EMPLOYMENT TRIBUNALS

Claimant: **Mr A Haitham**

Respondent: **Havant & South Downs College**

On: **29 October – 9 November 2018**

Sitting at: **SOUTHAMPTON**

Before: **Employment Judge Emerton**
Members: **Mr N Cross, Mr M Richardson**

Appearances:

For the claimant: **Ms A Haitham (claimant's sister)**
For the respondent: **Mr M Palmer (counsel)**

JUDGMENT having been sent to the parties on 21 November 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Summary of the case

1. This was a somewhat over-complicated 10-day case, where the claimant is, effectively, a litigant in person (whilst being competently represented by his sister). Although counsel for the respondent did his best, the case had not been particularly well prepared by the respondent's solicitors. The case included (technically, although overlapping) some 126 allegations of various types of discrimination, as well as unfair dismissal, breach of contract and failure to pay outstanding holiday pay.

2. The claimant had worked for almost 20 years as an IT technician in a Hampshire College. He was made redundant in the autumn of 2017, after the merger of two colleges resulted in a reorganisation of IT.

3. Although the evidence at the hearing identified some shortcomings in the way the process and the staff were managed, the tribunal found that the dismissal was within the bounds of reasonable responses and that (with one exception) there was no discrimination. The allegation of discrimination which would have succeeded was well out of time, and the tribunal declined to extend time. This was an incident, without witnesses, where the claimant discharged the initial burden of proof and the respondent was not able to call sufficient evidence in rebuttal, largely because the employee concerned had very recently been dismissed. The claimant made a large number of serious allegations against a range of other individuals, including the College Principal, which were unfounded. The tribunal would emphasize there was no evidential basis for criticising as discriminatory the conduct of the respondent's senior management (notably the Principal and Vice Principal).

4. It also became apparent that the respondent had been mistaken in believing that the claimant's contract of employment (which was in a format no longer used by the College) entitled them to give pay in lieu of notice. It was also accepted by the respondent that the claimant should in fact have been enrolled in a pension scheme just before his dismissal, and the respondent accepted that some additional holiday pay should have been carried forward from the previous leave year. The breach of contract claim, and claim for holiday pay, therefore succeeded, and agreed compensation was ordered.

Structure of the written reasons

5. The reasons below are set out in some 16 main sections (further subdivided by sub-headings). For ease of cross-reference, the main headings are as follows:

The Background to the hearing

6. The claimant commenced ACAS early conciliation against the respondent on 6 October 2017 and early conciliation ended the same day. Early conciliation was only in respect of the college, which was ultimately the only respondent. The claimant presented his claim in the Employment Tribunal on 19 December 2017 against the respondent college and a large number of named individuals. As there had been no early conciliation in respect of the named individuals, the claim was accepted only against the respondent college.

7. On the respondent's calculation, the earliest date that an act complained of could be in time would be Wednesday 20 September 2017. The effective date of termination supplied by the claimant was 20 October 2017, although the respondent asserts that it was 19 October 2019 (little of any significance hangs on this difference). The respondent, rightly, does not take a point on the claimant commencing early conciliation before he was dismissed. Plainly, the dismissal, and acts surrounding the dismissal would be in time. Earlier acts of alleged discrimination could be out of time, and this was in fact an issue which the tribunal ultimately needed to resolve.

8. The claim was listed for a preliminary hearing by telephone on 20 March 2018.

9. Although the claimant had put in his claim without the benefit of legal representation, and no representative ever went on the record, for the purposes of the of the preliminary hearing he was represented by counsel. The respondent was represented by a solicitor from Paris Smith LLP.

10. At the preliminary hearing the case was listed for a 10-day hearing and the judge attempted to timetable the case, albeit the issues in the case were by no means clear at this stage. The judge identified heads of claim and referred to the issues being in another document, which appears not to have been retained. The claimant was directed to give further information, the respondent was permitted to present an amended response, and the judge made orders for disclosure, agreed bundle, exchange of witness statements and, perhaps surprisingly, for an agreed list of issues *after* all the documents had been disclosed. In the event, the claimant provided

further information in as intelligible way as he was able, without the benefit of legal assistance, albeit it is plain that there remained lack of clarity and unanswered questions. Unfortunately, the respondent's solicitors failed to ask those questions, failed to provide an amended response, and failed to initiate any action to agree a meaningful list of issues, other than a rather pointless list of issues produced prior to the preliminary hearing which did little more than to paraphrase the relevant legislation. Quite plainly this was insufficient in a complex, multiheaded case where the claimant was seeking to make a large number of allegations, against a large number of different people.

11. In essence, the claim concerned a period of just over a year between September 2016 and October 2017, when the claimant was working as a second line Apple Macintosh engineer in the IT department of South Downs College, near Portsmouth, Hampshire. Although he had worked there for many years, the period of time in question relates to the time immediately before and during the amalgamation with Havant College to form the combined college who are named as the respondent in the case. The claimant objected to various acts in his employment, which were said to be various forms of race/religion or belief discrimination and victimisation, objects to the arrangements for his being dismissed by reason of redundancy, and objects to being dismissed by giving pay in lieu of notice when contract of employment did not provide for this. The claimant makes no argument that he was not legitimately dismissed under contractual principles, but argues that he would have been entitled to pension contributions and further accrued holiday during his twelve weeks' notice period.

12. The above points being, in essence, the facts of the case, it is regrettable that the parties did not satisfactorily clarify their pleadings or agree the issues in the case prior to the start of the hearing. It is also unfortunate that the tribunal did to follow the usual practice in the Region in lengthy cases, of listing at least one further preliminary hearing to ensure that matters were progressed and that the parties were ready in all respects to progress to the final hearing.

13. When it became apparent to the Regional Employment Judge, the week before the hearing, that the case was in some disarray, further directions were given to agree a list of issues, in the hopes that the parties would nevertheless be ready to commence the hearing on the following Monday morning. Although the claimant expressed concern that he felt disadvantaged and that the case may not be ready to proceed, in the event he did not ask for a postponement at the start of the hearing, and the tribunal was satisfied that it was in the interests of justice and in accordance with the over-riding objective to proceed with the hearing, rather than for there to be a lengthy delay before the case could be re-listed. A shortage of judicial resources at Southampton meant that if a 10-day case was re-listed, there would in all likelihood be a very extensive delay in finding a new date.

14. As it transpired, the parties were still unable to agree a list of issues, and the respondent's solicitors did not in fact draft a comprehensive list of issues, but left matters to be discussed at the beginning of the hearing, together with other outstanding administrative matters.

15. Although the respondent instructed an experienced specialist barrister (Mr Michael Palmer, of Littleton Chambers) to appear at the hearing, it would appear that he was unable, in preparing the case, to put matters back on track. The tribunal appreciates the difficulties faced by a litigant in person in pursuing a complex discrimination claim. It is regrettable that an established solicitor's firm, representing a large institutional client which has an HR team, failed to take adequate steps to comply with directions or to prepare sufficiently for a 10-day hearing. Plainly, this had consequences in the tribunal having to deal at the start of the hearing with a large number of matters which should have been resolved many months previously.

16. It should, however, be noted that the tribunal was indeed able to deal sufficiently with these matters, albeit it took up the entire first day of the hearing, with the helpful assistance of counsel, and the cooperation of the claimant and his sister (who although has no experience of tribunal litigation, is an experienced HR professional and therefore had some additional understanding of what was expected). The tribunal was concerned to ensure that there was a level playing field and that both parties were ready to proceed, and both parties, after the judge had taken steps to clarify the issues, confirmed that they were sufficiently prepared and wished the hearing to go ahead. It should be noted (see the description of the hearing below) that arrangements were put in place for a list of issues to be agreed before the oral evidence started, and because the tribunal needed to have a day's reading (day two of the 10-day hearing), the reality was that the parties had an additional day to put the finishing touches to their preparation after the tribunal adjourned during the afternoon of the first day.

17. It should also be noted, that although the claimant has provided no medical evidence to the tribunal, he indicated that he was suffering from depression and finding things quite difficult, and due allowance was made for this. The claimant was given the opportunity for additional breaks, should he wish to take them, and guided by the judge from time to time as to how best to approach answering counsel's questions. If he had difficulty remembering matters, he was given time to consider his answers. He did not in fact ask for additional breaks, or indicate at any point that he was unhappy to continue.

Conduct of the Hearing

18. The hearing commenced on Monday 29 October 2018. The parties had been directed to provide documentation at 9.30am ready for a 10.00am start. The tribunal was provided with an apparently agreed bundle containing more than 450 pages, as well as a lengthy second bundle containing ACAS guides etc (which in the event were to directly referred to by either party). The respondent provided a bundle of both parties' witness statements. The claimant had provided a detailed statement, and statements from his wife and one other, and the respondent provided eight witness statements. The claimant provided a chronology (which the respondent was happy to accept as a useful starting point, although its contents had not been agreed), and Mr Palmer provided an opening note.

19. Although the claimant arrived somewhat late, the hearing was able to start shortly after 10.00am. In view of the lack of agreed issues, and various outstanding matters to do with documents, witness orders and so forth, the tribunal spent almost the entire first day clarifying the issues, arranging for a witness order at the request of the claimant, and discussing the timetable and the evidence which would be called by both parties.

20. A timetable was agreed and arrangements were also agreed for the claimant to clarify in writing his indirect discrimination claims and for the respondent to present an amended response and for an agreed list of issues to be provided by 09.00am on the third day.

21. The clarification of the issues revealed the fact that the claimant now sought to rely on matters which had not been expressly pleaded, and that in answer to those points and some other matters, that the respondent had not previously presented any intelligible response, clearly in part because there was lack of clarity as to what the claim was, to which they were responding. It was apparent that amendment issues arose, which would need to be resolved.

22. Most of these matters were resolved by agreement between the parties, but one matter was not.

23. The tribunal ruled, in the claimant's favour, that he would be permitted to make the desired amendment (see below).

24. It was agreed that the respondent should provide an amended response to deal with these various points.

25. As indicated, the issues were resolved during discussions on day one, reflected in the orders for an agreed list of issues which was produced, with minor amendments at the start of the third day of the hearing (see below).

Calling of oral evidence and the timing of closing submissions

26. The list of issues having been agreed, with minor amendments, at the beginning of the third day, shortly afterwards the tribunal heard oral evidence from the claimant. This evidence concluded before an early lunch break on the fourth day. The tribunal then heard relatively brief oral evidence from Ms Haitham (who had attended meetings with the claimant) and from Mr Allister McKenna (Senior IT Technician at the respondent college, who was a witness to some of the matters referred to).

27. The respondent then called witnesses, commencing with Mr David Turner, the respondent's Head of IT, against whom the claimant makes a number of complaints.

28. The second witness would have been Ms SE, another member of the IT team, against whom the claimant made a number of complaints. However, Mr Palmer explained the respondent would not be calling her as a witness, and the tribunal later heard evidence that she had recently been summarily dismissed for matters unconnected with subject-matter of this case, and was no longer an employee. It was as a result of her summary dismissal

that the respondent had made a decision, on advice, that she would not be called as a witness.

29. On the morning of the fifth day, the respondent called Mr Simon Allison (IT Development Leader, against whom the claimant made a number of complaints). His evidence was followed by Mr Graham Thomas (Head of Student Services, who investigated the claimant's grievance) and then Mr Michael Gaston (College Principal), who chaired the claimant's grievance hearing). It had been hoped that on the Friday afternoon the tribunal would hear the next witness, but in the event, there was insufficient time. On the following Monday (day 6 of the hearing), the timetable had originally been agreed on the basis that the remaining three respondent witnesses would complete their evidence around lunchtime or the early afternoon, and the judge made it absolutely clear to both parties (under the provisions of rule 45) that even if the timetable slipped a little, all oral evidence as to liability would need to be completed by close of play on the Monday. However, Ms Haitham took rather longer with some witnesses than the timetable which had been agreed, despite regular reminders from the tribunal as to the need to focus on issues and then move on to the next point, and of the limited time remaining. There was also a short delay when Ms Haitham felt a little unwell, and the tribunal took an extra break. She was content to continue. The tribunal heard oral evidence from Mr Barlow (a College Vice Principal who heard the grievance appeal), then from the next witness, Ms Heather Eyers (HR Manager).

30. Despite the clear timetabling of the case, and the need to finish all oral evidence by the end of the sixth day (the Monday), Ms Haitham did not complete her cross-examination of the preceding witnesses in time for the respondent to call and complete the evidence of its final witness on the Monday by a reasonable time. Rather than sit late to hear the final witness, the tribunal agreed to vary the timetable to allow the final witness would be heard on the morning of the seventh day, which had originally been reserved for closing submissions. Delaying the final witness would mean that the tribunal would hear closing submissions slightly later on the Tuesday, and would of course not expect any written submissions to deal with the oral evidence of the final witness.

31. At this point Ms Haitham indicated that she had not yet prepared her closing submissions, and asked if this could be deferred by a day to the morning of the eighth day, the Wednesday. Having heard from the parties, considered its discretion and having had regard to rule 2), the tribunal refused this application. This was on the basis that it was not in the interest of justice to remove a day's deliberation from the tribunal, and run the risk of the case going part-heard, without sufficient time to deliberate, announce oral judgment and reasons, and deal with any remaining remedy matters. The timetable had been agreed at the start of the hearing; the claimant and his sister having had a considerable time to prepare what they wished to say, including the second day of the hearing when the tribunal was conducting its reading and the parties were not required to attend. The tribunal had risen relatively early most days, and Ms Haitham had had ample opportunity to prepare what she wished to say in closing submissions on day seven. The claimant should have been ready. As it was, the tribunal was finishing reasonably early on the Monday and the claimant would have the remainder

of the afternoon and evening to prepare written submissions if Ms Haitham wished to do so, or alternatively to prepare oral submissions.

32. In the event Ms Haitham did produce reasonably well-structured written submissions the following day. It was agreed that Mr Palmer would email his written submissions first thing in the morning to the claimant, to give Ms Haitham as much time as possible to read what he had written.

33. On day seven of the hearing (the Tuesday) the tribunal heard the oral evidence of Ms Anna Rowen (Organisational Development Manager, in the HR department). It was agreed that the tribunal would then break for around half an hour to read the submissions, which should certainly provide sufficient time for each party to read the other party's submissions, if not already read. Ms Haitham agreed that half an hour would be long enough. The tribunal reminded the parties that it expected oral submissions to be no longer than forty-five minutes but that having presented written submissions, it may be that they wished to take less time. Having already read the respondent's submissions, the judge reminded Mr Palmer of the need to say a little more what he had to say about any ***Polkey*** arguments, and in respect of any possible just and equitable time extensions in relation to out of time claims, including (specifically) matters relating to allegations against SE, about which the tribunal would also expect to hear from the claimant.

34. After a 35-minute break, the tribunal heard oral submissions from Mr Palmer on behalf of the respondent (thirty-five minutes) and then oral submissions on behalf of the claimant (around five minutes). Mr Palmer did not wish to reply.

The remainder of the hearing.

35. The tribunal adjourned at lunchtime on day seven, directing the parties to attend on the morning at 10.00am on day ten (Friday 9 November 2018) albeit the tribunal might not be in a position to deliver oral judgment on liability until later. The parties were advised to be ready for remedy hearing or plans to arrange a subsequent date, and the judge pointed out that as the respondent had conceded an underpayment of holiday pay, and had conceded that it should have enrolled the claimant in the pension scheme prior to a twelve-week notice period and compensate the claimant accordingly, it would be open to the parties to settle or agree that matter either so that no remedy fell to be awarded on those matters. Alternatively, the tribunal could deliver a remedy judgment on those matters in terms agreed between the parties.

36. The judge also explained to the parties as to the arrangements for requesting written reasons and the arrangements for placing judgment and written reasons on the internet. He reminded both parties that any adverse findings or comments in the oral reasons might be dealt with in more detail in the written reasons, and the parties should listen carefully to the oral reasons and might wish to reflect upon whether they wished to request written reasons.

37. The tribunal deliberated until the morning of Friday 9 November 2018 (day 10 of the hearing) and called the parties in at lunchtime.

38. The parties had agreed the compensation for breach of contract which should be ordered in respect of the failure to automatically enrol the claimant in the pension scheme, as being damages in the sum of £1,224.33, a net sum not liable for deductions.

39. The parties had also agreed that the compensation for holiday pay outstanding at termination should be an amount to represent 2.67 additional days holiday pay, in the sum of £285.18. This was a gross sum which would be liable for lawful deductions for tax and national insurance purposes.

40. Having confirmed these agreed matters, and that they would be included within the judgment, the tribunal delivered the tribunal's unanimous judgment with detailed oral reasons. The oral judgment and reasons took some one hour and 40 minutes to deliver to the parties.

41. Neither party requested written reasons at the hearing. The judge confirmed with the parties that no other matters fell to be decided as compensation, in light of the tribunal's findings.

42. The claimant subsequently made an in-time request for written reasons. These lengthy written reasons could not, unfortunately, be produced quickly due the judge's other professional commitments. There is a shortage of judicial resources at Southampton Employment Tribunal, and Employment Judge Emerton was also absent for a number of periods.

The Issues

43. As has been noted above, the parties had originally failed to comply with the directions to agree a list of issues, and although the judge attempted to clarify the issues on the first day of the hearing, there was insufficient time to deal with every allegation, and it became apparent that it was still in dispute as to what the issues in the case were, and whether any amendment of the claim should be permitted. The disputes were resolved, and as indicated above the parties were directed to clarify and agree the issues. The respondent was directed to incorporate the agreed issues in a draft written list of issues, which the parties would agree.

44. At the beginning of the third day of the hearing, Mr Palmer handed up the agreed list of issues, explaining that he had had the opportunity to discuss it with the claimant, and it was *mainly* agreed, but there were a couple of minor amendments. These were discussed, and the tribunal agreed to include the claimant's amendments in the draft list. The full list of issues is annexed to these reasons, and includes the changes requested by the claimant at the start of the third day. It is also anonymised in respect of people referred to in the evidence but who did not give oral testimony.

45. Various other matters were clarified at this point (and earlier and later in the hearing) which are recorded below. However, it should be noted, as a starting point, that the claimant confirmed that he was relying on the following heads of claim:

(1) **Unfair dismissal** (section 98 of the Employment Rights Act 1996);

(2) **Breach of contract** (wrongful dismissal – given pay in lieu of notice when his contract of employment entitled him to be given a period of notice).

(3) It is not in dispute that the claimant received his full entitlement of wages, and the claimant does not seek to argue that there was no actual dismissal. The two specific claims under the head of breach of contract are as follows:

(i) A claim for additional holiday accruing during the 12 weeks' notice period;

(ii) A claim for compensation relating to pension contributions, on the basis that the claimant should have been automatically enrolled into the pension scheme shortly before his dismissal, and should have accrued benefits during the notice period.

(4) **Other holiday pay outstanding at termination**; [*it should be noted that this matter was not clarified until after the list of issues was agreed, and is referred to in the text below – but this was a matter for the tribunal to determine*]

(5) **Direct discrimination because of race** (sections 9 and 13 of the equality Act 2010;

(6) **Direct discrimination because of religion or belief** (sections 10 and 13 of the Equality Act 2010);

(7) **Indirect race discrimination** (sections 9 and 19 of the Equality Act 2010);

(8) **Indirect religion or belief discrimination** (sections 10 and 19 of the Equality Act 2010);

(9) **Harassment related to race** (sections 9 and 26 of the Equality Act 2010);

(10) **Harassment related to religion or belief** (sections 10 and 26 of the Equality Act 2010); and

(11) **Victimisation** (section 27 of the Equality Act 2010).

46. It was agreed that the tribunal, as directed at the preliminary hearing, would deal only with liability but would at the same deal with any ***Polkey*** issues (in other words the extent to which, if the dismissal procedures were unfair, a fair procedure would have resulted in the claimant's dismissal for redundancy).

47. Relevant to **remedy**, the tribunal would also deal with alleged breach of the ACAS Code, the claimant asserting that the way his grievance was handled breached the applicable ACAS Code of Practice. It was agreed that it would not be appropriate to make any ruling at this point as to any eligibility for aggravated damages (which the claimant was claiming) but that in view of the way that the claims for accrued holiday pay and breach of contract were pursued, the tribunal would need to make findings in respect of eligibility for holiday, whether the claimant would be entitled to additional holiday accrued at the end of his notice period, and in respect of any entitlement to pension contributions or any accrued benefits during the notice period. Mr Palmer having made further enquiries and taken further instructions, it was subsequently conceded that although the claimant was correctly paid the amount of outstanding holiday pay which had accrued during the current leave year, it would be appropriate to permit the claimant to carry forward untaken leave from the latter part of the previous leave year, such that the respondent would concede that it underpaid outstanding holiday pay at termination. Although the claimant had not in fact relied on a free-standing claim for holiday pay in the agreed list of issues, in light of that concession by the respondent, the tribunal had no difficulty in agreeing in effect to an agreed list of issues and to finding in the claimant's favour in respect of holiday pay outstanding at termination. Mr Palmer also conceded that although the issues to do with automatic enrolment in the pension scheme (which the claimant had previously not wished to join) were unclear, the respondent would concede that from 1 October 2017 (ie, shortly before his dismissal) he should have been automatically enrolled for the first time in the pension scheme, which would necessarily mean that he would receive the benefits of this during the 12-week notice period. Mr Palmer proposed a method of calculation for compensation upon which the tribunal did not need to rule at this point, but which put the claimant on notice as to how the respondent would calculate any compensation which may be payable.

48. The judge also took the parties through the claimant's existing schedule of loss, part of it being set out on a logical basis, part of it less clear or arguable. Although the claimant had claimed for a basic award for unfair dismissal, Ms Haitham accepted that the claimant had been paid a correctly-calculated redundancy payment, and that he would not be eligible for an additional basic award, calculated in the same way. The judge pointed out that a 25% uplift for breach of the ACAS Code would need findings that specific parts of the Code were unreasonably breached by the respondent, rather than the claimant being unhappy with the way that his grievance was handled, or with the eventual grievance outcome. The tribunal was keen to ensure that both parties had a realistic understanding of how any tribunal would approach the task of considering compensation, taking the claimant's case at its highest, and did not want the claimant to be left with unrealistic assumptions. The claimant was also reminded that injury to feelings compensation would be assessed in the light of the *Vento*/*DaBell* guidance and the Presidential Guidance rather than his own estimate, that aggravated damages were unusual and would need specific justification, and that the respondent was disputing his claim for lost earnings and would argue that there was plenty of employment opportunities locally for IT specialists. It was also pointed out to the claimant that if he was seeking to prove that he was medically unfit to work, or indeed if he sought to rely on medical arguments in relation to the liability hearing, he would be expected

to provide medical evidence to support his own assertions. The question of medical evidence was also raised on the first day of the hearing, in respect of the claimant seeking to raise an argument that his medical condition was relevant to any just and equitable extension of time. There was no intelligible medical evidence in the bundle. The claimant indicated that he might obtain further documentation from his GP, but did not in fact do so.

49. In the event, only very limited remedy issues fell to be considered.

50. The comments below do not seek to identify all the issues raised by the parties, but to give an overview, and to explain certain matters not apparent from the annexed list of issues.

51. In respect of the **unfair dismissal**, the tribunal established that the claimant had not applied for any alternative roles at the respondent college during the redundancy process, nor had he indicated a wish to carry out any alternative roles. Nevertheless, he would argue that as well as the roles notified to him by the HR department during consultation, two additional roles should have been made available to him, namely the role of the team leader for IT support, and the IT support development leader. The interim holder of the first of these two posts was confirmed in post after the redundancy process had completed for the claimant's IT colleagues, whilst the claimant was on sick leave, before his own resumed redundancy consultation completed in October 2017. The second post was created, or alternatively made permanent, within the same timescale. The claimant complained that these posts should have been offered to him. The respondent's case was that this had not been pleaded and was not in the witness statement, and the way that the claim was pleaded related to selection for redundancy rather than that the claimant should have been selected for one of these two posts. The respondent was however, happy to deal with these evidential points.

52. There was much discussion about **indirect discrimination.** The claimant did *not* seek to rely on the wording which had been recorded by the judge at the preliminary hearing, when there was no coherent indirect discrimination claim in the claim form. The wording in the claimant's further particulars was still a little unclear and did not set out the precise statutory basis of the claims. These matters were resolved, and the claimant having been taken through, in some detail, as to what was required, were set out in writing by email at the start of the second day, and reflected in the agreed list of issues presented at the beginning of day three.

53. In respect of **victimisation,** the issues were clarified and the judge confirmed that the claimant and Ms Haitham understood precisely what was meant by "protected act" for the purposes of section 27 of the Equality Act 2010. The claimant confirmed that he relied upon two protected acts, said to have been made orally to Mr David Turner and Mr Simon Allison in February 2017 (which were disputed), and the making of a formal written grievance on 21 June 2017, which the respondent accepts was a protected act. The respondent denies many of the detriments, and in any event, denies any causal link between any proven protected act and the detriments complained of.

54. The tribunal spent some time dealing with the question of **jurisdiction**. The judge explained that that regardless of what the parties had hitherto said on the matter, the tribunal did not wish the claimant to be in any sense disadvantaged. It understood the claimant's case to be that he would rely on acts continuing over time, within the scope of section 123(3)(a) of the Equality Act 2010. The tribunal noted that a claim based on the decision to dismiss was in time, as were the acts complained of relating to the grievance outcome.

55. The judge was keen to impress upon both parties, however, that it would of course be open to the tribunal to find that not all the matters complained of were part of a continuing act ending with an in-time act of discrimination. The judge expressly reminded both parties that they should, in their evidence and their closing submissions, be fully prepared to deal with the eventuality that the claimant would need to argue that it would be just and equitable to extend time. The judge also pointed out to Ms Haitham that it would be open to the tribunal to find, for example, that the grievance handling and dismissal for redundancy were not tainted by discrimination, but to find that there might be, for example, an arguable case relating to arguments over the claimant's use of keys to enter the IT office, or in relation to the arrangements over Ramadan (which appeared on the face of it to be particularly contentious issues).

56. The earlier incidents, taken on their own, would be well out of time. If the tribunal found that there was no subsequent discrimination, the claimant would need to be able to show it was just and equitable to extend time, possibly for a lengthy period. He would need to ensure that he had laid a sufficient evidential foundation during his oral evidence, to explain why the claim had not been presented earlier in relation to these matters, and to explain any delays or any evidence relating to the time that the claim was in fact presented. The tribunal was satisfied that Ms Haitham understood the point, and of the need to deal with this matter, for which she had permission to ask additional questions during evidence-in-chief.

57. The judge repeated the reminder before the claimant gave his oral evidence. Indeed, the judge asked the claimant a number of open questions after he had adopted his witness statement, in order to give him a full opportunity to explain the timescales, and to explain why he had not presented a claim at an earlier stage. He was also cross-examined on the point by Mr Palmer. In the event, this turned out to be a live issue, precisely in the manner which the tribunal had reminded the parties might be the case.

The claimant's amendment application

58. It is unfortunate that the tribunal needed to deal with disputes over amendment at the claim, at the start of a 10-day hearing.

59. The parties had, however, agreed the approach to be taken in respect of any amendments to the claim and response that may be required, in respect of the discrimination and victimisation claims. The tribunal was content to conclude that it was in the interests of justice to allow any amendment which might be needed to the claim and response, in respect of

those matters where the parties were agreed as to the issues, and the respondent was not seeking to prevent the claimant form clarifying or amending his claim.

60. A specific matter that remained in dispute, however, was the extent to which the claimant should be permitted to pursue his wrongful dismissal/breach of contract claims. There was an existing claim relating to the holiday pay which the claimant might have further accrued during the 12 weeks' notice period. The claimant's case, which Mr Palmer (wisely) did not appear to resist, was that he was given pay in lieu of notice but his contract of employment (signed many years ago) entitled him to be given notice, with no provision for pay in lieu of notice. His argument was that benefits would have continued to accrue during those 12 weeks when he should have remained an employee. The respondent had a clear defence to the claim based on holiday pay, which did not need to be considered at this point. Additionally, the claimant wished to pursue a claim based on the assertion that he would, or should, have been auto-enrolled in a pension from just before the effective date of termination, and that had the respondent done so, then he would have accrued additional pension benefits with a financially quantifiable loss during that twelve weeks of notice period.

61. This is a matter which is potentially of some significance, even though the sums are not excessive, because the claimant's lengthy service entitled him to a significant period of notice. Furthermore, this claim (like the holiday pay claim) was a stand-alone claim which might succeed or fail, regardless of whether any of the discrimination claims might succeed, and regardless of whether the claim of unfair dismissal might succeed under section 98 of the Employment Rights Act 1996. If the claimant succeeded, he would be entitled to certain additional sums of money in compensation. It should be noted that, coincidentally, the claimant's dismissal happened to fall around the time of a phased introduction by the Government of "auto-enrolment" into workplace pensions.

