EMPLOYMENT TRIBUNALS

Claimant: **Mr M Ibeziako**

Respondent: **(1) Your World Recruitment Group Limited**
(2) Humber NHS Foundation Trust

Heard at: **Hull**
On: **21 and 22 June and (deliberations only) 20 July 2018**

Before: **Employment Judge Maidment**
Members: **Mr N Pearse**
Mr M Brewer

Representation
Claimant: **In person**
First Respondent: **Mr S Lewis, Counsel**
Second Respondent: **Miss A Smith, Counsel**

JUDGMENT

The Claimant's complaints of direct discrimination pursuant to Section 13 of the Equality Act 2010 against both the First and Second Respondent fail and are dismissed.

REASONS

The issues

1. The issues in this Tribunal application had been identified at a Preliminary Hearing held on 5 October 2017 and had been revisited at a subsequent Preliminary Hearing on 9 March 2018. The First Respondent, as an employment agency, contracted with the Claimant's own service company, now the Second Claimant in these proceedings, so that the Claimant's personal services could then be provided to NHS employers. The Claimant was placed pursued to such arrangement with the Second Respondent.

2. The complaints now before the Tribunal were 2 distinct and separate claims of direct discrimination. The first claim is that the Claimant was less favourably treated by the First Respondent only in its refusal to support the Claimant in his dispute with the Second Respondent. This is a complaint of race discrimination. The second complaint is that the Claimant was less favourably treated by the Second Respondent in that it fabricated allegations against the Claimant with a view to removing him as a service provider. This is a claim of race and/or discrimination because of religion. The Claimant identifies himself in terms of the complaint of race discrimination as black/Nigerian and in terms of the religious discrimination complaint as Christian/Catholic.

Preliminary matters and the evidence

3. At the outset of the hearing which commenced on 20 June 2018 the Claimant asked if he could record the proceedings using his own mobile device. He made the request in circumstances where he said he was representing himself, suffered from depression and anxiety and lacked concentration. His only way to get a proper record of the proceedings was through his own recording which he said had been allowed in previous Tribunal proceedings he had brought. Whilst such application was opposed in particular on behalf of the Second Respondent, including on the basis that the Tribunal did not have any independent medical evidence supporting the Claimant in his contention, the Tribunal accepted the Claimant difficulties and permitted him to make a private recording on the basis, as was explained clearly to the Claimant, that this was for his own personal use, was not to be used for any purpose other than to assist him in this Tribunal hearing and was not to be played to anyone else.

4. There was then a discussion regarding relevant documentation where the Claimant believed that documentation which would prove his case was being withheld. It appeared to the Tribunal that the type of documentation being referred to related largely to background issues and not to the complaints as already narrowly defined above and that a proportionate approach needed to be taken by all parties when dealing with the potentially relevant background upon which the Claimant sought to rely. It was clear that the bulk of the relevant documentation had been disclosed, in particular by the Second Respondent, on or before 23 April but that some additional documentation had been disclosed somewhat piecemeal on 15, 18 and 30 May. The Claimant had been provided with hard copies of those additional documents and an updated index to the bundle albeit it was far from clear whether the Claimant had taken time to incorporate these documents into the bundle the Second Respondent had provided to him for use at this hearing. As regards this additional disclosure, the Tribunal was clear that the Claimant had time to consider those documents well in advance of this hearing. Fundamentally, the Claimant was unable to identify any other specific documents which existed and which he said had not been disclosed in circumstances where they ought to have been. There was no application for specific disclosure. The

Tribunal had explained how the hearing would proceed which would include quite a lengthy adjournment that day for the Tribunal to privately read through the witness statements and relevant documentation. Ms Smith offered (and the Tribunal advised the Claimant to accept her offer) to work through the Claimant's bundle with him to ensure that he had all of the relevant documents in order.

5. The Claimant then raised an issue regarding the witness statements, saying that he had not seen the Second Respondent's witness statements until that morning. The witness statements had been sent to him by email of 11 June a very short time after the Respondent's receipt of the Claimant's own witness statement by email in circumstances where the Tribunal was clear that the Respondent had not obtained any advantage or sought to take any advantage by their not having been a simultaneous exchange. The Claimant had subsequently asked for hard copies of the statements to be provided but had not told the Respondent's solicitors, as he now told the Tribunal, that he had been unable to open the email attachments which contained the Respondent's witness statements. The Claimant maintained that he had internet difficulties and restrictions on data receivable through his mobile telephone had meant that the statements could not be uploaded. The Tribunal noted that the Claimant had sought a postponement of this hearing in a request he had sent by email to the Employment Tribunal on 17 June. This postponement request had been refused on 18 June. The request was based on the alleged non-disclosure of relevant documentation by in particular the Second Respondent, there being no reference within it to the Claimant not having sight of or time to read the Respondent's witness statements.

6. After a brief adjournment, the Tribunal advised that in order to give the Claimant a proper and fair opportunity to consider the witness statement evidence, the Tribunal, rather than adjourn on the basis that it would start to hear live evidence from around 1 p.m. would in fact now adjourn for the rest of the day and commence hearing evidence only on what would be the second day of the hearing.

7. Mr Lewis, on behalf of the First Respondent, asked that Mr Jamie Seaman, one of the First Respondent's witnesses, be taken out of order and heard first and before the Claimant gave his own evidence. Tribunal refused such application on the basis that it would involve hearing the witnesses significantly out of order where it would be helpful to the Tribunal for the Claimant's complaints to be fully understood before any of the Respondent's witnesses were heard. Furthermore, the Claimant would have more time to consider the cross examination of the Respondents' witnesses if he indeed went first and they were called only after he had given his own evidence.

8. The aforementioned preliminary and housekeeping issues were discussed with the Tribunal comprised of this Employment Judge, Mr Pearse and Mr

Corbett. Having adjourned the hearing to allow the Tribunal to read into the evidence, Mr Corbett shortly thereafter received news of an urgent personal nature which meant that he would no longer be able to sit on this case on the first day and on the next 2 days listed. The Tribunal service was, however, able to identify that Mr Brewer was available to sit as the second non-legal member of the Tribunal on what would have been the second and third days of the hearing. Mr Brewer attended the Tribunal early on the second day enabling him to have time himself to read into the witness evidence and documentation to a similar level as had been accomplished by the remainder of the Tribunal.

