill

148. As we have indicated above, on 14th July 2016 when he was leaving his meeting Mr. Sobey also picked up an email not only from Nina Martin relating to the Claimant but also from another individual by the name of Emily Freeman. Emily Freeman is/was the Respondent's Interim Head of Safeguarding Adults and Professional Standards. The email from Emily Freeman set out that legislative proposals suggested that there was going to be an abolition of Local Safeguarding Children Boards of which, of course, the Derby Safeguarding Children Board was one.

149. The relevant portion of the email from Emily Freeman forwarded a chain of emails from others within the Respondent authority and other Safeguarding Boards and asked Mr. Sobey how he thought that this would affect things for him. By that, it is clear that Ms. Freeman was referring to Mr. Sobey's position as Board Manager of the Derby Safeguarding Children Board (page 451 of the hearing bundle).

150. The main thrust of the email chain was that, contrary to what those involved in Local Safeguarding Children Boards had understood from the Wood Review[11] was recommended and would be taken on board, the Government had laid amendments to the Children & Social Care Bill to abolish the requirements for such Boards and to instead put in place arrangements for "local safeguarding partners" (page 455 of the hearing bundle). There was little or no clarity as to what exactly was meant by the "local safeguarding partners" that were intended to replace the Boards.

151. We accept that the Government response and the amendments laid before Parliament in respect of the Children & Social Care Bill was a matter of both surprise and extreme concern to Mr. Sobey, and also later to Nina Martin when they later discussed it. It had been both unexpected in its approach and had also moved with considerable speed given the publication of the Wood report only a few weeks earlier.

152. Mr. Sobey impressed upon us at the hearing both his shock and firm disagreement with that particular legislative proposal but of course there was in reality little that he was able to do about the matter. It did, however, obviously raise significant concerns in relation to recruitment for the post for which the Claimant had been offered. If the Board was no longer going to exist in the long term, then the Policy & Development Officer role would disappear along with it.

[11] The review and report by Alan Wood CBE into the role and functions of Local Safeguarding Children Boards published in May 2016.

153. The Children & Social Care Bill received Royal Ascent in April 2017 and thereafter the Children & Social Care Act 2017 came into force. Section 30 of that Act provides for the abolition of Local Safeguarding Children Boards.

154. The Claimant in the proceedings before us places great emphasis on the fact that Section 30 of the Act has not yet been implemented (it requires Regulations being made by the Secretary of State for Education to do so). He contends that that fact and the fact that the Respondent had and still does not have any idea of the timescale for implementation of Section 30 resulted in the fact that they should have continued with the Policy & Development Officer role and employed him until such time as the implementation Regulations were made.

155. Whilst that is one way of looking at things, and given his desire to obtain employment with the Respondent it is not difficult to see how the Claimant would reach the conclusion that matters should have proceeded in that way, it is not the only way of looking at the situation, however. It overlooks the fact that both Mr. Sobey and Ms. Martin had considerable concerns about continuing the recruitment process for a role that at best at the time only appeared to have a relatively short shelf life. It is true to say that they had no firm idea about the timescales for implementation of the abolition of the Local Safeguarding Children Boards and that they had some residual funding from partners which was placed in the Boards reserves following the decision to discontinue recruitment (see page 506d of the hearing bundle) but we accept the evidence of Mr. Sobey that he was concerned that that might well take place quite swiftly given the speed at which the amendments to the Children & Social Care Bill had been laid before Parliament.

156. We accept Nina Martin's evidence that the problem with the suggestion of continuing with the recruitment process and appointing someone in post to the Policy & Development Officer post irrespective of the proposed abolition of the Board and others like it was manifold. Firstly, there was the expense of training and inducting for the role. That of course would take time and come at a cost. Given the potential for the role to have a relatively short lifespan (as appeared likely to Mr. Sobey and Ms. Martin to be the case at the material time) it is difficult to see what, if anything, the Respondent might have gained from continuing with the recruitment process when the question of time for training and induction was taken into account.

157. Secondly, Nina Martin considered that it would not be fair to recruit to the Policy & Development Officer post for what might only be a short time. As she told us in evidence, as she saw matters the successful appointee could have left another job to take up the position and they would no doubt be extremely disappointed to say the very least to then find that they would only be in post for what might be a relatively short period of time. That, in Ms. Martin's view, would have clearly been unfair.

158. Thirdly, as Ms. Martin told us in evidence, there was the potential liability for the Respondent to consider - for example in terms of having to pay notice pay etc - if the role was later to become redundant.

