



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE F SPENCER

MEMBERS: MS A. DONALDSON
MS N. O'HARE

BETWEEN: MR. L LOT-THOMAS CLAIMANT

AND

ST GEORGE'S UNIVERSITY HOSPITALS RESPONDENT
NHS FOUNDTION TRUST

ON: 17-19TH July 2018 and (in chambers) 25th July 2018

Appearances

For the Claimant: In person
For the Respondent: Ms Owusu-Agyei, counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that:

- (i) The Claimant was unfairly dismissed.
- (ii) The Claimant is not entitled to a redundancy payment.
- (iii) The Claimant's claim of direct race discrimination, harassment related to race and victimisation are not well-founded and are dismissed.
- (iv) The Claimant was not wrongfully dismissed.
- (v) A remedy hearing has been fixed for 10th December 2018

REASONS

1. The Claimant was employed by the Respondent on a fixed term contract at the end of which he was dismissed. He complains of unfair dismissal, wrongful dismissal, direct race discrimination and harassment related to his race, victimisation and a claim for a redundancy payment. The Claimant is of black African race and ethnicity and compares his treatment to that of Ian Sawyer, Jean Hudson and Melanie Smith who are all white British. He also relies on a hypothetical comparator. (However, in his witness statement the Claimant makes almost no reference to any of his comparators or any reference as to how they were or would have been treated. In cross examination he simply said that he had not witnessed Ms Biggins speaking to anyone else the way she spoke to him.)
2. The Respondent denies the claims and says that the Claimant was dismissed for some other substantial reason (SOSR), namely the expiry of his fixed term contract. Time issues arise in respect of some of the allegations of race discrimination.
3. The issues were agreed and are set out at the end of this judgment for ease of reference.
4. The Tribunal heard evidence from the Claimant and, on behalf of the Respondent from Ms Biggins, (who was the Claimant's line manager), and from Ms Leighton, who was the General Manager within the Therapies Department of the Trust at the relevant time. We had 2 lever arch files of documents running to well over 600 pages.
5. As will be apparent there have been a number of significant conflicts of fact between the witnesses. The credibility of the Claimant was not assisted by his tendency to use overblown language and to exaggerate. In some instances the Claimant admitted the evidence given in chief was not true – such as an allegation that he had been required to use machinery for which he was not trained. The evidence of Ms Biggins and Ms Leighton was, on the other hand, measured and consistent and we have, on the whole, preferred their evidence.

Circumstances of the Claimant's appointment

6. The Claimant was first employed by the Respondent on 13th September 2010. At the time of his dismissal he was employed by the Respondent on a fixed term contract as an Assistant Service Manager (Band 5) in the Therapies Directorate. Immediately prior to his appointment to that role the Claimant had been employed on a permanent contract as a Patient Pathway Coordinator at band 4.
7. The Managers' Guidance on the use of Fixed Term Contracts issued by the Respondent makes it clear (78) that managers should only use fixed term contracts where there is a justifiable reason for doing so, to ensure the best calibre of staff is available. Paragraph 3.2 of that Guidance provides that a fixed

term contract is likely to be appropriate for (i) the provision of cover for extended absence from work through maternity leave, parental leave, sickness leave secondment or a career break, (ii) where a specific piece of work or project needs to be completed, (iii) where there is uncertainty of short-term funding being renewed or other external or internal funding becoming available (iv) where there is a temporary increase in work or a peak in demand and (v) where the appointment is for training or career development. We had no evidence that any of these were applicable in this case.

8. Paragraph 4 of the Guidance states that (not quoted in full)

“Line managers are responsible for:

- Giving detailed consideration whether there is a valid and genuine reason for recruiting to a post on a fixed term basis.
- Providing written justification for the use of a fixed term contract when recruiting to the post on a fixed term basis (including reason and duration).
- Ensuring the draft job advert submitted to recruitment explains the reason and duration of the fixed term contract.The specific details of the reason and duration should be explained to applicants within the main body of the advert.”
- Making the offer of appointment conditional, for staff already working in the NHS, on taking a break of one week between appointments – although this condition can be waived if approval has been given considering secondments for internal staff applying for any fixed term posts, in full discussion and obtaining agreement with the current line manager
- Giving consideration as to whether there is a continuing need for the post to remain on a fixed term basis, rather than be made permanent, and providing a written statement to an employee with 4 or more years Trust service outlining the justification.

9. Paragraph 5.3 of the Guidance states that “existing members of Trust staff on permanent contracts may wish to apply for fixed term posts, especially if the post offers an opportunity to increase experience or improve salary. In this case, subject to line management agreement and the operational needs of the post they currently hold, they may be offered the post on an internal secondment basis if it is appropriate in the circumstances.”
10. In March 2016 the Respondent advertised a job role of Assistant Service Manager in the Therapies department. The Claimant applied for that role, which was a band higher than his previous role and was successful. The advertisement containing the vacancy details (286) provided information about the role and the person specification. It also specified that the vacancy was for a fixed one-year contract. It did not, contrary to Policy, identify any reason why the role was being advertised as a fixed-term position, rather than as a permanent contract.