9. On reconvening at the commencement of what would have been the second day of the Tribunal hearing, it was explained to the parties that it had been necessary to reconstitute the Tribunal panel and the Tribunal had determined to effectively restart the hearing. Obviously, the Tribunal had not commenced hearing any witness evidence by this point in time.

10. The Tribunal had before it a bundle of documents comprising in excess of 400 pages. The Tribunal heard firstly from the Claimant. His evidence was given from around 10 a.m. to 3.09 p.m.. The Tribunal then heard until 4:12 p.m. from Jamie Seaman, a recruitment consultant employed by the First Respondent and then until the conclusion of the hearing on this day at 5:05 p.m. from Ms Liz Dearing, formerly employed as a HR manager with the Second Respondent.

11. At the Commencement of the second day of hearing live evidence Ms Smith proposed to call Ms Todd to give evidence. However, the Claimant said that he had only prepared cross examination of an alternative witness from the Second Respondent, Mr Paul Johnson, Clinical Care Director for Mental Health. Ms Smith then acceded to the Tribunal's request, to assist the Claimant, that Mr Johnson be called first in circumstances where the Claimant would have time allowed during the remainder of the hearing to prepare any questions he had not already prepared for the other witnesses (it having been made clear to the Claimant at the outset of the hearing that there was an expectation that the Tribunal would hear from all of the witnesses within the time allotted and that it would be for the Claimant to challenge their evidence in so far as it was relevant to the issues and was not agreed by the Claimant by asking them questions in cross examination).

12. Mr Johnson then gave evidence from 10.05 to 11:41 a.m.. There was then a break, but at 12:03 p.m. the Claimant asked that Mr Johnson be recalled to deal with a point he had omitted to put to him. This was allowed and then the Tribunal heard on behalf of the First Respondent from Sarah Drane, a Clinical Adviser. The Tribunal already had before it a statement from another Clinical Adviser, Sarah Milliner-Crewe who was not able to attend this Tribunal but whose signed statement was accepted into evidence on the basis, which the Tribunal explained to the parties, that

less weight could be given to it in circumstances where she was not present to be cross examined. Following the conclusion of Ms Drane's evidence there was a break in proceedings from 12:34 p.m., extended at the Claimant's request to 1:47 p.m. before he then cross-examined Mrs Todd, HR Service Manager. The Claimant concluded his questions at 2.45 p.m.. The Tribunal then adjourned for 20 minutes before hearing submissions on behalf of the Second Respondent, then the First Respondent and finally the Claimant with each party being allotted 20 minutes to make whatever submissions they wished. Ms Smith on behalf of the Second Respondent also provided a written skeleton argument which indeed had been handed up at the commencement of the hearing with a copy provided to the Claimant.

13. Having considered all the relevant evidence, the Tribunal makes the findings of fact set out below.

The facts

14. The Second Respondent is a mental health provider looking after patients some of whom have long-term and potentially very serious mental health conditions. It therefore has a strong imperative in ensuring the protection and safeguarding of its patients and the Tribunal accepted Mr Johnson's evidence that it takes such responsibility very seriously.

15. The Claimant had worked within the Second Respondent as a band 3 healthcare assistant on an agency worker basis from 19 May 2016, initially supplied by an agency known as TFS and more recently through the First Respondent. He provided services through his own service company, the Second Claimant. The Claimant through his service company had entered into a written agreement with the First Respondent and the First Respondent in turn had its own contractual arrangement with the Second Respondent for the supply of agency staff. There was no obligation on the agency or agency worker to accept any available shifts offered by the Second Respondent and equally no obligation on the Second Respondent to offer work or accept any particular agency worker.

16. Under a Framework Agreement between the Respondents, if the Second Respondent did not wish to offer any shifts to an individual agency worker it would inform the First Respondent and provide it with a reason for any such action taken. The Framework Agreement provided that in the event that a worker was rejected, the First Respondent would be responsible for investigating the circumstances of that rejection.

17. In practice, Mr Johnson explained, if there was an issue of a conduct nature involving an agency worker the Second Respondent would carry out its own brief investigation but not through any formal disciplinary process as would apply to an employee of the Second Respondent and

not seeking to adhere to the ACAS Code of Practice on Disciplinary Procedures albeit the Second Respondent would generally endeavour to follow the broad principles of that Code. Whilst the Claimant sought to demonstrate that Mrs Dearing's understanding of due process was different from that of Mr Johnson, her evidence was that in the case of an agency worker the Second Respondent wouldn't use a full disciplinary process but that the decision whether or not to use an agency worker would be made after some form of fact find with feedback given to the agency. She noted, however, that patient complaints including where they involved agency workers were dealt with under a separate and distinct procedure.

18. On 25 November 2016 the parent of a mental health patient raised a complaint which was forwarded to the Second Respondent on 21 December 2016. The Tribunal has been shown a standard complaint form issued by the Second Respondent which has been redacted to remove identifying information of the individual and patient which appears to have been handwritten and submitted then with a typed document referring to an inpatient at the New Bridges Hospital and Mill View Court. The document is headed "*serious complaints points overview*". That typed document has been redacted as it is said to have included complaints of a confidential nature unrelated to the Claimant, but the Tribunal has read that one of the complaints was that the patient had been treated inappropriately by a member of staff *"discouraging recovery*". The patient's father described a visit where the patient "*excitedly spoke of the American election and that King David (bank staff who calls himself King David) had told X that later that day he was getting a helicopter to fly over to the White House to smoke weed with Obama. In his poorly mental state X was clearly excited about this conversation he'd had and begged me not to tell other staff as they might find it strange."* The patient's father said that he had reported this to staff up when asked if it had been investigated a few days later was told that it should have been.

19. The evidence before the Tribunal was that the complaint had been much wider than this issue and had in included alleged negligence in patient care and lack of due care of the patient's personal property.