159. In short, we accept that the email from Emily Freeman setting out the legislative proposals for the abolition of Local Safeguarding Children Boards threw the whole question of appointment to the Policy & Development Officer role

for which the Claimant had applied into question and the view that both Mr. Sobey and Ms. Martin held as a result was that the recruitment process should be discontinued. We accept without doubt that it was that development and not the Claimant's 2006 grievance (of which neither Mr. Sobey or Ms. Martin were, we accept, in any event aware of) that resulted in their agreement to withdraw the post as a result.

160. We deal with the point of knowledge of the grievance further below.

Withdrawal of the offer of employment

161. Mr. Sobey and Ms. Martin were in agreement that the offer of employment should be withdrawn and the recruitment process halted, but they were not in a position to take that decision themselves. That was a matter for Andrew Smith, the Strategic Director of People Services and a member of the Derby Safeguarding Children Board.

162. On 16th July 2016 Nina Martin and Mark Sobey were present with Andrew Smith at an unconnected meeting. Given the developments with regard to the future of the Board, Mr. Sobey and Ms. Martin took the opportunity to discuss the same with Mr. Smith and in doing so also expressed their view that in light of the Government's position the recruitment for the role for which the Claimant had applied should be discontinued. We accept that it was a decision for Mr. Smith as to whether or not that would happen and that it was he who made the ultimate decision not to continue with the recruitment process.

163. We also accept the evidence of Mr. Smith that at that juncture, and indeed until the course of these proceedings, he had no idea that the Claimant had raised a grievance back in 2006 or, indeed, that it was the Claimant that had been offered the post. As such, we are entirely satisfied that the protected act relied upon by the Claimant did not feature in the mind of Mr. Smith at all – whether consciously or subconsciously – given that he had no idea that a protected act had even been done by the preferred candidate for the post.

164. Again, other than speculation by the Claimant that Mr. Smith had became aware of his grievance from either Mr. Sobey, Ms Martin or both (or otherwise through some unspecified enquiries of HR/HR databases) the Claimant has nothing at all to suggest Mr. Smith had any awareness of those matters. We accept this evidence that he did not and that he had no knowledge of the fact that the Claimant had raised a grievance in 2006 at the point that he made the decision to rescind the offer of employment and discontinue the recruitment process.

165. We further accept his evidence that his sole reason for doing so in the circumstances was the proposed legislative changes which saw the requirement for the role which the Claimant had applied for as being one that was not going to be needed long term. In short, the proposed legislative changes had done away with the ability to continue the recruitment to the Policy & Development Officer role.

166. We accept that it was that and nothing else which determined Mr. Smith's position that the recruitment would now cease. That decision was conveyed to Mr. Sobey and Ms. Martin accordingly during their discussions on 16th July 2016. Mr Sobey, as the recruiting manager, was tasked with informing the Claimant

about that position.

167. After the decision had been taken by Mr. Smith to withdraw the job offer and discontinue the recruitment process, he did make brief enquiries of Ms. Martin and Mr. Sobey as to what stage the recruitment process had reached thus far and they had mentioned to him in reply that a preferred candidate had been offered the role but that there was an issue with references. We accept the evidence of Mr. Smith, Ms. Martin and Mr. Sobey that the Claimant's name was not mentioned, however, and that matters went no further than that.

168. In all events, the decision had already been taken to withdraw the offer and discontinue recruitment by the point that any mention was made as to the stage which the process had reached.

169. On or around 18th July 2016, Mr. Sobey drafted a withdrawal letter to the Claimant in respect of the Policy & Development Officer role in view of the decision which had been taken by Mr. Smith. He sent this to Zoe Bird, the of Human Resources Shared Services Manager at the Respondent Council, for approval.

170. The email from Mr. Sobey to Zoe Bird said this (see page 477 of the hearing bundle):

> "*Dear Zoe*
>
> *I have been advised to contact you re the attached letter[12].*
>
> *The Derby Local Safeguarding Children Board (DSCB) were in the process of recruiting someone to the policy officer post (employed through DCC). On Thursday last week it became apparent that an amendment to legislation proposes abolishing the DSCB and there is insufficient clarity about the proposed replacement arrangements in the draft bill amendment.*
>
> *This was discussed with the Chair of the DSCB and the Director of People Andy Smith.*
>
> *In light of this coming to our attention and the absence of any indication from government what the future functions for the replacement of LSCB's, it does not seem appropriate to continue with the recruitment.*
>
> *(This could not have reasonably been foreseen when we gained partner agency funding for the post and began the process).*
>
> *I have therefore drafted a letter to advise the preferred candidate of our withdrawal of the post - please would you be so kind as to check it as we wish to ensure no unintended consequences for DCC.*
>
> *Any amendments or suggestions welcome.*
>
> *It would be helpful if you could reply as soon as possible and thank you".*

[12] This being the draft withdrawal letter which Mr. Sobey proposed to send to the Claimant.