62. The tribunal noted that this was a dispute about what was a relatively small percentage of the sums claimed overall, but it was dispute of real substance, and one where the claimant might succeed even if every other claim failed.

63. The tribunal noted that at the preliminary hearing which was held on 20 March 2018, when the claimant was represented by Counsel, the issues were identified in outline and this question of breach of contract with respect to pension payments was simply not identified. The judge identified the heads of claim, and expressly identified the only breach of contract claim as being "*breach of contract with respect to holiday pay*." It is clear from the overall context, and indeed not in dispute, that the nature of that specific dispute was whether the claimant should be entitled to additional holiday pay under the head of breach of contract, to take account of accrued rights during the twelve-week notice period. That said, neither the claimant's Counsel nor the judge identified any wider contractual issue, relating to pension contributions.

64. The claimant now wished to rely upon this further breach of contract issue, relating to pension rights.

65. In deciding whether or not to allow this amendment, the tribunal applied its case management discretion in accordance with the overriding objective to deal with cases fairly and justly, and also reminded itself of the guidance given by Mummery P (as he then was) in the well-known case of *Selkent Bus Company Ltd v Moore [1996] IRLR 661*. The tribunal has followed that guidance.

66. The starting point was to consider what was in the original claim form, presented at a time when the claimant was not legally represented. This is a very lengthy claim form, set out in narrative style, that raises many factual issues but is rather short on setting out the legal claims relied upon. However, it does make it tolerably clear that the claimant is asserting that there are breach of contract claims, and is also asserting that he was dismissed in breach of contract because he was entitled to 12 weeks' notice but was in fact dismissed with pay in lieu of notice. He states that he considers that was a breach of contract. The claim form expressly links this to the further period of holiday which he considers he would or should have accrued during that period. The claim form does *not* expressly link this matter to the question of any pension entitlement, but does expressly refer to the failure to enrol him in the occupational pension scheme around this time, albeit this appears to be labelled as some form of discrimination, rather than breach of contract.

67. The tribunal considered that it is therefore clear that the claimant was seeking (1) to bring a breach of contract claim relating to the failure to dismiss him with his contractual notice, and (2) he was also seeking to rely, in his claim, on facts relating to the respondent's failure to enrol him in his pension scheme, even if he did not relate this to breach of contract.

68. The tribunal considered that this matter did require an application to amend, which it would characterise as a relabelling of facts already pleaded. It is perhaps more than a "mere relabelling", because it is a completely different head of claim. Furthermore, as already indicated, it is significant that the amendment would introduce a stand-alone claim which could succeed even if none of the discrimination claims succeeded.

69. As for the timing and manner of the application, it is unfortunate that not only was it not raised in the claim form, and when the claimant was legally represented at the preliminary hearing which considered the issues, it was still not raised. It does not appear to have been raised at all until an oblique reference on 30 April 2018, more than a month after the preliminary hearing and well out of time. It would have been reasonably practicable to have raised it earlier. However, it has to be said that this was already a lengthy and complex ET1 claim form, which was not properly clarified in other respects at the preliminary hearing, and *both* parties failed to comply with the directions as to agreeing a list of issues. On 30 April, the claimant did not expressly amend the claim, and did not even in his schedule of loss of that date set out a breach of contract remedy relating to pension. On the same date, however, he submitted another document relating to the alleged breaches of the ACAS Code. He had not, unfortunately, been directed to clarify any parts of his claim other than his discrimination claims. However, in the document headed "Claimant's information re ACAS Code breached

by the respondent and breach of contract 30 April 2018", the claimant did expressly plead (albeit well out of time) that the breach of contract also relied on "the claimant's contractual and statutory rights to auto enrolment onto a pension scheme have also been breached by the respondent".

70. The position, therefore, is that from 30 April 2018, or shortly thereafter, the respondent was plainly on notice that the claimant in his own mind thought he was bringing a claim for breach of contract based on this particular argument.

71. The respondent having, very unsatisfactorily, failed to comply with directions, and having not thought fit to present an amended response (for reasons that were never satisfactorily explained) and having failed to agree a list of issues although directed by the tribunal to do so by 10 July 2018 (although some dates were extended at the claimant's request), had not seized the opportunity to clarify the claim or response, or query what it was it thought the claimant was seeking to argue.

72. Although the claimant can be criticised for failing to clarify this point when given the opportunity to do so at the preliminary hearing, the respondent certainly does not come to the dispute with clean hands. It ill-behoves a legally represented respondent to leave it until the first morning of a 10-day hearing to argue the toss on a matter which should have been clarified many months previously, and where the claimant has made it factually clear (if not in the pleadings themselves) back in April 2018 that he wishes to pursue a breach of contract claim relating to pensions. The respondent, on a proper reading of the claimant's documentation, therefore had some six months' notice that the claimant was seeking to bring some sort of breach of contract claim arising out of the failure to auto-enrol him in a pension scheme.

73. Although the timing and manner of this being raised was unfortunate and rather late in the day, the respondent did not at the time, or in the following six months, object to it or query it. Indeed, as Mr Palmer made relatively clear at the hearing, although the respondent would probably resist such a claim, and if it was before the tribunal it would require some additional evidence, Mr Palmer was plainly ready to deal with the point and was in a position to call (or challenge) the relevant evidence at the hearing. The tribunal considers, in those circumstances, that this is not a matter which would particularly disadvantage the respondent, because Mr Palmer is ready to deal with it, despite those who instruct him having failed to raise any issues when it was first raised.

74. The tribunal considers that there would be some prejudice to the respondent caused by the extra work needed to defend this matter, even though the arguments could and should have been highlighted by the respondent at a much earlier stage. The prejudice to the claimant (if the amendment was not allowed) on a matter he is concerned about and had referred to in his claim form (even if with another label and not clearly articulated), and could in theory be the only part of his claim to succeed, would be one he would be prevented from pursuing.

75. The tribunal considered that, notwithstanding the late application to amend, and late clarification, it is in the interest of justice that the claimant should be permitted to pursue a breach of contract claim based on the alleged failure to auto-enrol him in the pension scheme during the 12-week notice period. The tribunal therefore permitted the amendment, subject to what was further agreed in respect of reducing the issues (including both parties' cases) to writing, along with other hitherto unclear areas, which also need to be clarified in writing.

The Parties' Submissions

76. Both parties relied primarily on written submissions, and then made supporting oral submissions. Copies of the written submissions have been kept, together with the judge's note of oral submissions, and the tribunal refreshed its memory of the submissions during its deliberations. What appears below is not intended to be a comprehensive summary, but rather an overview of the salient points.

77. Mr Palmer, for the respondent, relied upon lengthy written submissions of 46 pages. However, the tribunal would note that this was set out in well-spaced type, in an intelligible format, and quite a few of the pages related to a recitation of the law and the issues, and that the substantive submissions were in fact rather more concise.

78. Mr Palmer's introduction summarised the main thrust of the submissions and then went on to make observations on the evidence, suggesting that the claimant's dismissal plainly had nothing to do with his race or religion. The suggestion that the claimant's manager, the HR department and the Principal and Vice Principal all acted in unison to discriminate and victimise him was plainly wrong, and the claimant lacked insight into his own position and that of others around him. Many of the claimant's points were described as "self-evidently bad". The respondent's case, in a nutshell, was that instances of poor communication or poor management did not amount to any form of discrimination, against the background of a restructure following the merger of two colleges and problems in the claimant's private life. Mr Palmer invited the tribunal to make certain findings of fact in the respondent's favour, including that the redundancy and grievance processes were fair and not tainted by discrimination. The law was referred to in respect of the reason for dismissal, which remained in dispute, and in respect of unlawful discrimination, harassment and victimisation (including the reverse burden of proof).

79. The submissions went on to discuss the issues, inviting the tribunal to consider that dismissal was for a potentially fair reason and was fair, that the claimant was not treated less favourably because of the protected characteristics in any of the incidents, that there was no harassment related to the protected characteristics, that the only protected act was the written grievance of 21 June 2017, but that in any event there were no acts of victimisation. The two allegations of indirect discrimination were analysed and it was argued that the PCPs were not applied, but in any event there was no discrimination. As for breach of contract, the respondent conceded that there was no express contractual provision entitling it to make a payment in lieu of notice, but the claimant had been paid his full entitlement

to salary. It was conceded in respect of pension enrolment that the claimant could have been auto-enrolled with effect from 1 September 2017 and would have remained enrolled until the end of the notional period of notice, and the respondent did not take a point as to the possibility that the claimant might in fact have opted not to be enrolled. It was accepted that for the leave-year commencing 1 September 2017, the claimant was paid four days' outstanding holiday and strictly speaking was entitled to another 0.17 days, and it was accepted that at the end of the leave year ending 31 August 2017 the claimant was owed two and a half days, and the respondent accepts that this should have been carried forward and added to the leave outstanding at termination. It was not accepted the claimant was entitled to further compensation for leave accrued during the notional notice period, as he would have been required to take any outstanding annual leave during his notice, had he been asked to work his notice or sent on garden leave. It was asserted that there was no breach of the ACAS Code in respect of the grievance. The respondent invited the tribunal to dismiss all the claims.

80. In oral submissions, Mr Palmer dealt with three main points: (1) the question of time jurisdiction, (2) the matters related to breach of contract and holiday pay, and (3) ***Polkey***. In respect of just and equitable time extensions, on the basis of any out-of-time allegations (including and in particular those relating to SE), he addressed the tribunal at some length, pointing out that it was only a minority of the allegations which were in time. Incidents prior to 20 September 2017 were out of time. He suggested that in respect of all of the SE allegations, including those relating to keys, the claimant's evidence did not discharge the initial burden of proof, but invited the tribunal to attach in any event some weight to SE's witness statement and to find that there was no discrimination. However, in relation to that and other earlier incidents, he submitted that it would not be just and equitable to extend time and that in respect of SE, who had recently been summarily dismissed, the respondent was prejudiced by not being in a position to call her as a witness at the hearing, whereas had the claim been presented in a timely way, it should have been possible to do so. He reiterated and elaborated on his arguments in relation to breach of contract and holiday pay, and in respect of ***Polkey*** suggested that there were no procedural flaws, but if there had been, it was inevitable the claimant would have been dismissed for redundancy anyway, as had the other two members of the IT department some months previously.

81. Ms Haitham's closing submissions on behalf of her brother comprised eight pages, set out in a clear way. She started by making submissions as to the facts and the evidence. She referred specifically to the grievance and the redundancy, indicating the claimant's case as to various matters said to amount to discrimination, and highlighting various matters from which the tribunal was invited to draw inferences. In relation to the indirect discrimination, she relied upon the PCP's already identified, drawing attention to matters she considered to be failures by the respondent. In respect of breach of contract, she restated the claimant's case (albeit this had effectively been conceded), but did not explain how the claimant would rebut the respondent's argument that he would have been expected to take untaken holiday during his notice period. She did not set out any alternative calculation of outstanding holiday pay to rebut the respondent's case, albeit

it is clear that the written submissions were drafted prior to the final witness, who dealt with this point. Ms Haitham was therefore given the opportunity, and indeed encouraged, to make oral submissions in relation to the evidence which this witness had given. The written submissions also asserted that there were protected acts in February 2017 and that the respondent's witnesses knew of the impending formal complaint and invited the tribunal to conclude that the ACAS Code had been breached. A point was made on SE not giving oral evidence, and it was doubted that the apparent email authority to present a statement had any value. She suggested that the respondent had not been straightforward in immediately admitting the circumstances of SE's dismissal (which occurred on 23 October 2018). A comment was made on the comparators and the tribunal was also invited to attach little weight to the notes of the meetings and the grievance investigation interviews, and to take into account the fact that the respondent had no proof of sending the claimant the investigation report prior to the grievance meeting. The tribunal was invited to prefer the evidence of the claimant and his witnesses.

82. In very brief oral submissions, after having listened to the respondent's oral submissions, Ms Haitham argued that the duties that the claimant had carried out before the redundancy process still needed to be carried out after his redundancy dismissal. The post was not redundant. She suggested that the respondent had sought to disadvantage the claimant by not calling Rebecca Avery (HR adviser) as a witness, so she could not be cross-examined, and adverse inferences should be drawn. The claimant's evidence should be preferred to that of Anna Rowen's. She suggested that the redundancy policy was not correctly followed.

Findings of Fact

83. This is a case which very much turns upon its own facts, which are in some respects unusual.

84. It is not possible fully to understand events in the workplace over the period in question, without understanding the professional developments prior to these events, and the claimant's own personal background.

The background to the matters complained of

85. The claimant, who is almost 41, had worked from the age of 21 as an IT Technician at South Downs College near Portsmouth. On his own evidence he had been happy in the role which he had carried out for so many years, and had good working relationships with colleagues. Although he reported a history of depression, there is no suggestion that illness had previously affected his ability to work, to any significant degree. It appears clear to the tribunal that the regime within the IT department of South Downs College was relatively relaxed, with management content for employees to find their own way of working, no doubt on condition that they "delivered the goods" when required to do so.

86. The claimant describes himself as a British Black Muslim male of mixed African decent, and although the evidence suggests that there were few employees at the college who were non-white or Muslim, it is evident that

the claimant never previously felt that race or religion was an issue in the workplace. It is notable that some of the colleagues whom he has latterly accused of discriminatory behaviour, motivated by their perception of Muslims, or of people of Black African decent, are people whom he had previously worked happily with, without in any way previously suggesting that he was unhappy with the way they behaved towards him.

87. The claimant's life appears to have changed dramatically around September 2016.

88. The tribunal has genuine and considerable sympathy with matters that were going on in the claimant's private life. These quite plainly had a profound affect upon him, particularly bearing in mind his history of depression.

89. Firstly, the claimant's father had been ill for some time, and his condition was deteriorating. The claimant and his siblings were very concerned over their father's welfare. Indeed, this turned out to be a terminal illness.

90. Secondly, the claimant's relationship had broken up and this had led to an acrimonious custody battle with his former partner. In September 2016, the claimant had custody of his five-year-old son.

91. These were clearly matters which preyed upon the claimant's mind, and occupied much of his non-working life. In respect of his young son, a further concern for the claimant were issues relating to childcare, as he could not always rely on others to look after his young son and would sometimes need to collect his son from school during the working day, and he chose to bring his young son into the workplace, despite the inherent dangers in having a small child in the IT room.

92. Similarly, things changed at work around the same time, with significant and disruptive changes, over which the claimant had no control.

93. As the claimant and other employees would have been aware, there was a plan to merge South Downs College and the nearby Havant College. This plan was indeed carried through, the following year.

94. The claimant, like other members of the IT department, would doubtless have been under no illusion that this planned merger was likely to result in a significant restructuring of the IT support provided to the new single college, which had previously been provided by two separate IT departments. The tribunal would expect any employee in those circumstances to have concerns over the future of their own employment, and at the very least to appreciate that previous working practices would be likely to change, and that in all probability the new College would look to make savings in the cost of support to the teaching function. This is against the background where the claimant had, for the previous 17 or so years, been entirely happy with the existing working arrangements, and did not welcome the prospect of change.

95. In September 2016, Mr David Turner, previously head of IT at Havant College, arrived at South Downs College to take over the claimant's department.

96. It is clear to the tribunal that Mr Turner was concerned to ensure that the department was ready for the restructuring which would inevitably follow the following year, and equally clear that he did not necessarily agree with some of the practices which had grown up at South Downs College. This was absolutely nothing to do with the claimant personally, but to do with the Department's ways of working.

97. The tribunal also notes that, as the Principal of the college himself concluded in resolving the claimant's subsequent grievance, Mr Turner did not perhaps have the management experience or skills to suit him for his responsible management role, which was at a challenging time. The Principal identified that he needed better communication skills, and management training.

98. Against that background, the tribunal considers that it is not in the least surprising that personal and professional matters would have conspired to cause the claimant to find his working life considerably more stressful, and to find it more difficult to maintain good working relationships. This was particularly so with a new manager, who had evidently come in with a remit to make the Department ready for a restructuring, and others whose professional responsibilities, and professional relationship with the claimant, had also changed.

99. Faced with an increasingly difficult life from September 2016 onwards, the numerous heads of claim in the Employment Tribunal are premised on the belief by the claimant that changes in the workplace, any adverse events which happened to him, or any deterioration in his relationship with management or colleagues, must be related in some way to his own personal characteristics, even when the colleagues were people he had worked with happily for years. The claimant evidently believed that these matters all had something to do with his race and/or religion.

100. The claimant also characterised a restructuring and redundancy programme as in some way to be discriminatory, or even to be designed to ensure that the College dispensed with his services, when no such explanation is rationally supported by the primary facts. The claimant went as far as to assert that the manager who investigated his grievance (relating to discrimination), and the Principal and Vice Principal who dealt with the grievance, were motivated by race and/or religion, and dealt with matters in a discriminatory way.

101. In terms of longstanding colleagues, whom the claimant knew well on a personal and professional level, he singled out Mr Simon Allison and Ms SE for numerous allegations of discriminatory conduct.

102. The particular position in respect to SE is dealt with below, noting that she was not called to give oral evidence at the tribunal hearing, although many of the matters relating to her were witnessed by others and other respondent witnesses can give evidence as to the primary facts. In relation to the other people complained of, and the other evidence called by the parties, the claimant has not been able to point to any matter from which the tribunal would draw any discriminatory inferences. Although the claimant

has sought to blame Mr Turner for introducing a discriminatory culture when he took over the IT Department at South Downs College in 2016, the tribunal considers that there is no evidence supporting such a conclusion. Rather, there was a new approach which the claimant did not like, and was unwilling to cooperate with, against a background of very serious pressures in his private life. The rather fanciful construction, in the claimant's own mind, of some sort of growing discriminatory culture, was speculation on his part, and this misperception fatally undermines many of the irrational conclusions which the claimant seeks to persuade the tribunal to rely upon.

Credibility

103. Against the background set out above, the respondent suggests that the claimant has "*frequently shown that he lacked insight, both into the position of others around him and in relation to the effect that his intransigence and his willingness to throw absurd allegations around has on others*". Mr Palmer cited the assertions made to respondent witnesses in cross-examination of the grievance officers, that his grievance was so self-evidently full of merit that the failure to conclude that his account is correct can only be the result of his race or religion. Mr Palmer suggests that in reality, the grievances displayed a complete misunderstanding by the claimant, although they did highlight some heavy-handed line management.

104. The tribunal considers that there is merit in Mr Palmer's argument. Whilst the tribunal fully understands that the events complained of, were at a time when the claimant felt vulnerable and was unhappy in the workplace, it is a considerable step further to assert that all these matters were in some way related to race and religion, and the tribunal agrees that many of the accusations put to witnesses (or in many cases when in fact witnesses' evidence was *not* challenged on a relevant matter) go well beyond the bounds of anything that can reasonably be inferred from the evidence. The respondent also cites, for example, the claimant's failure to appreciate how inappropriate it was to bring a very young child into the workplace, without having made provision for childcare. As the respondent points out, there were various occasions when the claimant suggested that something should be done, or was obvious to anyone, when in reality that was solely his own perception. An objective view of the facts would lead to a different conclusion. For example, the claimant takes extreme exception to the way that the Principal of the College, Mr Gaston, dealt with his grievance. However, the tribunal considered that Mr Gaston gave very clear and credible evidence, and in fact treated the claimant's grievance in a fair and helpful way. He conceded, correctly in the opinion of the tribunal, that there had been poor management within the IT department, and poor communication, and to that extent upheld the aspects of the claimant's grievance which indicated that the situation had not been well handled. He took positive steps to seek to remedy the situation, going forwards. Rather than this undermining the respondent's case, the tribunal agrees with the respondent that this willingness to consider where things had gone wrong, and do something about it, supports the credibility of Mr Gaston and other respondent witnesses. To take this one example, the fact that the claimant did not agree with Mr Gaston's conclusions, does not mean that Mr Gaston came to the wrong conclusions, nor does it mean that he acted in an unreasonable or discriminatory way. It merely means that the claimant's

perception of the reality of the situation was somewhat different from the College Principal's, when the tribunal found the Principal's conclusions to be both logical and sensible.

105. There are not many disputed relevant primary facts, albeit there some of significance. In most cases the dispute between the parties relates principally to the perception to be put upon events, and upon the motivation for various individuals carrying out the acts they did. There is some dispute as to what was said or done by SE, who did not give oral evidence to the tribunal, and this particular issue is referred to below.

106. One of the disputes of fact relates to whether the claimant did a protected act for the purposes of victimisation claim, by orally complaining of discrimination by SE in what he said to Mr Allison and to Mr Turner in February 2017. The respondent disputes this allegation, and the tribunal notes that it appears to be fundamental to the claimant's case that he made a complaint of discrimination, and that this was then followed up by his written grievance some months later on 21 June 2017.

107. In fact, the claimant does not expressly say in his written grievance that he had already complained of discrimination, which one would expect if the written grievance was repeating allegations of discrimination already made. In his detailed description of the matters in February 2017 (in relation to the key to the IT office) which was subsequently labelled as an example of discrimination, an allegation pursued at the Employment Tribunal, he does not in fact give any indication in his written grievance that at the time he had complained that he had been discriminated against. He subsequently claimed that he had reported to Mr Allision and Mr Turner that he had been discriminated against. This is not what his written grievance asserts. In relation to the report to Mr Allison (which is in any event denied), all he appears to be indicating is that the incident left him feeling inferior. He asserted, and pursued this assertion at the tribunal, that he complained of discrimination to Mr Turner, but his written grievance in fact made no assertion that he reported to Mr Turner at all, let alone that he made a complaint of discrimination. What he in fact described, was being "quizzed about the incident by David". The tribunal has also noted the wording of the claimant's witness statement, said to be in support of the assertion that he made an express complaint of discrimination orally to two people in February 2017. However, what the claimant in fact says in his witness statement is not an entirely straightforward description capable of being that protected act. He does not describe the words he was said to have used, and although his witness statement refers to "discrimination", this appears to the tribunal to be in the context that he reported the incident, and that he *felt* that this was "clearly discriminatory behaviour". The claimant does not in fact give any primary evidence indicating that he made an express complaint of any type of discrimination, or made a complaint in a way that anyone hearing it would understand it to refer to race or religion discrimination, or indeed any other sort of discrimination.

108. To the extent referred to at the end of the previous paragraph, there does not appear to be a particularly significant dispute of fact. Nevertheless, the claimant invited the tribunal to come to factual conclusions in his favour, as a central part of his case of discrimination and victimisation, that were not

even supported to any significant degree by his own evidence, and were in any event categorically denied by the respondent witnesses against whom allegations were made.

109. The tribunal found the evidence on these points from Mr Turner and Mr Allison to be clear, logical and unambiguous, and although further comment on the evidence is made below, considers that their clear evidence should be preferred to the claimant's somewhat unclear and equivocal account.

110. There were disputes of fact relating to certain matters, without witnesses, when there were said to have been remarks made by SE, which are referred to below.

111. In terms of general credibility, the tribunal has little difficulty in accepting that when the claimant describes his *feelings* of upset and his sense that he believed he was being singled out, and was unhappy in the workplace, that this is indeed genuinely based upon how the claimant was feeling at the time. That does not, of course, mean that the claimant is able to prove primary facts necessary in his discrimination claims, nor that discriminatory inferences can necessarily be drawn. There were other disputes of fact as well, some of which are referred to below.

112. As far as general credibility of the claimant in his witnesses is concerned, with the exception of some matters in dispute, the tribunal considers that he and his sister did their best to be of witness of truth, albeit their recollection of events is quite plainly influenced by their perception as to underlying motives. Mr Allister McKenna gave brief evidence, and on the basis of other evidence called, the tribunal had no reason to doubt the truth of those matters upon which he could give primary evidence.

113. In respect of the respondent witnesses, some comment has been made already.

114. The tribunal first heard from Mr David Turner, and it is clear that remarks which the Principal of the College made in the grievance outcome related to him and other members of the IT management team: "*leadership and management skills are evidently weak in the IT department and there is a clear training need*". Whilst the tribunal found Mr Turner's evidence to be clear and credible, it was able to observe his demeanour and the way he gave evidence. It is clear that the senior management of the College had confidence in Mr Turner's technical expertise, but less confidence in his ability to handle people, as a line-manager. From the way that Mr Turner came across when giving oral evidence, the tribunal can understand that the claimant might have found his way of communicating to be not as empathetic as he would have preferred. This is not intended to be a personal criticism, but an observation which appears to support the Principal's own conclusions. It does not indicate discriminatory motive, but may indicate a technically proficient IT specialist, who is promoted into a role where he is required to exercise people-management functions for which he may be insufficiently prepared, especially at a difficult time when staff would be concerned as to the future after the restructuring, and especially when staff such as the claimant had significant pressures in their personal life.

115. In respect of the evidence of Mr Simon Allison, the tribunal again found his evidence to be credible. It did not consider that he was in any sense intending to mislead the tribunal. However, even more than Mr Turner, it was clear that Mr Allison had some difficulty in communicating verbally with the tribunal, and with those asking him questions. Again, his no doubt professional IT skills would not appear to be matched with the broader communication and management skills which are normally expected in a leadership role. Again, the tribunal can appreciate from its own observations, why it was that the Principal of the College would again conclude that there was a lack of leadership and management skills within the IT department. Whilst the claimant may have had a perfectly good working relationship with Mr Allison as a colleague, he may have had more difficulty communicating with him during the course of 2016, when Mr Allison was promoted to the team leader role. It would appear from the tribunal's understanding of background facts that in the more relaxed atmosphere that had previously been the case in the IT department at South Downs College, this was not an issue until the arrival of Mr Turner. Mr Turner was plainly more keen on actively managing the department, even if he may not have had all the necessary management experience and skills to put this into practice effectively.

116. The tribunal found that the evidence of the grievance investigating officer (Mr David Thomas), and of the Principal and Vice Principal (Mr Michael Gaston and Mr Richard Barlow) was entirely credible, and has no hesitation in accepting them to be witnesses of truth. The tribunal also found the evidence of Ms Heather Eyers (HR Manager) to be extremely clear and credible, and accepts her to be a witness of truth.

117. The evidence of Ms Anna Rowen, albeit on more limited matters, was at times a little unclear, and it is also obvious that she had been brought in to carry out the redundancy interview because Heather Eyers was not available over the period in question. Notwithstanding some vagueness in her evidence, the tribunal also accepts her to be a witness of truth.

118. Comment is made below specifically on the evidence of SE, who was not called to give oral evidence. On many of the matters she refers to in her witness statement, oral and documentary evidence was called from other sources, which enabled the tribunal to make clear findings of fact, which were consistent with the assertions in her witness statement. On limited areas, it was a dispute between her written account and the claimant's oral account, and this is a matter referred to below, where the tribunal has needed to make particular findings.

119. With the exception referred to in the previous paragraph, the tribunal accepts the truth and *bona fides* of the respondent witnesses, and was particularly impressed by Mr Gaston's analysis of the grievance before him and his attempt to deal with the matters in an even-handed and fair way. Although the tribunal fully accepts that the claimant was at no stage intending to mislead the tribunal, it found that he appeared to be confused in his own mind between what had *actually* happened, and his *feelings and perceptions* as to how he felt he had been treated. To that extent, with the

exception of certain matters relating to SE, where there is a dispute of fact the tribunal has preferred the evidence of the respondent.

Narrative findings of fact

120. The tribunal makes the following findings of fact upon a balance of probabilities. It should be noted that although reasonably lengthy, this is intended to be a chronological account of the key events in order, so as to explain the sequence of events and to "tell the story". Further comment on the evidence is made in the tribunal's conclusions, and these include further findings of fact where appropriate. These written reasons should be read as a whole.

(1) The respondent is a large college on two sites in Hampshire, close to Portsmouth.

(2) Until 1 August 2017 there were two separate colleges; South Downs College on its own campus close to Waterlooville, and Havant Sixth Form College on a separate site which, as the name suggests, is within Havant. The college describes itself as being a "further education and higher education college providing A level courses and vocational courses". Before they merged, each college had its own IT department providing support to the education within that particular college.

(3) In the case of South Downs College, for example, the computers included both PCs and Apple Macs. South Downs College had an IT helpdesk, and a number of technicians who could provide the second line of support to individual users in the college, and maintain the IT infrastructure. The head of the IT Department at South Downs College, and in the subsequent merged college, would report directly to the Finance Director, who was part of the senior leadership team.