11. Prior to the Claimant taking up his post the managerial structure of the Therapies department was that an administrative team reported to two Assistant Service Managers (ASMs). They in turn reported to Service Manager. Above the Service manager was an Assistant General Manager who reported to a General Manager. The General Manager and the Chief Therapist were in charge of the management of the team. (In 2015 there had been a small restructure in that a post of Assistant Chief Therapist had been deleted and a new post of Service manager introduced.) Prior to the Claimant's appointment the ASM posts had been filled by two permanent members of staff, one of whom was on secondment from elsewhere in the Trust. Those 2 members of staff moved on to new positions and Ms Leighton, the General Manager, applied to the Vacancy Control Panel (the VCP) for authority to recruit one ASM.
12. It was Ms Leighton's evidence that she sought permission to recruit for a permanent post, and that she was aware that there was insufficient funding to recruit for 2 posts. She told the tribunal that having sought permission to recruit for one permanent ASM post, the VCP rejected that but gave her authority to recruit for an ASM on a one-year fixed term contract. The decision to make the post fixed term was taken by the VCP, for reasons that are not documented.
13. In her witness statement Ms Leighton said that the reason for the post being fixed term was *"because it was part of a wider restructure within the Therapies department which involved the creation of an operational management team. The post was fixed term in order to see how the model worked within that department. The post was also fixed term as a result of the financial situation of the organisation the time."*
14. We do not accept that. The management structure which was adopted on the Claimant's appointment did not differ from the previous structure. In answer to questions from the Tribunal, Ms Leighton gave us a different explanation. She told us that she understood that the reason for the post being fixed term was that *"at the time the plan was to undertake a review of ASM posts across the whole organisation. The purpose of the review was to review the role and structure of ASMs"*. As far as Ms Leighton was aware, however, that review never took place. There was no evidence of any such review contained in the bundle; and it was not referred to in any document sent to the Claimant or in the witness statements.
15. The Claimant applied, was successful, and was appointed on a fixed term contract from 27th June 2016.
16. The Claimant was interviewed by Ms Leighton. She told the tribunal she could not remember whether the Claimant had been told why the post was being advertised as fixed term. We conclude that he was not told. There was no discussion of the post being available as a secondment.
17. The Claimant was sent a formal offer of employment on 18th May 2016 (158). The offer details made it clear that this was a fixed term 12-month contract. On 21st

June 2016 (233) the Claimant's appointment was confirmed with a start date of 27th June 2016.

18. The Claimant signed a written contract (235) on 24th June 2016 which states that the employment was a fixed term appointment and would expire automatically on its "expiry date". (Although no expiry date was specified the original offer letter made it clear that this was a 12-month contract). The contract erroneously stated that the Claimant's start date for employment rights purposes was 27th June 2016. Both this contract and the offer letter were plainly based on a proforma intended for someone who had not previously been employed by the Trust and there was no acknowledgement of his current employment status in the documentation. It is accepted that there was no break in the Claimant's continuity of service before he took up his new post.
19. When the Claimant was appointed he reported to Ms Biggins. Her substantive role at that time was "Service Manager" but soon after the Claimant started she was appointed to act up as the Assistant General Manager (with her substantive role remaining vacant). Ms Leighton was the General Manager. There was also a 2nd ASM in the Department, Ian Sawyer who was white British. He was a bank employee.

Allegations of race discrimination.

20. The Claimant alleges that Ms Biggins treated him differently and less favourably to other white employees and that his treatment was because he was black. The instances relied on are set out below.

Taking his old ID badge off him

21. The Claimant complains that in the first day in his role Ms Biggins took his ID badge away from him and told him that she was returning it to security. It is his case that this was an act of less favourable treatment because of his race and he considered that Ms Biggins did not trust him to return the badge to security himself. Ms Biggins does not recall the incident but that it is usual practice when moving roles within the Trust to return old identity badges to the former manager and to collect a new identity badge for the new role. He was upset about this because he felt that she didn't trust him, and he had never been asked for his old badge before. We accept that Ms Biggins asked him for his old ID badge, but we do not consider that this was anything other than standard practice or a detriment in any real sense.

Ms Biggins told him not to use his mobile phone at work.

22. The Claimant says that Ms Biggins told him not to use his personal mobile at work and that this also was an act of less favourable treatment. The Claimant says that he had been asked to go to the estates department to get his new ID badge. When he realised that there was a long queue he texted her to say it was taking longer than anticipated. Ms Biggins then told him that she did not expect him to use his mobile at all while at work. The Claimant says that he told Ms Biggins that he needed to use his phone, as an aide memoire because

of an old head injury, and to be in touch with members of his family in case of emergencies. He says that, after that, she began to “creep behind me to peep over my shoulder to look into my phone whenever I had it in my hand to see what I was doing” and that on one occasion she had accused him of accessing social media whilst at work. The Claimant considered that this was illustrative of the fact that she did not trust him to do his job properly and was evidence of her attitude to minorities.

23. Ms Biggins’ evidence was that she did discuss the use of mobile phones with the Claimant during his first week at work and reminded him of the Respondent’s policy that mobile phones should not be used for personal conversation or texting whilst on duty. It was also Ms Biggins evidence that this was Trust policy and that she expected him, as a line manager, to lead by example. She agreed that the Claimant could use his phone as an aide memoire, although she could not recall accusing the Claimant of accessing social media and denied peeping or spying on him. She had asked Ms Brown, who is white, not to use her mobile phone at work.
24. We accept that Ms Biggins told the Claimant not to use his mobile phone for personal use at work and accept the Claimant’s evidence that she told him that he should not be accessing social media whilst at work. We find that this was an unremarkable management instruction.

Being hostile and aggressive about e-triage

25. The Claimant alleges that sometime around October 2016 he complained to Ms Leighton about Ms Biggins. Shortly after that Ms Biggins “charged into his office” to confront him in front of other members of staff. He then told Ms Biggins that he did not like the way she had spoken to him in front of other people and would appreciate that any criticism should be made away from other people. In cross examination the Claimant said that it was not what she said that he objected to but her manner. She was rude and aggressive.
26. Ms Biggins evidence on the other hand was that the Claimant had made a minor error of a kind that he had made previously. She went to his office to discuss with it him and to support an improvement. The conversation took place in the office which he shared with Mr Sawyer and 2 others. It was a minor error and she did not consider it was necessary to call the Claimant into her office. Ms Biggins denies that she was hostile and aggressive, but she does say that during the conversation the Claimant became agitated and argumentative and later came to see her to say that he was unhappy that she had raised his mistake in the presence of colleagues. She had apologised and explained she had not intended to criticise or upset him.
27. It is hard for the tribunal, many months later, to discern whether a particular individual was hostile or aggressive and the Claimant’s complaint seems to be about Ms Biggins manner rather than about the words used. However, on balance, we prefer the evidence of Ms Biggins as to what occurred in October 2016 and find that this was an ordinary day-to-day management discussion, in the office.

Challenge to annual leave.