171. The Tribunal questioned Mr. Sobey on what "unintended consequences" he was referring to in his email to Ms. Bird. Whilst Mr. Sobey appeared somewhat vague on this particular issue, we take into account this is a small extract from an email sent over 12 months ago and taken as a whole with the rest of the evidence before us, we do not discern anything of consequence from it.

172. With very minor changes to the original draft, the withdrawal letter was despatched to the Claimant on 20th July 2016 (pages 480 and 481 of the hearing bundle) and the relevant parts of the letter said this:

> "*I am having to write to inform you that regrettable the Derby Safeguarding Children Board is unable to continue to recruit to the position of the a Policy and Development Officer* [sic].
>
> *This has arisen as a result of circumstances that were brought to our attention in respect of proposed amendments made to the Children and Social Work Bill.*
>
> *In May 2016 HM Government responded to the Review of LSCBs carried out by Alan Wood. It was noted that "local areas that have strong and effective arrangements for multi-agency co-operation delivered through their LSCB will be able to retain them as long as they meet the new requirements".*
>
> *It was brought to my attention on Thursday 14 July that an amendment had been made to the Children and Social Work Bill at Committee stage* (07/07/16) *in the House of Lords.*
>
> *The proposed amendment abolishes local Safeguarding Children Boards with insufficient clarity about the functions of the body that will replace them included in the Bill.*
>
> *Urgent discussion is being held with the Chair of the Derby Safeguarding Children Board, Christine Cassell and the Director of People, Andy Smith.*
>
> *The amendment places Derby Safeguarding Children Board, and the local authority (as the employer) in a difficult position in respect of the continuation of the recruitment to the post for a Policy and Development Officer.*
>
> *It is therefore, with significant regret, that the decision has been made that the recruitment of the post will not continue and therefore the verbal offer is withdrawn.*
>
> *On behalf of the Derby Safeguarding Children Board I wish to thank you for your application and apologise for the understandable inconvenience this will cause.*
>
> *I wish you all the best with your future endeavors(sic).*"

173. Mr. Sobey also spoke to the Claimant on the telephone on 20th July 2016 and explained the situation to him. We accept Mr. Sobey's evidence that at that point the Claimant appeared accepting of the situation and that fact is reflected in Mr. Sobey's subsequent email of 20th July 2016 updating Nina Martin and others

on developments (see page 486 of the hearing bundle).

174. We are satisfied that the content of Mr. Sobey's email to Zoe Bird further emphasises the reason for withdrawal of the post and supports the evidence given to us by Mr. Sobey, Ms. Martin and Mr. Smith that this was the proposed legislative changes which we have already referred to. We accept the representations of Ms. Jeram that if the reasons in the email were false as the Claimant contends, then this would have involved Mr. Sobey having foreseen that the Claimant might not accept the reasons that he had given to him over the telephone and in his letter for withdrawal of the post; taking the view that the Claimant would link this back to his 2006 grievance and concocting a wholly fictitious email to Zoe Bird to "cover his tracks" in the event that the Claimant was to complain or bring a claim arising from the withdrawal of the post. Quite simply, we do not think that that is a matter which bears any real degree of scrutiny.

175. Mr. Sobey sent the letter to the Claimant of 20th July by email. He also sent a covering email. In that covering email, he made reference to the fact that during his telephone conversation with the Claimant, the Claimant had asked if he was aware of an "allegation" that had been made against him. Mr. Sobey made it clear in his email that he was not.

176. It is now common ground that what the Claimant was referring to in relation to mention of an "allegation" was the 2006 grievance, although it was perhaps a slightly odd choice of words to refer to an allegation "against him". Be that as it may, the Claimant contends in the proceedings before us that Mr. Sobey was not correct in the content of his email that he was not aware of the position with regard to the "allegation"/grievance. It is the Claimant's position in this regard of course that both Mr. Sobey and others were influenced by the fact that he had raised the grievance and were using the issue of the Children and Social Work Bill as a cover for their real motivation in withdrawing the job offer. It must therefore be his position, although the Claimant has been extremely reticent about saying so, that Mr. Sobey was being untruthful in the content of his email of 20th July 2016 and that he knew full well what allegation the Claimant had been referring to.