(4) As would be expected, before and after the merger the College(s) had a number of HR-related policies covering such matters as disciplinary procedures, grievance procedures, dignity and respect at work policy and organisational change policy and procedure. Reference need not be made to their contents, save that the tribunal would characterise some aspects of the procedures set in in the grievance policy as being less than entirely clear, with wording which appeared to confuse the role of the manager hearing the grievance, and the role of any other manager who may have been appointed to carry out a preliminary investigation prior to the grievance hearing. In any event, in respect of dealing with grievances, the tribunal accepts that the process would be that managers involved with the process would take advice from personnel within the HR department, who would advise them as to the best procedures and processes to follow in the particular circumstances of the grievance.

(5) The claimant describes himself as a British-black, Muslim male of mixed African descent.

(6) As indicated above, the claimant had been a long-term employee of South Downs College from age 21. He had been recruited in March 1999 as a "Grade 2 IT technician", later promoted to "Second Line IT Apple Mac Technician" in or around June 2006. He remained in the latter role for the following 11 or so years. The claimant's employment appears to have been reasonably happy and uneventful, until the autumn of 2016. Although the claimant has made reference to being on the receiving end of racial insults by students some time before the events in question, dealt with informally at the time, this is not a matter which the tribunal need set out in any detail.

(7) The claimant was issued with a contract of employment when he joined the college in 1999 and this, for example, provided for periods of notice but did not provide for pay in lieu of notice (although it is clear that employees joining at a later stage had a differently worded contract, which did allow for pay in lieu of notice). The contract was also unclear as to the leave year, although the tribunal considers that the implication was that it would be 1 April – 31 March. It is clear to the tribunal that although the standard employee contract changed over the years, nobody sought to issue the claimant with a new contract. It is also clear that at some stage a contractual leave year was introduced which essentially followed the academic year, running from 1 September – 31 August each year. That would appear to be a perfectly sensible and normal practice for an academic institution, where the academic year begins at the beginning of September.

(8) The leave year following the academic year had plainly become well-established custom and practice, and the claimant was reasonably clear that his understanding was that he would plan his holiday on the basis of a leave year running from 1 September. This matter is not in dispute, but for the record, the tribunal accepts that the original contract, such as it was, was varied by consent and/or custom and practice such that certainly well before September 2016 all employees had a contractual leave year commencing 1 September each year.

(9) The claimant enjoyed a good working relationship at South Downs College with his colleague Ms SE, and his immediate line manager Mr Simon Allison, in the period up to September 2016.

(10) Reference has already been made to the changes in the claimant's personal life from around September 2016, and the arrival of Mr David Turner as head of the IT department, prior to an expected reorganisation and merger of the colleges which went ahead at the end of that academic year.

(11) From September 2016 the claimant started bringing his young son into the workplace, from time to time, without permission. This would be after the end of the school day (3.30pn) and during school vacation periods.

(12) Shortly after Mr Turner joined (from Havant College), in September 2016 he noticed that the claimant was bringing his son into work, which he considered was inappropriate. The tribunal accepts that he

would take the same view of any young children being brought into the IT department. Mr Turner was not aware of any other staff bringing children in, albeit SE's (much older) 17-year old daughter would occasionally meet her in the department after her studies completed, she being a student at the same college, and who was covered by the respondent's insurance.

(13) At this point, it would appear that Mr Turner was not yet fully aware of the difficulties in the claimant's private life. But after he was informed he sent an email to members of the department in early October, copied to the claimant and to HR, explaining that he had spoken to the claimant and had agreed to email the department explaining that the claimant currently had a "*personal, domestic situation that is both rapidly evolving and must be generating an enormous amount of stress. This may, from time to time, require him to take time off from work (potentially at short notice) to attend appointments or to deal with some other aspects of this situation*". The email was plainly designed to assist the claimant. It explained that the college was supportive and they would try to meet his requirements but that the claimant understood that unless annual leave was taken then all time off would be accounted for and made up elsewhere. Mr Turner also appreciated that because of the claimant's new childcare responsibilities, that would also be a matter which might require him to take time off.

(14) The claimant did indeed ask for additional time off, and for flexibility in respect of his childcare arrangements, and was permitted to work flexibly. Mr Turner was not, however, remained unhappy to authorise any staff to bring a young child into the IT department. This matter is referred to further, in the tribunal's conclusions.

(15) There had traditionally been a IT department Christmas party, which the claimant sometimes organised, where other members of the college were also invited. Mr Turner considered that in view of the forthcoming amalgamation of two separate IT departments from the two sites, it would be appropriate to have a single IT Christmas function attended by staff from the IT department of two colleges, rather than a more general matter involving friends from South Downs College generally. He wished staff members to arrange it, and called for volunteers to do so. There was none. In the absence of any clear volunteers, he proposed a way ahead. Mr Turner was not aware that the claimant had previously been involved in organising such events. In any case, for reasons wholly unrelated to the claimant, Mr Turner was clear that he wanted the arrangements to involve just the IT department.

(16) From this period onwards, it is clear that the claimant was finding it increasingly difficult to deal with colleagues and managers in the department, and various interactions clearly caused him concern.

(17) As far as professional tasks were concerned, for example, one of the changes which was introduced by Mr Turner, albeit at the request of the helpdesk, was to require the IT office to remain locked. This was partly for security, but in particular to ensure that members of the

College would go first to the helpdesk, who would log a call, rather than for staff members to try and seek out a specialist technician to support them directly, when the matter was supposed to be organised through the helpdesk and the work managed and prioritised accordingly. This new arrangement commenced from January 2017, and all members of the IT department were given a key of the office albeit a spare was held on the helpdesk.

(18) The arrangements for keys evidently caused some difficulty for certain members of the team.

(19) The claimant did not wish to carry his key with him when he left the college, including when he went home in the evening, and it would appear the claimant when he left the premises for example, to collect his son from school, preferred to leave his key in the IT office. He would therefore need to borrow a key on his return. He was evidently concerned he might accidently leave the key at home, and for some reason did not want to put it on his key ring.

(20) Similarly, Mr Allister McKenna, also in the IT Department, had his own preferred arrangements. He would take his key home in the evening, but would usually cycle home for lunch, and his practice in this period was to leave his key in the office, and borrow the helpdesk key when he came back from lunch.

(21) These matters are referred to below, but the need to borrow the help-desk's spare key evidently caused some friction. The tribunal accepts that members of the helpdesk complained that the claimant was asking for his key, at times when other staff thought that he should have kept his own key about his person. This led to disagreements over use of keys.

(22) There was an incident between the claimant and SE (relating to keys), on or about 10 February 2017, which is referred to in the tribunal's conclusions.

(23) The claimant was unhappy with SE, who was at that time coordinating the helpdesk, and was even more unhappy when she was promoted in March 2017 as interim IT team leader. The promotion was because Mr Allison, the current team leader, was moved into a new role which had been created, albeit it would appear on a temporary basis. That was the team leader in charge of development, a role being part of a temporary team working with an external contractor, managing the merger of the two IT departments.

(24) Although there was a change of line manager to SE, the tribunal accepts the clear evidence of the respondent's witnesses that the claimant's responsibilities did not change.

(25) However, the claimant did not like Mr Turner's new style of managing the IT Department. For example, the claimant objects to the arrangements which were in place for carrying out various tasks, including contracts with external contractors. Mr Turner preferred a

particular new contractor, with whom he had developed a working relationship at Havant College, and who offered a discount. The claimant, who was put in charge of making recommendations as to contractors, preferred to continue to work with the contractors he was used to dealing with, albeit there were delays in his making a proposal to management.

(26) A number of other things happened in the workplace which made the claimant increasingly dissatisfied with his working life, and which are referred to in the tribunal's conclusions. For example, there was an issue relating to the claimant wishing to vary his working hours during Ramadan (which was approved).

(27) Meanwhile, plans progressed with a view to the proposed merger of the two colleges, and the consequent restructuring of the IT services.

(28) The tribunal accepts that Mr Turner was tasked with drawing up a proposal to implement a more cost-effective and efficient way of supporting the new college with IT services. It would not just apply to South Downs College, of course, but also to the existing staff at Havant College, as it was intended to provide a structure for the newly merged IT Department, taking account of the needs of both sites. This proposal involved the helpdesk dealing with most issues, and with rather cheaper junior technicians being deployed to deal with technical matters which required a hands-on technician. It reduced the need for more expensive specialists, and envisaged that all technicians would be expected work on all IT systems. Consequently, there was no need for a specific expert in Apple Mac systems.

(29) Within the IT team there two second line infrastructure technicians. One of these was the claimant. The other was a white male technician who was not a Muslim. There was also one "operations technician - first line" on a lower salary, also while male non-Muslim. These posts were no longer needed, but the proposal was to retain the "team leader IT support services" on a slightly raised salary. The leader IT support services would be supported by an existing role of senior IT technician (held by Mr KcKenna) and five junior IT technicians. Three existing roles as IT service desk assistant and IT services assistant would be unaffected.

(30) There was one junior technician already, who would be expected to remain in post, so four new junior IT technician posts would be created. There would for the time being remain three other roles: An interim team leader for IT support services (SE), the development role (Mr Allison) and the senior IT technician role (Mr McKenna).

(31) The tribunal accepts that as part of the wider reorganisation plans, Mr Turner was tasked with drawing the specific proposals. In June 2017 the restructuring proposal was approved by his finance director (to whom head of IT reported), and then approved in the usual way by the senior leadership team, with an input from HR who would be involved in managing any redundancy process that might result. This plan was set out in a document dated 19 June 2017. The arrangements for the

restructuring redundancy are set out below, and further referred to in the tribunal's conclusions. But, in essence, this involved the IT department being told on 20 June, in general terms, of the restructuring plan. The three individuals (including the claimant) whose positions were being made redundant would then follow a period of individual consultation.

(32) The three individuals at risk of redundancy were put on immediate special leave (or garden leave), after a short introductory meeting, when the situation was explained to them. The precaution was also taken of suspending the IT access for all three individuals. Although all three were permitted to take their immediate personal belongings from their desk, they were not at this stage being dismissed and management were keen that their desks and most of their contents should remain in place, on the basis that the employees concerned may well be returning to work after the redundancy consultation completed. The tribunal accepts the respondent's evidence that all three were treated the same way. The tribunal accepts that the intention was that for all three, the redundancy consultation should continue shortly afterwards. All three were briefed accordingly, in identical terms.

(33) The other two technicians were made redundant and dismissed. Although the claimant believes that they were both given voluntary redundancy (at an enhanced rate), the tribunal accepts the credible and better-informed evidence of the respondent that one was made compulsory redundant, and the other accepted voluntary redundancy. In any event, the claimant's two IT colleagues (as well as a number of college staff across the departments) were dismissed by the end of July 2017.

(34) The claimant having been sent home on 20 June 2017, he was evidently upset by a number of matters, not least of which, and understandably, was the prospect of losing his employment.

(35) In the late afternoon of 21 June 2017, the claimant presented a detailed written grievance by email. This was sent to HR as a formal letter of grievance, and expressly referred to *"workplace bullying, racial/religious discrimination*". It referred to various events which had taken place from September 2016 up to and including the claimant's requesting a colleague (KS) to retrieve pictures of his two sons which he had forgotten to take with him the day before. The claimant complained that SE and Mr Allison had acted rudely and had refused to hand over the pictures. Incidentally, the claimant at this point made no complaint about being asked to leave the premises the previous day, and does not suggest that he was not permitted to remove his personal belongings, but explains he had forgotten to take the pictures with him when he had left the previous day.

(36) The claimant also consulted his GP and was signed off as unfit to work through depression for four weeks, from 22 June 2017 – 20 July 2017. The tribunal has also been provided with a subsequent fit note from when the claimant was signed off by his GP with "depression work

stress" from 20 July 2017 – 10 August 2017. Although the claimant was reminded of the importance of providing any medical evidence upon which he sought to rely, the claimant has not provided the tribunal with any other medical evidence, albeit it would not appear to be in dispute that he was treated by the respondent, for administrative purposes, as being off sick from then until the termination of his employment. That said, the claimant was happy to attend meetings and engage in the grievance process, and then after that the redundancy process, regardless of his state of health. As he would in any event have been on garden leave, his precise recorded leave status after 18 August 2017 was not material to what happened to him.

(37) In any event, the claimant having submitted a detailed grievance and having then been signed off sick on 22 June 2017, the respondent agreed to deal firstly with his grievance and therefore to defer the redundancy consultation until the grievance hearing had taken place. The result of this is that the consultation was not resumed until after the two other members of the department were made redundant, and some time after the restructure had taken place, and the new IT department formed in the newly merged college.

(38) The respondent's grievance procedures provided for the possibility of the appointment of an investigating officer, and HR nominated Mr Graham Thomas to conduct an investigation into the claimant's grievance.

(39) Mr Thomas was independent of the IT department. His main college role was head of student services, and he was also a member of the college's equality and diversity forum. He had received training on equality and diversity issues. Although he had been involved in grievances previously, this was the first time that Mr Thomas had personally conducted an investigation as the investigating officer. He was familiar with various procedures and policies, but took HR advice in how to go about the investigation (the tribunal having already remarked upon the slight lack of clarity in procedures, and the blurred line between the investigating officer, and the manager conducting the grievance meeting, this was a wise precaution).

(40) The tribunal, as recorded above, found Mr Thomas to be a credible witness and was entirely satisfied that he conducted the grievance investigation with the intention of ensuring that the claimant and his concerns were treated fairly and even-handedly. Indeed, the respondent having agreed to put the redundancy process on hold, it was equally clear that the respondent intended that this be the case. Far from seeking to penalise the claimant, in some way, for having the temerity to raise issues of discrimination, it was self-evident that the respondent took matters very seriously, and bent over backwards to give the concerns a fair airing.

(41) There were certain matters which were criticised in the way that Mr Thomas conducted his investigation. In the first place, there were issues as to (1) against whom complaints had been made or (2) who

may have witnessed incidents. What Mr Thomas did was to take a handwritten note of the answers which individuals gave to his questions, check that individuals were happy that his note was accurate, and then subsequently type them up. The tribunal accepts that that this was the usual procedure in grievance investigations, and that HR had advised Mr Thomas accordingly. There was nothing unusual or unfair about this procedure.

(42) It was not usual for the respondent to organise more than one investigatory interview with a complainant, especially in the context that the claimant would have the opportunity to explain his grievance further at the grievance hearing to the person hearing the grievance. One interview meeting was arranged by Mr Thomas.

(43) Mr Thomas made arrangements for an interview with the claimant. The claimant did not wish to come into the college for the interview, and so HR agreed with the claimant that the interview would take place at the Marriott Hotel. This is a large hotel not far from the college, and indeed the largest hotel in the area. The tribunal accepts the clear evidence from a number of respondent witnesses that it was a venue which was frequently used by the College for meetings of various types. The choice of this venue was entirely uncontroversial.

(44) HR did not book a meeting room, but took the view that it would be appropriate to conduct the interview in one of the booths in the public area of the hotel, which would require less organisation and no expenditure of budget on a room booking. This was a practice which had been used in the past, apparently without complaint or any practical difficulty.

(45) The tribunal would query whether it was appropriate to conduct an interview, concerning allegations of discrimination, in a public venue such as this. Plainly it was something of a hostage to fortune, and with the benefit of hindsight might well have been the wrong choice. The tribunal notes, however, that the respondent's witnesses, including Mr Thomas, had taken the view that as this venue had been used in the past without any obvious disadvantage, it could again be used. This view was taken in good faith, and the tribunal accepts Mr Thomas's evidence that in fact he took the view at the time that they had sufficient privacy and would not have been overheard.

(46) The claimant attended the grievance investigation meeting (accompanied by his sister) on 24 July 2017.

(47) Having interviewed the claimant, and a number of other people, and looked into the claimant's allegations, Mr Thomas prepared his investigation report. The tribunal notes that this was the first time he had personally prepared such a report, albeit he was familiar with the overall grievance process. Through an oversight, and perhaps lack of familiarity with procedures, Mr Thomas initially did not attach as annexes documents which would normally be expected, albeit there is no suggestion that HR came back to him on this point. He made

various recommendations in his report, which he sent to HR within a reasonable period.

(48) The tribunal accepts that the appropriate practice would have been for this investigation report and supporting annexes to be supplied to the claimant in advance of any subsequent grievance hearing. Indeed, this was plainly the respondent's intention, and the tribunal accepted the respondent's evidence that it was understood at the time that the report was indeed sent to the claimant. As it turns out, the claimant's evidence (which the tribunal also accepts) is that he never in fact received the report. The tribunal is a little surprised that the claimant, especially one being advised by his sister, who had been an HR professional, did not think it strange that there had plainly been a grievance investigation (in which he had participated) but that he had not seen the report. The claimant did not query why he had not yet received it.

(49) On 3 August 2017, Ms Heather Eyers of HR had emailed the claimant to keep him up-to-date with progress with the report explaining that the findings of the report would be shared with him. The claimant did not subsequently query why this had not happened. The email explained arrangements for a grievance meeting, but acknowledged that the claimant may not wish to attend a meeting, because he was (at that point) signed off sick, and asked him how he wanted to proceed. She followed this up with further emails.

(50) On 29 August 2017, Ms Eyers emailed the claimant to invite him to a grievance meeting to take place on 6 September 2017, to be heard by the Finance Director, KS. This would, uncontroversially, be following the usual process, as the Finance Director would be the relevant member of the senior leadership team, responsible for the IT department.

(51) Having received this email, the claimant explained that due to a prior engagement he would want the timing of the meeting moved. He did not make any complaint as to the identity of the senior manager hearing the grievance.

(52) The claimant has asserted that for personal reasons KS (who was not named in the grievance) was an inappropriate to hear the grievance. The claimant was relying upon rumours he had heard. The tribunal accepts that the HR department did not know of any such rumours, and the tribunal is plainly not in a position to make any finding of fact as to whether the claimant's views were or were not well-informed. It is however notable, that having been informed in August as to the identity of the person hearing the grievance, the claimant made no objection to that person.

(53) Communication continued to arrange an alternative date (eventually fixed as 28 September 2017), complicated by the sickness of Mr Thomas. During repeated email exchanges on various matters relating to the grievance (including supplying the claimant with further information), the claimant neither queried why he had not yet received

the grievance investigation report, nor challenged the identity of the person due to hear the grievance. He did not request a copy of the grievance investigation.

(54) On 20 September 2017 the claimant requested reassurance that the procedure would not be compromised in any way or there are no possible conflicts of interest regarded to people who would be chairing the meeting. The claimant did not suggest that there was in fact any conflict in the Finance Director hearing the grievance.

(55) Meanwhile, the claimant was, on 20 September 2017, sent an email in respect of pension auto-enrolment reminding him that he would be assessed for auto enrolment with effect from 1 October 2017, and confirming that he was eligible to be automatically enrolled, but he would be contacted nearer the time to confirm if he was eligible. It is not in dispute that in fact he was eligible. He was told what actions he needed to take to opt out, should he wish to do so. This communication was copied to HR and forwarded to the claimant. The claimant did not respond. The respondent has accepted that, notwithstanding the dismissal for redundancy shortly afterwards, the correct procedure in those circumstances would have been for the claimant to have been automatically enrolled in the pension scheme with effect from 1 October 2017.

(56) On 22 September 2017, the claimant raised by email, for the first time, that he considered that there was a personal conflict of interest in relation to the Finance Director. This email was sent on the Friday afternoon, and on the Monday morning Ms Eyers replied, confirming arrangements (about which there had been exchanges) for the claimant to come in and print off emails he wish to have access to. She explained that she was not aware of any conflict of interest in relation to the Finance Director. The claimant replied to this email but did not immediately indicate that he was unhappy with leaving the Finance Director to hear the grievance. However, the following day, on 26 September 2017, the claimant indicated that he was ***not*** happy with the Finance Director hearing his grievance. On the same day Ms Eyers replied. She pointed out that the panel could not be challenged after the grievance was heard, and if the claimant wished to challenge the composition of the panel, she wished him to provide a legitimate reason. The claimant replied on 27 September 2017, providing, for the first time, an explanation, Ms Eyers decided to reconvene the panel at very short notice. In normal course the appropriate member of the senior leadership team, as an alternative to the relevant Director, would have been the Vice Principal, but he was not available at short notice. The Principal, Mr Michael Gaston, happened to be available, and so Ms Eyers asked him to hear the grievance, and informed the claimant accordingly. She also informed the claimant that RA would be the HR advisor at the hearing.

(57) The tribunal was provided with no evidence indicating that the claimant was unhappy in RA providing HR support to the principal hearing the grievance.

(58) The grievance went ahead on the date planned, namely 28 September 2017. It was held at the College. The claimant was accompanied by his sister. Although the procedures did not allow for this, the respondent was content that he should bring her, rather than a union representative or colleague.

(59) The tribunal is satisfied that Mr Gaston chaired the meeting in an appropriate and fair way. He started by summarising the information. Although the claimant his sister confirmed that they had all the paperwork, and plainly they had known that there was an investigation report, it rapidly became clear to Mr Gaston that in fact they had not read the investigation report. When he queried, this they confirmed that they had not seen a report. Mr Gaston immediately ensured that they were provided with a copy of the investigation report, and he adjourned for 20 minutes so that the claimant and his sister could read it.

(60) On return from the adjournment, the claimant confirmed that he was ready to proceed. Neither he nor his sister suggested that they needed more time, or wished the grievance hearing to be adjourned. Mr Gaston went through the various matters raised by the claimant, during which he also asked the claimant how he would wish the grievance to be resolved. The claimant was unable to answer the question. The claimant asked for the opportunity to present how he would want matters to be resolved after the hearing and requested the opportunity to present further evidence.

(61) After the grievance hearing, the claimant emailed further evidence for Mr Gaston to consider, namely a copy of a WhatsApp message he had sent to SE in respect of wishing KS to pick up his pictures on the day after he had been sent home on garden leave, albeit this was not a specific point which had been raised in the grievance. Despite sending this in, he did not send at any stage give any indication to Mr Gaston any indication of how he wanted his grievance received.

(62) On 3 October 2017 Mr Gaston signed the grievance outcome letter, which was emailed to the claimant on 5 October. It crossed in the ether with some further evidence the claimant submitted. Again, this was without the claimant indicating what outcome he wished. The claimant wanted a copy of the minutes of the meeting.

(63) The claimant subsequently challenged the minutes of this and other meetings, albeit he never indicated in what respects they were incorrect, or what changes he wanted made. There was never in fact an agreed or amended set of minutes which he wanted to rely upon. If the claimant was waiting for agreed minutes before he was prepared to say what outcome he wanted, he never in fact either agreed amended minutes nor attempted to set out the preferred outcome to Mr Gaston. The notes that this was, however, a matter raised and considered on appeal.

(64) Mr Gaston's grievance outcome did not accept that there were any acts of discrimination. It carefully considered the matters raised by the

claimant, including allegations of workplace bullying and discrimination. Mr Gaston concluded that although these matters did not fall within the definition of "bullying" or "discrimination", they did amount to the breakdown of working relationships, and poor management. Mr Gaston indicated that there was a training need for managers within the IT department.

(65) The claimant was given the right to appeal against the grievance outcome, and he did so. The appeal was acknowledged, and a grievance appeal hearing was arranged for 23 October 2017.

(66) Immediately after the grievance outcome was sent to the claimant, he was reminded that the redundancy consultation had been put on hold, and now needed to be resumed. The claimant was invited to the resumed redundancy consultation meeting, which went ahead on 13 October 2017 in the College. It was conducted by Ms Rowen, in the absence of Ms Eyers, who was absent. Ms Rowen had a script to read relating to the consultation, and she followed the script. She informed the claimant of current vacancies, but subsequently discovered that there were two additional part-time vacancies to cover maternity leave on the helpdesk. By this stage the two leadership roles had already been filled and were not vacant. The claimant did not wish to apply for any of the new roles and HR agreed that the junior technician roles were not suitable alternatives, unless the claimant wished to carry out that role, admittedly resulting in a significant reduction in salary. She emailed the updated list of vacancies to the claimant on 18 October. As the claimant had not suggested any other jobs, did not wish to apply for the available vacancies, and had made no proposals in respect of avoiding redundancy, a decision was then made that the redundancy dismissal would go ahead.

(67) The claimant was reminded by email on 18 October 2017 that the dismissal would go ahead. On 19 October 2017 the claimant was sent a formal redundancy dismissal letter, confirming his benefits, and telling him that he could appeal. He was informed that he was being given pay in lieu of notice (despite his personal contract of employment not providing for this), with a termination date of 19 October 2017. The tribunal accepts that the formal notice of dismissal was received on 19 October 2019, which was consequently the claimant's last working day and the effective date of termination.

(68) In the circumstances, the issue of auto enrolling the claimant in the pension was not progressed.

(69) The claimant did not appeal against his dismissal for redundancy.

(70) Meanwhile, in anticipation of bringing a claim in the Employment Tribunal, the claimant had already, on 6 October 2017 commenced and completed ACAS early conciliation.

(71) The claimant having appealed against the grievance outcome, the respondent nevertheless was content to progress after the termination of his employment.

(72) The claimant attended a grievance appeal meeting, which had been rescheduled for 1 November 2017. It was heard at the College by Mr Richard Barlow, the Vice Principal. Mr Barlow considered all the paperwork provided by the college and the claimant. He listened to everything that the claimant said, and also heard the evidence from Mr McKenna, called as a witness by the claimant. He also followed up on the question of what outcome was wanted, and confirmed that it was his wish that there should be sanction against those against whom he had complained. When the question of training was raised, his expressed view was that this irrelevant to him, but if he was still employed he would seek training so that people understood what racial discrimination was. But, of course, he was no longer employed.

(73) Mr Barlow signed the grievance signed the grievance outcome letter on 3 November 2017. He dealt with the specific matters raised by the claimant, taking into account the additional points raised, including a complaints about the minutes of the grievance meeting (where the claimant had not in fact identified any inaccuracies he wished corrected). Mr Barlow concluded that the appeal should not be upheld. The claimant was reminded that the decision of the appeal panel was final and binding.

(74) The claimant presented his claim form to the Employment Tribunal on 19 December 2017.

Conclusions

Alleged breach of the ACAS Code

121. The tribunal notes that the subject of the grievance did not deal with the question of the claimant's holiday pay or the consequences of being dismissed with pay in lieu of notice, albeit the grievance appeal was held after the claimant was dismissed. The issue is not therefore strictly relevant to the remedy payable for breach of contract or failure to pay holiday pay.

122. However, on the basis that it is theoretically possible that the handling of the grievance may be relevant to the amount of compensation payable, the tribunal has considered whether there as an unreasonable failure to follow the ACAS Code of Practice on Disciplinary and Grievance procedures (2015). The Code does not apply to redundancy procedures.

123. In the claim form, the claimant had made generalised assertions of a failure to follow the ACAS Code. At the preliminary hearing he was ordered to provide further particulars, which he did. On 30 April 2018 the claimant asserted that paragraphs 34, 39 and 43 of the Code had been breached. This was disputed by the respondent.

124. In the claimant's closing submissions, he asserted that consideration should have been given by the respondent to adjourning the grievance meeting for any investigation that may be necessary. The claimant believed that Mr Gaston should have investigated SE for the incident of 20 June 2017, and

that both the grievance and the appeal should have been dealt with impartially, but were not.

125. The tribunal considered all the matters raised, and has come to the conclusion that there was no unreasonable breach of the ACAS Code and consequently no basis for adjusting any award made.

126. The tribunal notes that the Code of Practice provides a minimum level of what is expected in handling grievances, and indeed anticipates that in many or most cases the onus would be on the claimant to explain what their grievance is, which would be set out in writing and then heard for the first time by the manager hearing the grievance at the grievance meeting. In fact, in this case there had already been an investigation by an independent manager, who had made a report, and therefore the Principal (when he came to hear the grievance) had the benefit not only of hearing from the claimant, but of reading the report prepared by management.

127. The claimant asserts that, under paragraph 34 of the Code, there was breach of the term that employees should be allowed to explain their grievance and how they think it should be resolved. The tribunal is entirely satisfied that the claimant was given the opportunity to explain his grievance (it having been previously set out in writing in some detail) and then he and his sister (who was permitted to attend to accompany him at the meeting) were given every opportunity to set out what the claimant was concerned about. It is unfortunate that the claimant did not appear to have received the investigation report before the meeting, but the tribunal accepts that Mr Gaston acted reasonably in giving a copy to the claimant at the start of the grievance meeting, and then adjourning for the claimant and his sister to read it. After that adjournment the claimant indicated that he was ready to proceed. In those circumstances he had the opportunity to explain his grievance. The claimant was not merely given the opportunity to say how it should be resolved, but was expressly asked about this by Mr Gaston. It is somewhat surprising that having gone to the trouble to present a detailed grievance, and after an exhaustive investigation, he failed to have any coherent answer to that rather obvious question. The claimant was given the opportunity to send his suggestions by email after the meeting, but in fact did not do so.