28. The Claimant's next complaint is that Ms Biggins challenged him about his annual leave entitlement in a manner that again suggested that she did not trust him. It was the Claimant's evidence that he had asked for 1.5 hours annual leave on the 2nd December 2016 (371). As Ms Biggins was aware, he had to take his children to school that day because their au pair had left. He complains that Ms Biggins asked to speak to him about his request, then asked if his parents or an au pair from an agency could take the children to school and also asked if he had enough leave left. When he confirmed that he had enough leave, she insisted that she showed her his E roster to prove that he had sufficient annual leave left to cover the 1.5 hours that he had requested.
29. Ms Biggins' account is different. She accepts that she asked the Claimant to confirm that he had sufficient annual leave left to cover his request, but she says she did not challenge him and that she had approved his request before she asked to look at the E roster system.
30. Even if the Claimant's account is correct this is a trivial complaint. The Claimant had asked for leave at short notice and was granted the leave he requested. The Claimant is upset that Ms Biggins asked him whether he had enough leave entitlement and asked about his childcare arrangements and that she wanted to look at his E roster. There is no evidence to suggest that she asked him about his childcare arrangements in anything other than an attempt to be supportive.

Out of office.

31. The Claimant complains about an incident on 1st December 2016 when Ms Biggins approached the Claimant when he was leaving the office and asked him if he had put his out of office on. He complains that when he said that he had forgotten she was insistent that he did so before leaving; and she stood in the doorway blocking his exit.
32. The Claimant made a formal complaint about this incident the next day and Ms Leighton investigated. Ms Biggins gave her account of the conversation. The other people who had been in the room at the time (Chris Nyunt and Lesley Brown) both emailed their recollections of the conversation. (393 and 396). Those independent contemporaneous accounts support Ms Biggins' account and we have preferred her evidence to that of the Claimant.
33. On 1st December 2016 Ms Biggins had a routine 1:1 meeting with the Claimant. At the meeting she had asked him if he would put his out of office on before he left the office that day as he would be late in the next morning. She considered that this was important because he was usually the first person in the office and was therefore notified of clinic cancellations for the day. The Claimant had failed on 2 previous periods of leave to turn on the "out of office" message to his email and that failure had caused difficulties for the Department.
34. Later that day, at about 4 o'clock Ms Biggins came into the office to talk to Mr Sawyer just as the Claimant was leaving. She asked if he had put on his out of office and he told her that he was sorry, he had forgotten. Ms Biggins asked him to

log onto his computer and to put the out of office on. The Claimant refused, saying it would take too long to log back onto his computer. Ms Biggins repeated her request but the Claimant said that would not do so as he would miss his bus. Ms Biggins asked when the next bus was, and the Claimant said it was due at 16.15. She asked if he could get the next one and he said no - as he had children to pick up. Ms Biggins then asked him to discuss the matter in her office. The Claimant again refused, saying he had to catch the bus. She asked him again, but the Claimant just left.

35. The Claimant's account was largely the same -- only he put a different spin on the event. He says this "*[Miss Biggins] hatred and resentment towards me spilled over on first December 2016 when she confronted me and then tried to physically stop me from leaving the office after I'd finished work.*" He said that Ms Biggins had asked if he put his out of office on and when he had said he had forgotten "*angrily ordered me to log back onto my computer and put my out of office notifications on*". Having refused a couple of times he had made his way towards the exit "*Georgina stood in the doorway blocking me from leaving the room. I had to walk around Georgina to leave the office, she simply would not move out of the doorway to enable me to leave. I felt threatened, humiliated, belittled and violated. I had to squeeze past to leave the office. She simply would not let me leave the office. I was shocked and outraged by her behaviour. I simply could not believe that anyone will see it fit to confront and try to physically prevent another work colleague from leaving their office. I felt humiliated, belittled, violated and angry. I have never felt so aggrieved in my life. I simply cannot believe that anyone will feel it is justified to humiliate another member of staff in front of their colleagues in the workplace.*" In cross examination he referred to being "*barricaded into the room*" and to the fact that she had stood at the doorway which amounted to false imprisonment. He said that Ms Biggins insistence was unreasonable and that it was her responsibility to send an email "*to the respective mailing groups in our department to notify all staff that I will not be in till 9.30.*"
36. We do not accept that the Claimant was prevented from leaving the office. It is apparent from Ms Biggins account, and from the account of his colleagues who were in the room at the time, that the Claimant was able to, and did, simply walk out of the office. In answers to questions in cross examination he confirmed that he had walked out of the door without touching Ms Biggins but said that he said he "had to walk around her". He had not had to make contact with her to leave. However he said that but said that "*she didn't move away from the door... that's false imprisonment.*"
37. Despite the Claimant's indignation about this incident we are satisfied that it was the Claimant who was in the wrong. He had been given a reasonable management instruction with which he had refused to comply. Ms Biggins had sought to stand her ground but he had still refused, and he had then left the office without hindrance.
38. The next morning as soon as he arrived into the office the Claimant emailed Ms Leighton stating that he wished to make an official complaint against Ms Biggins

(391). Ms Leighton saw him immediately. Ms Leighton then asked Mr Nyunt, Ms Biggins and Ms Brown for their versions of what had happened the day before. (389.) The Claimant emailed his written statement the same day.

39. Ms Leighton concluded that Ms Biggins request had been a reasonable management request and proposed the use of mediation between Ms Biggins and the Claimant. However, before the mediation could be arranged a further incident occurred as set out below.

Count for dietetic feeds

40. The Claimant complains that on 22nd December 2016 Ms Biggins forced him to do work he was not trained to do. Specifically, he was required to count the dietetic feed product when it arrived, and this involved using equipment he was not trained to use.
41. It was the responsibility of the Claimant's colleague, Mr Sawyer, (the other ASM) to order the dietetic feed for the Department. Ms Biggins asked the Claimant to cover this task while Mr Sawyer was on annual leave. The Claimant agreed to do so and, on 15th December, confirmed to Ms Biggins that he had been trained on "all aspects of ordering and counting the feed" and that he was confident that he would *"be able to manage and escalate all aspects in relation to dietetic feeds."* (401) The same day Ms Biggins sent an Outlook calendar invite to the Claimant to attend catering stores with her on 22nd December to check the stock.
42. The order arrived on 21st December. The Claimant told Ms Biggins that the order had arrived but that he had not been able to check the products in and that he would count the feed the next morning. There is a dispute of fact between the Claimant and Ms Biggins as to whether she told him that she would do the feed count the next morning herself or not. Either way it is not in dispute that the next morning, on 22nd December, both the Claimant and Ms Biggins went to the stores to count the dietetic feed.
43. It was Ms Biggins evidence that counting the feed involved crosschecking the products that had been delivered against the orders that had been made. She had arranged with a member of the catering stores staff that he would be present to assist them as this was a standard and weekly arrangement. This was so that the catering store staff could unload the feed off the pallets to a shelf whilst they counted. Ms Biggins says that, as there were so many products, both she and the Claimant helped move the feed from the pallets. No IT equipment or machinery was used or necessary to do this and the Claimant did not raise any concerns about the task. She left at 10 a.m. to go to a meeting and the Claimant finished off with a member of the catering stores staff.
44. It was the Claimant's evidence that there were 4.5 tonnes of feed which had arrived on pallets. He complains that he had made an arrangement with a member of the catering team to help him unpack and count the feeds on the 22nd December 2017 but Ms Biggins overrode his arrangement and "forced him"