177. The Claimant responded to Mr. Sobey's email at 04.58 in the morning of 21st July 2016. However, he did not make any such suggestion that what Mr. Sobey had said about not knowing about the allegation/grievance was incorrect. This was despite the fact that his email in reply went on to set out a number of dissatisfactions with the decision which had been made to rescind the job offer.

178. We find it very surprising had the Claimant genuinely believed that Mr. Sobey was not telling the truth about a lack of knowledge of the grievance that he would not have said so in that particular email reply. As we have already said, we are satisfied that Mr. Sobey in fact had no knowledge at all of the grievance which the Claimant had raised in 2006.

179. The Claimant's email in response to Mr. Sobey said this:

> "*I disagree with the a retraction of a lawfully made contract of employment being retracted given the fact that I have lawfully accepted the offer in writing* [sic].

Furthermore, I have also completed the pre-employment conditions[13] and provided all relevant details to the HR team at Derby City Council in this respect.

It is highly confusing that a validly made and accepted offer of employment following successful completion at interview is being retracted based on legislative provisions which are not currently in force.

The bill is merely a bill. It has no legislative effect at present. Proposed changes are yet to be made.

I am saddened that the quality assurance function is clearly still a very paramount factor to a current role being advertised by the Derby Safeguarding Children Board. I have included a snapshot of the role to which I refer in this email.

The role to which I refer is considerably similar in function and responsibilities as to the one which I have been interviewed for an accepted.

My surprise and complete dismay having noticed the date upon which the post is advertised is insurmountable.

Please find time to forward this email to the directors you mentioned in your letter as I believe a matter of ethical and legal obligations has been raised by your email which should be addressed in person at your earliest possible convenience."

180. We note of course that no reference was made at all in that email by the Claimant to the suggestion that the withdrawal of the post had all been down to the fact that he had raised a grievance regarding discrimination in his earlier period of employment. Once again, we also note of course that he did not seek to challenge Mr Sobey's statement in his email that he had not been aware of any "allegation" to which the Claimant had referred in their telephone conversation. The email reply instead focused on the legal and ethical legitimacy of withdrawal of what the Claimant at that time considered to be a perfected contract of employment.

181. The Claimant's email, of course, noted that he believed that there had been another post advertised which was "similar in function and responsibilities" to the Policy & Development Officer role. We have been taken to details of that particular role, which is one for a Child Protection Manager (see page 499 of the hearing bundle). It is clear that that is an entirely different role from the one which the Claimant applied for. Particularly, it required qualification as a social worker and a minimum of five years' experience in children's social work. The Claimant did not possess either the qualification or essential criteria for such a post and therefore it was not one which the Respondent was in a position to consider offering to him as an alternative (even assuming that there was any obligation upon them to consider doing so).

[13] This was in fact not entirely accurate as the Claimant's Disclosure and Barring Service ("DBS") check was still outstanding at that particular time and this was also a pre-employment condition of employment along with receipt of satisfactory references.

182. Moreover, we are entirely satisfied that this was a completely different position from the Policy & Development Officer role for which the Claimant had applied and therefore that, insofar as this is suggested by the Claimant, there was no "re-labelling" of the title of the Policy & Development Officer role so as to ensure that he was not offered the position but it was still filled in another guise. In fact, we accept the evidence of Mr. Sobey and Ms. Martin that the Policy & Development Officer role was never filled in any guise and that the duties were shared out amongst existing members of the Board pending the implementation of the statutory changes to which we have referred above. We say more on that below.

Post-withdrawal communications

183. On 21st July 2016, the Claimant wrote to Helen Jackson requesting a meeting. He also spoke again with Mark Sobey on the same date. Mr. Sobey's contemporaneous record of the conversation as set out in an email to Zoe Bird appears at page 492a of the hearing bundle and we accept that it is an accurate record of what was discussed. The Claimant did not raise the "allegation" point again nor make any suggestion that his grievance was behind the decision to withdraw the post. Instead, he concentrated on his view that he had been "contractually offered" the position and that as the Children & Social Work Bill was not yet law, there were no grounds for removing the post.

184. It is the Claimant's case that at some point on 20th or 21st July 2016, he had a further telephone conversation with Mr. Sobey during which Mr. Sobey said words to the effect that if the Claimant decided to legally challenge the decision not to appoint him to the role, then he would only get "six months money". We accept the clear and unequivocal evidence of Mr. Sobey that he made no such comment at all to the Claimant and again we prefer his evidence on that point.