20. The Tribunal has been shown a copy of a report generated on an internal electronic reporting system known as Datix. This notes the receipt of a formal complaint received from the father of a patient and that his son had reported that a member of staff had referred to himself as King David and told him about the aforementioned proposed visit to the White House. The system notes the investigation having been closed as at 14 March 2017 but reopened as at 4 April 2017. The outcome recorded a lack of documentation in relation to the alleged comment of a staff member.

21. Prior to reaching any such conclusion, the complaint was acknowledged by a letter of 12 January 2017 to the patient's father. The complaint came

to be considered by Mr Johnson who thought the alleged comments made by a member of staff to be inappropriate given that the Second Respondent's patients are often vulnerable individuals. He noted that the patient in question had a diagnosis of psychosis which meant that he was particularly unwell and could be vulnerable to any such suggestion considering that he had a possible altered state of mind. He thought that the patient's father was understandably concerned if the comment had been made and agreed that such comment could have a detrimental effect on the patient's recovery.

22. He assigned Jenni Jordan, Service Manager, to investigate the complaint as she was responsible for the Adult Inpatient Mental Health Units.

23. She carried out an investigation and a letter was sent by the Second Respondent's chief executive to the patient's father on 14 March describing the investigation and summarising the findings. An apology was issued regarding a loss of the patient's property. Ms Jones investigation findings were attached. As regards the alleged staff comment, it was said that no documentation been found in relation to the event and the staff spoken to during the investigation had no recollection of such comments. It was said that unless additional information could be provided by the patient's father the Second Respondent could not investigate this issue further.

24. The patient's father wrote to the Respondent again by letter of 18 March 2017 clearly dissatisfied with the outcome. He revisited the points of grievance. As regards the staff comment, he considered that the matter had not been investigated at the time he raised an issue saying that the staff knew who this *"bank staff individual*" was that he clearly hadn't been approached and could be continuing with "*this appalling treatment of mentally unwell patients*".

25. Mr Johnson received the response to the complaint outcome and decided to ring the unit where the patient had been based. He spoke to a staff nurse, asking whether she knew who "King David" was. She advised that she did not work in that unit but whilst still on the phone to Mr Johnson asked her colleagues who were in the office the same question. Their response was that this was an agency worker known as Michael and who had also previously referred to himself as a "Nigerian Ambassador". Mr Johnson identified that it was the Claimant who appeared to be being referred to from these comments and, aware that he had worked elsewhere within the Second Respondent, he spoke to other managers asking in neutral terms whether the term "King David" meant anything to them. They all identified this as being the agency worker, Michael, recalling also that he had said that he was friends with the Kardashians and Barrack Obama. Mr Johnson considered that the complaints raised by the patient's father would need to be further investigated. However, in the meantime he was not happy for the Claimant to undertake any further

work within the Second Respondent. Mr Johnson said that he did not know the Claimant's race or religion at the time albeit he accepted that he had made an assumption that the Claimant was black Nigerian considering the alleged comment regarding being a "Nigerian Ambassador". Mr Johnson spoke to human resources to explain the allegation raised against the Claimant and understood that they liaised with the Flexible Workforce Team to ensure that the Claimant's shifts on and after 29 March were cancelled. He then chose Jo Wolfe, another Service Manager, who had not been involved in the matter before to carry out a further investigation on the basis that she had experience in such investigations.

26. Mr Wilson-Birch of the Second Respondent's Flexible Workforce Team emailed the First Respondent on the afternoon of 29 March saying that they had been forced to cancel the Claimant's forthcoming shifts on 29, 30 and 31 March due to "*some adverse verbal feedback*" saying that they were awaiting written feedback pending further investigations and would of course keep the First Respondent posted. This message was forwarded to Jamie Seaman, recruitment consultant with the First Respondent who looked after the provision of staff to the Second Respondent on the First Respondent's behalf. He had spoken to James Knight of the Second Respondent on 29 March. He then emailed the Second Respondent in the afternoon of 30 March referring to James Knight having mentioned that the Claimant had apparently said to another staff member whilst working at (stated in error as Hawthorn rather than) Mill View Court that he was the ambassador for Nigeria. He asked if that was accurate saying that he was just trying to determine exactly what had happened in case it was necessary for the Claimant to be disciplined.

27. By this stage Mr Seaman had telephoned the Claimant to inform him of the cancellation of his shift and informing him that there was an allegation that he had referred to himself to other staff as the ambassador of Nigeria. The Tribunal can accept Mr Seaman's evidence that the Claimant was angry and upset at this news which is not surprising action given the Claimant's vehement denial of the allegation made against him. The Tribunal also accepts that Mr Seaman said that the First Respondent would still be willing to place the Claimant elsewhere but that the only opportunity he was aware of was in Bradford which was noted to be a significant distance away from where the Claimant lived in circumstances where the Claimant did not drive. Mr Seaman's description of him having got up the Claimant's address on Google maps, as he spoke to him with reference to where he might be able to work, wholly convincing.

28. Mr Seaman chased the Second Respondent by email on the afternoon of 31 March. He received a response shortly afterwards on that day from James Knight of the Flexible Workforce Team saying that this was not an isolated incident but that the Claimant had actually been found to be sharing *"such details"* with our unit staff members quite frequently

"including some other seemingly fantastical suggestions of a similar nature". As such, feedback was being requested from the unit but based on current evidence it was felt that using the Claimant for further shifts would be inappropriate given that the Second Respondent's main client base was mental health patients. Mr Knight said that his manager, Sarah Todd, was aware of the situation.

29. The Claimant submitted a letter of complaint directly to the Second Respondent dated 1 April 2017. He referred to his shifts having been cancelled following an allegation from an undisclosed individual *"who said that I told somebody at work that I am the ambassador of Nigeria*". The Claimant said that he had made his position very clear to the First Respondent that the allegation "*is bogus and never exist."* The Claimant went on to say that he viewed his treatment as inhuman and in violation of his human rights including the prohibition of discrimination and right or a fair hearing.

30. The Claimant's complaint was acknowledged by letter of 4 April by Liz Dearing, HR Manager. Her evidence was that she was not aware of who the Claimant was or any allegations raised against him at any stage until his complaint letter was passed to her by Sue Jarvis, HR Business Partner, who requested that she acknowledge the letter and forward it to the Flexible Workforce Team. The letter of acknowledgement advised the Claimant that he would have a more substantive response as soon as possible.