128. Although criticism is made of Mr Gaston, suggesting that he should have waited for longer, on the off-chance that the claimant might eventually provide his answer to Mr Gaston's question, the tribunal does not think it is unreasonable for Mr Gaston to have proceeded to his outcome before receiving this information, especially as it is clear from the grievance outcome and Mr Gaston's oral evidence that he had given careful thought to the appropriate outcome, and set that out in his letter. This included further training for the managers concerned. The claimant, having chosen to put in a grievance, should have given thought before the grievance meeting as to what outcome he wanted. If he wanted specific extra time, he could easily have asked for it. He could have sent an email setting out his suggestions after the meeting, but did not do so.

129. The claimant subsequently made it clear that an apology would not be enough for him, and that he wanted the other managers disciplined. It is

clear that had the claimant given that answer to Mr Gaston at (or immediately after) the grievance hearing, it would in fact have had no influence on the outcome. Mr Gaston was plainly of the view that that discip0lining others would not be appropriate, and that was an entirely reasonable view to take.

130. Under paragraph 34 of the Code, the claimant also complains that consideration should have been given to adjourning the grievance meeting for any investigation that may be necessary. The tribunal agrees with the respondent that Mr Gaston had no good reason to conduct further investigation, especially as a management investigation had already taken place. Although the claimant now relies upon there being a grievance against SE, in fact that was not made plain in the grievance. Mr Gaston cannot legitimately be criticised for not further investigating a matter which had not been raised, which related to an incident which had already been investigated by Mr David Thomas. It was not expressly put to Mr Gaston in cross-examination exactly what he should have done, and the tribunal considers that even though Mr Gaston was prepared to defer his outcome pending further information from the claimant, that there was no breach of the Code by his decision that no further investigation was necessary. Even if the tribunal had been minded to conclude that there might have been a potential breach of paragraph 34 (which it was not), then any breach would certainly not have been unreasonable in the circumstances.

131. In respect of paragraph 39, the claimant relies on the requirement that "*the companion should be allowed to sum up the worker's case, responding on behalf of the worker to any views expressed at the meeting*". The tribunal is entirely satisfied that at the grievance meeting the claimant and his companion were permitted to do this. There was plainly no breach.

132. Paragraph 43 provides that the appeal should be dealt with impartially, albeit that the claimant also complains that the grievance itself was not dealt with impartially. Plainly the claimant disagreed with the outcome of the grievance appeal. It would appear that the claimant seeks to label this as not being impartial because the decision maker came to a different view from that which he wished them to. The tribunal considers it is abundantly clear that Mr Barlow dealt with the appeal impartially, as had Mr Gaston at the original grievance hearing. These was no breach of paragraph 43.

133. In the circumstances there was no unreasonable breach of the ACAS Code.

Unfair Dismissal

Reason for dismissal

134. The initial matter for the tribunal to determine is whether there was a potentially fair reason for the claimant's dismissal within the meaning of section 98(1) of the Employment Rights Act 1996.

135. The respondent relies upon redundancy, a potentially fair reason, and asserts that there was a redundancy situation and that the dismissal fell within the definition of section 139 (1)(b)(i) of the Act. The claimant disputes

that there was a genuine redundancy situation, and disputes that the reason for dismissal was redundancy.

136. The burden of proof is upon the respondent to show that redundancy was the reason for dismissal. Although the respondent relies upon the presumption of redundancy under section 163(2), in fact the tribunal has not needed expressly to refer to this provision.

137. Ms Haitham's closing submissions, on behalf of the claimant, did not expressly deal with this issue, albeit it is implicit in the claimant's case that he felt that the real reason for dismissal was that the respondent wanted to get rid of him, for discriminatory reasons. He appears to be asserting that in order to dispose of the claimant's services, the College deliberately also made two white, non-Muslim employees redundant at the same time. This is a fanciful assertion which is not borne out by the primary facts, or indeed by logic.

138. In the absence of any clear argument as to why there was no genuine redundancy situation or why this was not the reason for dismissal, the tribunal has nevertheless looked at the evidence in the round, on the basis that the primary burden of proof is upon the respondent.

139. The tribunal has reminded itself that the situation was that the College's senior management had agreed that the claimant's post, in common with a large number of others, College-wide, would be made redundant. The claimant (like many of his colleagues) would consequently be dismissed for redundancy unless he or the respondent could find a way of avoiding that dismissal. The most obvious way would be to consider possible alternative employment. The reality was that the claimant did not wish to progress any of the alternative employment which he was aware, or had been told, might be available.

140. Absent a discriminatory conspiracy (which the tribunal has found to be an entirely fanciful notion), the tribunal considers that if there was a redundancy situation, the only plausible explanation for the claimant's dismissal was indeed that he was made redundant.

141. The respondent's submissions were, in essence, was that there was plainly a redundancy situation. In his written submissions Mr Palmer set out a considerable quantity of legal analysis and case law, which need not be rehearsed here. However, he relies upon the statutory definition of redundancy referred to above. Section 139(1)(b)(i) of the Act provides that: "…*An employee who is dismissed should be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish*".

142. The tribunal considers that the respondent has had little difficulty in explaining that as a result of the merger of two colleges, and consequently the merger of the two separate IT departments, there was a clear need to restructure and reconsider what skills were needed, and that there was no longer a need for three employees, including the claimant, to carry out a

particular function. The tribunal considers that the circumstances of the restructuring fell squarely within the statutory definition of redundancy, that this was a restructure approved by the Finance Director and the senior leadership team, and plainly designed to improve the efficiency of the department whilst at the same time saving costs in the new combined structure.

143. The tribunal considers it is also clear that this is the only reason that the claimant was considered for redundancy, and subsequently dismissed for redundancy. The respondent has had no difficulty in establishing that the sole reason for the claimant's dismissal was the potentially fair reason of redundancy. The respondent gave an entirely clear and credible (and non-discriminatory) explanation of the process, which was self-evidently a genuine redundancy process, where the claimant and two colleagues were all three dismissed because they were redundant. In other words, the reason for the dismissal was a set of facts known to the employer, namely the consequences of the review of posts and proposed restructuring, which amounted to redundancy, and which caused the respondent to dismiss the claimant (see for example *Abernethy v Mott Hay and Anderson [1974] ICR 323, W Devis & Sons v Atkins [1977] AC 931* and *Safeway Stores plc v Burrell [1997] ICR 523 etc – the tribunal has not needed to refer to the various other cases referred to by the respondent)*.

144. The tribunal finds that the claimant was dismissed for redundancy, a potentially fair reason.

The tribunal's approach to the fairness of the dismissal – general background

145. In consequence of finding above, the tribunal has gone on to consider whether the dismissal was fair and reasonable within the terms of section 98(4) of the Act. It has taken into account the size and administrative resources of the College, which were such that a such that a proper procedure should have been followed.

146. The tribunal notes that although the claimant (in his closing submissions), complains of unfair "selection for redundancy", this is not strictly correct. The procedure which the respondent followed, which is increasingly the norm in large organisations, was not the more traditional model of establishing a pool for selection, then devising a method of scoring those in the pool to decide which ones should be retained. Although the guidance in *Williams v Compare Maxam Ltd [1982] IRLR 83* is still helpful in setting expected standards of behaviour, it does not amount to principles of law, and not all the factors may be relevant. Rather, the respondent had determined that after the restructure there was no business need for the role previously carried out by the claimant, or indeed a similar role. Having identified that three existing posts were no longer needed, wholly new roles were created at a more junior level. This was as well as subsequently making permanent arrangements for what had been temporary senior roles. The position was that individuals would need to apply for one of the new roles in the organisation, if their current role was one of those identified as being no longer needed. The test remains that of fairness under section 98(4) of the 1996 Act, and when an employer decides, looking forwards, to

conduct a reorganisation resulting in the deletion of old posts and selection for newly-created posts, this requires a different approach from that in the *Williams* case (see, for example, *Morgan v Welsh Rugby Union [2011] IRLR 376*).

147. The respondent determined, correctly in the view of the tribunal, that the new "junior technician" role was on a much lower salary, and that it did not amount to a reasonable alternative for the purposes of the redundancy processes. Therefore, although the claimant could apply for this new role, and if he applied for it he would have been appointed, he was plainly over-qualified, and the respondent did not require him to accept such a post, or suggest that a failure to do so would mean that he would not be entitled to a redundancy payment. The position was, therefore, that the onus was on the respondent to indicate to the claimant what alternatives were available at the time of the redundancy consultation, and the claimant would need to apply for (or at least indicate his preference for) an alternative role, in order to secure his ongoing employment at the new College. Alternatively, he might suggest during consultation some other way of extending his employment or avoiding the need to dismiss him. Although in fact the claimant's employment was extended (unlike his two IT colleagues), there appeared to be no obvious alternative role which was suitable for the claimant. Indeed, the College was a whole was looking for ways to save money and make surplus staff redundant in each department. The claimant did not himself make any suggestion as to how dismissal might be avoided. The claimant was also given the opportunity to apply for voluntary redundancy, on a more generous termination package, but chose not to do so. Therefore, there was no "selection" for redundancy, and the question of selection would only arise if the claimant indicated that he wished to apply for one of the alternative roles, albeit the tribunal accepts the respondent's evidence that there would not need to be a formal selection for the more junior technician role that was being created, because self-evidently the claimant would be professionally able to carry out that role.

148. The list of issues, agreed to by the claimant, confirms that the claimant believed the dismissal process was "unfair and unreasonable", that he was "not properly consulted as to the deletion of his job", that he was "not fairly chosen for redundancy out of all the other employees", and there were "jobs which he could do which were not made available to him". There is some overlap between the discrimination allegations and the claim of unfair dismissal, and the tribunal repeats that these written reasons should be read as a whole. If the facts are analysed only briefly in one section, that should be read in light of comments made, and conclusions drawn, under different headings.

149. The respondent maintains that the procedures were fair, and fell within the band of reasonable responses, although it was argued in the alternative that if there was any procedural unfairness then there was a 100% chance that the claimant would have been dismissed in any event.

150. The tribunal would also note that, on the slightly unusual circumstances of this case, the claimant was not consulted for redundancy at the time which had been planned (when his two colleagues were subject to consultation) because (firstly) he was unwell and (secondly) because he had just

presented a detailed grievance. The respondent, therefore, agreed to keep paying the claimant as an employee, and to await the outcome of the grievance hearing, before continuing with redundancy consultation. This had the effect of the claimant being treated rather more favourably than his two colleagues, as he had more than three months of additional paid employment, after his colleagues had been dismissed during July 2017. This also meant that in dealing with his grievance, and considering what he might say during the redundancy consultation, then rather than having a maximum of two weeks to consider the point (as his colleagues had done), the claimant in fact had many weeks in order to consider what he wished to do, what he wished to query, and what he wished to propose, during the consultation period. On the other hand, it meant that consultation was only concluded after the new organisation would need to be bedded-in, giving less room for manoeuvre.

151. The tribunal would also note that it was part of the pre-planned redundancy consultation that alternative employment was considered at the consultation meeting. This would have been late June or early July had the respondent not agreed to adjourn the consultation, but in the claimant's case this was not until the end of September 2017. This meant that the alternative roles available at the time of the consultation, would therefore have been slightly different from those which would have been discussed with his two colleagues during the earlier period of consultation. That said, the claimant would (or could) doubtless have spoken to his colleagues and to management in June/July, had he wished to be kept appraised of what his colleagues were being offered (in the event, neither obtained alternative employment and their redundancy consultation period ended in their dismissal).

152. The tribunal would observe that one unfortunate effect of the respondent assisting the claimant by agreeing to defer redundancy consultation, was that the redundancy consultation did not take place until after two roles of IT team leader and IT team development leader had already been advertised, interviewed, and appointed. It would appear that throughout the period from being sent on special leave on 20 June 2017 and the claimant's eventual dismissal for redundancy with effect from 19 October 2017, he did not have access to his work email or the College intranet, because his personal IT account had been suspended. Any communication between him and HR etc was to the claimant's personal email address. The tribunal accepts the respondent's evidence that the two new roles which were advertised, apparently in late June or in July 2017, but were not emailed by HR to the claimant's personal email address.

153. It was plain that the College's practice was to post internal vacancies on the college intranet, and to send a global email to employees of the college to their college email addresses. The tribunal would observe that even though redundancy consultation had been put on hold, it would have been desirable had somebody within the HR department spotted the fact that the claimant would not have received any internal email alert. Even though redundancy consultation had been suspended at the time that the posts were advertised, it would have been possible for this to be brought to the claimant's attention. It should also be noted, however, that the claimant knew the proposed redundancy process, knew that he would in due course be considered for redundancy and be able to take part in formal

consultation. But the claimant did not ask for further information, even though he would be very familiar with the operation of the intranet and the methods of internal electronic communication at the College.

154. The tribunal acknowledges the claimant's own evidence that in fact the two job advertisements *were* brought to his attention at the time, notwithstanding that the HR department were not directly responsible for this. Even though HR did not formally forward the information, it would appear that it was the claimant's colleague Mr McKenna, who either orally told the claimant about the advertisements, or forwarded the advertisement email to the claimant. The reality was, therefore, that no unfairness resulted, and that the claimant had the information he needed to decide whether he wished to apply for either of these two posts.

155. The claimant's evidence was that he was entirely aware that these new, more senior roles, were being advertised, but that he made a conscious decision that he did not wish to apply for them.

156. The potential oversight by the HR department therefore had no consequences.

157. The tribunal accepts that the whole point about the reorganisation was that the new restructure was supposed to have been completed prior to the beginning of the 2017 autumn term. The relevant date for the restructuring was 31 July 2017, so that when the term started in early September the colleges would be fully merged and a new IT department would already be in place, subject to continuing to recruit for any vacancies which had not yet been filled. The claimant was aware of this. This meant that when consultation was resumed with the claimant on 13 October 2017, this would be *after* the restructure had completed, and *after* the two leadership roles had already been filled, albeit roles that the claimant had decided that he did not wish to apply for.

158. The tribunal was shown the respondent's organisational change policy and procedure, which set out a procedure for redundancy. This provided, at paragraph 5, for consultation arrangements with employees. It explained that the employee would be notified of the proposal and the reasons, the employee would be invited to a meeting to discuss the matter, and may be accompanied by a work colleague or trade union representative. It explained that individual meetings would normally be undertaken by a representative from the HR department and the employee's relevant line manager. It provided that initial information about redundancy proposals would be given through meetings and/or the issue of a statement setting out the timetable to implementation and that there would be further correspondence consultation continuing with the claimant and his or her union representative or work colleague until redeployment or the termination of employment. The tribunal also notes that although there were provisions in the policy for some retention of the higher salary, these only related to "suitable alternative employment" which the respondent (rightly in the view of the tribunal), did not consider applied to the rather more junior technician role at a much lower salary.

159. The tribunal was also provided with the specific document setting out the proposed restructure, dated 19 June 2017, which explained the reorganisation and the old posts and the new posts. It set out what changes were proposed, explained the justification, explained the old and new salary structure, explained the overall financial impact including an annual saving of approximately £23,000, and summarised the consultation process which would be "*a two week consultation process will apply commencing 21 June 2017 until 5 July 2017*". It explained that post holders at risk would be placed on special consultation leave during the consultation period, and would not be expected to attend work during that time, but would continue to receive full pay. It explained that each member of staff at risk of redundancy would be invited into college for individual consultation meetings during the consultation period, and it flagged up that voluntary redundancy would be open and that staff at risk may apply for the new roles within the structure whereby staff would be selected in through an assessment process in line with the job description and person specification. The document identified the three roles which were no longer required in the new structure including the claimant's role.

The redundancy process – sequence of events

160. It is clear that the plan was to call together the whole IT Department on 21 June 2017, in order to run through what was set out in this document, so that that the department as a whole would know what was planned. The tribunal would observe that Mr Turner, who had been involved in preparing the restructure, was already aware. Mr Allison, in his leadership role, had also been pre-briefed. The tribunal has accepted that the policy document had been approved by the senior leadership team. Other members of the department had not been individually briefed, but quite plainly would be entirely aware that there would be a restructuring of some sort, in line with the merger of the two colleges, and the merger of what was previously two separate IT departments.

161. The respondent's evidence was that the initial group meeting was for all the IT staff and that all the staff did in fact attend.

162. The claimant indicated that he recalls no such meeting. If that is correct, it is not clear why he did not or was unable to attend this meeting, but there is no evidence suggesting that he was in some way missed off the notification. The tribunal notes that the meeting was called at short notice, as such meetings inevitably would be, and that although others who attended believed the claimant was there, it is possible that for whatever reason the claimant did not receive or read the message prior to the meeting. It has not been suggested, and in any event the tribunal would not accept, that there was any deliberate oversight. But the tribunal accepts that the plan to inform the whole IT department was implemented. Plainly this would have been a major topic of conversation in the department immediately after the meeting, and the tribunal considers that on any analysis it is inconceivable that the claimant would not immediately have heard of the restructuring proposals, at least in outline. The tribunal notes that the speaking note which Mr Turner used to announce the redundancy is a fairly brief one, and does little more than to explain that "against a backdrop of falling student applications and a challenging financial outlook for the college", there was a

need to deliver savings and cost effectiveness, and that they had looked at how the team was currently structured and why it was necessary to shift towards "*more general junior level IT technicians providing day-to-day IT support*".

163. The HR representative, BE, also set out the process to be followed.

164. The evidence was slightly confused as to the timings of meetings. The tribunal accepts, however, that the plan was clearly for Mr Turner, with HR support (BE) to go on to meet individually with all three members of the department who were at risk of redundancy, namely the claimant and his two colleagues, shortly after the group meeting for the IT department, and of course the detailed information would therefore be provided at the individual meetings, rather than shared with the whole department. It is also the respondent's case, which the tribunal accepts, that for operational reasons, a view was taken that the three IT personnel at risk of redundancy should all be sent on special leave, not only to give them the opportunity to consider their future (and take advice as required), but also so that they would not be in the premises with unrestricted access to the IT system, at a time when they were likely to be upset as to the likelihood of their job coming to an end.

165. It is not in dispute that at an individual meeting with RA and Mr Turner, the claimant was informed that his role had been disestablished and it was explained that he would be put on special leave or "garden leave" with immediate effect. The tribunal accepts that the purpose of this meeting was to inform the claimant of the process and to answer any immediate questions, not to discuss matters at any length. These would be matters that the claimant would in all likelihood be not ready to talk about, and it would not be normal procedure for employees to have a representative present for such a subsequent meeting for consultation, where the details could be discussed.

166. After the meeting, the claimant left the premises.

167. The claimant was sent a letter the following day, explaining the procedure to him in writing in more detail, including that the individual consultation had commenced and would continue until 5 July 2017, during which he was invited to comment on the proposals, making any suggestions or alternative proposals which were operationally and financially viable. He was told that any suggestions he wished to make should be emailed to a specified inbox by 5 July 2017. In the event, the claimant did not do so.

168. The claimant was also reminded in the letter that there was a voluntary redundancy process available, and that he could be considered for the junior IT technician role. He was invited to attend an individual consultation meeting to be held on 29 June 2017 at the respondent's premises. The purpose of the meeting was explained, and the subsequent procedures were also explained. It was explained that any redundancy decision would be based on a termination date of 31 July 2017 and notice would be served by letter on 10 July 2017, and any notice would be paid as pay in lieu of notice at the end of July, together with the redundancy payment.

169. It should be noted, as referred to elsewhere in this judgment, that employees recruited more recently (ie: the vast majority of the claimant's colleagues) were on a contract of employment which permitted pay in lieu of notice. HR had not realised that the claimant was on an old-style contract which did not allow for pay in lieu of notice. This meant that the respondent believed that it would be both appropriate, and permissible under the contracts of employment, to have implemented any necessary redundancies, including employment being terminated, by 31 July.

170. In the event, the consultation was not immediately proceeded with, because the claimant wished to concentrate on his grievance, and he was then signed off sick. Matters were put on hold until after the grievance was dealt with, and in the intervening period the claimant's two colleagues were dismissed by reason of redundancy.

171. The grievance outcome letter having been sent to the claimant, on 5 October 2017, Ms Heather Eyers then emailed the claimant at his home email address, confirming that further to the letter of 21 June 2017, the redundancy consultation would need to resume. She explained the arrangements for a meeting at some stage next week. The claimant was provided with estimates of the payments that the claimant would receive.

172. The meeting was arranged, and the claimant attended with his sister on Friday 13 October 2017. The meeting was held with Ms Anna Rowen from the HR department. Ms Rowen followed a script, to inform the claimant of various matters including vacancies currently available. The tribunal accepts that the meeting lasted for no more than 20 minutes, because the claimant had very few questions. The claimant was told about current existing vacancies, and was invited to confirm his view by email, by 18 October, as to the other options concerning employment, and to indicate if he was interested in any of the posts. In fact, in the period since Ms Rowen had checked vacancies before the meeting, another two vacancies had become available as a result of the need for maternity cover. There were now two part-time IT service desk assistant roles available. Ms Rowen emailed details of these roles to the claimant on 18 October. The claimant did not indicate interest in any of the roles, or raise any other suggestion for avoiding redundancy. There was, therefore, nothing further to discuss. In consequence, he was informed by Ms Rowen on 19 October 2017 that a letter would be sent to him that day confirming that his employment would be terminated. This was followed up by a letter, also dated 19 October 2017, confirming his dismissal for redundancy with immediate effect, with pay in lieu of notice, together with sums representing outstanding holiday pay, and a redundancy payment.

173. It should be noted that the tribunal has rejected the claimant's suggestions (1) that there was not a genuine redundancy situation, and (2) the real reason for dismissal was discrimination or victimisation.

<u>General conclusions relating to the fairness of the dismissal</u>

174. In considering fairness generally, the tribunal has some concerns that it would appear that (through an oversight) the claimant may have failed to

attend the group meeting at which the redundancy consultation commenced, when the staff were first told of the planned restructuring.

175. However, the claimant has not pointed to any unfairness that arose from this, particularly as he himself had an individual meeting shortly afterwards, and was given a letter explaining the process. As things transpired, whereas his two colleagues (who evidently did attend the general departmental meeting) only had a few days to think about it before their consultation meeting, the claimant in fact had many weeks, as the respondent agreed to defer. The practical effect was that the claimant had ample opportunity to consider his future, to consider the information available to him, to ask questions or find out any further information about the restructuring which may have been unclear in his mind. The tribunal notes that not only was he repeatedly in touch with management and HR throughout this period, but on his own evidence was in touch with his colleague Mr McKenna, and he was in a position to find out further information or take advice, should he have felt unclear in his own mind as to what was happening.

176. The claimant has asserted that he was not properly consulted as to the deletion of his job. The tribunal disagrees, in the sense that this was a properly managed proposal, cleared by the Finance Director and the senior leadership team, and where it would be highly unlikely that any employer would give additional advance notice of a possible intention to delete a particular job. The claimant had in fact been invited to individual consultation, where it was open to him to raise any matter he wished to, to avoid redundancy, and had been given the opportunity to set out any proposals in writing. He chose not to. It was made clear to the claimant that the redundancy process would not complete until the end of the designated process, and that during that during that time he could ask questions, attend the consultation meeting, and make whatever proposals or suggestions he wished to. It was the claimant's choice not to be proactive in engaging in the consultation.

177. The tribunal also considers that the suggestion that the claimant was "not fairly chosen for redundancy" does not stand up to analysis. The respondent has quite clearly and plausibly explained the basis of the restructuring, and why there was no longer any operational need for the three roles which were deleted. As the claimant was in one of those roles, then subject to him raising any alternative arguments (which he did not) it was inevitable that his future employment would therefore be subject to whether he wished to apply for an alternative role. From the claimant's point of view, this was of course unfortunate and unsettling, but it was not unfair.

178. The overall process was within the band of reasonable responses. Had the claimant had any concrete proposals or matters to raise at the time, he had the opportunity to do so.

179. The tribunal also has recorded that it has some concern over the fact that the two more senior roles created in June/July 2017 were not advertised directly to the claimant. However, as recorded above, it would not be correct to say they were not made available to him, because the fact that the

college advertised these to all employees made it clear that they were inviting applications. The claimant was aware but chose not to apply.

180. Indeed, there was a contested competition, and two internal applications were received for the IT team leader post. Mr Turner candidly told the tribunal that had the claimant chosen to apply, he would have been a credible candidate, and it is certainly possible that he would have got the job. Mr Turner told the tribunal that he thought the claimant would have interviewed well, and that it would have been close. The tribunal accepts that this evidence was truthful. However, as the claimant had decided he did not wish to apply for these jobs, the situation did not arise, and these jobs had necessarily been filled by the time that the redundancy consultation resumed in October, some time after the beginning of term in the newly-merged college.

181. Overall, whilst the tribunal would accept that the redundancy consultation might have been handled better, it considers that it was procedurally and substantively within the band of reasonable responses.

182. The claimant was given sufficient warning and appropriately consulted, and had the opportunity to present any ideas or suggestions as to how the redundancy dismissal might be avoided, and had the opportunity to apply for other roles which were available at the time, even if he chose not to.

183. The tribunal does not accept that the respondent refused to listen to the claimant. The reality is that although it is unfortunate for the claimant that he was made redundant, the process that was followed, and the decision to dismiss him by reason of redundancy, were sufficiently fairly handled. Dismissal was an appropriate option open to the college, and it was not unreasonable for the college to have made the decision to dismiss him by reason of redundancy.

184. The claim of unfair dismissal under section 98 of the Employment Rights Act 1996 is not well founded.

Holiday Pay outstanding at termination

185. The tribunal has accepted in its findings of fact that the leave year ran from 1 September – 31 August each year.

186. The respondent has provided clear evidence as to the holiday entitlement, as to the record of the holiday taken by the claimant in the leave year up to 31 August 2017, and as to the calculation of the outstanding holiday (the claimant not having taken any further leave) in the balance of the leave year from 1 September 2018 until the effective date of termination, namely 19 October 2017. Although the claimant has sought to challenge this evidence, he has not provided any alternative basis for the calculation or provided primary evidence enabling the tribunal to come to any other conclusion than the evidence-based conclusion suggested by Mr Palmer. Given the opportunity to call evidence and to make closing submissions on the point, the claimant has not provided anything sufficient to rebut the respondent's clear evidence on the point.

187. The tribunal accepts the respondent's calculation that in respect of the period from 1 September the claimant was, technically, underpaid to the extent of the relatively trivial amount of 0.17 days. The respondent has conceded that it would be proper to add this to the sums paid.

188. The respondent has also provided the claimant's leave record, supported by oral evidence from the HR department, indicating that as at 31 August 2017, the claimant had taken all but 2.5 days of his holiday entitlement. The respondent does not take a point on carrying forward holiday pay (albeit there is no express contractual right to do so), and rather than seek to analyse the respective positions under UK and EU law, the respondent has conceded that a further 2.5 days should in the circumstances be added to the leave entitlement, as being the amount carried forward from the previous year. Again, the claimant has not provided any arguable alternative basis of calculation. The schedule of loss provides some estimates, but the evidence and submissions did not set out any persuasive case. asserts that. In the circumstances, the tribunal accepts that the claim for outstanding holiday pay is well founded, and that holiday pay was underpaid by 2.67 days. This is therefore the tribunal's finding of fact.

189. It was agreed between the parties that the gross holiday pay owing (based on that calculation) was £285.18. The tribunal therefore awarded that sum.

Breach of contract (wrongful dismissal)

190. The tribunal has made findings of fact that the claimant's original contract of employment, which in respect of this provision appears never to have been varied, entitled him to be given specified notice of termination, and did not permit him to be provided with pay in lieu of notice. The point is in any event conceded by the respondent. In the circumstances the tribunal therefore finds that the claim of breach of contract (wrongful dismissal) is well founded on the basis that the claimant was dismissed with pay in lieu of notice, when his contract of employment provided for dismissal with notice.

191. There is no suggestion by the claimant that there was no valid dismissal, nor that the pay in lieu of notice was less than the wages that he would have been entitled to during the notice period. Rather, he seeks (firstly) damages representing the additional leave he believes he would have accrued during the notice period, which he has calculated as being additional sums which he asserts would have been outstanding at the end of the notice period. Secondly, he seeks damages representing the sums which would have been paid into his pension during (and indeed just before) the notice period, had he been auto-enrolled.