185. In addition to our general observations as to credibility which are set out above, we would also observe that despite the Claimant now placing significant emphasis on the alleged comment at the hearing before us, it is not something that is recorded in any of the communications sent by the Claimant to Mr. Sobey or to the Respondent generally at the time. The Claimant was not able to provide any reasonable explanation as to why a point that has taken on such significance now was not referred to at the material time. Indeed, it is a matter which does not appear to have been mentioned by the Claimant at all until the preparation of his witness statement for this hearing. We have already commented in the context of the institutional racism point above as to our views of the exaggeration inherent in the Claimant's witness statement. The comment attributed by the Claimant to Mr. Sobey was not even mentioned in the Claimant's pleadings for this claim nor in the Preliminary hearings before Employment Judge Britton. Again, we bear in mind in this respect that the Claimant has legal training and find it highly improbable that had that comment in fact been made it would not have been referred to by the Claimant at a much earlier juncture given the emphasis that he now places upon it.

186. In view of all of those matters and our assessment of credibility generally, we preferred Mr. Sobey's evidence on this point to that of the Claimant and we are satisfied on the balance of probabilities that no such "six months money" comment was ever made.

187. The Claimant also spoke with Zoe Bird after his further conversation with Mr. Sobey. A note of her conversation with him appears at page 494 of the hearing bundle. Again, there is no suggestion that the Claimant raised that he considered the withdrawal to have been linked to his 2006 grievance. Zoe Bird reiterated to the Claimant the reasons for withdrawal of the post as per the information that had previously been given to him by Mr. Sobey.

188. The Claimant also sought to speak to Mr. Smith, although by that time Mr. Smith had departed on annual leave (see page 495 of the hearing bundle). Mr. Smith did not call the Claimant upon his return from leave and we accept his evidence that he could not recall having seen the email that his Assistant copied him into regarding her own conversation with the Claimant. We accept that in light of the volume of emails that Mr. Smith received whilst on leave, that oversight would not be unusual nor do we consider there to be anything in the point that his Assistant did not specifically draw it to his attention either during or upon his return from leave.

189. On 25th July 2016, the Claimant wrote again by email to Helen Jackson and Mark Sobey in an email entitled "Affirming Contract of Employment" (see page 497 of the hearing bundle).

190. In that email, the Claimant said this:

> "*I write to affirm my contract of employment with Derby City Council for the post of Derby Safeguarding Children's Board Policy and Development Officer.*
>
> *The agreement between myself and the local authority remains alive. An offer has been made, I have accepted that offer.*
>
> *The offer has been retracted following my acceptance. This constitutes a breach of contract.*
>
> *I urge the authority to strongly consider continuing the process given that a valid agreement is still in place between myself and the local authority."*

191. Again, it is notable in that email that no reference was made to the Claimant's belief that his previous grievance was the real reason for withdrawal of the offer. He concentrated again only on the contractual issues.

192. On 3rd August 2016, Zoe Bird wrote to the Claimant following his communications with the various individuals set out above. Her email (see page 503 of the hearing bundle) said this:

> "*Further to our letter dated 20th July 2016 (re-attached) and our subsequent telephone conversation on 25th July 2016, I am writing to confirm that nothing has changed in terms of our position on this. The offer was conditional and at the time the offer was withdrawn, those conditions hadn't been satisfied. Therefore, a binding contract had not been formed so we are entitled to withdraw the offer.*
>
> *We do not take lightly withdrawing any conditional offer but given the uncertainty with funding for this role, it has proved necessary in this case.*

I am sorry it's not the answer you were hoping to hear and wish you all the luck for any future roles you apply for."

Board discussions

193. On 14th September 2016, there was a meeting of the Derby Safeguarding Children Board and at that particular Board meeting an update was provided to the Board about the fact that the Policy & Development Officer appointment had not gone ahead and this was due to the uncertainty of the future of the Local Safeguarding Children Boards.

194. We have seen a copy of the minutes of that particular meeting which reflect this (see particularly page 506d of the hearing bundle). We have also seen the content of an earlier email to the Board members dated 25th July 2016, which is referred to in those minutes.

195. That email report to the Board members was sent in the name of Christine Cassell as Chair but had been penned by Mr. Sobey as a result of his knowledge of the issues. We are entirely satisfied from Mr. Sobey's evidence, however, that the matter of the need to withdraw the offer and discontinue the recruitment exercise had been fully discussed with Ms. Cassell as Chair of the Board.