to unpack 4.5 tonnes of feed, that he could not lift such heavy loads and that he suffered from a long term chronic back problem. He said that he “had not been health and safety trained to move pallets which needed moving around using a hoist/jack”.

45. We do not accept that the Claimant was forced to unpack 4.5 tonnes of feed, that he was forced to do work he was not trained to do or that he had to use equipment he was not trained to use. He told the tribunal that he had been “forced” to unload pallets, but when asked how he had been forced he said he was “expected” to unload the pallets. When he was asked why he believed he was expected to unload the pallets, the Claimant said that this was because Ms Biggins had not made an arrangement in advance with a member of the catering staff that they should assist. This was puzzling, first because the Claimant accepted that a member of the catering staff was there to assist and secondly because the Claimant’s evidence was that he had made his own arrangements with a member of the catering staff to be in attendance. We have preferred Ms Biggins’ evidence of this event, which was that a member of catering staff was present to unload the feed while she and the Claimant counted. As there were so many products they both also helped to unpack the feed, but it was not overly heavy and did not require the use of machinery. The Claimant had not complained at the time or subsequently.

Refusal to help with backlog

46. The Claimant complains that Ms Biggins refused to authorise anyone to help with a backlog of work that had arisen over the Christmas period. On 3rd January 2017 Ms Biggins returned to work after a period of annual leave. The Claimant had been covering for some colleagues over the holiday period. He complains that on the morning of 3rd January Ms Biggins sent him a “barrage of curt and aggressive emails which she copied Ms Leighton into.” The email trail in the bundle shows that Ms Biggins sent the Claimant 2 emails on 3rd January which referred to the backlog on E-triage and a 3rd email the following day (4th January) asking him to confirm he was focusing on E-triage service. Ms Leighton also sent the Claimant a further 2 emails on 4th January asking him to focus on the E triage service queue. None of those emails can be described as “curt and aggressive”.
47. In essence Ms Biggins had noted a backlog of work on e-triage and had asked the Claimant to deal with it as a priority. (427). The Claimant responded that he would appreciate some help to clear the backlog on e-triage. Ms Biggins asked him to let her know “what else you are working on so I can help you prioritise your work to free up your time to focus on e-triage.” The Claimant said he was working on escalations and enquiries asked again for someone to help clear the backlog of patients on e-triage (425). Ms Leighton asked him if he had any other tasks that were urgent and, if not, he should focus purely on e-triage.
48. Very early on 5th January the Claimant emailed Ms Leighton stating that he wished to raise a complaint against Ms Biggins in line with the bullying and

harassment policy. Later that day during a routine supervisory meeting Ms Biggins reiterated her concern about the e-triage backlog. The Claimant complained that he had not got any support. Ms Biggins again suggested that she could offer support by helping him to prioritise his work. (433). Further emails followed on 5th and 6th January. The Claimant said that he was able to prioritise his own work and he wanted help specifically with e-triage. Eventually Ms Biggins told the Claimant that she would check Ian Sawyers capacity on Monday to see if he could help. The Claimant accepts that the following Monday (9th January) Ian Sawyer was asked to assist with the e-triage backlog.

49. The Claimant's complaint is that it was not sufficient to give him assistance with prioritizing his work and that Ms Biggins should have immediately provided assistance to him on e-triage task. He did however accept, in answer to questions from the Tribunal, that had he concentrated solely on e-triage as he had been asked to do he would have been able to clear the backlog unaided.
50. The long and short of this complaint is that the Claimant had asked for help with the backlog on 3rd January 2017 and by 9th January he had been allocated such help. In the meantime, his managers had asked him to leave other tasks in order to help him reduce the backlog. This was an unexceptional management course of action and a reasonable response to his request for help. E triage was a task which fell within the Claimant's sole responsibility and management are entitled to ask those that they line manage to prioritise their work in a particular way.

Confiscation of ID badge and being frogmarched from the building.

51. The Claimant's case is that on 27th June Ms Biggins told Ms Leighton to confiscate his ID badge and that this led to Ms Leighton frog-marching him out of the building.
52. The Claimant's contract came to an end on 27th June 2017. Details of the process by which this occurred appear in paragraphs 54 -64 below. On his last day, Ms Leighton asked the Claimant for his ID badge. She did not "confiscate" it. He was leaving and was no longer entitled to it. Under cross examination the Claimant said that he had told Ms Leighton he could not return the ID card as he needed it to exit the building and that she then said, "Don't worry, I'll come with you". This is not frog-marching him out of the building but a reasonable response. We do not accept that it was humiliating not to have been trusted to take the ID to security personally.
53. Nor do we accept that Ms Biggins "told Ms Leighton" to confiscate the Claimant's ID badge. By this time Ms Biggins was no longer the Claimant's line manager. A new service manager had been appointed to Ms Biggins substantive role and Ms Biggins had been substantively promoted to Assistant General Manager role in which she had previously been acting up. She denies telling Mr Leighton to ask him to hand in his badge and Ms Leighton denied having that Ms Biggins. We accept that evidence.