31. Ms Dearing then sent an email to Andy Partington, a charge nurse, asking if he had any information or records he could share with her regarding the allegation made against the Claimant. He responded suggesting that the Flexible Workforce Team might have relevant information. Mr Partington also contacted Paul Johnson directly by email (copied to Ms Dearing) saying that he understood he might have been involved with the Claimant's case saying: "*I have spoken to staff as he has done a few shifts on HCT and there is a general feeling that he is quite grandiose and may not be well himself."* Mr Johnson responded on 6 April saying that he had said that the Claimant should not be used at all by any of the Second Respondent's services and that the Flexible Workforce Team were aware of that. Ms Dearing also received this response from Mr Johnson and replied to him asking if he had any further information as to why the Claimant should not be used saying that they now had a formal complaint. Mr Johnson responded: *"Are you kidding me. He is an agency worker who does not have a contract with us. This man has been going around allegedly saying he is called King David and a Nigerian ambassador. This has been verified by different people and we have a complaint from the father of a very psychotic young man regarding saying all this to someone who is psychotic and vulnerable. We are currently investigating the complaint but at this point we have asked FWT not to use him."* Ms Dearing responded again on 6 April thanking Mr Johnson for his email and

saying that she was unable to get any information from the Flexible Workforce Team.

32. The Claimant has maintained in these proceedings that it was Ms Dearing who fabricated the allegations against him with a view to removing him as a service provider. Indeed, at an earlier stage she was individually named as a respondent in these proceedings. The Claimant maintained that this was not his first dealing with Ms Dearing. He said that on 9 August 2016 an allegation had been made against him while he was supplied as an agency worker by the agency, TFS, to Beverley Community Hospital. He said that he had been treated like a slave there by white staff and when he complained to the nurse in charge, an allegation was fabricated that he had been sleeping all night in the reception area. At an earlier Preliminary Hearing he said that he had spoken to someone on the telephone, "*possibly Liz Dearing*", who said that they would resolve the matter. Subsequently someone called him to admit that the Claimant's situation should have been handled better. The Claimant was satisfied with what he took as this apology. Again, his belief was that the person who had spoken to him was Ms Dearing.

33. It was clear from the Claimant's own evidence that he was unclear to whom he had spoken about this incident. He says that he had wanted to speak to the person responsible for coordinating his shifts. That was not Ms Dearing and at the time of this incident she was responsible for human resources matters relating to inpatients. Her evidence was that she had never been responsible for any hospitals in the East Riding of Yorkshire.

34. In the circumstances and where Ms Dearing was clear that if she had had the type of conversations referred to by the Claimant she would have recalled them, Ms Dearing's evidence is preferred. Whilst the Claimant may have spoken to someone about his issues in August 2016 it was not with Ms Dearing. The Claimant has been unable to say on what basis he believed that he had spoken to Ms Dearing.

35. As regards that 2016 incident, whilst there is evidence that the Claimant was accused of sleeping on duty there is no evidence that he ever made a complaint that he was being treated like a slave or otherwise. The Claimant was restricted from performing duties for a brief period but that restriction was lifted when no information about the allegation of sleeping came forward from the unit where the Claimant had been working. However, there is no evidence of an investigation into the issue. The Claimant maintains that there had been a request to access CCTV footage which would have shown that he had not been asleep when on duty and that he had been told that indeed the police had checked the CCTV footage. Ms Todd has since investigated the CCTV log and there is no record of any accessing of the footage at all. The Claimant said in evidence that other black colleagues had also been accused of sleeping

but has provided no names of such individuals nor referred to any evidence of those allegations having been made.

36. The Claimant wrote to Ms Dearing by letter of 12 April 2017 as he had still not received any response to his earlier complaint or further information about the allegation made against him. The Claimant said that the allegation was "*driven with the prejudice that you have that I am a national of Nigeria…*". He further maintained that he had been discriminated against because he was from Nigeria and that he wished to make it clear that the issue he had was between himself and the Second Respondent and not the First Respondent agency.

37. Within the Second Respondent the Claimant's complaint was being dealt with by Imran Barkat who emailed Ms Jordan and Mr Johnson on 24 April stating that they were still awaiting a written response giving the reasons why the Claimant had been stopped from working any shifts. Mr Johnson responded stating: *"I am really sorry and I don't mean to be blunt but are you telling me we have a complaint from an agency worker about not being used as an agency worker! I'm sorry but we don't have to justify why we are not using any agency staff who have not got a contract of employment with us."* He went on to refer to concerns that the Claimant had been making comments to vulnerable patients about him being a Nigerian ambassador and referring to himself as King David amongst other things. He referred to the complaint from the parent and that they were undertaking a complaint investigation but, while this was happening, he had made a decision not to use the Claimant. The investigation referred to was the aforementioned investigation into the patient complaint now being conducted by Ms Wolfe.

38. On 12 May Mr Barkat wrote to the Claimant saying that they now had written feedback from the service area and that this had been provided to the First Respondent stating that *"they are now obliged to investigate."* This correspondence was not however copied to the First Respondent and at this point in time no feedback had indeed been provided to the First Respondent whether to Mr Seaman or anyone else.

39. An electronic log completed by Ms Todd noted a conversation with Mr Seaman where she referred to the concern about the Claimant being as a result of a patient complaint as a result of which an investigation was undertaken with the outcome pending. Her note recorded agreeing to send a feedback form to the First Respondent and then that Mr Seaman would provide feedback on an outcome of the First Respondent's own investigation. That indeed corroborated the evidence which both Mrs Todd and Mr Seaman gave before the Tribunal. Mr Seaman noted this was the first time there been any reference to a patient complaint. This left him feeling somewhat confused and that there had been a lack of proper communication from the Second Respondent.