Holiday pay accruing during the notice period

192. In respect of holiday pay, the claimant's case (as set out in closing submissions and schedule of loss) was no more that the claimant believes that he should be paid the additional holiday pay which would have accrued during the notice period. However, Ms Haitham gave no explanation as to how the claimant would seek to rebut the respondent's argument that he would have been expected to take untaken holiday during his notice period.

193. The tribunal noted that the claimant had previously been on sick leave. Although the claimant put forward no arguments on the point, of its own motion the tribunal considered whether this would indicate that he might be found, on balance of probabilities, to have continued on sick leave such that he would not have needed to take any of his annual leave during the notice period, which might therefore have been outstanding at the end of the notice period. However, the tribunal notes that the claimant has provided no evidence indicating that he *would* have been on sick leave for the duration of the notice period. Indeed, he has not sought to argue that he would have been on sick leave, nor that for that reason he would have continued to accrue annual leave which would therefore have been outstanding at the end of a further twelve weeks period. The tribunal finds, on balance, that there is no proper basis for concluding that the claimant would have been prevented through illness from taking further annual leave during the lengthy notice period.

194. The respondent's position is that the claimant is not entitled to further pay because the tribunal should find that the claimant would have been required take his holiday during the notice period. Mr Palmer submitted to the tribunal that an employer is entitled, on terminating an employee's contract of employment with notice, to do so in the most favourable way to the employer. Applying this legal principle to the facts of this case, Mr Palmer submitted that this would have entailed the respondent requiring the claimant to take any further holiday accruing during the notice period. The length of the notice period means that it would not be unreasonable to give the claimant notice of the requirement to take outstanding leave before the termination date. There is nothing in the contract of employment inconsistent with this, and the few additional days accruing during the notice period fall well within the minimum period specified in the Working Time Regulations. This appears to the tribunal to be a reasonable argument, and despite being invited to respond in closing submissions, the claimant has not presented any coherent alternative argument, or indeed given any explanation whatsoever as to why he could not have been expected to take any outstanding leave during this period. Mr Palmer also referred the tribunal in oral submissions to the cases of *Laverack v Woods of Colchester Ltd [1967] 1QB 278* and *Clark v BET Plc [1997] IRLR 345* as support for the proposition that the respondent is entitled to rely on the argument that if notice had been given then the respondent could expect that the claimant would take all outstanding leave during the notice period.

195. The tribunal notes that Diplock LJ's judgment in *Laverack* confirms that when assessing damages for wrongful dismissal, the assumption to be made is that the defendant "will perform his legal obligations under his contract with the plaintiff and nothing more". The tribunal, on the facts, accepts that it would be reasonable for the respondent to require an employee given notice of redundancy (especially if he was not being required to work during his notice period) to be expected to take, during that notice period, any leave which had accrued, thereby avoiding the need to pay additional sums on termination. Indeed, the underlying purpose of contractual or statutory leave is to enable an employee to have paid time off during their employment. The entitlement to additional holiday pay, to be paid on termination, is surely only to cover the situation whereby an

employee is unable to take his or her full holiday entitlement during their employment.

196. The tribunal accepts that the respondent has proposed an evidentially and legally cogent approach to the issue of whether additional outstanding holiday would have been payable at termination, had the claimant been given notice, as against an absence of any coherent case from the claimant.

197. The tribunal accepts that the claimant would have been required to take all outstanding leave during the 12-week notice period, and that therefore there is no additional compensation payable in relation to holiday, because the claimant was paid in lieu all the wages which would have been payable during the notice period, and those wages would have covered any period which would have been treated as annual leave.

198. In the circumstances, the claimant is not entitled to any further compensation relating to holiday during the notice period.

Enrolment into the pension scheme and accrual of benefits/value of payments which the employer would have made

199. This is, strictly, not entirely a wrongful dismissal claim, as it encompasses a financial entitlement which in fact accrued shortly before termination (ie: before any notice period would have started). However, as the matter essentially turns on its facts, and relied upon factual concessions by the respondent, it can fairly be decided on its facts, whatever the legal label put upon it.

200. In respect of the pension provisions, it is notable by way of background that the claimant, in his many years of service, had never expressed any wish to be enrolled in the pension scheme. Again, during the redundancy process, when terminal benefits were discussed, and the claimant raised a number of concerns, he had also expressed no such wish. In the circumstances, it is hardly surprising that the respondent may have missed this particular point at the time. Coincidentally, the government's policy of auto-enrolment of employees in pension schemes was being rolled out at the same time.

201. The tribunal accepts (and it is not in dispute) that shortly before the claimant's dismissal, a deadline arrived for him to decide whether to be enrolled in the pension scheme. It is accepted that under the appropriate regulations and/or the Government guidance, the default position was that an employee would be auto-enrolled, if he did not indicate otherwise in writing. Nobody asked the claimant the question. The claimant expressed no view, and he certainly did not put in writing that he did *not* wish to be enrolled. Of course, had he been dismissed within the original timescale, like his colleagues who had been made redundant, then the issue would not have arisen. The claimant's service as an employee was artificially extended, and so this became an issue |(even if not one spotted at the time). This was because the auto-enrolment deadline was after what would have been the effective date of termination.

202. As it was, the claimant was then dismissed much later than his colleagues, with pay in lieu of notice, everyone overlooked the few days of pension contributions the claimant would theoretically been entitled to, had he been auto-enrolled.

203. Having taken a pragmatic and sensible view on this issue, Mr Palmer decided not to dispute liability, and did not take the tribunal into the merits, and details, of precisely how auto-enrolment would have operated, precisely what the effective date of the claimant's auto-enrolment would have been, and the extent to which the respondent might be entitled to rely upon a defence, under contract law or under the government's transitional arrangements for auto-enrolment. The claimant has not provided any information suggesting that Mr Palmer's concession was unfair or did not go far enough.

204. The respondent therefore conceded that the claimant should have been enrolled prior to his effective date of termination. The tribunal has not gone behind this concession, and accepts that the claimant should have been automatically enrolled in the pension scheme shortly before the twelve-week notice period.

205. This means that the tribunal accepts that the wrongful dismissal/breach of contract claim is well founded to the extent that the respondent was in breach of contract by not enrolling the claimant in the pension scheme prior to his dismissal. This is the only breach of contract matter for which the claimant falls to be compensated.

206. The claimant set out a calculation in his schedule of loss, suggesting loss of pension rights to be calculated at £150.43 per month, albeit in the context of ongoing loss of earnings after dismissal. His closing submissions did not deal with the point, save to assert that the entitlement to contribute to a pension commenced on 1 October 1997 and would have continued during the notice period. On the basis of what he had asked for, this would suggest compensation somewhat over £500 (although the claimant never articulated this as the sum claimed). In fact, Mr Palmer calculated damages on the basis of employer contributions which would have been paid, had the claimant been auto-enrolled. Mr Palmer calculated this as being £1,224.33 to cover the period from 1 October 2017 to 18 January 2018. This, of course, results in a more generous sum in compensation than the claimant's own calculation would lead to. Unsurprisingly, the claimant did not challenge Mr Palmer's analysis.

207. In the circumstances, and the tribunal having accepted that the claim of wrongful dismissal is well founded, the tribunal has no difficulty in accepting Mr Palmer's concession and that compensation of £1,224.33 is due. That is the sum which the tribunal therefore awards.

The discrimination claims generally

208. The claimant relies two protected characteristics: upon race, as a "British-born black male of mixed African descent", and religion or belief as a Muslim.

209. As referred to in relation to the findings of fact, it should be pointed out that the various discrimination claims are overlapping, and indeed the judgment and reasons should be read as a whole in order to appreciate the tribunal's findings. A slightly different approach was warranted in respect of some allegations involving SE, where the tribunal has made particular findings in relation to the circumstances of the case and the jurisdiction to hear those claims.

210. In essence, in relation to the various claims under the Equality Act 2010, the tribunal finds that none of the matters (save for the specific SE matters, dealt with separately below) had any relationship with the claimant's race or religion, such as to render the acts to be unlawful discrimination. Additionally (or alternatively), none of the detriments complained of (if they occurred at all, or in the way alleged) were because the claimant had done a protected act.

211. The claim is based very much upon the claimant's perceptions, rather than the claimant having established any primary facts sufficient to justify a conclusion that there had been discrimination. The tribunal would repeat its earlier comments that it undoubtedly has sympathy for the very difficult and stressful personal situation the claimant was in from September 2016. This was also at a time of turbulence in the workplace, with restructuring, a "new broom" manager, and sometimes less than sensitive management of the claimant.

212. To label the various problems the claimant faced as all being "discrimination" or victimisation" is, however, wholly unrealistic. This is particularly so, when it comes to the way that the grievance and grievance appeal were decided: the claimant's perspective on these matters strays outside the territory of merely unrealistic and into the territory of being fanciful. The tribunal would reiterate, in particular, that the conduct of the Principal and Vice Principal of the respondent college was not only free from any form of discrimination, but was reasonable in the circumstances and showed a fair-minded approach. For the claimant to present a "kitchen sink" case, seeing some sort of discriminatory conspiracy in every event that did not go as he had hoped, or whenever anyone took a different view from his own, and making wild accusations against senior managers who were plainly trying to ensure the he was being treated fairly, merely underlines the unrealistic nature of the claimant's perceptions. Nevertheless, he sought to argue that this all amounted to various instances of unlawful discrimination, and refused to back down from this view-point, even when it was pointed out by the respondent why his arguments were unsustainable. This has given the tribunal a complex and time-consuming task, in disentangling and dealing with all the claimant's sometimes muddled allegations, and then setting these out in oral reasons and these lengthy written reasons.

213. A general conclusion is that in most areas the claimant has failed to discharge the initial burden of proof in establishing facts from which any discriminatory inferences can be drawn, save for certain matters relating specifically to SE. The respondent has, in any event, been able to provide a credible explanation for events, wholly untainted by discrimination.

214. The claimant has, in his own mind, constructed a discriminatory narrative which simply did not exist. This fundamental weakness in his case undermines almost the entirety of his discriminatory claims of various types. Things happened to the claimant, but they were unrelated to protected characteristics.

Victimisation

215. There being various overlapping factual allegations, further comment will be made below as to matters alleged to be victimisation. However, the first matter to be determined in any claim of victimisation, is to establish what protected acts, if any, occurred under section 27 of the Equality Act 2010. In this case the claimant has set out the specific acts said to be protected acts, and asserted that it was as a result of carrying out these protected acts that he was subjected to detriments.

February 2017 protected acts

216. The first two protected acts are said to be oral complaints of discrimination, made to Simon Allison and David Turner in February 2017. The claimant's case is brought squarely on these oral complaints amounting to a protected act. The claimant relies upon section 27(2)(d), namely that in his oral complaints the claimant made an allegation (whether or not express) that there had been a contravention of the 2010 Act.

217. As referred to in the findings of fact, the tribunal considers that the claimant's evidence falls far short of establishing this primary fact. The tribunal finds, on a balance of probabilities, that there was no oral complaint which, even taken at its very highest, was capable as being an implicit complaint of some sort of discrimination. The tribunal finds that there was no oral protected act in February 2017.

218. Furthermore, the tribunal finds as a fact that the claimant had given no intimations of a possible intention to bring a complaint of some form of discrimination. Until such time as he made allegations on 21 June 2017 9see below), the tribunal accepts that the respondent and its employees did not know or suspect that there might be a discrimination allegation.

21 June 2017 protected act

219. The only other protected act relied upon is the written grievance of 21 June 2017. The respondent rightly concedes that this is a protected act, noting that it is expressly stated to be a complaint about race/religion discrimination.

220. The tribunal would however comment that it notes that part of the allegations relate to the period immediately before the grievance was put in. These are 4(q) (direct discrimination) 5(q) (harassment) and 6(m) (victimisation). The tribunal would stress that it has found that the respondent did not know, and had no reason to believe, that the claimant was about to present a written grievance relating to discrimination. In the absence of any such belief that the claimant would do a protected act (section 27(1) (b) of the Equality Act 2010) this is not capable of being

victimisation, and indeed it would be counter intuitive that if a manager suspected somebody might put in a grievance they would therefore effectively suspend them and tell them they might be dismissed for redundancy, which would hardly be likely to reduce the risk of them putting in a grievance.

Detriments potentially capable of amounting to victimisation

221. The only acts, therefore, capable of amounting to victimisation are those that relate to the period after the grievance was presented on 21 June 2017.

222. These are the allegations set out at paragraph 6(n) onwards in the list of issues, which overlap with other allegations of various types of discrimination. It must therefore follow that allegations 6(a) to 6(m) are incapable of being victimisation and must necessarily be dismissed.

223. However, taking allegations 6(n) to 6(y) as a whole, the tribunal considers that the victimisation claim is a particularly unmeritorious part of a generally weak claim.

224. To amount to victimisation, the respondent must subject the claimant to an act of detriment because of the protected act (section 27(1)). The claimant must prove that there were detriments and there must be primary facts from which the tribunal could conclude that such detriments were caused or contributed to by the protected act, having drawn appropriate inferences from the evidence as a whole. The tribunal has found it helpful to look at the evidence in the round, and ask itself the question of what caused the act in question. The victimisation claims must all fail on the issue of causation, as (to the extent that there was a detriment at all), what happened to the claimant is entirely explained in each case by matters which are wholly unrelated to his having done a protected act. Indeed, it is inherently implausible that any of the matters complained of could have been caused or contributed to, in any sense, buy the fact of the claimant having done a protected act, and the tribunal has found nothing from which any discriminatory inferences might be drawn.

225. The tribunal's conclusions as to allegations at 6(n) to 6(y) allegations, and the non-discriminatory nature of the reason that these acts occurred, are similar to the tribunal's conclusions as to discrimination generally, but brief mention will be made in this section. These written reasons should be read in their entirety, however, and further comment will be made below on specific factual allegations.

226. Quite plainly, the claimant being notified as to the arrangements for redundancy (allegation 6(n)) was nothing whatsoever to do with the claimant having just put in a grievance. This was part of the agreed redundancy process, and it is wholly uncontentious that these arrangements had been made before the claimant presented his grievance.

227. The other allegations can be dealt with fairly briefly: Many of the other allegations relate to the way the grievance was handled, and the tribunal doubts this this properly amounts to a detriment at all, as the grievance was handled in a fair way. To the extent that there might be detriments, there is

no causal link with the subject-matter of the complaint: There is simply no rational basis for concluding that the grievance would have been dealt with more favourably if it had not included a complaint of discrimination, or that the matters complained of were because of the protected act. The grievance was fairly investigated, fairly decided and the appeal was fairly dealt with. To the extent that the allegations relate to the redundancy process, the suggestion that it was dealt with in a detrimental way because of a protected act is particularly fanciful, when the claimant was, in reality, treated considerably more favourably than his colleagues who had not done a protected act, and his paid employment was extended so as to account for his sick leave and the need to progress his grievance.

228. The range of other allegations, such as arrangements for auto-enrolment on the pension, or for promoting a colleague, or for dismissing the claimant, were all for reasons wholly unrelated to the protected act. To suggest that there was some sort of casual link is fanciful and simply unarguable. As indicated above, there is simply no arguable basis for coming to the conclusion that the claimant was in any sense, and at any stage, subjected to a detriment for making a protected act.

229. The victimisation claims are lacking in merit and are not well founded.

Indirect discrimination

230. The claimant has brought just two allegations of indirect discrimination under section 19 of the Equality Act 2010. One relates to Ramadan working hours (brought solely as indirect religion or belief discrimination) and one relating to redundancy deployment (brought in the alternative as race, or religion or belief discrimination).

231. In a claim of indirect discrimination, the claimant must demonstrate that the respondent applied (or would apply) a provision, criterion and/or practice ('the PCP') to persons who with whom the claimant does not share the protected characteristic in question. The application of this PCP must put other persons with whom the claimant shares that characteristic, and must put the claimant at that disadvantage. If these conditions are met, the respondent can only successfully defend the claim if it is able to show that that the treatment was a proportionate means of achieving a legitimate aim.

Indirect discrimination - Ramadan working hours

232. In relation to the indirect discrimination related to Ramadan, the tribunal was entirely alert to the possibility that there could, on the face of it, be a plausible basis for bringing such a claim. The tribunal is sympathetic to the background notion that for an observant Muslim fasting during Ramadan, the handling of working hours by the employer could indeed result in a situation whereby people with the same religious beliefs might well be placed at a particular disadvantage. The judge was at pains to ensure that the claimant was given every opportunity to be able to put forward his best case.

233. It is not in dispute that the claimant's religion was Islam, and he fell within the group of Muslims who would wish to fast during Ramadan. In 2017, Ramadan fell in the period 24 May to 26 June.

234. The PCP is said to be "*the policy from the manager that all staff take lunch break at set time and not use flexitime to have no lunch and finish early*". The tribunal can understand that an individual fasting at Ramadan might well not want to take a lunch break, and might well prefer to finish work early. However, the evidence before the tribunal makes it clear that this is something of a misconceived PCP. The tribunal finds, on a balance of probabilities, that there was no such policy. It became increasingly clear that what the claimant was *actually* objecting to was *not* the factual allegation set out in the PCP. Rather, having for many years (it seems) devised his own Ramadan working arrangement with no input from management, he objected to being told by management in May/June 2017 that he would need to agree any temporary alterations to working arrangements with his line manager.

235. The facts before the tribunal, including the claimant's own evidence, make it clear that in fact no-one in the management chain had any difficulty whatsoever in the claimant's manager agreeing to the claimant forgoing his lunch break during Ramadan, and in consequence being allowed to finish work early. This was against a background that the claimant would be fasting, but he did not wish to take time off to have lunch because he would not be having lunch and in fact would not wish to be having a lunch break with other people who were eating when he was not allowed to eat.

236. The background to this particular sequence of events is that Mr Turner had decided generally to tighten up procedures in the IT Department from the previous September. This included a more hands-on management style, and ensuring that agreed working hours were kept to, with concerns that the claimant had asked for various period s of time off (unrelated to any protected characteristic), and had not always arrived at work on time The claimant has characterised as generally discriminatory Mr Turner's view as to the need to agree working hours and to stick to them (and making complains in his grievance about this), he took particular exception to the wording of an email from Mr Turner about the Ramadan working arrangements. It would appear that when the Principal dealt with this in the grievance, he relied upon the explanations given to him without in fact seeing the email in question until after he had delivered his decision, which criticised some insensitive handling of the matter.

237. The Principal's conclusions, that it would have been better for Mr Turner to have discussed this sensibly with the claimant, contain a valid viewpoint. However, when one actually examines the offending email, one discovers that far from it being an inflexible and discriminatory email, on any objective reading it makes it perfectly clear that the claimant's contract of employment required him to take a lunch break. It was clear that if he wanted to vary his working hours, such variation should be agreed with his line manager. It is evident that the email reflected HR advice which had been given to Mr Turner. The tribunal notes that under the Working Time Regulations, it is perfectly reasonable for the respondent, over and above any existing contractual agreement, to ensure that if the claimant does not take the

break which the Regulations entitle him to (and where enforcement action can be taken against the respondent), that there should be a record of these matters being agreed. The policy was *not* that all staff had to take a lunch break at a set time, but that if the Working Time Regulations were to be apparently disapplied (by agreement), and the terms of the contract of employment varied, this should be properly agreed. Furthermore, if members of the IT staff were expected to be available to provide a service during specified working hours, it is not unreasonable to ensure that there was a record of an individual employee being permitted not to be in the workplace during part of those working hours.

238. It may be that Mr Turner was better equipped to express himself in a sensitive way in the written word than in face-to-face interactions, but in any event he chose to send an email to the claimant on Tuesday 6 June 2017 (copy to SE, the claimant's line manager). This email is phrased in appropriate terms, and plainly expresses appropriate respect for the fact that the claimant was observing Ramadan. It explained how he had asked HR about the policy regarding religious events and holidays, and their potential impact on working hours. It is clear from the email, as Mr Turner explained to the tribunal during his oral evidence, that he did take advice and was advised that the contractual working hours were 8.30 – 5.00, with an hour's break, with different working hours agreed on a Monday. He explained that the break, normally at lunchtime, was not specifically a lunch break, but the fact that the claimant was observing Ramadan did not mean he was automatically entitled to skip his break, and not therefore entitled to arrive at work an hour late or leave an hour early. Mr Turner's evidence was that for any employee seeking to vary the working hours and the arrangements for breaks, he would expect such arrangements to be agreed, and whether to agree with any changes would be at the discretion of the college. The tribunal accepted his credible (and unchallenged) evidence.

239. The tribunal therefore finds that the PCP that was actually applied was that any employee who wished to vary their hours because of religious events or holidays, or indeed for any other reason, should agree them in advance with the line manager. Having set out this background Mr Turner went on to explain how he personally appreciated why the claimant would not wish to have a break in the middle of the day, and he made it clear that he was willing to discuss a temporary change in the working hours during Ramadan. There would need to be a discussion with either himself, or the claimant's line manager, whichever the claimant preferred, with a mutually agreed outcome, subject to operational need.

240. The tribunal accepts that the result of sending this email was that the claimant went to his line manager, who immediately agreed to the claimant's proposed working hours, and those were the hours which he worked.

241. The tribunal notes that in the email exchange in question, the claimant adopted a rather brusque tone in his reply to Mr Turner. Mr Turner then replied in turn to the claimant's email, explaining the fact that the claimant was observing Ramadan was "*obviously not in issue. The issue is that it is not for anyone to decide autonomously whether or not they are taking their*

breaks and simply adjust their working hours accordingly". He went on to state "*if anybody wishes to do that it must be agreed with the line management in advance*". He concluded by making it clear that it was absolutely fine for the claimant and his line manager to reach an agreement. The tribunal would characterise Mr Turner's reply as perhaps less sensitively worded than his original email, albeit in response to what the claimant had himself raised. The claimant then sent another somewhat curt reply to Mr Turner, who replied in neutral terms, also commenting "*whilst this might seem like overkill, it is to protect you as well as the college".* The tribunal would consider that this should be seen in the context of the College potentially being in some difficulty if it had apparently failed to give the claimant the statutory break required under the Working Time Regulations.

242. The facts being as above, the tribunal has found that the PCP was not in fact applied as alleged. The actual PCP that was applied was along the lines of requiring employees to agree variations to working hours with their line managers. Technically, the claim must fail because the alleged PCP was simply not applied.

243. In fact, the claimant's own account confirmed that he had no difficulty whatsoever in agreeing the variation of hours with his line manager, evidently against the background that the arrangement had worked satisfactorily during Ramadan in previous years. If the tribunal was willing to adopt a broader understanding of the PCP, and to substitute one more beneficial to the claimant's claim (although he did not in fact invite the tribunal to do so), the only area of possible disadvantage is the effort of talking to the line manager to agree the variation in hours. That would hardly seem to be a disadvantage at all, especially as the line manager was entirely amenable to agreeing the hours which the claimant wished to work. If it was a disadvantage at all, it would seem to be rather trivial.

244. If the claimant had succeeded this far, however, the tribunal would need to go on and consider whether, if this PCP was applied, it put persons with whom the claimant shares the characteristic at a particular disadvantage when compared to people with whom the claimant does not share it, in the specific factual context of Muslims who wished to observe the Ramadan fast. The specific disadvantage relied upon is that "*as an adherent Muslim he could not eat during the lunch hour or would have to sit in the common room watching others eat – this would place a heavy emotional and psychological burden on him*". This was not in fact a disadvantage which the claimant ever suffered, or was likely to suffer, as the only arguable disadvantage was the need to request a variation in hours. The same would apply to other people who wish to vary their hours in the light of religious holidays, or for other personal reasons, where annual leave was not being taken to cover the time off.

245. The tribunal considers that people of the Muslin faith were not put at any real disadvantage at all, let alone a "particular disadvantage". If there was some minor disadvantage relating to the need to agree variation in working hours with the line manager, it would apply equally to any person who wished to vary their working hours in a similar way, whether it be (for example) an observant Jew wishing to finish work early on a Friday in the

darker months or on a religious holiday, or (for example) a person wishing to vary their hours and not take a lunch break for a reason wholly unrelated to religion or belief. The tribunal concludes that the claimant was not put at a particular disadvantage, beyond the disadvantage suffered by anybody wishing to temporarily vary their working hours, in that they would need to ask the line manager.

246. Even if the tribunal had been minded to conclude that there was sufficient particular disadvantage, the tribunal considers that the need to clear such variation in working hours with the line manager was perfectly sensible. It is not a rational cause for complaint for an employee. The complaint is somewhat frivolous. In terms of the statutory framework, the tribunal would in any event conclude that under section 19(2)(d) there is a legitimate aim in relation to the need to agree and to confirm with some degree of certainty an employee's working hours, when they seek to work different hours from their contractual requirement, and if, in addition they wish to have the mandatory requirements of the working time regulations waived such as they chose not to take their statutory break. Similarly, it is a legitimate aim that the employer should be informed and to agree that a particular employee would not be available to carry their tasks during the hours when they would normally be expected to be in the workplace. These being legitimate aims, the tribunal must consider whether the PCP was a proportionate means of achieving those aims. The tribunal has no hesitation in concluding that the PCP actually applied (namely to request permission from the line manager for variation of hours) was quite plainly entirely proportionate. It was not a difficult, onerous, nor complex task. It merely required a brief conversation, which in the claimant's case immediately resulted in approval for the proposed hours.

247. This first allegation of indirect discrimination is not well founded.

Indirect discrimination - redundancy/redeployment

248. The statutory framework has been referred to above.

249. In relation to the second allegation, this relates to the redundancy/redeployment procedure where the claimant relies on the following PCP: "*The practice of using a manager's personal preference as a selection tool in redeploying staff in his section and deciding on who to make redundant*".

250. The claimant relies upon his religion or belief as a Muslim, and/or his race as what can be summarised "a Black African". This is in the context of the vast majority of employees at the College not being Muslims, and being white and visibly not of Black African descent. The tribunal noted that this in many respects appeared to be a direct discrimination allegation in disguise, because it appears to be based on the assumption that a manager who was not a Black African, or of the Muslim faith, would treat individuals belonging to these groups less favourably than people similar to himself (see the section below in respect of the allegations of direct discrimination/harassment, and the general comments on discrimination above). However, it is expressly pleaded as indirect discrimination, and has been considered as such.

251. This aspect of the claim has not been pleaded with great care. The PCP is said to have been applied during the period March 2017 – October 2017. The claimant was given numerous opportunities to clarify this aspect of his claim, but did not do so beyond confirming the PCP set out above. The claimant asserts that he was put at a particular disadvantage because "*the manager had a natural affinity with people who looked like him, acted like him and shared the same cultural and social values as him*. *The claimant looking and being different as Black and Muslim would therefore not be preferred by the manager for redeployment, but would be for redundancy*".

252. As indicated above, the tribunal considers that to a large extent this is seeking to get a direct discrimination in "by the back door". Despite being encouraged to clarify and explain his claims, this is an allegation which is not properly explained by the claimant. In effect, however, it relies upon the tribunal accepting, for example, that when Mr Turner promoted SE (whom the tribunal has not seen, and whose religion, cultural views or attitudes are not recorded), he did so because she looked like him and shared the same cultural and social values as him. In fact there is no evidence relating to these matters, other than it is common ground that she was, like Mr Turner, white. The claimant has also failed to call evidence suggesting that Mr Turner had a natural affinity with Simon Allison. Although he looked like him, in the sense of being a clean-shaven white male, there is no evidence called again that Mr Allison acted like him, shared the same cultural and social values as him. The tribunal has been told nothing about the background of these two witnesses, save for their evidence relating to the incidents in question. The assertion that the manager would prefer white people to black people, and would prefer to Muslims, is wholly unsubstantiated, and in any event is in reality direct discrimination.

253. When one in fact analyses the facts behind the rather unclear allegation which the claimant has chosen to pursue, it is apparent that in fact the (twin-pronged) PCP is mistaken.

254. Looking first at the "redeployment" aspect of the allegation, the PCP perhaps makes more sense in respect of Mr Turner redeploying Mr Allison from the leadership role to the development role in March 2017, and in promoting SE to the IT team leader tole at the same time (in order to back-fill the vacancy caused by Mr Allison's move), albeit on a temporary basis, pending the departmental reorganisation.

255. The tribunal noted that in any event Mr Turner gave a very clear explanation in his oral evidence, which was not challenged in cross-examination, that these changes to SE's and Mr Allison's roles were not based on his personal preference on such matters as social or cultural (or religious or racial) background, but rather were based on his perception of professional skills. He also made it clear that when Mr Allison was moved to the development role (Mr Allison not appearing, perhaps, to be particularly strong on leadership and oral communication skills) to be over blessed with human communication and leadership skills), SE was technically less proficient but had the organisation skills that made her a suitable candidate to lead the team.