Termination of the Claimant's fixed term contract

54. The Claimant had been appointed, as we have said on a fixed term contract for 12 months commencing on 27th June 2016.
55. On 30th March the Claimant received an email from HR which purported to be an amendment to his contract "to confirm that your fixed term contract has been extended." It had not been extended as it was a 12 month contract always intended to expire on 27th June 2017. The Claimant signed to the effect that he agreed to the above "amendment". We accept Ms Leighton's evidence that the department had no input into this email which was generated entirely by HR.
56. On 4th May 2017 Ms Leighton and a member of HR met with the Claimant to discuss the expiry of his contract. (513) Ms Leighton explained that internal permissions were being sought for his ASM post be allowed to be made permanent. If permission was given, the post would be advertised, and he would be able to apply. (The Trust's Guidance on the use of fixed term contracts states that if a fixed term post becomes available on a permanent basis then it must be advertised and appointed to through competitive interview.) If the post was not approved the Respondent would look at redeployment. We do not accept, as the Claimant alleges, that he was informed at this meeting that his contract was being terminated because there was no funding for the post and that he would therefore be entitled to a redundancy payment. The outcome of the meeting was confirmed in a letter from Ms Leighton dated 26th May (527). That letter stated amongst other things that his post was "fixed term because of the financial position of the Trust", that if the post was made permanent he would be able to apply and, if successful, would be made permanent. If not, his contract would automatically end on 26th June.
57. In the meantime, the Respondent brought a number of potential posts to the Claimant's attention.
58. In May 2017 the Claimant applied for a position as an ASM in the general surgery team. He interviewed for the post on 2nd June 2017. Following the interview Mr. Winsall, who was on the interviewing panel, asked the Claimant if they could meet at 4 o'clock. The Claimant responded that he was not available, that it was not a convenient time, but he would discuss feedback on the phone. Mr Winsall responded that "there was actually something I wanted to talk to you about face-to-face before making a decision. Perhaps you would be available tomorrow?" The Claimant did not respond, and Mr. Winsall chased the Claimant several times over the next few days to arrange a meeting. The Claimant was evasive about his availability to meet and/or did not respond. Mr. Winsall then reasonably took the view that the Claimant was not that keen on the post and re-advertised.
59. (In evidence the Claimant said that he was interested in the post but should not have been asked to meet Mr Winsall. He had been told that a decision would be made following the interview and it was not appropriate to ask him to a face-to-face meeting to ask him further questions.)

60. On 6th June 2017 Ms Leighton told the Claimant that post of ASM in Therapies had been made permanent and that it was now available and was being advertised (533). The Claimant did not apply. He was off work sick from 12th - 16th June. On Tuesday 13th June Ms Leighton e-mailed him (537) to say that the advert for his role had now closed, due to a cap on the number of applications, but that if he wanted to apply he could still do so by completing an off-line application by close of play on Thursday. He did not do so.
61. On 19th June the Claimant telephoned HR to ask if he would receive a redundancy payment. He was told he would not and that he should contact Mr Winsall regarding the ASM role in Surgery. The Claimant responded (556) to the effect that he had been unable to meet Mr Winsall (although he had offered his phone number), and that he had been unable to apply for the ASM role because he was off sick when it closed. He was entitled to redundancy.
62. On 20th June 2017 Ms Leighton emailed the Claimant (560) to say that if he wanted to make an application for the ASM role in therapies he could submit an off-line application form by midnight. She attached the application form previously sent him. If he applied, his interview would be held the next day. However, as his role had been advertised, and he had had the opportunity to apply, he was no longer a redeployee and was not redundant. The Claimant did not apply for the role.
63. There was a further meeting with the Claimant on 21st June. The Claimant was asked why he hadn't followed up on his interview for the ASM in General Surgery and why he had not applied for the ASM in Therapies. The Claimant said he had not had time. He was told his contract would end on 27th June and he was not entitled to a redundancy payment. A letter was sent confirming the discussion (567).
64. The Claimant's last day of work was 27th June. He then worked 3 days as bank in the Genetics department and resigned with immediate effect. He told the Respondent that he had been offered a job to start immediately.

The law

Race discrimination

65. Section 39 of the Equality Act 2010 prohibits an employer discriminating against or victimising its employees by dismissing them or subjecting them to any other detriment. Section 40 prohibits an employer from harassing its employees.
66. Section 13 of the Equality Act defines direct discrimination as follows:-
"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favorably than A treats or would treat others."

Race is a protected characteristic

67. Section 40 prohibits an employer from harassing its employees. Section 26 defines harassment as follows

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

68. As to victimisation, Section 27 of the Equality Act provides that

“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.

69. Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why she has acted in a certain way towards another, in circumstances where she may not even be conscious of the underlying reason and will in any event be determined to explain her motives or reasons for what she has done in a way which does not involve discrimination.

70. The burden of proof, is set out at Section 136. It is for the Claimant to prove the primary facts from which a reasonable Tribunal could properly conclude from all the evidence before it, in the absence of an adequate explanation, that there has been a contravention of the Equality Act. If a Claimant does not prove such facts he will fail – a mere feeling that there has been unlawful discrimination, harassment or victimisation is not enough. Once the Claimant has shown these primary facts then the burden shifts to the Respondent and discrimination is presumed unless

the Respondent can show otherwise.

71. The principles for determining whether there has been a breach of the Equality Act 2010 were set out in *Islington London Borough Council -- v- Ladele* 2009 ICR 387 Elias J (as he then was) said (as summarised in the head note)

- (1) In every case the tribunal has to determine the reason why the Claimant was treated as she was. In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.
- (2) If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.
- (3) Direct evidence of discrimination is rare, and tribunals frequently have to infer discrimination from all the material facts. This is a two stage test. The first stage places a burden on the Claimant to establish the prima facie case of discrimination.
- (4) If the Claimant can establish a prima facie case of discrimination, then the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the tribunal must find that there is discrimination.
- (5) The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the Claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. Of course in the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation. If the employer fails to provide a non-discriminatory explanation for the unreasonable treatment then the inference of discrimination must be drawn.the inference is then drawn not from the unreasonable treatment itself -- or at least not simply from that fact - - but from the failure to provide a non-discriminatory explanation for it.
- (6) It is not necessary in every case for a tribunal to go through a two-stage procedure. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under the stage one. The employee is not prejudiced by that

approach because in effect the tribunal is acting on the assumption that even if the first hurdle has been crossed by the employee, the case fails because the employer has provided a convincing non discriminatory explanation for the less favourable treatment.

(7) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts are set out in some detail what these relevant factors are.