40. The feedback form was then have received on 23 May as promised. This recorded that: *"a number of concerns have been raised regarding the above named gentleman making comments to vulnerable patients within the Trust's inpatient units regarding him being a Nigerian Ambassador and referring to himself as King David. Some service users are very poorly with various conditions including psychosis, and comments such as these impact on their health and well-being. A patient/carer complaint was received and an investigation undertaken – outcome pending."*

41. In late May the Claimant telephoned Mr Seaman referring to the letter he received from the Second Respondent dated 12 May. As already stated, Mr Seaman was unaware of that letter which included the Second Respondent stating that the First Respondent had been provided with details and was now obliged to investigate. During their conversation Mr Seaman did seek to explain to the Claimant that he was an agency worker and not an employee and, whilst he could do whatever he could to ensure that the Second Respondent had the Claimant version of events, it was difficult for the First Respondent to dispute the Second Respondent's decision. Mr Seaman accepted in cross examination that the Claimant had suggested a three-way meeting to resolve matters. This was not something which Mr Seaman had ever heard of occurring before.

42. The Claimant emailed Mr Seaman on 1 June attaching the 12 May letter from the Second Respondent. The Claimant referred to Mr Seaman saying that the First Respondent did not employ him and that they could not conduct an investigation as well as his own suggestion of a three-way meeting. The Claimant asked for a copy of the feedback form and threatened involving the First Respondent in Tribunal proceedings.

43. On 2 June Mr Seaman passed over all information he had on the Claimant's situation to Sarah Milliner-Crewe, clinical advisor. Indeed, the usual process was for the clinical advisory team to become involved in any complaint from the outset, but Mr Seaman had no prior experience in such matters and had tried to resolve matters himself as described before realising that the matter ought to be passed over.

44. On 5 June Ms Milliner-Crewe was contacted by Joanne Barton, Procurement Specialist, to say that the Second Respondent was investigating the complaint internally and had advised the Claimant to ensure that all contact with the Second Respondent was via the First Respondent. She stated that in accordance with the staffing Framework Agreement the First Respondent would be required to respond to the complaint on behalf of the Claimant.

45. Ms Milliner-Crewe emailed James Knight also on 5 June asking whether there had been an outcome to the investigation and if they had yet

received a statement from the Claimant. She said that she understood that the Second Respondent had unfortunately received correspondence directly from the Claimant that normally this is discouraged since the complaint is usually managed through the clinical advisory team from the outset. She referred to the matter unfortunately not having been passed to the team earlier. Mr Barkat notified Ms Milliner-Crewe that they had not received a statement from the Claimant and that he was under the impression that the First Respondent would pursue this. It was hoped that the investigation would be concluded by the end of the week.

46. Having unsuccessfully tried to reach the Claimant by telephone Ms Milliner-Crewe emailed him on 5 June asking if he could provide a statement about the incident. She copied into the email the section from the feedback form which contained the allegation being made against the Claimant. She said that the statement provided would enable them to complete their investigations and she attached a document setting out guidance on writing a statement. She asked the Claimant to provide the statement by return email by close of business the following day. She also said that she was aware that the Claimant had made contact with the Second Respondent directly and asked that he desisted from making further contact whilst appreciating the Claimant's frustration at getting the issue resolved.

47. The Claimant felt under some pressure to provide his statement and quickly put together an email which he sent through his mobile telephone on the evening of 5 June. He said that the allegations made by the Second Respondent *"did not exist and never happened and there is nothing to comment on it. The allegation is all fabricated lies designed by Liz Dearing to justify her action of getting rid of me from working in the trust. You may wish to know and also be aware that this is the second time Humber Trust has came up with fabricate lies just as this one intend to get rid of me from the trust…. My reputation and career has been dent by this and all you write to tell me in this email is not to get Humberside NHS involved on this matter only because you want to protect your contract with them… I have no intention now and in the further to work with either of your agency or Humber NHS…"*

48. Ms Milliner-Crewe replied to the Claimant by email on 6 June saying that the complaint had been brought to her attention only on 5 June but that in normal circumstances any complaints would have been passed to the clinical advisory team at the time they were made. She was now the point of contact in dealing with the matter. She said that his statement was requested to give him an opportunity to respond to the allegations and that she would forward it to the Second Respondent. Ms Milliner-Crewe did not understand that the earlier email from the Claimant was intended by him to be his statement. She therefore then emailed him on 13 June to say that she had not yet received his statement and wanted to check whether he still intended submitting one. The Claimant replied that in his previous

email he had made it very clear that *"this bogus allegation made by Liz Dearing against me never happen and that the allegation did not exist. It is not clear from your side what else you want me to say…"* The Claimant copied in the Second Respondent to this email. Ms Milliner-Crewe in response asked him to stop contacting the Second Respondent directly and said that she had not been clear that his last email was in fact a statement but that she would now forward the relevant part of it to the Second Respondent and would await to hear the outcome of their investigation.

49. She duly emailed James Knight on 14 June into which she pasted the Claimant's comments in his first email denying the allegation and maintaining that it was a fabrication. The Claimant further contacted Ms Milliner-Crewe to ask her to cease threatening him. She then further contacted him on 19 June confirming that she had forwarded his statement to the Second Respondent. She also chased the Second Respondent to see if there had been an official outcome on 19 July. James Knight replied that day informing Ms Milliner-Crewe that information provided had been forwarded to the Second Respondent's HR department.

50. As already referred to, Mr Johnson had commissioned Jo Wolfe to investigate the issue relating to the Claimant as part of the revival of the complaint received from the patient's father. The Tribunal has seen handwritten notes of Ms Wolfe which included her speaking to Mr Johnson himself regarding his preliminary investigation and telephone calls to unit managers to determine if the words "King David" meant anything to them. She also spoken to Mr John Robinson on 10 May and Jess Slingsby on 15 May. She was noted as identifying the individual as a healthcare assistant engaged through an agency describing him as "*eccentric, says he is a model looked at pictures on the intranet, no other concern."* The Claimant was identified as the staff member she was referring to. The notes also show that questions were asked regarding the care of the patient and his belongings. A case update note of 3 August recorded the investigation as having been completed and a report having been presented to Mr Johnson on 10 July. Mr Barkat was recorded as having chased Mr Johnson for a copy of the report so as to close the case off but it was recorded that he had not received a response.