256. The tribunal accepted Mr Turner's credible and largely unchallenged evidence. Indeed, it is notable that the claimant did not complain about either of these roles at the time, even if others may not have been sure that they agreed that SE was the best choice. However, this was against a background of needing, within a relatively short time-span, to prepare for the restructuring and have people in post prior to the process beginning. Mr Turner gave a credible and entirely non-discriminatory explanation, which did not rely on his "personal preference" as a selection tool, and certainly wholly discounted any suggestion that these were based on people "like him", or that he considered that the claimant was "different".

257. Indeed, as will be referred to below, when Mr Turner advertised, interviewed and recruited to the permanent roles, he candidly and credibly told the tribunal that actually he thought the claimant would have been well-qualified for the leadership role, and it would have been a close-run thing had the applied for it, as well as Mr McKenna and SE. This evidence was not challenged by the claimant and the tribunal accepted it. It is clear from the claimant's own witness statement that he is *not* in fact arguing that SE was not qualified to do the job and that he was better qualified, which appeared to the tribunal to be implicit to be implicit in the indirect discrimination claim. Rather, his view was that in fact he did not want SE to be his line manager. This is an entirely different matter, relating to the breakdown of his own relationship with SE, which had previously occurred, and is not a matter inherent in the alleged PCP.

258. A fundamental weakness in the claim is that the claimant cannot show that even if some sort of PCP along the lines alleged was applied, that he was put at any disadvantage. Mr McKenna (who on the face of it appeared to be from a similar background to Mr Turner) applied for a new role but was not selected. The claimant was aware of the new roles, but did not even apply. The tribunal accepts that if he had applied, Mr Turner believed that the claimant would have been a strong candidate.

259. The claimant has certainly not established that the alleged PCP was applied in respect of "redeployment". Even if it could be established that a PCP along the lines of that alleged was applied (based on Mr Turner making the decision as to who to temporarily appoint in the two roles), the claimant was not put at any disadvantage because he did not indicate then, or subsequently, that he wanted to do either role. If he had applied, the evidence suggests that he might have been successful.

260. The more relevant period is that relating to the process commencing, it would appear, late June and then July 2017, when the two *permanent* roles were advertised to the whole college, and a number of people applied. This involved an interview conducted by Mr Turner, albeit with HR support, where the individuals had submitted written applications in accordance with the advertisement and job description. There is simply no evidential or inferential basis for concluding that Mr Turner conducted the process of people who were more like him or looked like him, and the tribunal not having seen Ms SE, considers that a more plausible explanation is that Mr McKenna, as a man of a similar age and appearance to Mr Turner, would be someone who would be more likely to be "like him" than Ms SE, who in fact got the job.

261. The tribunal considers that to some extent any selection process where the interviews are conducted by a manager, albeit with support of HR and looking at written applications and interview results against a job specification, might be described as a practice of using a manager's personal preference, as such as inherent in interview selection process. However, that really does not take matters very far. The PCP, as explained by the claimant, is simply not one which was applied and in any event there is no basis for concluding that people who were black or Muslim would be treated less favourably. The tribunal finds as a fact that no such PCP was applied. Indeed, as referred to above, Mr Turner made it clear that he thought that if the claimant had chosen to apply he would have been a credible candidate who might or might not have been appointed into one of the roles in question.

262. The facts were as follows: a general email went out to staff, and the tribunal finds that this email was passed on to the claimant (who was at home and not at the time receiving work emails). Certain staff (not the claimant) applied, and the respondent then went on to consider on merit all those who applied. Those who did not apply would not be considered. The claimant did not apply and was therefore not put at any disadvantage whatsoever, let alone a "particular disadvantage" by the way that Mr Turner selected from the applicants. There is no evidence to support the underlying assumptions upon which the claimant relies, and no reason to conclude that anything of a racial, religious, social or cultural nature was deliberately or subconsciously applied in the selection process.

263. The first part of this indirect discrimination allegation is incapable of succeeding.

264. The second part of this allegation, although this was never properly explained by the claimant, appears to be suggesting that the redundancy process itself, had an indirectly discriminatory effect. This has never been coherently articulated, and it appears to suggest that there was some sort of selection for redundancy. There was not. What in fact happened was that a decision was made (approved by the senior leadership team) to make three IT posts redundant. This plainly had nothing to do with the personal characteristics of the three post-holders, two of whom were white and, as far as the tribunal is able to tell, probably not Muslim. The tribunal consider that there is quite plainly nothing capable of having an indirectly discriminating effect in senior management identifying the three posts which were no longer needed in the new structure. There was no selection for redundancy.

265. The respondent created new, different, posts, and individuals were expected to apply for them, if they wished to take one of the new posts. The claimant did not apply for them. The tribunal considers that the facts are not capable of falling within the PCP at all, as there was plainly no "managers personal preference" in identifying the technical roles needed in the new structure. This part of a larger restructuring programme to be ready to start as one new combined College, approved by the senior leadership team with an input from HR. In that sense, all Mr Turner was doing was implementing it. There is simply no evidential basis for concluding that the redundancy

process put Black Africans or Muslims at a particular disadvantage, compared to other employees at a similar level who were neither Muslim nor black. This is not capable of amounting to indirect discrimination.

266. None of the claims of indirect discrimination are well founded.

Allegation 4(g)/5(g) involving SE – including time limits and jurisdiction

The specific allegation involving SE – February 2017

267. There are a number of allegations against SE. SE provided a witness statement, but did not attend. These involve for direct discrimination (because of race and religion/belief) and harassment (related to race and religion/belief). In most of these allegations, the tribunal has had the benefit of hearing relevant evidence from other witnesses, notably Mr Allison and Mr Turner, who gave credible sworn evidence at the hearing, either on the incident itself, or sufficient that appropriate inferences could be drawn from the background and related evidence. Those allegations are dealt with below, and turn on their facts.

268. In respect of SE there are allegations ranging in time from September 2016 to June 2017. Not all the allegations are entirely clear, but most (see above) are either unarguable, or the evidence from other sources strongly supports the respondent's case. Although there are also allegations of victimisation against SE, none of them post-date the protected act (the written grievance of late afternoon of 21 June 2017), and the tribunal considers that there is no basis upon which SE or indeed anybody else would have known that the claimant was planning a grievance relating to discrimination.

269. In relation to one incident, however, there is a clear evidential dispute as to what transpired in an incident between the claimant and SE, at a stage before she became his line manager. There were no witnesses, and the respondent was not able to call much relevant evidence from other sources. This is the

270. This is the allegation set out in the list of issues at paragraph 4(g) (direct discrimination) and 5(g) (harassment). It is the same allegation under both heads of claim, namely "By SE treating C less favourably in relation to lending him keys to the IT room" on an unspecified date in February 2017, although the tribunal heard evidence that it would have been on or around 10 February 2017. For the purposes of the direct discrimination claim, the comparators are "Mr McKenna/rest of IT team". The claimant gave evidence on this incident, and also relies upon background evidence from Mr McKenna. He also relies on inferences from evidence relating to SE, including a racially offensive comment made in the past.

Absence of SE from the hearing

271. As indicated above, the respondent provided a witness statement from SE. this was unsigned, but Mr palmer was able to provide an email from SE confirming that the statement was her evidence. Many of the contents of her statement were logical and supported by other contemporaneous evidence, or related to primary fact which were not in dispute. To the extent that the

statement deals with those points, the tribunal was able to accept the evidence and put some weight on its contents, albeit limited weight, and would rather rely upon the corroborative evidence of sworn witnesses, whose accounts were tested in cross-examination. In relation to matters in dispute as to what transpired between the claimant and SE at the incident in February 2017, however, the tribunal is able to give the witness statement very little weight indeed.

272. As also recorded above, Mr Palmer explained that the sole reason that SE was not called as a witness for the respondent (as confirmed by Mr Barlow, the college's Vice Principal, in his oral evidence) was that she had been summarily dismissed the week before the commencement of the Employment Tribunal hearing. Mr Barlow confirmed that the dismissal was for reasons unconnected with this case. That evidence was not challenged by the claimant. Whilst it would, of course, have been open to the respondent to ask for a witness order to secure SE's presence at the hearing, the tribunal appreciates that it would be unusual for a respondent to seek to rely upon the oral evidence and credibility of a witness who had just been dismissed for gross misconduct. Taking a realistic and pragmatic view, it is hardly likely that she would have been favourably inclined towards her former employers or to have been expected to co-operate with the process. As SE is not named as a respondent, and the respondent would be vicariously liable for any discriminatory acts SE might have been responsible for, it would be the respondent college which would bear any liability for acts of discrimination she might have carried out, not her. The tribunal accepts that the respondent would have been put in a difficult position in preparing for the case, but quite plainly it would be very risky for the respondent to call SE, in these circumstances, as a witness of truth.

273. SE having only been very recently dismissed, plainly that current situation would not have arisen at a time when SE was still an employee of the respondent. As the tribunal draws the inference that the disciplinary matters only arose relatively recently, had the hearing been held some months previously then this issue would not have arisen. That said, even without the potentially significant delay, the respondent was prejudiced by not realistically being in a position to call SE as a witness to rebut the claimant's allegations.

274. The tribunal makes no criticism of Mr Palmer's decision not to call SE as a witness at the hearing. The tribunal accepts that most Counsel, faced with this issue, would probably (and justifiably) adopted the same course of action.

275. The position is therefore that the respondent has no reliable direct evidence to call to rebut an allegation from the claimant, where the only person in a position to deal with the point would be SE herself. The tribunal recognises that this puts the respondent at some disadvantage, whatever the strength of their case might be in respect of other allegations. Mr Palmer did his best with what he had, but was plainly in a rather difficult position.

<u>The evidence relating to allegations 4(g) and 5(g)</u>

276. In relation to the incident in February 2017 involving keys, the claimant's case is not a particularly strong one in the overall context of the evidence before the tribunal. But it is an at least potentially plausible account. The allegation arises from Mr Turner's entirely acceptable decision, in January/February 2017, that the IT room would be locked, and that members of the IT team would need to carry keys around with them. This was both for security reasons, and also to ensure that staff using the services of the IT department had to go to the help-desk, rather than to disrupt the working arrangements by going straight to the IT room to try to obtain an IT technician themselves, to resolve whatever their problem was. So far, so good. The tribunal had no difficulty in accepting this credible evidence.

277. It is not in dispute that at this time, the claimant's practice was that he would not always keep his keys on him. He would leave his keys inside the IT office overnight, and then borrow keys from the helpdesk in the morning to let himself into the IT office. This was plainly contrary to Mr Turner's express instructions.

278. The tribunal does accept the respondent's arguments that, in the circumstances, it is hardly surprising that SE (in charge of the help-desk) would have become frustrated by the claimant turning up every morning to borrow keys, when plainly the head of the department expected him to carry his own key. Taken in isolation, this would be an allegation of no merit, and indeed a rather trivial matter for the claimant and SE to fall out over.

279. In relation to all the other witnesses, including in particular Mr Turner, the tribunal has found nothing capable of bearing any inferences that their behaviour was tainted in any way by discrimination. In relation to various other matters involving SE, the tribunal has also been satisfied that there was no discrimination.

280. However, the claimant was evidently upset by SE's reaction on a day around 10 February 2017 when he went to borrow the key of the IT office. There might be a credible non-discriminatory explanation for what was said by SE (there is no allegation of explicitly discriminatory words during this incident), albeit there was no sworn evidence from SE. If, however, the frustration exhibited by SE in telling the claimant he should not repeatedly borrow the key from the helpdesk amounted to less favourable treatment than that shown to comparators, and if there was anything from which a discriminatory inference could be drawn, then he would have an arguable case of direct discrimination or harassment.

281. The claimant's own evidence was that he was very upset, to the extent that it would fall within the definition of harassment, if it was related to a relevant protected characteristic. On the face of it, what he describes suggests that what SE said to him had, at the very least, the effect of violating his dignity, or creating at least a hostile, humiliating environment for him. He also believes that this was less favourable treatment than other received, or would receive. The main issue for the tribunal in relation to this incident, having established precisely the nature of the exchange, which the claimant describes as "*one of the most hurtful and humiliating incidents in my*

employment" is the reason for such treatment, or the extent to which it may have been related to religion or race.

282. The tribunal notes that the allegations against SE in relation to the way she treated the claimant in respect of the keys, on or around 10 February 2017, are matters where it would normally expect to hear evidence from the respondent, possibly to dispute what was said, and certainly to provide an explanation. Mr Turner, and others, can plainly give evidence about the surrounding circumstances, why there was an issue with keys, and how the matter was eventually resolved. But neither Mr Turner nor any other witness other than the claimant, was present during the conversation between SE and the claimant, to which the claimant takes particular exception. The reality at the hearing, however, was that the respondent did not call SE.

283. What the claimant describes was a verbal exchange with SE which he plainly found upsetting, and which on the face of it appeared to go rather further than what one would usually expect when all the person in charge of the help-desk needed to do was politely remind the claimant, firmly if necessary, that he should keep his own key with him (or report the matter to management to resolve).

284. As well as the precise wording and tone of the exchange on 10 February 2017, the claimant has been able to call further evidence in support of his claims of discrimination or harassment.

285. In relation to less favourable treatment (or at any rate disparity of treatment, which might also be evidentially relevant to harassment), the claimant called credible sworn oral evidence from Mr McKenna, which was largely unchallenged. Mr McKenna gave evidence (which the tribunal accepted) that over the same period it was his (Mr McKenna's) usual practice to cycle home at lunchtime, and to leave his key in the (locked) office, in the same way that the claimant would overnight. Like the claimant, when he returned he would go to the help-desk to borrow the office key to let himself in. He reported to the tribunal that despite this being his practice on "most days," he never received any complaint from SE, or others, as to doing this.

286. SE's witness statement ostensibly dealt with the point as follows: It explained that the reason that Mr McKenna was treated differently, was that the situation was different because "*I certainly do not remember Allister forgetting his keys and if he did so it was only on an occasional basis*". This set of facts was plainly disputed by Mr McKenna. This is a matter in dispute upon which SE could have been cross-examined, but on the face of it her explanation for the disparity of treatment was incorrect. This might be a legitimate cause for drawing discriminatory inferences: arguably an over-reaction in the way the claimant was treated, when a white non-Muslim colleague (Mr McKenna) was not subjected to any sort of unfavourable treatment in very similar circumstances. The explanation given by SE is one which is directly contradicted by credible and unequivocal evidence from Mr McKenna. That is also a matter from which adverse inferences might be drawn as to her explanation for how she treated the claimant.

287. The claimant also refers, as a matter from which he would invite the tribunal to draw inferences, that some time previously, in 2015, he had had a

conversation with SE during which she had made inappropriate references to a "Paki shop". The tribunal accepts that although this is a term which, some years ago, was in wide use, by 2015 it should have been apparent to anybody that it was a racially derogatory term. This is not the strongest of allegations, because the claimant makes no suggestion that he complained at the time (and indeed, it appears for the first time in his witness statement) and also gave evidence to say that at that period he had a good relationship with SE and had no problem with her. However, when there is a unsatisfactory explanation for why SE got angry with the claimant over a relatively trivial matter, when she did not with Mr McKenna, and she has used racially derogatory terms in the past, it is a matter from which inferences might be drawn. Although the evidence is not entirely clear, either the claimant made up the account over the reference to Paki shops or it did happen – it is unlikely that he would have been mistaken. In the circumstances, the tribunal having found the claimant to be a generally truthful witness (if sometimes wide of the mark in his perceptions) the tribunal finds it more likely than not that she did say this to him in 2015. It may be relevant to race, and also to religion, in the context that most people of Pakistani origin are Muslims.

288. Mr Palmer submitted that it would not be an appropriate course to draw inferences, because even if SE had made remarks about shops, this did not indicate any objection to people who were of Black African extraction or who were Muslims. The tribunal would characterise that argument as a little optimistic.

289. The claimant also gave evidence that in relation to a later incident when he asked Mr Sadler to retrieve the pictures of his sons from his office, the day after he had been escorted from the premises, he had previously sent a WhatsApp message to SE telling her that Mr Sadler would be coming in. Although not much had been made of this previously, the claimant was clear in his evidence to the tribunal that he believed that SE's witness statement was lying when SE said in her witness statement at paragraph 44 that "*the claimant himself had not given authority for the personal belongings to be collected".* Mr Palmer sought to rely on the witness statement, and this matter is before the tribunal. The claimant's clear evidence that he had indeed given personal authority and notified this to SE, and he produced evidence from the tribunal which appeared to indicate that first thing in the morning the message had been read by SE. that appeared to be reasonably plausible. The matter was raised during the grievance process, although the claimant made little of it at the time. But his witness statement in the tribunal makes it clear that he would rely on inferences from this further (alleged) attempt to mislead the tribunal.

290. The tribunal would observe that SE had no advance notice that the claimant would raise the discussion about "Paki shops" in his witness statement, and it is not surprising that she did not deal with the matter at all either to admit, deny or give an alternative explanation for this conversation. In relation to the WhatsApp message said to have been sent to her, she also did not refer to this, again probably because the claimant had not expressly pleaded this point, albeit during the course of grievance proceedings he had provided a copy of the WhatsApp message and so the respondent were at least on notice that this might be a matter which was raised.

291. Taking an overview of the evidence relating to the February 2017 incident, the tribunal attaches some weight to the following: The tribunal recognises that in relation to the disparity of treatment in relation to the keys for which SE was allegedly responsible, and in relation to the conversation about shops, and in relation to whether SE was in fact lying as to the reasons that she refused Mr Sadler permission to take the claimant's pictures, it may well be that in oral evidence she would have been able to give a plausible and non-discriminatory explanation. But there is no credible explanation before the tribunal. With all due respect to Mr Palmer's submissions to the contrary, the tribunal considers that the claimant has established primary facts, on a balance of probabilities, from which the tribunal could draw discriminatory inferences. Had SE given oral evidence and been cross-examined on these points, it may be that the tribunal's concerns would have evaporated in the face of a non-discriminatory explanation. However, no satisfactory explanation is before the tribunal. These remain matters indicating a possible propensity to take a less than enlightened view as to race and possibly religion, and a possibly false explanation as to disparity of treatment between the claimant and a white non-Muslim colleague, together with a possibly false explanation as to why she treated the claimant in the way she did in relation to an incident not pleaded to discrimination but quite plainly a matter which caused the claimant concern during the sequence of events which has been labelled as discrimination.

The tribunal's conclusions on allegations 4(g) and 5(g)

292. In light of the above, in looking at the treatment of the claimant by SE in relation to keys on or around 10 February 2017, the tribunal notes that this is not the strongest of claims, and would be unlikely to result in more than a small amount of compensation for injury to feelings. Nevertheless, it is of sufficient cogency that the claimant is able, on a balance of probabilities, to discharge the initial burden of proof:- the tribunal considers that this is a matter to which the reverse burden of proof provisions of the Equality Act apply.

293. Section 136(2) of the Equality Act 2010 provides that "*if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred*."

294. In relation to the allegation concerning the discussion on keys (paragraphs 4(g) and 5(g) of the list of issues) the tribunal considers that the claimant has proved primary facts to the required standard which are capable of being less favourable treatment, and also capable of being harassment. Drawing inferences from the disparity of treatment, previous remarks, and a possible deliberate lie in explaining SE's behaviour on a separate but broadly related matter, the tribunal considers that it would be open to decide that that amounted to direct discrimination or alternatively to harassment.

295. The case is weakened by the surrounding circumstances and the reasonable argument put forward by Mr Palmer that the treatment by SE could well have been a product only of her frustration in repeatedly having to lend keys to the claimant when he had been issued with his own key.

However, on this particular incident (and this incident alone), that argument is not strong enough to provide a sufficient explanation, when the explanation required is that from SE herself. Little weight can be applied to her witness statement, and there are matters of significant dispute which appear to show that her explanation may not be correct.

296. What that means in practical terms is that the tribunal considers that the claimant has, if only just, discharged the initial burden of proof. The respondent's case is too weak, in respect of this specific allegation, to fall into the category of providing "any other explanation", and indeed there are inferences to be drawn from her evidence which might further undermine that explanation and to support the claimant's case.

297. An allegation cannot succeed both as direct discrimination and harassment. On this case, the tribunal considers that perhaps the most telling evidence is Mr McKenna's credible account as to the disparity of treatment. The most obvious difference (relevant to protected characteristics) between the two men is race, albeit the tribunal would not rule out religion as the underlying reason for any disparity.

298. In the circumstances, the tribunal considers that it is obliged by the provisions of section 136(2) to find that the contravention did occur (direct discrimination because of race, and/or religion or belief).

299. Having been drawn to this conclusion as a matter of law, the question of harassment does not arise as it is not open that a tribunal to find that this also amounted to harassment. The tribunal would therefore, in any event, find that the allegation of harassment (paragraph 5(g)) is not well founded.

300. The position is therefore that alone among the allegations of discrimination, the tribunal has found that this particular allegation relating to keys, which the claimant himself labelled as an allegation of particular significance in the sequence of events he complains of, is factually made out.

301. The tribunal would repeat that it did not have the benefit of hearing the sworn oral evidence of SE. It would stress that the decision is based on the possibility of inferences being drawn, and the lack of any evidence of sufficient weight, supporting a non-discriminatory explanation.

302. In those circumstances the tribunal must consider the question as to whether this allegation was within time, and if not, whether time should be extended. Before dealing with that point, however, the tribunal considers that it is important to deal with a further evidential issue which arose.

<u>Comment on the evidence relating to SE's part in incident on 21 June 2017</u>

303. Reference has been made, above, to a second factual allegation involving SE, albeit (perhaps unexpectedly) it is not one which the claimant has attempted to bring to the tribunal as a formal allegation of some form of discrimination, although it is something from which discriminatory inferences might be drawn. This is the matter of the claimant's colleague KS coming into the office, wanting to retrieve pictures of the claimant's children on 21 June 2017, and being told that he could not. This was the day after the

claimant had been sent home on special leave (gardening leave) as part of the redundancy process, and just before he presented his grievance, which referred to this incident (amongst other matters).

304. In relation to this factual allegation, the tribunal looked very carefully at the way the case was pleaded, bearing in mind the principle in *Chapman v Simon [1994] IRLR 124*. The tribunal notes that the direct discrimination allegations 4(p) and 4(q) (and 5(p)/5(q)/6(l)/6(m) for harassment/ victimisation). These allegations, relied upon as discrimination, relate unequivocally to what happened *before* the claimant was placed on special leave and then his being "ejected" from the premises before being able to make a grievance. The factual allegations considered in this sub-section relate to what happened after this, when KS (on the claimant's instructions) came and tried to obtain the picture(s). During the course of the claimant's internal grievance, and during his oral evidence in tribunal, however, he had specifically complained that his colleague KS came in the following day (21 June 2017) and that SE and Mr Allison were abusive and refused to let him have the pictures he had requested. He also went as far as to make the factual allegation that SE had deliberately lied in her evidence, when she stated that she did not know that KS had the claimant's authority to request these possessions. This, according to the claimant, was a lie, because he had already sent her a WhatsApp message (a copy of which was provided to the tribunal) which had explained to her that he had asked KS to collect these belongings, and his evidence was that he could see from the message that it had been read.

305. Noting that the claimant had been sufficiently concerned by this matter to include it in his grievance as a complaint about SE, the tribunal took some time to confirm precisely what the pleaded tribunal case was. It wished to establish whether the list of issues, in this respect, did correctly set out the claims which had been included within the claim form, and within the schedule of further particulars which the claimant provided in response to the orders at the preliminary hearing.

306. The tribunal satisfied itself that the specific relevant allegations relied upon as being discrimination/harassment was solely what happened at the time that the claimant was put on special leave on 20 June 2017. Although the narrative of events described in the claim form (paragraph 4.15) *does* refer to involvement by SE and Simon Allison denying him retrieving "all his possessions", the context was clearly that this was a reference to what happened *before* he left the college premises, and was a reference to "*all his possessions*", whereas his specific complaint about what happened the following day was clearly in relation only to KS going back (the day after he left the premises) and trying to retrieve pictures of his children. There is no reference in the claim form to the incident when he wanted a colleague to retrieve pictures of his children, and the passing reference to SE at paragraph 4.15 does not indicate that he believed that SE's behaviour was discriminatory. Plainly, the lack of clarity in the claim form required the claimant to confirm which factual allegations were discriminatory, and type of discrimination they were.

307. The claimant's further schedule, upon which the respondent takes no point as to whether any of the discrimination allegations required an amendment

application, expressly sets out at pages 9 and 10 the allegations relating to 20 June 2017, expressed as being the date that the claimant was removed from the college. This cross-refers to the paragraph in the claim form previously identified. The schedule then goes onto deal with later matters *after* the claimant had been removed from college and makes no reference to any subsequent events relating to not being permitted KS not being permitted to retrieve the claimant's picture. Indeed, the narrative relating to 20 June set out in the schedule of further particulars, makes it clear that the matters relating to the claimant personally retrieving personal possessions occurred *before* he left the college, because it ends "*then marched off site like a criminal by security*".

308. In reliance on the matters identified by the claimant as comprising his claims of discrimination, the respondent (on the direction of the tribunal) prepared a draft list of issues which, with minor amendments, was agreed with the claimant on the morning of the third day of the hearing before any evidence was called.

309. The agreed list of issues expressly set out the wording at the relevant paragraphs that allegation in question was "by r denying c the right to collect his personal possessions before placing him on special consultation leave (June 2017)". The claimant agreed that this was correct. Even if this had been an oversight on the morning of the third day of the hearing, the claimant had ample further opportunity during the course of the hearing to check the wording, and if it was inaccurate in any way, to notify the tribunal, and if necessary to make an application to amend.

310. There was no such notification, and the claimant made no application to amend during the hearing.

311. The tribunal is therefore satisfied that the pleaded allegations relate solely to the events of 20 June ***before*** the claimant was removed from the college on special leave. It is not for the tribunal to make the claimant's case for him, and he has been given ample opportunity to clarify what his claim is. His claim does not allege discrimination on the following day, in a separate incident. Despite the claimant's concerns over what happened the following day, this is not part of the case which the tribunal needs to decide.

312. Having noted the points in the above paragraphs, the tribunal would go on to point out that it may be relevant background evidence. The tribunal accepts that by giving evidence on the points, it is not unreasonable to conclude that it is a matter from which the claimant would wish to draw discriminatory inferences, in relation to those matters which do form part of the claim. The tribunal notes that in his witness statement (at paragraph 46) the claimant does refer to this incident, and plainly considers it relevant evidence before the tribunal. The tribunal is content to take it into account, and the circumstances, it has identified that SE's alleged lie in respect of the request to retrieve belongings the day after being sent on special leave, is a matter from which the tribunal might be able to draw discriminatory inferences.

Time jurisdiction – the tribunal's conclusions

313. The basic points in the chronology of events, relating to jurisdiction, are as follows:

314. The claimant commenced ACAS (and concluded) early conciliation on 6 October 2017, and presented his claim in the tribunal on 19 December 2017. For a claim to be in time (subject to section 123(3)(a) of the Equality Act 2010) it should relate to a matter occurring on or after 20 September 2017.

315. This allegation concerning SE relates to on or about 10 February 2017, more than seven months before 20 September 2017. As no subsequent allegation has been found to be well-founded, the question of acts extending over time does not arise. The claim was therefore well out of time.

316. In order for this claim to be in time, the claimant would have needed to go to ACAS at the latest on 9 May 2017 (or around this date because of the lack of precise particular date of the incident), and after the issue of an early conciliation certificate he would have had a further month to present his claim. He did not go to ACAS by 9 May 2017, and does not benefit from any further extension of time. On the facts of this case, because there was only a one-day early conciliation, and the claimant then waited a further three months before presenting his claim, that matter would in reality have no significant impact on delay.

317. In its preliminary reading of the case papers, prior to the hearing, the tribunal had noted that although a point was being taken generally on time jurisdiction, the arguments had not been developed. As indicated above, right at the start of the hearing, the judge identified that this may well be a live issue. Indeed, having been informed by the respondent that it would rely upon SE's witness statement but not call her as a witness, the judge expressly pointed out to both parties that one of a number of possible outcomes might be that the respondent could be in some difficulty in rebutting some allegations involving SE, and that in that particular context time jurisdiction points might arise. The judge pointed out that there appeared to be no allegations involving SE dated after June 2017: plainly all allegations involving SE were well out of time.