72. The burden of proof does not shift to the Respondent simply on the Claimant establishing a difference in status or a difference in treatment. Such acts only indicate the possibility of discrimination. The phrase “could conclude” means that “a reasonable Tribunal could properly conclude from all the evidence before it that there may have been discrimination.” Madarassy v Nomura International PLC [2007] IRLR 246
73. In Hewage v Grampian Health Board [2012] ICR 1054 Lord Hope addressed the role of the burden of proof provisions. At paragraph 32 he recognised that: “... They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.
74. As to time limits Section 123 of the Equality Act 2010 provides that complaints of discrimination should be presented within three months of the act complained of. An act extending over a period is treated as done at the end of that period although this should be distinguished from a single act with continuing consequences. The concept of an act extending over a period was considered in Commissioner of Police of the Metropolis v Hendricks 2003 IRLR 96 and given a wide interpretation.
75. If an application is out of time the Tribunal may still consider the claim if, in all the circumstances of the case, it considers it would be just and equitable to allow the claim to proceed out of time.

Unfair Dismissal Some other substantial reason

76. Section 94 of the ERA sets out the well-known right not to be unfairly dismissed. It is for the Respondent to show that the reason for the Claimant’s dismissal is a potentially fair reason for dismissal within the terms of section 98(1). The expiry of a fixed term contract is not, of itself, a potentially fair reason for dismissal. The expiry of the contract is the dismissal and not the reason for it (Tansell v Henley College Coventry 2013 IRLR 174)
77. Section 98(1) (b) provides that it is potentially fair to dismiss for “some other substantial reason”. The Respondent relies on this reason to justify the dismissal in this case.

78. In Terry v East Sussex County Council 1976 ICR 536 the EAT said that the expiry of a fixed term contract could be some other substantial reason but that it was for the employer to show what that reason was and that it was substantial.
79. In Fay v North Yorkshire County Council 1986 ICR 133 the Court of Appeal clarified the circumstances in which the expiry of a limited term contract can amount to some other substantial reason. It must be shown that (i) the contract was adopted for a genuine purpose, (ii) which was known to the employee, and (iii) that purpose had ceased to be applicable.
80. If the employer can show that the dismissal of a fixed term employee was for some other substantial reason, then the Tribunal must go on to decide whether that dismissal was fair or unfair within the terms of section 98(4). Whether or not the purpose of the contract was communicated to the employee will be an important factor. Other considerations would include to what extent the employer had looked for other available employment. An employee on a fixed term contract has a right to be informed of all available vacancies at the place where they work. Equally, where an employee is competing for permanent post the employer has to exercise reasonable judgment in deciding which candidate to prefer. Where a permanent position is created to replace a temporary post, the employer may be expected to help the temporary incumbent to apply.
81. Redundancy is also a potentially fair reason for dismissal. The definition of redundancy is set out in section 139 (1)(b) of the Employment Rights Act. This states that there is a redundancy situation where the requirements of the business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they are employed, have ceased or diminished.

Submissions

82. For the Respondent Ms Owusu-Agyei submitted that all of the potential acts of discrimination, victimisation and harassment were out of time, save for the dismissal and the confiscation of the Claimant's ID badge. Moreover, the evidence did not establish any connection to race.
83. She submitted that there was no redundancy situation. He was dismissed for some other substantial reason.
84. His contract was for a fixed term and he was aware that it would terminate on the expiry of that term. She referred to Royal Surrey County NHS Foundation Trust v Drzymala EAT/0063/17. Where the employee is in a fixed term contract the employer does not need to take any positive steps to dismiss. Passive non-renewal will cause the contract of employment to come to an end.
85. She submitted that the Claimant had signed a contract on that basis and a

further letter in March acknowledging this. He had agreed to its terms. The Respondent made him aware of vacancies and gave him help and assistance in applying for his old role and other roles. The test in Fay had been met. When the Claimant's predecessor left Ms Leighton had asked for a permanent post but the VCP had refused. That evidence was not challenged. The post was created for a genuine reason. It was the only basis upon which Ms Leighton could offer the post. The Respondent had had a lot of change and there was a potential wider review of ASMs. In times of uncertainty it was reasonable to offer an employee a fixed term position.

86. The Claimant submitted that the Tribunal should prefer his evidence to that of the Respondent's witnesses and made submissions on the facts.
87. As to dismissal he submitted that he was not told why the contract was fixed term but both his predecessor and his successor were permanent. He should have been slotted in without having to apply. Ms Biggins had been slotted in when she was made permanent Assistant General Manager after she had acted up in that role, without the role being advertised. Instead the Trust had filled her substantive role of Service Manager. There was a precedent to show that the process would allow slotting in.

Conclusions

Direct race discrimination and harassment.

88. We have set out the facts above. The Claimant does not emerge as a person who is easy to manage. Certainly he took exception to Ms Biggins management of him, but we do not consider that she acted unreasonably in her management requests. There was no evidence to suggest that the matters about which the Claimant has complained, whether looked at individually or taking the whole picture together, amounted to less favourable treatment and none at all which would suggest, or from which we might draw an inference, that his treatment was a linked to his race. The Claimant has failed to shift the burden of proof to the Respondent. In view of this finding, the issue of time limits does not fall to be determined.
89. In relation to the complaint of harassment we do not accept that the Claimant was subjected to any treatment which had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. There was no material from which we could infer that any treatment was related to his race.

Victimisation.

90. It is the Claimant's case that the bullying and harassment complaint that he raised against Ms Biggins on 2nd December 2016 was a protected act and that the termination of his contract was because of his protected act.

91. This complaint is misconceived. First the complaint against Ms Biggins dated 2nd December 2016 does not make any allegation that Ms Biggins or anyone else at the Respondent had discriminated against the Claimant because of his race, or in any other way done something which might be said to have contravened the Equality Act. It does not therefore satisfy the definition of a protected act in Section 27(2). Secondly, the termination of the Claimant's contract had nothing to do with that complaint. His contract came to an end because he was on a fixed term contract and he had not secured any other role. Ms Leighton, advised by HR, considered that they were bound to advertise the Claimant's role and to require him to apply. We consider that to be unfair, but we do not consider that it was in any way linked to his race or to his grievance.