196. The email to the Board said this:

"*Dear DSCB Members*

You will be aware from our last meeting that, following the Wood review, the government is proposing to remove the statutory requirement for LSCB's in their current form. The links below illustrate the wording currently being used in the amendments to the Bill. The Children and Social Care Bill will need to be supported by statutory guidance and regulation, which we expect to provide the details of the requirements for the new partnership arrangements. In light of the uncertainties, Andy Smith and I have agreed that it would be wise to pause in the current recruitment process for the quality assurance post[14].

Whilst it is disappointing not to proceed with this much needed post at this point, I hope you will agree that it would be irresponsible to commit partnership funding until we are a little clearer about future arrangements. We will have further discussions with partners as soon as possible and again at the Board meeting in September. I will of course keep you informed on national developments and local discussions."

197. Again, we are satisfied that that email set out the true reason for the withdrawal of the offer of employment to the Claimant. It was certainly of course the information that Mr. Sobey had given to Christine Cassell as the Chair of the Board. We note in this regard that if the real reason for withdrawal of the post was on account of the Claimant's 2006 grievance, then the information that Mr. Sobey had provided to Ms. Cassell would have had to have been deliberately erroneous. This would have amounted to Mr. Sobey deceiving Christine Cassell as Chair of the Board, and also later the Board itself in a September Board meeting, as to the true reason for withdrawal of the job offer. We are entirely

[14] This is the Policy and Development Officer position

satisfied that Mr. Sobey is not an individual who's professionalism or ethical views would have even allowed him to contemplate such a deceit.

Knowledge of the Claimant's 2006 grievance

198. As we have observed above, the Claimant relies upon his 2006 grievance as his "protected act" and in respect of which he contends that he has been subjected to detriment by the Respondent. It is clear, of course, that in order to be influenced by the Claimant's protected act in their treatment of him, those that have done the acts of which he complains would have to have been aware at the material time of the fact that the Claimant had done a protected act.

199. The Claimant has contended during the course of the hearing before us that there had been discussion, and in effect conspiring, between a number of individuals so that they had become aware of the Claimant's grievance and in consequence of that had determined, either individually or in concert, that the job offer would be withdrawn. He contends that this would be on the basis, in essence, that he would have been seen as something of a trouble maker and that it would be undesirable for the Respondent to employ someone who had made serious allegations of race and religious discrimination and brought those matters to light.

200. The involvement of the particular actors in the Claimant's above contention has somewhat developed during the course of the hearing before us. We do not rehearse all of the issues in that respect here but one particular issue of note was that the Claimant conceded at one stage that he accepted the evidence of Andrea Cauldwell that she did not know about his grievance and the content thereof (given that she had been on annual leave at the material time of these events). However, when it was drawn to his attention by the Tribunal that this would unravel his then argument as to how he said Mr. Sobey would have became aware of the grievance, the Claimant resiled from that concession and contended that Andrea Cauldwell had, irrespective of her annual leave, somehow been aware of the content of his 2006 grievance. He was not, however, able to put to Ms. Cauldwell any positive case as to how he asserted that position.

201. We found it somewhat troubling in this and other respects that the Claimant did not appear to have approached the analysis of his case particularly diligently. Whilst we acknowledge that he is of course appearing as a litigant in person, as we have already observed above, he has had some legal training and background so that we consider that it is reasonable to have expected him to more thoroughly research, prepare and consider his case and the issues within it.

202. What we should say, however, is that there is no evidence whatsoever before us that Mark Sobey or Nina Martin had any idea that the Claimant had even raised a grievance, let alone that this had been a grievance about discrimination. The reference from Beverley Parks said nothing about this and we are satisfied that nobody else, either acting individually or in concert with each other, said anything to either of them about this either. Beverley Parks knew about the content of the grievance but we are satisfied that she said nothing to Mr. Sobey or Ms. Martin and had no contact at all with them other than providing the reference via Helen Jackson.

203. Whilst Helen Jackson knew that there had been a grievance, we are satisfied from her evidence that she did not know the full details and that she did not make mention even of the fact that the Claimant had raised a grievance to Mr. Sobey or to Ms. Martin. It therefore follows that neither Mr. Sobey nor Ms. Martin could, as the Claimant contends, have informed Mr. Smith as the ultimate decision maker that the Claimant had raised a grievance and that that grievance concerned allegations of discrimination.

204. For the avoidance of doubt, insofar as the Claimant alleges that someone else other than Mr. Sobey or Ms. Martin informed Mr. Smith that the Claimant had raised a grievance about discrimination or that Mr. Smith interrogated the Respondent's systems himself to find out that information, we accept Mr. Smith's categorical and consistent evidence that this was not the case and we are satisfied that he had no knowledge at all of the fact that the Claimant was the preferred candidate or that that preferred candidate had raised a grievance, let alone the subject matter and content of the same.