318. The judge also took the time to explain to the parties, in some detail, that it would be open to the tribunal to conclude, for example, that the handling of the grievance and the redundancy process was non-discriminatory, noting that the dismissal and grievance outcome were in-time. The judge pointed out that earlier matters, particularly those matters relating to the period up to the claimant being sent on garden leave, appeared to be well out of time. He pointed out that it was perfectly possible that the tribunal might find that the only arguable acts of discrimination were out of time. For that reason, the judge explained to the parties that the tribunal would expect to hear oral evidence from the claimant relating to a just and equitable extension of time, and to have closing submissions on this specific point. The judge also pointed out that medical evidence might be needed, as sick notes only covered part of the period in question.

319. The judge repeated this advice at the beginning of the third day of the hearing, when the list of issues was agreed, having noted that the time jurisdiction points had not been set out in the list of issues. The judge made it abundantly clear that if there was a time point to be taken, the tribunal would be obliged to take it, and would expect the parties to be ready to deal with the points in oral evidence and closing submissions. The claimant's witness statement having made no express reference to the time point, the judge reminded the claimant (and Ms Haitham) that he would need to give oral evidence on just and equitable time extensions, and to explain why the claim was presented at the time it was, and not earlier.

320. The claimant having volunteered no oral evidence-in-chief on this point, before permitting cross-examination the judge pointed this out, and then asked the claimant a number of open questions, designed to enable him to explain the time-scale for presenting his claim, and to give him the opportunity to give an explanation as to why a claim was not presented earlier. Indeed, the claimant was expressly given the opportunity to explain why it was that he felt able to present a detailed claim on 19 December 2017, but had not done so earlier. The claimant was also cross-examined on the point by the Mr Palmer, and Ms Haitham had the opportunity to re-examine the claimant on this matter.

321. The judge later reminded both parties that in preparing for oral submissions, they must be ready to deal with the point of a possible just and equitable time extensions. Mr Palmer, who made closing submissions first, offered detailed submissions as to why the respondent would argue that time should not be extended in relation to the earlier incidents. He also addressed the tribunal specifically on those allegations involving SE. He suggested that the claimant had not established any sufficient reason as to why he could not be expected to present his claims at a much earlier stage, when he had been able to pursue a detailed grievance and appeal against dismissal, with help of his union representative. He addressed the tribunal in detail as to the balance of prejudice, arguing that for all practical purposes the respondent had been unable to call SE to give sworn evidence to rebut the claimant's allegations.

322. Despite all these reminders Ms Haitham did not deal with the point in her written submissions, and did not respond to this point in oral submissions.

323. The tribunal notes that the claimant's answers to questions from the judge and Mr Palmer gave some explanation as to the delay. He made reference, albeit not with great clarity, to the ill-health of his father at the time, and to his own ill-health, with the generalised assertion that this inhibited him from concentrating on progressing his case. He stated that his father had a stroke around 25 October 2017, and after that he had had to focus on his father. He asserted that this was why he had presented his claim on 19 December 2017. He also asserted that he was suffering from anxiety and depression at the time. He stated during his evidence (on the morning of the third day of the hearing) that he could bring medical evidence of his condition at the time, but failed to provide anything before closing submissions (which were on the seventh day of the hearing). He had been reminded of the need to provide medical evidence covering the period in question, and the sick notes covered only the period from 22 June 2017

until late August 2017. There was no suggestion that the claimant was unwell up to 21 June 2017 (itself well over three months from 10 February 2017) and unable for that reason to present an in-time claim during that period. There was no clear evidence relating to the period from late August until the claim was eventually presented on 19 December 2017.

324. In considering its discretion, the tribunal's starting point is of course the wording of section 123(1) of the Equality Act 2010, giving the discretion to extend time beyond three months on a just and equitable basis. The tribunal has also taken into account, and considers that it should follow, the guidance from the Court of Appeal set out in the case of *Robertson v Bexley Community Centre [2003] IRLR 434*, and in particular the judgment of Lord Justice Auld. Paragraph 25 of the judgment contains the following passage:

> "It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

325. In following the judgment, however, the tribunal has borne in mind, for example, the Judgment of Lord Justice Sedley in another Court of Appeal decision, *Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327*. At paragraph 31, Sedley LJ refers to *Robertson v Bexley Community Centre* and reiterates that there was no principle of law which dictated how generously or sparingly the power to enlarge time is to be exercised. This was helpfully quoted in Mr Dutton's submissions. The paragraph of Sedley LJ's judgments ends (by reference to the judgment of Lord Justice Auld) "…*he was drawing attention to the fact that limitation is not at large: there were statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them*." The tribunal has also noted guidance from the EAT suggesting that the tribunal is liable to err if it focusses solely on whether the claimant ought to have submitted his or her claim on time, and that tribunals should weigh up the relative prejudice that extending time would cause to the respondent on the one hand, and to the claimant on the other (see, for example, *Pathan v South London Islamic Centre* EAT 0312/13 or *Szmidt v AC Produce Imports Ltd* UKEAT 0291/14. The tribunal also notes that in *Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194*, the Court of Appeal made it clear that "just and equitable" is clearly intended to be a broad and unfettered discretion: there need not be a "good Reason" for the delay, let alone that time cannot be extended in the absence of an explanation for the delay, even if this may be one of the relevant matters to which the tribunal ought to have regard.

326. The tribunal has also taken into account the well-established factors set out in the judgment of Mrs Justice Smith in *British Coal Corporation v Keeble [1997] IRLR 337*. Briefly summarised, the tribunal accepts that it is appropriate to take into account, when exercising judicial discretion, the provisions of section 33 of the Limitation Act 1980. Although that is an Act

which does not expressly apply to the Industrial Tribunal (as it then was) but to the civil courts, there are factors there which may be relevant to the exercise of discretion in respect of out-of-time claims, such as the length of and reasons for the delay in bringing a claim, and reasons such as any steps taken by the plaintiff (or claimant) to obtain appropriate advice once he or she knew of the possibility of taking action. There are various other relevant matters which include, but are not restricted, to the balance of prejudice between the parties.

327. In considering a possible just and equitable time extension, the tribunal has considered the matters raised by the parties, within the scope of the legislative framework and the relevant case law. The tribunal has weighed up the factors raised by the parties, or matters which appeared to be relevant, and giving appropriate weight to the claimant's illness and his concerns over his father, and the likelihood that he was finding matters stressful. At the same time, the claimant's case was hampered by his inability to give any sufficient explanation as to why he had not presented a claim much earlier, relating to the matters which he asserted were discriminatory, and which pre-dated the commencement of his sick leave in late June 2017. The claimant has given no explanation as to why he did not present a claim (or go the ACAS for early conciliation) dung the three-month period after 10 February 2019, and indeed the four-and-a-half months before he took sick leave. Similarly, the chronology of events makes it entirely clear that the claimant was making specific, detailed and repeated allegations of discrimination in writing, and able to attend meetings to discuss his concerns, at a time where he is now asserting (for reasons which have not been adequately explained) he was unfit to present a claim. The claimant knew that medical evidence might assist his case, and even told the tribunal that he could obtain medical evidence to support his assertion that he would not be able to present his claim. But he failed to obtain anything further. Neither the claimant in his oral evidence, nor Ms Haitham in her submissions, made any suggestion that the claimant was not aware, at least in general terms, of time limits in the Employment Tribunal, and there was no suggestion that had he been in any doubt he would not have been able to access advice from his union or elsewhere.

328. The tribunal concludes that the claimant could easily have progressed his claim within the statutory time limit after the incident in question, and draws the inference that either the claimant would have known about time limits or could easily have found out. It also draws the strong inference that if the claimant was well enough to progress his grievances and (at least in September 2017) take part in redundancy consultation, he should have been able to present an Employment Tribunal claim. The same applies to concerns about the claimant's father, albeit on the claimant's own account his father's health took a turn for the worse on 25 October, considerably after the three-month time limit had expired. Despite being reminded of its relevance, and encouraged to provide evidence on the point, the claimant gave little explanation as to why he waited until 19 December 2017, before he presented a very detailed claim. He told the tribunal that the exchange over keys on 10 February 2017 was one of the worst ever incidents in his employment, and that at the time he believed it was discriminatory.

329. This is not, of course, and end of the matter, although (applying *Keeble*) it is relevant that it was over 10 months after the significant 10 February incident, before the claimant eventually presented his claim. It is also relevant that despite the claimant making written allegations of unlawful discrimination on 21 June 2019 (that itself already out of time), there is no adequate explanation for the delay, no suggestion that the claimant did not know or could not easily find out how to bring a claim. The claimant took no steps to move the claim on until much later. These are factors weighing against the extension of time. The tribunal now turns to balance of prejudice.

330. On the balance of prejudice point generally, the claimant has brought over 150 claims, most of which are of little or no arguable merit. The claims surrounding the dismissal do at least link to a claim for loss of earnings. The claims arising out of the 10 February 2017 incident add little, albeit (if successful), might be expected to result in one-off compensation for injury to feelings, likely to be a relatively small sum. However, refusal to extend time would prevent the claimant from being able to pursue this particular matter, and from receiving compensation. That said, it was the claimant's choice to present a convoluted, over-complicated and weak claim, and significantly to delay presenting a claim, when he could have brought a relatively swift and straightforward claim. The effect of this was to add very significantly to the overall delay, and then to insist upon pursuing unmeritorious matters which needed a 10-day hearing to resolve, with the consequent added delay in the tribunal being able to find a listing date. The prejudice to the claimant is that if time is not extended, he would be prevented from bringing a very small part of the claim which he eventually decided to pursue. If he had presented his claim before 10 May 2017 (subject to an extension of time, had he commenced ACAS early conciliation timeously), it is reasonable to conclude that a hearing could have been listed very much sooner, perhaps in early 2018.

331. As for prejudice to the respondent, the circumstances of this part of the claim are relatively unusual: had the claimant put in his claim in a timely way there is no obvious reason why the respondent would not have been able to call SE to give evidence to rebut the claimant's assertions (which was plainly the respondent's intentions at the time of witness statement exchange). This success of the 10 February 2017 allegations relies upon the claimant being able to discharge the initial burden of proof in relation to 1the incident with SE on 10 February 2017, and on the respondent's failure to discharge the evidential burden under the reverse burden of proof provisions (section 136 of the Equality Act 2010). Had it been possible to list the case earlier, the tribunal considers that it is likely that the respondent would have been able to call SE as a witness of truth. Whilst the tribunal cannot predict what the outcome would have been, quite plainly there is very significant prejudice by the respondent's inability to provide any evidence of any weight to rebut the claimant's account of what happened at the incident on 10 February 2017, and what SE's motivation was in whatever she said to the claimant, and the way she said it. Similarly, there has been prejudice in respect of the respondent's inability to call evidence in rebuttal of the new allegation raised for the first time and relied upon as which to draw inferences, in relation to the comment about shops, and in relation to SE providing a non-discriminatory explanation for her reaction

when asked to provide the claimant's pictures of his children on 21 June 2017, when the claimant is effectively accusing SE of giving a false account. This is a matter which would doubtless have been explored in SE's oral evidence.

332. Finally, and importantly, in relation to the reason for any disparity of treatment on 10 February 2018, between the claimant and Mr McKenna (as comparator), Mr McKenna has given evidence which appears to indicate that at least part of the non-discriminatory explanation given, is simply incorrect. There may or may not be a discriminatory explanation for this, but the lack of reliable explanation is a matter from which inferences could be drawn. Taken as a whole, the delay in bringing the claim has led (even if this would not have been foreseeable at the time).

333. Taking the case in the round, and taking into account all the relevant factors, the tribunal has concluded it would not be just and equitable to extend time.

334. Even though the allegations of discrimination are ones which would succeed on the basis of section 136 of the Equality Act 2010, the tribunal does not have jurisdiction to hear the claim, and in consequence the claim is dismissed.

The Tribunal's Consideration of the individual allegations of direct discrimination/harassment/victimisation

335. The tribunal has dealt, above, with a particular matter relating to SE, and also in general terms in relation to victimisation. There are also general findings and conclusions in respect of the various types of discrimination, and as to the fairness of the dismissal, which impact upon the findings below. As indicated above, the only acts of alleged victimisation which need be considered are those post-dating the sole protected act of 21 June 2017.

336. The tribunal would observe, again, that there are some 126 separate allegations of discrimination, albeit many of them overlapping, relating to direct race discrimination, direct discrimination because of religion or belief, harassment related to race, harassment related to religion or belief, indirect race discrimination, indirect religion or belief discrimination and victimisation. The case is extremely unclear and at times muddled and repetitive, and overloaded with a wide range of incidents. Some of these, even taken at their very highest, are quite plainly incapable of amounting to any sort of discrimination. To some degree, the way the claim has been pleaded and pursued rather begs mental gymnastics. The tribunal has, however, done its best to rationalise a somewhat irrational case. The tribunal would repeat that it has looked at the evidence in the round. Although written reasons must necessarily be set out in a sequential format, they should be read in the round.

337. The tribunal considers that the simplest approach is to take the sequence of direct discrimination claims, in order, as the overall framework, many of which are pleaded in the alternative as harassment or victimisation. To these need to be added some additional harassment and victimisation claims. Some aspects, including indirect discrimination, have already been

dealt with above. The analysis below is based upon the paragraph numbering in the list of issues (see the Annex), based upon the direct discrimination claims (paragraph 4), the harassment claims (paragraph 5) and victimisation claims (paragraph 6). To the extent that the tribunal may have missed any of the issues in its analysis below, it relies upon its general conclusions.

338. As already indicated, all these allegations must be seen in the light of significant developments in the claimant's personal life, and the arrival of Mr Turner to head the claimant's department, preparatory to the re-structuring and to prepare the Department to merge with the other college. discrimination is dealt with separately below. These developments, of course, were wholly unrelated to the claimant's racial or religious background. With the exception of a specific matter relating to SE, dealt with above, in relation to every single allegation where there is any evidence of any type of unfavourable treatment, there is simply no plausible reason to link this to race or religion, or to the claimant having made allegations of discrimination. To that, extent much of the case is entirely speculative and based upon the claimant's perceptions, rather than evidence.

339. Some of the heads of claim can effectively be considered together.

340. The tribunal has taken into account the provisions of sections 13, 26 and 27 of the Equality Act and the case law referred to by the respondent. Most of the points taken relate to well-established legal principles, and it is not necessary to over-complicate already lengthy written reasons by repeating them here. However, the tribunal would note that Mr Palmer has set out a good summary of the law in his written closing submissions, at pages 16-22: the tribunal has been content to adopt his analysis. For example, Mr Palmer set out a helpful analysis of *Kamlesh Bahl v Law Society [2003] IRLR 640* (paragraphs 59-60 of his submissions), *Igen v Wong [2005] IRLR 258* (paragraph 61) and *London Borough of Camden v Miah [2009] UKEAT 0031-08-2601* (paragraphs 63-64)

341. The tribunal notes that in almost every case the discrimination and harassment are brought in the alternative as being race, and also religion or belief. For his direct discrimination claims under section 13 of the Act, he specifies some named comparators, and otherwise relies upon hypothetical comparators. Although the reverse burden of proof is relevant (section 63), it is generally simpler to consider the key underlying issue as being is what the reason for the treatment, was rather than an unnecessarily legalistic analysis in respect of the relative burdens of proof. Although in almost all allegations there is nothing from which any discriminatory inferences could be drawn, the respondent also relies upon non-discriminatory explanations, which have been accepted by the tribunal (save for the single factual allegation relating to the exchange with SE on 10 February 2017 – see above).

342. As well as the above paragraphs (335-341), note should also be taken of the general comments on credibility (paragraphs 103-109), and general comments on discrimination (208-214) and victimisation (215 and 221-229). Some of the factual matters are referred to in detail in the narrative findings

of fact at paragraph 120, and some other under headings such as the unfair dismissal, breach of contract of indirect discrimination.

Allegation 4(a)/5(a)

343. The first allegation relates to the claimant being informed that he was not allowed to bring his child on site, whereas white non-Muslim staff members were allowed to.

344. The claimant had originally named SE as a comparator, but later accepted that her 17-year old daughter who was a student at the college, did not amount to her being an appropriate comparator. The claimant mentions three comparators, none of whom were in the IT department, and none of whom were subject to management control by Mr Turner, and about whom Mr turner had no knowledge. This matter is referred to generally in the narrative findings of fact at paragraph 120 (12)-(14). The tribunal considers that there is no sufficient evidence enabling it to find that any of the three comparators as being relevant or in similar circumstances, whether in terms of the frequency of the claimant's son's attendance, and in particular in relation to the child's age. One of the comparators had a child in the creche on site at the college, who was in any event covered by the College's insurance. But the key point is that within his own department, Mr Turner (who had no prior knowledge of what might have been happening in other departments) did not want young children brought into the IT department. The tribunal accepts the explanation that the age of the claimant's son (age 5, with his 6th birthday in January 2017) was such that it was not safe to have him present in the workplace for an extended period, or with the frequency of the claimant brought him in.

345. The tribunal accepts Mr Allison's evidence that on one occasion there was a particular hazard, where there was equipment on the floor which the claimant's son almost tripped over.

346. The tribunal considers it is hardly surprising that notwithstanding sympathy for the claimant's childcare difficulties, Mr Turner did not wish the claimant to repeatedly bring his young son into the workplace to accompany him when he was carrying out his technical tasks involving computer equipment. Furthermore, the claimant's son was not covered by the respondent's insurance in the same way that a child at the creche, or a pupil at the college would be.

347. The tribunal can see even the slightest whiff of anything discriminatory in Mr Turner informing the claimant of the perfectly sensible policy that he should not bring his child into work with him. There was no less favourable treatment, whatever the claimant's feelings may have been this was unrelated to race or religion. The tribunal accepts that any member of the IT department wishing to bring a young child in on a regular basis would have been treated identically, regardless of protected characteristic.

348. The direct race discrimination cannot succeed. The same applies to harassment: quite apart from it being unreasonable to conclude that this would have any harassing effect, it was clearly wholly unrelated to race or religion. It is surprising, like most of the allegations, that the claimant

appears to believe that the tribunal might conclude that this was discriminatory.

Allegation 4(b)/5(b)

349. The next allegation relates to Mr Turner and Mr Allison removing from the claimant responsibility for arranging the 2016 Christmas party.

350. The tribunal has accepted that the claimant had provided no evidence sufficient to suggest he had sole responsibility each year for organising the Christmas event, even though he may well have frequently been involved in previous years before Mr Turner had any contact with the college. This is referred to in the findings of fact at paragraph 120 (15).

351. The tribunal accepts that Mr Turner gave an entirely clear and credible explanation as to what he was hoping to achieve, and that he wanted a Christmas event for the two merged IT teams. Indeed, far from removing responsibility from anyone, he wanted somebody to organise this, but no-one, including the claimant, sought to volunteer. Mr Allison carried out his instructions in respect of the arrangements. There is nothing whatsoever in the circumstances of the event being organised that was in any sense related to the claimant's protected characteristics. It is clear from Mr Turner's credible evidence that had the claimant volunteered to organise an event along the lines that he proposed, he would have been delighted for the claimant to have done so. The allegation is factually incorrect, nothing from which discriminatory inferences can be drawn, and there is nothing capable of being discriminatory.

352. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(c)/5(c)

353. The next allegation relates to Mr Allison and SE subjecting the claimant to public humiliation and making his life difficult when he needed to take a day to look after his child in October 2016.

354. The tribunal accepts the respondent/s case that in fact the evidence points to the claimant (unlike his colleagues) being given considerable flexibility in relation to his working hours, once the claimant had explained to Mr Turner about his difficult personal circumstances. In any event, the claimant's evidence has not established on a balance of probabilities that he faced any difficulties at all, and certainly nothing which could even remotely be described as humiliation. Mr Turner and Mr Allison were able to give clear evidence on the point, and in respect of this allegation, the absence of SE had no impact of the tribunal's findings of fact. The tribunal rejects the suggestion that the claimant was ever humiliated. The did frequently wish to take time off and vary his working hours, and on each occasion he requested it it was permitted, without adverse comment, even though it would appear that he was in fact the only member of the team treated in such a favourable way.

355. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(d)/5(d)

356. The next allegation relates to Mr Allison and SE "backbiting" about the claimant to other team members in October 2016.

357. This allegation is weak and unparticularised and is bound to fail. In fact the claimant has not provided any sufficient evidence to suggest that anything happened to which he could take exception, let alone anything even remotely related to a protected characteristic. To the extent that others might have talked about the fact that he had frequently needed to be absent, and this and his flexible working had needed to involve others in making arrangements to cover for him, there is nothing capable of being "backbiting". The claimant reports being told, by unnamed colleagues, that that there had been unspecified comments about him, on unspecified occasions. He provides no evidence, even by way of hearsay, of anyone in fact making specific critical remarks that were reported to him.

358. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(e)/5(e)

359. This is essentially a very similar allegation to which the same conclusions apply, save that it relates only to SE and to November 2016. The absence of SE is of no significance, as the claimant's own evidence is insufficient to establish any prima facie case, and the respondent's evidence as a whole in any event provides the non-discriminatory context.

360. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(f)/5(f)

361. The next allegation relates to Mr Turner undermining the claimant and divesting him of responsibility, especially as to him being side-lined in relation to the appointment of external contractors. This is said to be January 2017, although in fact the period appears to have been ongoing over a longer period.

362. The tribunal understands how the claimant, as in so many other matters, was plainly uneasy in a new manager proposing a new direction of travel, when he had been used to matters being handled in a certain way, and dealing with familiar contractors. This is referred to in the findings of fact at paragraph 120 (25). The claimant points to nothing suggesting that the new arrangements were in any way related to a protected characteristic, and (as in so many other areas of the claim) it would defy logic to find any linkage. In any event, the tribunal accepts the respondent's evidence that the claimant was in fact *not* undermined, and was *not* divested of responsibility. Indeed, he was being asked to recommend the appropriate choice of relevant contractor to Mr Turner. The claimant has not in fact provided any concrete evidence sufficient to suggest that any responsibilities were taken away from him, rather than his own rather vague perception.

363. It is clear that the claimant was somewhat delayed in reporting to Mr Turner as to the competing merits of any potential contractors. Whilst no criticism

of the claimant is made in respect of this, quite plainly the respondent (and specifically Mr Turner, as head of the IT department) was entitled to take into account any material from the claimant, together with any other information or operational imperatives, and to chose a contractor in accordance with the management view of commercial suitability. The fact that Mr Turner eventually chose the contractor which was not favoured by the claimant, was a matter which was clearly within his responsibilities as head of department. This was in no sense whatsoever less favourable treatment because of a protected characteristic, or harassment related to a protected characteristic.

364. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(g)/5(g)

365. This relates to an allegation specifically against SE treating the claimant less favourably in relation to lending him keys to the IT room. It is referred to above, where the tribunal's findings in respect of discrimination, harassment and jurisdiction are recorded.

366. It should be noted, as set out above, that the background to this incident, as explained by Mr Turner, is entirely uncontentious and non-discriminatory (see paragraph 120 (17)-(22) and the analysis above at paragraphs 276-278). Mr Turner had put into place entirely sensible arrangements in respect of key control, and it would appear that after the incident between the claimant and SE, Mr Turner (and Mr Allison) resolved matters and that there were no further incidents on this matter.

Allegation 4(h)/5(h)

367. This allegation relates to Mr Allison undermining the claimant in carrying out his work in the form of being stopped from carrying out essential updates on computers, directed on other tasks, and "being given a dressing down in front of the IT team".

368. The tribunal accepts Mr Allison's account (supported by other respondent evidence). The respondent's is credible, and entirely non-discriminatory. This is that there were sound business needs relating to the directions that Mr Allison gave to the claimant, which were unrelated to the claimant's characteristics and which Mr Allison was perfectly entitled to decide, and to give in his capacity as team leader and the claimant's line manager. This was based on his consultation with Mr Turner as to what the department's priorities should be. It was for Mr Turner, not the claimant; to set the department's priorities. It was not a matter for the claimant unilaterally to decide what his head of department's priorities should be. The Tribunal in any event accepts the respondent's evidence that the claimant was given the opportunity to carry out all the tasks, including those tasks the claimant thought more important, and that he should should have been able to complete these in the time available. The claimant may have felt undermined, and it may well be that Mr Allison was not good at orally communicating with the claimant or the rest of the IT department, but in essence his objection was to management making management decisions;

that was an unrealistic objection. These matters were wholly unrelated to a protected characteristic.

369. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(i)/5(i)

370. This allegation relates to Mr Turner calling the claimant for a meeting and then raising his contact with female helpdesk members in February 2017, in a way which he did not with the rest of the team.

371. This is an example of the claimant getting the wrong end of the stick, and seeing discrimination on the part of others, where there was none, without appreciating the sensitivities of female colleagues. The allegation is laid squarely, and solely, against Mr Turner, but is not justified. The tribunal was given detailed and credible evidence on this matter from Mr Turner, which it accepts. The tribunal accepts that this matter was raised with him (Mr Turner), by SE, on the basis that were concerns from the female staff on the helpdesk, that they were uneasy with too much personal contact from the infrastructure technicians generally. There was no specific complaint against the claimant. The tribunal accepts that Mr Turner dealt with the matter in good faith, hoping to resolve matters informally and in a low-key way. It is easy to see that this might have developed into a sexual harassment complaint if immediately action had not been taken by the head of department to resolve the issue.

372. It happened, quite by chance, that the first person whom Mr Turner spoke to was the claimant. The tribunal accepts that When Mr Turner spoke to the claimant about this, his expectation was that he would then go on and say exactly the same to the other technicians. However, in a subsequent conversation with LE, a female member of the helpdesk team, she made it clear (which Mr Turner had not known) that it was only the claimant who was responsible for unwelcome contact: she told Mr Turner that she was finding the claimant's repeated conversations with her to be uncomfortable, and she wished this not to happen in future. The tribunal considers that Mr Turner in fact dealt with this matter entirely appropriately, and the matter could then be satisfactorily closed, and there was no need to speak to anyone else.

373. Those being the facts, the tribunal accepts that Mr Turner's conduct in question certainly did not amount to less favourable or harassing treatment. The approach he took is entirely explained by the concerns that had been raised with him, which he dealt with entirely appropriately. This is not capable of being in any sense discriminatory.

374. Although the claimant subsequently referred to allegations being made against him, this shows a surprising lack of understanding of the nature of harassment, nor that junior female members of staff might feel harassed by unwanted attentions from men within their department.

375. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(j)/5(j)

376. This allegation relates to Mr Turner requiring the claimant to report to SE from March 2019.

377. The tribunal has accepted that there had been no complaint of unlawful treatment made against SE at this point, and Mr Turner had good operational reasons to temporarily promote SE into the line manager role, because the claimant's previous line manager (Mr Allison) needed to be moved sideways into a temporary role to help develop the restructuring for the merger of the two colleges.

378. The idea that the reporting line was changed because of one or more of the claimant's protected characteristics, or that it was harassment relating to a protected characteristic, is somewhat fanciful. The tribunal also notes that the claimant raised no objection to this promotion at the time. Plainly, if SE became the claimant's line manager, then the claimant would be expected to report to her. Notwithstanding there had been an argument over keys, it was perfectly reasonable to expect the normal line of reporting to be maintained within the IT Department. Quite plainly there is nothing whatsoever linking the requirement for the claimant to report to his new line manager, to any protected characteristic. The tribunal notes that the title used was "interim IT team leader" albeit SE was eventually successful in the subsequent selection process to make the role permanent.

379. The tribunal would reiterate its findings that the claimant did not raise any complaint of discrimination involving SE (or indeed anyone else) until his written grievance after the redundancy process started.

380. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(k)/5(k)

381. The next allegation relates to SE discussing the claimant's lateness after approving his late arrival on 10 April 2017.

382. The tribunal has already noted that the claimant's timekeeping was somewhat erratic, and for childcare reasons he often had to request varying his hours of short notice. On this occasion he had messaged his line manager (SE) early in the morning to say he was not going to be available until 10.30am, because of babysitting problems, and she had apparently agreed it by text. The claimant asserts that she "then went on to backchat me about being late to the rest of the team in disparaging terms, belittling and humiliating me". This is clearly not an allegation as to what SE said to him, but based on what he understood had been said to other people in his absence.

383. The tribunal considers that there is insufficient explanation from the claimant as to precisely what it was that SE was said to have done. However, the uncontroversial background is that the claimant was expected at work at 08.30 but did not arrive until two hours later, so others would have needed to cover his work. Notwithstanding that the claimant had given notice of this, it would not be wholly unsurprising if any line-manager was not entirely pleased: plainly any need to tell other staff would arise from the

failure to arrive on work on time, rather than some other reason. In any event, the tribunal considers this is a relatively trivial point.