Unfair dismissal

92. It is for the employer to show what was the reason for the dismissal of an employee and that the dismissal was for a potentially fair reason.
93. We accept that the Claimant was not redundant. The requirements of the Trust for employees to carry out the work that the Claimant did had neither ceased nor diminished. The Therapies department was specifically recruiting for an individual to do the Claimant's work. Since he was not redundant he is not entitled to a statutory or a contractual redundancy payment.
94. The Respondent's case is that the Claimant was dismissed for "some other substantial reason" (SOSR). However, the expiry of a fixed term contract is not, of itself, SOSR. It is the mechanism by which the dismissal is effected but it is not the reason (Tansell v Henley College Coventry).
95. What was that reason? In most cases an employer will enter into a fixed term contract for a well-documented reason. Typically, this might be to cover for an employee on maternity leave or to cover a peak in demand, such as additional post office workers at Christmas. In such cases, when the fixed term contract comes to an end, the reason for the dismissal is well known. It is the ending of the reason which caused the employee to be appointed to the role. The absent employee returns to work or the peak in demand falls away.
96. In this case the Respondent has failed to show why the Claimant was employed on a fixed term contract in the first place. Prior to the Claimant's appointment both ASMs were permanent positions. There was no evidence before this Tribunal to suggest that the posts were to be deleted or would not be required in the future. Ms Leighton's evidence as to this part of the Respondent's case was inconsistent and vague. The impression that the tribunal had was that she did not really know and had been given little or no information by the VCP. The decision was not hers. The decision to create the Claimant's post as a fixed term post was taken by the VCP, from whom we did not hear.
97. We do not accept that the post was fixed term because it was part of a wider

restructure within the Therapies department. As we have already said we note that the structure adopted immediately before the Claimant's appointment did not differ from the structure after his appointment. The explanation subsequently given by Ms Leighton – that the plan was to undertake a review of ASM posts across the whole organisation – was vague, hearsay and not part of her original evidence in chief. We heard nothing about what that review entailed and there was no evidence that all ASM posts across the Trusts were being recruited to on a fixed term basis. A vague reference to funding difficulties is an insufficient reason given that, in any event, the Claimant's salary had to be covered. We were not told, for example, that this was a case where the Trust had allocated funding to cover the Claimant's post for a year and no more.

98. The Claimant was not told why his post was being recruited to on a fixed term basis. The Respondent's Policy states that "Line managers are responsible for giving detailed consideration whether there is a valid and genuine reason for recruiting to a post on a fixed term basis". Ms Leighton's evidence was that the decision to recruit on a fixed term basis was not hers (or that of the line manager) and outside her control, and we must conclude that this policy was being routinely ignored.
99. Given that there is no clear reason why the post was recruited to on a fixed term basis, the Respondent is also unable to establish the reason for the ending of the fixed term contract. His post was still there, and the Respondent was recruiting to it.
100. The Respondent's policy states that when a fixed term post is made permanent, it should be advertised in accordance with the Trust's Recruitment and Selection Policy and Procedure, and will be appointed to through a competitive interview. The post holder will be able to apply as an internal applicant. In this case the Respondent followed their policy and asked the Claimant to apply for the post. However, nothing had changed other than that the VCP, for reasons not apparently disclosed to Ms Leighton (and certainly not to the Tribunal), had authorised the position as permanent rather than fixed term. As we have said the ending of a fixed term contract is not of itself, a fair reason for dismissal. As we are not satisfied that the purpose for which the fixed term contract was awarded had ended, we find that the Respondent has not established a potentially fair reason for dismissal and the dismissal is unfair. In such circumstances the Claimant could have been slotted in. We have had no evidence that this was considered by Ms Leighton, who simply followed HR advice that, as it was a fixed term post which had come to an end, the post had to be advertised.
101. The Respondent's policy suggests that consideration should be given to the use of secondments when permanent staff apply for fixed term. In this case the Claimant had been required to give up a permanent position in order to gain a promotion, for a reason that was unclear.

102. In Fay (above) the dismissal of Mrs Fay was held to be fair because the Tribunal was satisfied that there was a genuine need for there to be a fixed term contract, which was to cover a temporary absence, and that the employee knew at all times what that reason was. That reason had come to an end. In that case Brown-Wilkinson LJ said this “Merely to say that this was a fixed term contract does not by itself establish that there was a substantial reason for dismissal. But, in my judgment, if it is shown that the fixed term contract was adopted for a genuine purpose and that fact was known to the employee and it is also shown that the specific purpose for which the fixed term contract was adopted has ceased to be applicable, then, for the purposes of section [98], those facts are capable of constituting some other substantial reason.”
103. The missing link in this case is that the Respondent has not shown that the fixed term contract was adopted for a genuine purpose, which had come to an end and that fact was known to the employee. Although Ms Owusu-Agyei has referred to Drzymala (above) for the proposition that the expiry of a fixed term contract can be SOSR, it does not establish that it always is, and it is a case which is about the reasonableness of the dismissal under section 98(4), rather than the reason under section 98(1).
104. We ought to add, in fairness, that had the Respondent been able to establish a good and valid reason, known to the Claimant, for the fixed term offering, and to establish that that reason no longer applied, it is likely that we would have found the Claimant’s dismissal to be fair, when considering reasonableness within the terms of section 98(4). The Respondent made a particular effort to encourage the Claimant to apply for the post and he had chosen not to do so. They also drew other vacant posts to his attention.
105. However, as the Respondent has failed to establish a fair reason for dismissal those considerations can only go to questions of contribution and or Polkey. These are matters that will be considered at the remedy hearing to take place on 10th December 2018.
106. Wrongful dismissal. It is the Claimant’s case that he was dismissed in breach of contract in that he was not given his contractual notice. However, the Claimant was aware that the contract would come to an end on 26th June and was reminded of that on 30th March 2017 (278). The Claimant was given three months’ notice of termination, (which could have been withdrawn had the Claimant been retained) and his claim for wrongful dismissal (notice pay) therefore fails.
107. Redundancy payment. The Claimant claims that he is entitled to a statutory and a contractual redundancy payment. We are satisfied that the reason for the Claimant’s dismissal was not redundancy and therefore there is no entitlement to either of these payments. (For that reason, it is not necessary to consider the jurisdictional point raised by the Respondent.)