51. An outcome was provided to the complaining patient's father by letter of 11 August which concluded amongst other things that the first investigation had not been to the standard expected. Findings were then enclosed. As regards the allegation which had come to involve the Claimant, Ms Wolfe said that she had found evidence in clinical records that the patient's father had raised a concern on 8 November 2016 and a further note being made to evidence that his concerns been escalated to the unit manager. However, on interviewing unit manager, no explanation had been provided as to why the incident was not further explored and he

could only conclude that the matter had been overlooked. She then went on to say that some staff were aware of the individual calling himself "King David". Upon speaking to human resources and Mr Johnson about additional complaints and concerns raised about this individual it did not appear that any other issues had been escalated by either staff or patients. However, she went on "*given the gravity of your concerns decision has been made to not use this member of agency staff in the future."* The report went on to deal with the other quite separate points of complaint. Mr Johnson's evidence before the Tribunal was that he considered that the Claimant was an experienced healthcare assistant and should have been aware of the negative effect which such comments could have had on patients with mental health issues. The Second Respondent's paramount duty was to protect vulnerable patients and in his view the best way to achieve this was to ensure that the Second Respondent did not use the Claimant as an agency worker. The Claimant in cross examination accepted that comments of this nature to patients would certainly be unacceptable, although of course he denied that any such comments had been made.

52. The Second Respondent did not inform the First Respondent of this outcome into the patient complaint, nor was the Claimant made aware directly. Ms Milliner-Crewe chased up Mr Knight again on 10 October to see if he had any feedback as to the final outcome. He responded saying that he hadn't had any new information and the person dealing with this in the HR Department was currently on leave. He did however refer the matter to Sue Jarvis, senior HR business partner who replied to him on 11 October saying that she would make some enquiries and get back to him. Still, no further information was provided to the First Respondent or the Claimant.

53. The Claimant subsequently asked to be provided with work through the First Respondent and its compliance team emailed him on 18 October requesting further information including reference forms and certifications. The Claimant did not respond. His view was that the First Respondent already had all necessary information to use him as an agency worker.

54. The Claimant has raised that after he had registered with the First Respondent on 4 September 2016, he had spoken to Mr Seaman and told him about the problems he had experienced at the East Riding Community Hospital. Mr Seaman agreed that the Claimant had told him he had had a previous problem and alleged that individuals working in a particular ward "*hated black people*". The Tribunal accepts that Mr Seaman did not know any of the detail behind this but that he referred to a significant percentage of the First Respondent's candidates being black and that the First Respondent had not had any previous complaint of discrimination from any candidates against the Second Respondent. As a result of what the Claimant said, Mr Seaman ensured that he was not placed on the same ward where he said that he had previously experienced difficulties. The

Claimant was aware of that. In subsequent conversations, when the Claimant was seeking information about what work might be available, Mr Seaman had referred to work available on the problematical ward within the context of that being the only work available and knowing that the Claimant would not want to accept it. Mr Seaman denied categorically that there had been any discussion about any other employee who Mr Seaman had supported in a dispute with the Second Respondent saying that he wouldn't have disclosed sensitive information about any other individual albeit he was not aware of any such occurrence. His evidence is accepted on this point.

55. The Claimant has referred to a number of previous events within the Second Respondent which have caused him concern and which amounted to discrimination against him. Mrs Todd had been tasked with investigating these previous issues. The Tribunal has already dealt with the Claimant's issues following an allegation that he had been sleeping on duty. The Claimant also alleged that work was not shared equally at Hawthorn Court. He said that he was allocated most of the cleaning jobs. The Tribunal has been shown a number of worksheets which appear to indicate a number of staff performing a range of duties on the shifts in question but Tribunal can draw no conclusion from these sheets as to the exact jobs undertaken by the staff on shift or the amount of time taken up in those duties. The records do not appear to have been completed by the staff members themselves including the Claimant. However, whilst the Claimant maintains that he complained to the nurse in charge, Mrs Todd had spoken to that individual, Joanna De Silva, who had no recollection of anyone raising such concerns. The Claimant in his witness statement referred to a patient who drank a lot of fizzy drinks and had the potential to be violent alleging that he was always asked to look after this patient. Again, no evidence could be found of the Claimant having been left in a position of risk by other staff members or of any complaint having been raised by Claimant at the time. The Claimant also alleges that he was denied a break on the last two shifts he worked at Hawthorn Court. The Claimant maintained that this was because he is black. A log for a shift worked on the evening of 26 March did indicate the Claimant taking a break however and a sheet for the earlier shift on 24 March suggested that the Claimant had started working on that site part way through his ordinary shift having spent the earlier hours, for which he was paid, at Maister Lodge.

56. As regards working at Maister Lodge, the Claimant made a separate allegation that white employees were relieved earlier and that he was always the last to hand over to staff commencing their day shifts. Ms Todd had found no evidence that the Claimant stayed late in circumstances where she said if he had he would have been paid for all hours worked. Again, there was no evidence that the Claimant had raised a complaint about having to work beyond his ordinary 7:30 a.m. finish time. The Claimant maintains that whilst it was the Respondent's policy to relieve a staff member after two hours of undertaking one-to-one observation of a

patient, white staff would be relieved but black staff would be required to remain with the patient all night. Beyond the Claimant's assertion there was no evidence of such practice nor had Mrs Todd found any evidence, including of the Claimant raising any complaint.

57. Finally, the Claimant had alleged that a black patient when resident in the Westland inpatient unit had complained about her care including that she had not been properly fed. The Claimant maintained that the patient had involved a solicitor in pursuing a complaint. Mrs Todd had spoken to the Patient Advice and Liaison Service and the complaints department but there was no evidence of a complaint having been made by this patient.

58. The Claimant's primary assertion in this case is that the allegation about him has been made up and that all of the paperwork surrounding it is a fabrication. Whilst initially in these proceedings the Claimant had considered that the allegations had been fabricated and engineered by Liz Dearing, the Claimant was unable to provide any evidential basis of her having a wider involvement in his situation beyond her acknowledgement of his complaint and some basic steps taken to understand the reason for the Claimant's treatment and who was dealing with the issue within the Second Respondent.

59. If the allegation has been fabricated, then it is clear on the evidence that it is Mr Johnson who must be behind this albeit the scope of fabrication is so wide that a significant number of other individuals within the Second Respondent must have been complicit or somehow duped by Mr Johnson.