205. It follows, therefore, that quite aside from the matter of the legislative changes to which we have referred above, Mr. Smith could not possibly have been influenced in his approach to the withdrawal of the offer of employment by the fact that the Claimant had done a protected act because he had no knowledge of it at the material time.

206. We should also observe here, in fact, that if anything the fact that the Claimant had previously raised a grievance may well have stood him in good stead with regard to his application for the Policy & Development Officer role, certainly insofar as Ms. Martin was concerned. We accepted her evidence, which we found to be an honest reflection of her position, that in fact she would have welcomed the fact that the Claimant had raised a grievance as a positive thing. This was because the role of the Board, and the quality assurance duties for which the Claimant was going to ultimately be responsible, was all about challenging the Respondent in areas of concern. The position as Ms. Martin sees it, therefore, was that it would in fact have been a positive that the Claimant had raised a grievance because that would have demonstrated the key requirement for the role and the work of the Board in challenging the Respondent on areas of concern. For Nina Martin therefore we accept that the grievance would have been a positive thing had she known about it and not something which she would have held against the Claimant.

<u>Quality Assurance duties – allocation of work post withdrawal</u>

207. As we have already set out above, the position of Local Safeguarding Children Boards was in a state of flux at the time that the offer of employment which was made to the Claimant was withdrawn. There had been no abolition of the Boards at that stage but, as we have observed, that was "in the pipeline".

208. Thus, having taken the decision to withdraw the offer of employment we accept that in the interim there was still a need for the quality assurance functions that would have been undertaken by the incumbent to the position of Policy & Development Officer to be carried out. As we have already set out above, no other external or internal candidate has been appointed to that role and the position of Child Protection Manager was not such as to undertake the quality assurance functions for the Board.

209. Instead, we accept the evidence of Mr. Sobey that quality assurance, which is still a very important aspect of the Board's work, has been managed internally from existing Board resources. This has seen Mr. Sobey taking on a significant chunk of the workload himself along with two existing members of staff already employed at the time that the Policy & Development Officer role was advertised. One of those members of staff has had some slight amendment made to their terms and conditions of employment but that is a relatively insignificant change and simply allowed the Respondent to require that individual to undertake additional tasks as and when required to meet the needs of the Board. That is nothing unusual.

210. We should observe here that we accept Mr. Sobey's evidence that the withdrawal of the offer of employment and the consequent decision to halt the recruitment process is one which has occasioned him a considerable amount of additional workload in taking on the bulk of the quality assurance duties that that role would have entailed. We further accept that from his point of view in that regard and in respect of the needs of the Board generally, the stalling of the recruitment process was entirely undesirable. A considerable amount of additional work has now fallen on his shoulders and we accept that it was only the proposed legislative changes that resulted in there being no realistic alternative in the view of himself, Ms. Martin and Mr. Smith but to take the step of halting the recruitment process. We accept that this was not a decision that was taken at all lightly and was borne only out of logical operational and financial considerations.

Issue of proceedings

211. The Claimant was dissatisfied with the responses which he had received from Mr. Sobey, Ms. Bird and others which we have referred to above and so accordingly issued the proceedings which are now before us for determination.

CONCLUSIONS

212. As we have set out in our analysis of the law above. In order for the claim under Section 27 Equality Act 2010 to get off the ground, the Claimant must have done a protected act. It is accepted by the Respondent that the Claimant did a protected act in relation to his 2006 grievance.

213. Our next consideration then is whether the Claimant was subjected to any detriment. There are two complaints of victimisation in this regard and we have considered each of them separately below:

The content of the Beverley Parks reference

214. Before turning to the subject matter of this complaint, we remind ourselves that the Respondent contends that the Tribunal has no jurisdiction to entertain this complaint. We are satisfied that we do. The reference was penned by Beverley Parks and sent to the Respondent on 13th July 2016. The Claimant entered into ACAS Early Conciliation on 25th July 2016, that is within three months of the date of the reference, and that period of conciliation ended on 9th August 2016. Taking into account the "stop the clock" provisions, the Claimant had until 27th September 2016 to present his claim to the Employment Tribunal. He did so on 26th August 2016 and thus well within that time frame.