108. Remedy. It is to be hoped that the parties will be able to agree terms as to any remedy. The Tribunal notes that the Claimant obtained new employment shortly after his dismissal and that his loss is therefore likely to be limited.
109. If, however, the parties are unable to agree terms, then the issue of remedy will be dealt with at a hearing before this Tribunal on 10th December 2018 at which issues of contribution, mitigation of loss and Polkey will also be considered. If the parties are able to arrive at terms of compromise they should inform the Tribunal so that the date can be vacated.
110. If the Claimant has not already done so then he should disclose to the Respondent, no later than 14 days from the date of the promulgation of this Judgment, all documents (payslips, contracts of employment, offer letters etc) relating to any employment undertaken since 27th June 2017.
111. The Claimant should also provide an updated Schedule of Loss to the Respondent within 14 days of the date of the promulgation of this Judgment.
112. The Respondent will prepare and send to the Claimant on or before 12th November 2018
 - a. a small bundle of documents relevant to remedy and shall bring additional copies to the remedy hearing for the use of the Tribunal; and
 - b. a list of issues to be determined at the remedy hearing
113. Any witness statements to be used at the remedy hearing should be exchanged on or before 26th November 2018.

Employment Judge F Spencer
16th October 2018

**THE SCHEDULE
AGREED LIST OF ISSUES**

INTRODUCTION

1. The Claimant ("C") is pursuing the following claims: unfair dismissal, wrongful dismissal, direct race discrimination, harassment, victimisation and redundancy pay.

UNFAIR DISMISSAL

2. Was C dismissed for a potentially fair reason within s98 (1) and (2) ERA 1996?

The Respondent ("R") asserts that C was dismissed for a fair reason (SOSR: end of fixed term contract). C alleges he was dismissed because he raised a complaint against Georgina Biggins and/or by reason of redundancy.

3. Was the dismissal fair in all the circumstances (including the size and administrative resources of the employer's undertaking) and did R act reasonably in treating the end of the fixed term contract as sufficient reason for dismissing the employee within s98(4)?
4. If the dismissal is found to be unfair, would C have been dismissed in any event had there been no unfairness (Polkey)?
5. If the dismissal is found to be unfair, did C contribute to his dismissal by his own blameworthy conduct? If so, to what extent?

REDUNDANCY PAYMENT

6. If the Tribunal find that the reason for C's dismissal was redundancy (i.e. the dismissal was wholly or mainly attributable to cessation or reduction in the need for employees to carry out work of the particular kind undertaken by C) then does the Tribunal have jurisdiction to hear the claim for a redundancy payment under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994?

R asserts that the Tribunal does not have jurisdiction to hear this claim because under Agenda for Change C's right to the payment was contingent upon him confirming that he had not obtained, been offered or unreasonably refused to apply for or accept suitable alternative health service employment within 4 weeks of the termination date. Accordingly, the payment did not arise and was not outstanding on termination.

7. If the Tribunal does have jurisdiction then what payment is C entitled to?

WRONGFUL DISMISSAL

8. Was C dismissed in breach of contract?

R asserts that C was given 12 weeks' notice that his contract was due to end. This is in excess of the required 6 weeks' notice. In any event, as the fixed term contract was terminated at the conclusion of the fixed term C was on notice of the date of termination from the time he entered into the contract.

9. If so, what payment is C entitled to?

DIRECT RACE DISCRIMINATION

10. C is of Black African race and ethnicity.

11. Was C subjected to less favourable treatment because of his race, contrary to section 13 of the Equality Act 2010?

12. C alleges that the following acts were acts of less favourable treatment:

- (a) 27 June 2016 - Georgina Biggins taking his old ID badge off him.
 - (b) On/around 27 June 2016 - Georgina Biggins telling C not to use his personal mobile at work.
 - (c) At some point between June and September 2016 Georgina Biggins accused C of accessing social media on his mobile phone.
 - (d) On/around October 2016 - Georgina Biggins confronted C in the office in the presence of Mr C Nyunt and Ms L Brown regarding a work issue (probably E-triage). Georgina Biggins was hostile and aggressive when she confronted C.
 - (e) 30 November 2016 - Georgina Biggins challenged C about his annual leave entitlement, suggesting he had exhausted it and insisting to see his E-roster.
 - (f) 01 December 2016 - Georgina Biggins approached C when he was leaving the office and asked him if he had put his out of office on. When C confirmed he had not Georgina Biggins was insistent that he do so before leaving and she stood in the doorway blocking his exit.
 - (g) Withdrawn .
 - (h) 22 December 2016 - Georgina Biggins forced C to do work he was not trained to do. Specifically he was required to count the dietetic feed product when it arrived and this involved using equipment he was not trained to use.
 - (i) 3 January 2017 - Georgina Biggins refused to authorise anyone to help C to clear the backlog of patients in the E-triage queue.
 - (j) 27 June 2017 -Georgina Biggins told Ruth Leighton to confiscate C's ID badge which led to Ms Leighton frog marching C out of the building.
 - (k) 27 June 2017 - The termination of C's fixed term contract.
13. C alleges that the relevant comparators are Ian Sawyer, Jean Hudson, and Melanie Smith. C believes all these comparators are White British.

HARASSMENT

14. Did the R engage in the unwanted conduct set out at paragraph 12 above?
15. Was the conduct related to the Claimant's race?
16. Did the conduct have the purpose of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C?

In determining whether the conduct have the effect referred to above the Tribunal is invited to have regard to the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

VICTIMISATION

17. Did C do a protected act?

C relies on the bullying and harassment complaint he raised against Georgina Biggins on 02 December 2016.

18. If so, did R subject C to a detriment because he had done the protected act?

C alleges that the detriment was the termination of his contract.

JURISDICTION

19. Were C's claims under the Equality Act 2010 presented to the Tribunal before the end of the period of three months beginning when the act complained of was done (Section 123(1) Equality Act 2010)?
20. Did the matters complained of amount to conduct extending over a period ending within the period of three months prior to the presentation of the claim (Section 123(3) Equality Act 2010)?
21. To the extent that any of C's complaints are out of time, would it be just and equitable for the Tribunal to extend time for the bringing of the complaint (Section 123(1) (b) Equality Act 2010)?

REMEDY

22. To what compensation, if any, is the Claimant entitled (including for injury to feelings)?