60. Again, the Claimant has been unable to provide any evidence of fabrication or which might cause the Tribunal to look upon what on its face appears to be a genuine patient complaint with suspicion as to its genuineness. The complaint on its face appears to be genuine and detailed including a range of issues of which the behaviour attributed ultimately to the Claimant was only one. Effectively, the Tribunal has been asked to accept that Mr Johnson made up this complaint and ensured that it was logged on the Respondent systems and taken forward in circumstances where it had the potential to get a number of staff into trouble regarding their treatment of the relevant patient yet in circumstances where the initial complaint did not even mention the Claimant. The Tribunal is then asked to accept that a further letter from the patient's father, again without mentioning the Claimant, is a fabrication.

61. The nature of the complaint and how it was ultimately pursued does not suggest it is anything other than genuine. This was a complaint which was not upheld or investigated at the first stage but only on the patient's father reviving the complaint and providing further information. Mr Johnson therefore invented a complaint which was not pursued then invented a revival of the complaint which still did not name the Claimant but on

investigation at this second stage was found to point to him as the individual being identified by the alleged inappropriate comments. Of course, the Claimant's case is that Mr Johnson speaking to staff who identified the Claimant is a further fabrication as must also be the Jo Wolfe investigation and the conclusions she reached which were firstly incorporated in the feedback form provided to the First Respondent and then formed part of the findings which were sent to the patient's father as part of the outcome of the patient complaint.

62. The way in which the handling of this complaint evolved in terms of confusion at times as to the exact nature of the allegations, the piecemeal nature in which the information was provided and the inaccuracy of some of the information passed to the First Respondent is illustrative in fact of the handling of a genuine complaint rather than some carefully constructed fabrication and conspiracy to remove the Claimant. If Mr Johnson had wished to have the Claimant removed as an agency worker there was no need for him to build a false case of inappropriate conduct against him. The Tribunal's key factual finding is that the complaint was made and considered in exactly the way described above and by the Respondent's witnesses. There was no fabrication of the complaint or the process undertaken to investigate it.

Applicable law

63. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

64. *"Race" and "religion or belief"* are both protected characteristics listed in Section 4. Section 23 provides that on a comparison of cases for the purpose of Section 13 *"there must be no material difference between the circumstances relating to each case".*

65. The Act deals with the burden of proof at Section 136(2) as follows:-

    a. *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
    b. *(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".*

66. In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions in the preceding discrimination legislation albeit with the caveat that this is not a substitute for the statutory language.

67. The Tribunal also takes notice of the case of **Madarassy v Nomura International Plc [2007] ICR 867**. There it was recorded that Mr Allen of Counsel had put forward that the correct approach was that as Ms Madarassy had established two fundamental facts, namely, a difference in status (e.g. sex) and a difference in treatment, the Act required the Tribunal to draw an inference of unlawful discrimination. The burden effectively shifted to the respondent to prove that it had not committed an act of discrimination which was unlawful. Mummery LJ stated:-

> *"I am unable to agree with Mr Allen's contention that the burden of proof shifts to Nomura simply on Ms Madarassy establishing the facts of a difference in status and a difference in treatment of her. …….. The Court in Igen Ltd v Wong [2005] ICR 139 expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent committed an unlawful act of discrimination. …*
>
> *"Could….conclude" …. must mean "a reasonable tribunal could properly conclude" from all evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only the statutory "absence of an adequate explanation" at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like …..; and available evidence of the reasons for the differential treatment*
>
> *The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."*

68. It is permissible for the Tribunal to consider the explanations of the Respondent at the stage of deciding whether a prima facie case is made out (see also **Laing v Manchester CC IRLR 748**). Langstaff J in **Birmingham CC v Millwood 2012 EqLR 910** commented that unaccepted explanations may be sufficient to cause the shifting of the burden of proof. At this second stage the employer must show on the balance of probabilities that the treatment of the Claimant was in no sense whatsoever because of the protected characteristic. At this stage the Tribunal is simply concerned with the reason the employer acted as it did. The burden imposed on the employer will depend on the strength of the prima facie case – see **Network Rail Infrastructure Limited v Griffiths-Henry 2006 IRLR 865**.

69. The Tribunal refers to the case of **Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** for guidance as to how the Tribunal should apply what is effectively a two stage test. There it was recognised that in practice Tribunals in their decisions normally consider firstly whether the claimant received less favourable treatment than the appropriate comparator and then secondly whether the less favourable treatment was on discriminatory grounds (termed as the "reason why" issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is resolved in the favour of the claimant. The less favourable treatment issue therefore is treated as a threshold which the claimant must cross before the Tribunal is required to decide why the claimant was afforded the treatment of which he/she is complaining. Lord Nichols went on to say:-

> *"No doubt there are cases where it is convenient and helpful to adopt this two step approach to what is essentially a single question; did the claimant on the prescribed ground receive less favourable treatment than others? But, especially where the identify of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined."*

70. Later, he said:-

> *"This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former there will be usually no difficulty in deciding whether the treatment afforded to the claimant on the*

proscribed, ground, was less favourable than was or would have been afforded to others."

71. More recently the Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

Conclusions

72. The Claimant complains that the Second Respondent as an act of unfavourable treatment because of his race/religion fabricated the allegations made against him with a view to removing him as a provider of services. The Tribunal's finding that there was no fabrication is fatal to the Claimant complaint. There was no unfavourable treatment of that nature.

73. As however the Tribunal explained to both Respondent's representatives, it saw the Claimant's complaint not straightforwardly that allegations had been fabricated in order to remove him because of race or religion but that separately to any allegation of fabrication, it was the Claimant's case that he had been removed as a service provider because of his race/religion.

74. The Tribunal has already identified that the relevant decision maker in the Claimant not being provided with shifts and then effectively barred from providing services to the Respondent was Mr Johnson. The Claimant's case is that Mr Johnson wished to remove the Claimant because he is black Nigerian in terms of colour/nationality/ethnic origin. Mr Johnson was aware of the Claimant's colour and likely nationality. The Claimant has, however, failed to prove any facts nor has the Tribunal for itself found any facts which could have led it to conclude that the treatment of the Claimant was in any way related to his race. The Claimant's entire case is one of assertion without any explanation for its basis. The burden of proof does not shift and the Claimant's case must fall at this hurdle.