215. We are therefore satisfied that we have jurisdiction to entertain that complaint and the first question for us accordingly is whether the Claimant was subjected to detriment. In relation to the content of the reference, we are satisfied that he was not. That reference was a fair and accurate reference having regard to the material parts concerning the Claimant's performance, timekeeping and the like. Whilst the Claimant may not agree with the content of the reference in respect of his performance in 2005/6, and we acknowledge that sense of dissatisfaction, we are afraid that we cannot do otherwise than conclude that on the basis of the evidence to hand it was a fair reflection. Any grievance that the Claimant has in that regard, therefore, is unjustifiable on the facts and as such the content of the reference cannot reasonably amount to a detriment.

216. However, even if we had not reached that conclusion and insofar as we have not already done so, we go on below to set out why we are satisfied that that content of the reference as penned by Ms. Parks was neither consciously or unconsciously motivated by the 2006 grievance.

217. Whilst we observe that there were a number of factual errors which we have referred to above, those were not in our view significant matters when the reference was taken overall. Moreover, even if those were significant errors, then as we have already observed, those were not caused in any way, shape or form by the fact that the Claimant had raised a grievance concerning discrimination in 2006.

218. The errors which the Claimant identified were ones for which human error or carelessness were to blame. This was not a situation where there was any motivation on the part of Ms. Parks to include erroneous information to negatively affect the Claimant's chances of appointment to the Policy & Development Officer role. There is an entirely innocent explanation for those matters and it had nothing to do with the fact that the Claimant had done a protected act.

219. As we have already alluded to above, the main contentious portions of the reference with regard to the Claimant's performance and abilities was, we are entirely satisfied, similarly nothing to do with the fact that the Claimant done a protected act. The reason for the content of the reference being as it is was is simply because it reflected the reasons that the Claimant had been dismissed in 2006 for poor performance and failure to successfully complete his probationary period.

220. There was nothing amiss with regard to the content of that reference when one considers the background as it was in 2006 and at the time that the Claimant's employment was terminated. All that Ms. Parks was doing was simply reflecting the actuality of the situation at that time within the content of her reference. There is nothing at all which can begin to reasonably suggest that she was influenced, consciously or subconsciously, in doing so by the fact that the Claimant had raised a grievance in 2006. She was simply setting out, as the reference request required her to do, a truthful and accurate depiction of the situation as it had been at the time of the Claimant's employment and the termination thereof.

221. Therefore, the complaint that the content of the reference was an act of victimisation fails and is dismissed for the reasons that we have set out above.

The withdrawal of the offer of employment

222. We turn then to the question of withdrawal of the offer of employment in the Policy & Development Officer post which the Claimant similarly contends was an act of victimisation on the part of Mr. Sobey, Ms. Martin, Mr. Smith, Helen Jackson and possibly also Andrea Cauldwell. We are entirely satisfied that that was not the case.

223. Firstly we are satisfied that none of the individuals named by the Claimant and set out above had any knowledge of the content of the grievance that the Claimant had raised in 2006 and that this was concerned discrimination. Indeed, in relation to Mr. Sobey, Ms. Martin and Mr. Smith, none of them had any idea at all that the Claimant had even raised a grievance. Those three were the individuals who were involved in the recruitment process and consideration of the withdrawal of the job offer. We are satisfied that Mr. Smith was the individual who made the ultimate decision in this regard, albeit to an extent guided by the views of Ms. Martin and Mr. Sobey, and that he himself had absolutely no idea whatsoever that the Claimant had raised a grievance, what that grievance was about or even the identity of the person who had been offered the role at that stage and from whom it was to be withdrawn.

224. It is therefore not possible that Mr. Smith was influenced, either consciously or subconsciously, in his decision to withdraw the offer of employment by the Claimant's protected act, given that he had no knowledge of it at all.

225. However, that aside in all events we are entirely satisfied that the reason for the withdrawal of the offer of employment and the halting of the recruitment process was for no other reason than the legislative changes which led to the proposals to abolish the Local Safeguarding Children Boards. As we have already set out above, whilst the Respondent could feasibly have continued with the recruitment process pending the passing of Regulations to implement Section 30 of the Children & Social Work Bill, there were perfectly valid reasons why that was not considered as a viable and reasonable option and which we have set out above. The decision therefore had nothing whatsoever to do with the fact that the Claimant had done a protected act and for that reason, this complaint of victimisation also fails.

226. It follows that for all of the reasons that we have given, the Claimant's claim of victimisation must fail and be dismissed.

Employment Judge Heap
Date: 5th October 2017
REASONS SENT TO THE PARTIES ON

19 October 2017

FOR THE TRIBUNAL OFFICE