75. The evidence is of a genuine complaint of a serious nature in terms of an individual's conduct towards patients with mental health vulnerabilities. The evidence is also up of Mr Johnson genuinely being concerned about having a member of staff talking to patients in this manner which he thought risked patient safety and amount to inappropriate behaviour in circumstances where anyone with the Claimant's experience would or ought to be aware of the potential harm they might cause. It is also clear from Mr Johnson's evidence that the Claimant was treated as an individual by reason not of his colour but of his agency worker status as someone who was easily removeable and where standards of proof and due process were somewhat different compared to the situation which would

have existed had the Claimant been directly employed by the Second Respondent.

76. Indeed, had the Claimant been able to shift the burden of proof, the Tribunal is entirely satisfied with Mr Johnson's explanation for his decision-making and that he straightforwardly determined that with evidence of inappropriate behaviour, the Claimant ought swiftly and summarily to be removed as an agency worker providing services to the Respondent. Mr Johnson's contemporaneous email reactions to suggestions that there was a need to investigate further and more fully justify his decision are very telling in clearly illustrating the unsurprising view he took as to the obligations he might owe to an agency worker as opposed to an employee. He clearly did not see that someone of agency worker status merited a full investigation or that there ought to be any form of disciplinary hearing. His view of the type of behaviour in issue again is unsurprising in terms of its inappropriateness and seriousness and was convincingly explained by Mr Johnson to the Tribunal in circumstances where the Claimant himself accepted that it would be a serious matter and inappropriate if any member of staff had spoken to vulnerable patients in the way he was accused. Of course, again, the Claimant's case throughout has been that he never made the alleged comments.

77. The background matters, the Claimant sought to rely on were not such, on its findings, that the Tribunal was in a position to draw any adverse inference. Nor did they involve Mr Johnson.

78. The Tribunal is mindful that the Claimant's complaint of unfavourable treatment against the Second Respondent is also based on his religion, the Claimant describing himself as Catholic/Christian. However, the Claimant has not explored this motivation with the Respondent's witnesses and in particular with Mr Johnson who the Tribunal accepts gave no thought or consideration to the Claimant's religion or beliefs, having no idea indeed as to what the Claimant's religion might be. The Claimant referred in cross examination to staff previously asking him if he was a Muslim, but this was not something Mr Johnson could have been aware of. There was indeed on the facts no indicator that the Claimant is a Catholic or Christian but in any event the Tribunal is again entirely satisfied by the Respondent's explanation of the reason for the treatment afforded to him in him being removed as a service provider. It had nothing at all to do with his religion or any perceived religion.

79. As articulated by the Claimant, if this was an allegation of anything it was perhaps one which could be viewed as a potential act of harassment. The Claimant maintained that the phrase King David had been fabricated to cause him particular upset in suggesting that he would seek to refer to himself under an alternative name when he already had a Christian name. However, that is not an allegation pursued in these proceedings and it is difficult to conceive how anyone might have invented that phrase as an act

of unwanted conduct relating to the Claimant's religion and certainly not with the purpose of calling any upset.

80. The Claimant's complaints of discrimination against the Second Respondent therefore fail and are dismissed.

81. The Tribunal now turns to the single complaint of race discrimination against the First Respondent in its alleged refusal to support the Claimant in his dispute with the Second Respondent. Again, however such complaint does not gain any traction given the Tribunal's findings of fact which are in essence that the First Respondent took significant steps to ascertain the allegations made against the Claimant quickly and repeatedly requesting more information from the Second Respondent. Such information was either not provided or only after a significant delay, but this was not for want of the First Respondent trying to get to the bottom of the matter. The Tribunal in fact is surprised by the amount of effort taken by the First Respondent, albeit the First Respondent had no interest whatsoever in the Claimant not being accepted by the Second Respondent as a provider of services given that both he and the First Respondent would be the losers in terms of future income.

82. In any event, the Tribunal accepts that the First Respondent's actions were at all times with a view to finding out what the allegations were against the Claimant in circumstances where it lay outside its own control to carry out any form of investigation, it having no access to the Second Respondent's staff. Whatever the framework agreement says in terms of the First Respondent's responsibility for investigating and providing the Claimant with an outcome, the reality of the situation in an arrangement such as this is indeed that the employment agency has to rely on the Second Respondent investigating the matter and can do little more other than to make, where appropriate, representations in support of an agency worker. The Claimant's outright denial of the allegations was communicated to the Second Respondent.

83. The Claimant maintains that the First Respondent was in fact putting more importance on its commercial relationship with the Second Respondent in failing to support him more vigorously and in not wishing to effectively rock the boat with a significant customer. If the Claimant is correct in this assertion, then certainly the reason for the First Respondent's actions were commercial rather than based upon his race. The First Respondent would have acted in an identical manner regardless of the agency worker's race there being no basis factually for the Tribunal coming to any other conclusion.

84. The evidence is not of the First Respondent in any sense colluding with the Second Respondent in a desire to remove the Claimant on racial grounds. The evidence is of an agency again repeatedly trying to find out

the basis of allegations against its agency worker and of understanding the outcome of the Second Respondent's investigation. If it failed to achieve this, then it was not for a lack of effort and in circumstances where the Claimant was supported as much as he practically could be.

85. Again, if the Claimant could have pointed to any further steps the First Respondent ought to have taken (he had for instance suggested to Mr Seaman that there be a three-way meeting) the Tribunal has found no facts from which it could reasonably conclude that the lack of taking any further steps was at all related to the Claimant's race. The First Respondent acted as it did as it was reliant on the Second Respondent investigating and coming to a conclusion with the ability only to put to the Second Respondent the Claimant's version of events. The limitations of the First Respondent's lack of influence is again demonstrated by Mr Johnson's view of the looseness of arrangements with an agency worker.

86. The Claimant's complaints against the First Respondent must also therefore fail and are dismissed.

Employment Judge Maidment

Date: 23 July 2018