384. The tribunal considers that what the claimant set out in his evidence is insufficient to amount to any finding that there was harassment, or less favourable treatment. Indeed, the claimant's choice of words, as with much of his claim, was very much based on him "feeling humiliated"; he may genuinely have felt humiliated, but he has failed to describe what it was that was done by SE, which would justify such a reaction. The tribunal does not consider that this is sufficient to establish primary facts capable of amounting to discrimination or harassment. The claimant asserted that he had provided a copy of text messages, but the tribunal was not taken to any such message, and the claimant did not tell the tribunal what was included in the text message. To the extent that the claimant was relying on the wording of a text message, this provides no support to his account. The tribunal's understanding of the evidence is that the claimant's line manager acknowledged the information from the claimant that he would be late for work, and that is really as far as matters can be taken.

385. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(l)/5(l)

386. This allegation relates to Mr Turner questioning the claimant's commitment in April 2017.

387. The tribunal accepts Mr Turner's evidence that there was indeed a discussion about the claimant appearing to be glum, at a time when Mr Turner was aware of the claimant's personal difficulties. The tribunal accepts Mr Turner's account that the conversation was in fact how the respondent could assist the claimant. The tribunal also accepts Mr Turner's evidence that to the extent that commitment was expected from the claimant, this was in the context that Mr Turner was expecting *all* employees in the IT Department to be committed to the plan to merge the IT teams. The tribunal accepts that there was no singling out of the claimant, as somebody whose commitment was in doubt. Rather, he was singled out for additional support, at a busy time when matters were in hand to prepare to merge the two IT teams in the separate colleges into one.

388. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(m)/5(m)

389. This allegation relates to SE calling the claimant into work outside working hours to fix an IT problem and then degrading him in May 2017.

390. The tribunal notes that there was no complaint made at the time, either to Mr Turner or the respondent generally, and this would not appear to be a matter of great significance, and the claimant has been unable to point to any plausible link with a protected characteristic.

391. The respondent's case was that if there was any discussion about this matter at the time, it related to the period of time it took to resolve the issue

in question. The evidence before the tribunal suggests that the IT issue in question appears to have been a straightforward one: a member of staff had pulled out a cable, which caused problems. The claimant purports to be shocked by being asked why he had not been able to sort this out sooner. Indeed, the claimant has chosen to bring the allegation in a certain way, which in effect amounts to no more than complaining that he was asked why the matter could not have been sorted out more quickly: that in itself is a very insubstantial basis for bringing a claim of discrimination. It is his label to call this "denigration", but the tribunal would not characterise such a straightforward (and understandable) management question as being less favourable treatment or harassment. If this question was asked (and the respondent is not in a position to contradict this assertion), the tribunal considers that it is a fair and unsurprising question to ask. The claimant now asserts that he was shocked by the response, but if he was genuinely shocked, he did not raise this as an issue at the time, and the tribunal has rejected his factual assertion that he requested a meeting at the time (it prefers the respondent witnesses' oral evidence). The claimant has also not sought to give the tribunal any rational explanation as to what was said which was so shocking, or which might justify such a reaction in him.

392. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(n)/5(n)

393. This allegation (which relates to religion or belief only) relates to Mr Turner indicating to the claimant that he could not unilaterally decide his working hours during his observation of fasting in Ramadan in June 2017 (Ramadan having started at the end of May 2017).

394. The facts have already been considered under the heading of indirect discrimination, at paragraphs 232-247, above. The tribunal also notes that this matter was considered by Mr Gaston at the grievance hearing, albeit Mr Gaston had evidently not seen the email subsequently complained of, at the time that he made the decision. Had he seen that email he might have taken a less harsh view of Mr Turner's behaviour, albeit his point of this being a matter better to discuss face-to-face was a valid one. However, the tribunal fully accepts that Mr Turner, who had not been present on previous years when the claimant had varied his working hours during Ramadan, was seeking to put in place arrangements to ensure that a decision not to take a statutory break was properly recorded, that the respondent properly knew where the claimant would be and recorded any agreement changing his working hours.

395. Although on the face of it there is a link with religion, because this issue arose in relation to Ramadan, quite plainly the issue (as raised in the allegation) was not so much Ramadan, but the claimant's wish unilaterally to change his working hours, to use his own phrase. The tribunal, as already explain din relation to the linked claim of indirect discrimination, and Mr Turner wanted the variation of hours on a more formal footing.

396. The tribunal agrees with the respondent the claimant suffered no detriment, because in fact there *was* agreement to the working hours. Mr Turner never in fact suggested that the proposal was unacceptable, merely that it needed

to be a properly recorded agreement. The tribunal does not accept that there was less favourable treatment, or indeed that any other employee who wished temporarily to vary their working hours would have been treated more favourably from the claimant. There is no actual comparator because no-one else sought unilaterally to vary their hours. A hypothetical comparator would be a non-Muslim who had a good personal reason to wish to vary their working hours on a temporary basis. There is nothing suggesting that they would have been treated any differently. The position is slightly different in relation to harassment, because there was on the face of it a link to religion or belief. However, the tribunal does not in the circumstances consider that it would be reasonable, notwithstanding the claimant's perception, to consider Mr Turner's instructions to be in any sense harassing (see section 26(4) of the 2010 Act). In reality, the issue was in any event related not to the protected characteristic of religion or belief, but to the fact of the claimant's wish to vary his working hours from that which he was contractually required to perform, to wish not to take a break as set out in the contract (and in accordance with the Working Time Regulations), and for a temporary period to substitute different working hours of his own choosing.

397. Whilst the context of the exchange is religion or belief, the tribunal considers that subject of the matters complained of, is not a matter inherently to do with religion. The tribunal considers that it is wrong to label this as being in any way discriminatory, and has accepted that there was in reality no detriment.

398. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(o)/5(o)

399. The next allegation is by being ostracised from any input in IT projects and views not being acknowledged in June 2017.

400. The claimant has made a rather sweeping, if unclear, allegation. However, the tribunal agrees with the respondent that in fact the claimant did not provide any evidence that he was ostracised from participating fully in IT team activities. To the extent that this relates to the appointment of contractors, this has been dealt with above (and the tribunal considers that the respondent was entitled to appoint contractors in accordance with its business needs and without referring further to the claimant). In any event, the tribunal agrees with the respondent that the claimant has not demonstrated any actual detriment in relation to any particular element of his work. The tribunal finds that there was no less favourable treatment or anything capable of being harassment, let alone any link with a protected characteristic.

401. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(p)/5(p)

402. This allegation is the respondent denying the claimant the right to collect his personal possessions before placing him on special consultation leave on 20 June 2017.

403. The tribunal has accepted the respondent's evidence that a decision was made that all of the three employees whose posts were planned to be made redundant in the restructuring, would be placed on garden leave, and that their desks would be left in place because they remained employees (and if they were not dismissed would be coming back to work). The process is referred to at paragraph 120 (27)-(34) and specifically 120 (32) above, and further comment on the facts is made at paragraphs 303-312. The sequence of events relating to the redundancy process is also set out at paragraphs 160-173.

404. The tribunal accepts the respondent's evidence that in fact all the employees had the opportunity to pick up belongings, and the tribunal considers that this was supported by the claimant's own evidence at the time, and indeed the wording of his grievance and the text which he sent to SE the following morning, which makes no suggestion that he was *prevented* from picking up what he wanted to pick up, but he had himself *forgotten* to collect the pictures of his children. The claimant's case is undermined further that he returned to the college on a number of subsequent occasions, and on each of those occasions did not in fact make any attempt to collect his possessions, even though they were available to him, and are indeed at the time of the tribunal hearing were kept by the respondent in a box and were still awaiting his collection. The claimant was treated the same as the two other IT employees subject to redundancy consultation: there was no less favourable treatment and this was wholly unrelated to a protected characteristic.

405. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(q)/5(q)

406. This allegation is being "ejected" from the college before being able to make a grievance.

407. See also the comments relating to the previous allegation. The tribunal has not referred to the specific victimisation allegations 6(a)-6(l), because there had been no protected act. Allegation 6(m) [victimisation] is the same as 4(q)/5(q). Although the grievance, relied upon as a protected act, is mentioned in the allegation, the tribunal has accepted, as indicated elsewhere, that the respondent had no idea that the claimant was about to make a grievance, let alone that he was going to make a complaint of discrimination, namely a protected act. Indeed, it may very well be that despite his protestations otherwise, it was only after the claimant was sent on special leave to think about his possible redundancy, that he decided that he would submit a grievance. In any event, this allegation is not capable of amounting to an act of victimisation, as the claimant had not done a protected act and no-one believed that he had done, or may do, a protected act. To that extent, the direct discrimination/harassment allegations also appear to be premised on an incorrect assumption.

408. However, taking the discrimination/harassment allegation more broadly, the tribunal considers that in any event, the fact that the claimant and his two colleagues were being asked to leave the premises, related entirely to the

agreed redundancy process. It was wholly unrelated to the claimant's protected characteristics, and he was treated in the same way as his two white, non-Muslim colleagues, who were subjected to the redundancy procedure. To use an emotive term like "eject" adds nothing, and is also inaccurate. The suggestion that this process was somehow to prevent the claimant presenting a grievance, makes no sense whatsoever. The tribunal accepts that the restructure proposal was timed and managed in accordance with the policy which had been agreed by the respondent's senior leadership team, and was arose entirely to the restructuring arising from the planned merger. To suggest otherwise is fanciful.

409. This allegation of direct discrimination or harassment is not well founded.

Allegation 4(r)/5(r)/6(n)

410. This allegation (which includes victimisation as well as direct discrimination and harassment) relates to being notified as to the risk of redundancy by email and informed that the post was redundant and that if no alternative employment was accepted, dismissal would arise (22 June 2017).

411. The facts are referred to at paragraph 120 (27)-(34) and 160-173, above. This allegation, like most relating to the redundancy process, is without merit, because it appears to be premised on the claimant's assumption that the whole redundancy process was a sham and that he was subjected to it for discriminatory motives. That is wrong. The claimant, and the two white non-Muslim IT staff members, were notified of the agreed redundancy arrangements. It would have been surprising if they had not been. The information was plainly designed to enable to claimant to understand the process and to answer his questions, to provide written detail to confirm what he had been told at the initial consultation meeting before being put on special leave. It was plainly wholly unrelated to protected characteristics or to the fact that the claimant had just done a protected act by presenting a written grievance.

412. This allegation of direct discrimination, harassment or victimisation is not well founded.

Allegation 4(s)/6(o)

413. This allegation (which includes direct discrimination and victimisation, but not harassment) relates to "not taking the grievance seriously" including choice of investigation interview venue, failure to convene a second investigation meeting, failure to provide a copy of notes to C and anonymity of C's witnesses (25 July 2017 and subsequent).

414. This is referred to in the findings of fact at paragraph 120 (40)-(48) and more generally, above. The tribunal considers that, as referred to above, the respondent self-evidently took the grievance very seriously indeed, and (in essence) conducted a thorough investigation and dealt with the matters fairly and thoroughly at the grievance hearing and on appeal. The claimant's complaint is, in reality, that he did not agree with the outcome and therefore seeks to see discrimination lurking around every corner. The reality is that the handling of his grievance was in no sense whatsoever tainted by

discrimination, and it is fanciful to argue that it was. Whilst one can point to certain matters that might have been handled better, that is not at all the same thing as being able to argue that it amounted to discrimination or victimisation, and is rather preaching a counsel of perfection. There is nothing from which any adverse inferences can be drawn.

415. This matter can be taken in the round, albeit the tribunal's findings of fact do go into some detail as to the venue for the investigation meeting (which was not ideal). Some of the other facts have been considered above, including as to the alleged failure to comply with the ACAS Code (where the tribunal was satisfied that there was no such failure – see paragraphs 121-133), in the findings of fact generally, and in respect of general comments on discrimination and victimisation. The procedures did not provide for a second investigation meeting being expected. Omissions on some of the paperwork are neither here nor there. The tribunal was entirely confident that all those involved in the grievance process went out of their way to ensure that the claimant's concerns were fairly dealt with. He had the opportunity to set out all the matters he was concerned about, and to raise whatever he wanted, and those concerned were carefully and fairly considered.

416. This allegation of direct discrimination or victimisation is not well founded.

Allegation 5(s)/6(p)

417. This allegation (which includes harassment and victimisation, but not direct discrimination) relates to being required to communicate on matters relating to the grievance and potential redundancy simultaneously (August 2017).

418. This allegation is without merit, and does not need any detailed analysis. The starting point is that when the claimant presented his grievance, and a sick note, the respondent agreed to defer the redundancy consultation, thereby treating the claimant more favourably than his colleagues, and did not re-commence redundancy consultation until after the grievance hearing. But plainly the two colleges were to be fully merging from the beginning of September 2017 (and the redundancies were supposed to have been completed by 31 July), and it would fly in the face of reason to pretend that the redundancy process would not need to be re-started shortly. If there was some correspondence on the point, it is hardly surprising and there is no coherent reason why the claimant believes that this matter (as indeed most aspects of his claim) are in any sense whatsoever related to race or a protected act. The claimant was unable to set out any coherent argument to support his case, and the tribunal has no hesitation in finding that this matter, like most of the others, and certainly everything in the way the redundancy and grievance were handled, as being wholly untainted by anything discriminatory.

419. This allegation of harassment or victimisation is not well founded.

Allegation 5(t)/6(q)

420. This allegation (which includes harassment and victimisation, but not direct discrimination) relates to correspondence with HR as to the selection of KS as grievance hearing officer before he was replaced (29 August 2017).

421. This allegation is also without merit, and also does not need any detailed analysis. The facts are referred to in the tribunal's narrative findings of fact at paragraph 120 (55)-(56). There is nothing in the slightest bit untoward in the way this matter was handled, or capable of being any discriminatory interpretation whatsoever. HR dealt with the matter perfectly sensibly, and it is astonishing that the claimant should seek to argue that there was anything related to his race or his religion or belief, or that to his having done a protected act. There is simply nothing in it. In essence, the claimant's line Director was nominated, in the usual way, to hear the grievance. The claimant was informed well in advance, and made no objection. Shortly before the hearing, he raised issues about KS conducting the hearing, and was (unsurprisingly) asked to explain his concerns. He did so, and HR, at very short notice, arranged for the College Principal to hear the grievance instead. Even apart from the lack of any connection to a protected characteristic or protected act, there was nothing even remotely capable of being a detriment or amounting to harassment. Indeed, the respondent did what the claimant asked.

422. This allegation of harassment or victimisation is not well founded.

Allegation 4(t)/6(r)

423. This allegation (which includes direct discrimination and victimisation, but not harassment) relates to the promotion of Mr Allison and SE to permanent management roles (September 2017).

424. This is referred to above in generally, and particularly in the indirect discrimination section, and the tribunal relies upon its findings set out at paragraphs 249-266. However, in essence, and considering this matter as one of less favourable treatment because of a protected characteristic, or because the claimant had done a protected act, the tribunal considers that there was no less favourable treatment, and no detriment to the claimant. This is because although the claimant knew of the vacancies, he chose not to apply. As he did not wish to apply, it can be no disadvantage to him that he was not appointed. His comparator would need to be a person who did not apply and was not appointed, which would be a meaningless comparison. There is no arguable case.

425. The allegation of direct discrimination and victimisation is not well founded.

Allegation 4(u)/6(s – part 1)

426. This allegation (which includes direct discrimination and victimisation, but not harassment) being provided with information as assessment for auto-enrolment on 1 October 2017 during pending redundancy consultation (20/09/2017).

427. Perhaps not very elegantly phrased, the tribunal takes the essence of this complaint as probably being, in fact, that the claimant was *not* auto-

enrolled, for discriminatory reasons, albeit this is pleaded as a separate allegation (4(aa) and 6(x). This matter was referred to in the findings of fact at paragraph 120 (55)-(56) and has been discussed at some length in respect of the breach of contract claim at paragraphs 199-207. The respondent, rightly, points out that the claimant was given the same information as any other employee would have been in the circumstances, and that this is incapable of being discriminatory. If that was the sole allegation intended by the claimant here, then that is an end of the matter and the claims are unarguable. However, taking a more liberal approach, the tribunal is in any event entirely satisfied that the reason the claimant was not enrolled in the pension in the few days remining before his likely dismissal for redundancy (which is what indeed happened), was not in any sense because of a protected characteristic or because he had done a protected act, but because there were only probably a few days' service remaining. The claimant had, in any event, shown no interest whatsoever in joining the pension scheme.

428. The respondent also points out that the claimant has brought no evidence suggesting that the reason he was not enrolled in the pension scheme was anything other than an administrative failure. He has also called no evidence suggesting (even taking his case at its very highest) suggesting that the respondent's pension administrator was directed to exclude the claimant from auto-enrolment.

429. The allegation of direct discrimination and victimisation is not well founded.

Allegation 4(v)/5(u)/6(s – part 2)

430. This allegation (which includes direct discrimination, harassment and victimisation) relates to being subjected to an unfair and discriminatory grievance hearing which was inappropriately conducted – without R following ACAS guidelines. [*It is the final allegation of harassment].*

431. As the tribunal has referred to above on various occasions, it agrees with the respondent that the grievance procedure was conducted fairly and impartially, and in a non-discriminatory way. Indeed, Mr Gaston came to findings which, in part, upheld aspects of the grievance. Quite apart from the fact that the allegations of "inappropriate conduct" and ACAS breaches are far wide of the mark (see paragraphs 121-133 in respect of the latter), there is simply nothing at all suggesting that the claimant was treated less favourably than someone of his protected characteristics would have been, nothing suggesting any relationship at all with his protected characteristics, and nothing suggesting that he was victimised for doing a protected act.

432. The claimant was treated in a fair and non-discriminatory way, and the allegations of direct discrimination, harassment and victimisation are wholly unfounded.

Allegation 4(w)/6(t)

433. This allegation (which includes direct discrimination and victimisation) relates to producing a grievance outcome which was a cover-up of unlawful discriminatory treatment (3 October 2018).

434. This is much the same allegation as the previous one. Quite apart from the fact that it appears to be intended as a self-fulfilling prophesy, it is wholly mistaken. The tribunal has had no hesitation in finding, as the respondent put it, that "the suggestion of a cover-up is palpably unsustainable". The evidence before the tribunal discloses no arguable case whatsoever. The outcome was wholly untainted by any sort of discrimination.

435. The allegations of direct discrimination and victimisation are wholly unfounded.

Allegation 4(x)/6(u)

436. This allegation relates to notifying the claimant of a pending consultation meeting where on his part "a failure to respond might result in C being given notice of redundancy" (5/10/2017).

437. This is essentially the same general point as to the redundancy process being discriminatory, whereas in reality it was wholly untainted by discrimination. Ii is in the nature of such a redundancy consultation that if an employee whose role has been made redundancy does not engage constructively, he would be likely to face dismissal. The claimant was treated in the same way that any other employer would have been in the circumstances. The redundancy would go ahead, in due course, regardless of, and unaffected by, the claimant's race, religion or protected act (save that the claimant was given considerable extra time, to his advantage, by virtue of the respondent agreeing to put matters on hold pending the grievance outcome). After the process was resumed, post-grievance outcome, the claimant took part in the some process which had colleagues had followed some weeks earlier, with the same opportunity to discuss alternatives to a redundancy dismissal, and the same opportunity to apply for alternative roles.

438. The allegations of direct discrimination and victimisation are wholly unfounded.

Allegation 4(y)/6(u)

439. This allegation relates to conducting a 'sham' redundancy meeting where there was no meaningful consultation and there was a 'pre-conceived' likely outcome (13 October 2017).

440. This is another attempt to argue the general point about it being a discriminatory process. It was not (see paragraphs 249-266). As the respondent correctly points out, the process was plainly not a sham. There was indeed consultation. It was wholly untainted by discrimination or by the claimant having done a protected act.

441. The allegations of direct discrimination and victimisation are wholly unfounded.

Allegation 4(z)/6(w)

442. This allegation relates to implementing the decision to dismiss the claimant on the grounds that his role was redundant (19 October 2017).

443. This is, essentially, the same argument. The claimant was dismissed by only by reason of redundancy. The dismissal was not because of a protected characteristic or because he had done a protected act.

444. The allegations of direct discrimination and victimisation are wholly unfounded.

Allegation 4(aa)/6(x)

445. This allegation relates to denying C the right to auto-enrol in the Local Government Pension Scheme (3 November 2018).

446. This would appear to be the wrong date, but the tribunal has in any event already dealt with the point under allegation 4(u)/6(s – part 1) (above), and has nothing to add.

447. The allegations of direct discrimination and victimisation are wholly unfounded.

Allegation 4(bb)/6(y)

448. This allegation relates to rejecting the claimant's appeal against the grievance outcome (3 November 2018).

449. This matter has been generally dealt with above. The tribunal is entirely satisfied that the post-dismissal grievance appeal, like the grievance itself, was dealt with in a fair and non-discriminatory way.

450. The allegations of direct discrimination and victimisation are wholly unfounded.

451. Overall, the tribunal is satisfied that all but one of the allegations of direct discrimination, indirect discrimination, harassment and victimisation are not well founded. The sole exception is allegation 4(g) relating to SE, for which the tribunal does not have jurisdiction.

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Employment Judge Emerton

Date: 28 May 2019

Annex to written reasons - Agreed Issues

Unfair dismissal

1. Was the reason for the Claimant's ("C") dismissal the potentially fair reason within the meaning of section 98(1) of the Employment Rights Act 1996 ("ERA")? The Respondent ("R") relies upon a redundancy falling within section 139(1)(b)(i) ERA.

2. If the reason was redundancy, was the dismissal fair and reasonable in all of the circumstances within the meaning of section 98(4) ERA?

   C alleges at para. 5 of the Grounds of Claim of the ET1 ("GoC") :-

   - There was not a genuine redundancy situation, and the real reason for his dismissal was unlawful discrimination/victimisation;
   - The dismissal process was "unfair and unreasonable";
   - He was "not properly consulted as to the deletion of his job";
   - He was "not fairly chosen for redundancy out of all of the other employees";
   - There were "jobs which [he] could do were not made available to him".

3. If the reason for the Claimant's dismissal was redundancy but he was unfairly procedurally dismissed within the meaning of Section 98(4) ERA, what would the likelihood have been of the Claimant being dismissed but for the unfair procedure?

Direct discrimination (Equality Act 2010, section 13)

The Claimant relies on the protected characteristics of his race ("British-born black male of mixed African descent) and his religion (Islam) [para. 2 GoC];

4. Contrary to section 13 of the Equality Act 2010 ("EqA") did R treat Claimant less favourably than it treated others because of the protected characteristics of his race and/or religion in relation to the following matters:

   a) By informing C that he was not allowed to bring his child onsite whereas white non-Muslim staff members were allowed to? – para. 4.1 GoC: comparators: Emma Keane/Paul Parsons/Neville Bonner (September 2016)

   b) By David Turner and Simon Allison removing from C the responsibility for arranging the Christmas Party (September 2016) - para. 4.2 GoC: comparators rest of IT team

c) By Simon Allison and SE subjecting him to ”public humiliation” and making his “life difficult when [he] needed to take a day to look after [his child] (October 2016) - para. 4.3: comparator - IT team/hypothetical;

d) By Simon Allison and SE “backbiting’ C to other team members (October 2016) – para. 4.3: comparator – IT Team/hypothetical;

e) By SE subjecting C to undermining treatment and ‘backbiting’ to the IT Team (November 2016) – para 4.4: comparator – team/IT/hypothetical;

f) By David Turner undermining and divesting C of responsibility, including him being sidelined in areas of his expertise, in relation to the appointment of external contractors (January 2017) - para. 4.5: comparator IT team/hypothetical;

g) By SE treating C less favourably in relation to lending him keys to the IT room (February 2017) - para. 4.6: comparator Allister McKenna/rest of IT team;

h) By Simon Alison undermining C in the carrying out of his work in the form of being stopped from carrying out essential updates upon computers and directed on other tasks and being given a dressing down in front of the IT Team (February 2017) -para. 4.7: comparator - rest of IT Team;

i) By David Turner calling C for a meeting and then raising his contact with female helpdesk members (February 2017) – para. 4.8: comparator – rest of IT team;

j) By David Turner requiring C to report to SE (March 2017) – para. 4.10: comparator – rest of IT Team;

k) By SE discussing C’s lateness after approving his late arrival (10 April 2017) – para.4.11: comparator – rest of IT team;

l) By David Turner questioning C’s commitment – (April 2017) – para. 4.12: comparator – rest of IT team;

m) By SE calling in C to work outside his working hours to fix an IT problem and then ‘denigrating’ C – (May 2017) – para. 4.13 – comparator – rest of IT team;

n) [RELIGION ONLY] By David Turner indicating to C that he could not “unilaterally decide his working hours” during his observation of fasting in Ramadan - (June 2017) – para. 4.14 – comparator – rest of IT Team;

o) By being ostracised from any input in IT project and views not being acknowledged (June 2017) para. 4.15 – comparator – rest of IT Team;

p) By R denying C the right to collect his personal possessions before placing him on special consultation leave (June 2017) – para. 4.15 – comparator – rest of IT team;

q) Being ‘ejected’ from the College before being able to make a grievance (June 2017) – para. 4.16 – comparator – rest of IT team;

r) By being notified of risk of redundancy by email and informed that if post was redundant and no alternative employment accepted that dismissal would arise – (22 June 2017) – para. 4.17 – comparator – rest of IT team

s) By "not taking the grievance seriously" including choice of investigation interview venue, failure to convene second investigation meeting, failure to provide copy of notes to C and anonymity of C's witnesses – (25 July 2017 and subsequent) – para. 4.18 – comparator – hypothetical;

t) By the promotion of Simon Allison and SE from acting to permanent management roles – (September 2017) – para. 4.21 – comparator - SE;

u) By being provided with information as assessment for auto-enrolment on 01/10/2017 during pending redundancy consultation (20/09/2017) – para. 4.22 – comparator – hypothetical;

v) By being subjected to an unfair and discriminatory grievance hearing which was inappropriately conducted – without R following the ACAS guidelines (28/09/2017) – para. 4.23/4.24/4.25/4.26/4.27 – comparator - hypothetical;

w) By producing a grievance outcome which was a cover-up of unlawful discriminatory treatment of C – (03/10/2018) - para. 4.28 – comparator - hypothetical;

x) By notifying C of a pending consultation meeting where on his part 'a failure to respond might result in C being given notice of redundancy (05/10/2018) - para. 4.29 – comparator - Allister McKenna/SE/Simon Allison/hypothetical;

y) By R conducting a 'sham' redundancy meeting where there was no meaningful consultation and there was a 'pre-conceived' likely outcome – (13/10/2018) – para. 4.30 – comparator – hypothetical;

z) By implementing the decision to dismiss C on grounds that his role was redundant – (19/10/2018) – para. 4.31 – comparator – Allister McKenna/Alex Burgess

aa) By denying C the right to auto-enrol in the LGPS - para. 4.31 -comparator - hypothetical;

bb) By rejecting C's appeal against the grievance outcome – (03/11/2018) para. 4.33 – comparator – hypothetical.

Harassment

5. Contrary to section 26 EqA did R harass C by engaging in unwanted conduct related to the protected characteristics of his race and/or religion where conduct had the purpose or effect of (i) violating C's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for C by reference to the following matters:

a) By SE and Simon Allison mocking C for the adjustment of his working hours to allow him to deliver/collect his son from school? – para. 4.1 GoC (September 2016);

b) By David Turner and Simon Allison removing from C the responsibility for arranging the Christmas Party (September 2016) – para. 4.2 GoC;

c) By Simon Allison and SE subjecting him to ”public humiliation” and making his “life difficult when [he] needed to take a day to look after [his child] (October 2016) - para. 4.2:

d) By Simon Allison and SE “backbiting’ C to other team members (October 2016) – para. 4.2:

e) By SE subjecting C to undermining treatment and ‘backbiting’ to the IT Team (November 2016) – para 4.4;

f) By David Turner undermining and divesting C of responsibility, including him being sidelined in areas of his expertise, in relation to the appointment of external contractors (January 2017) - para. 4.5;

g) By SE treating C less favourably in relation to lending him keys to the IT room (February 2017) - para. 4.6;

h) By Simon Alison undermining C in the carrying out of his work in the form of being stopped from carrying out essential updates upon computers and directed on other tasks and being given a dressing down in front of the IT Team (February 2017) -para. 4.7;

i) By David Turner calling C for a meeting and then raising his contact with female helpdesk members (February 2017) – para. 4.8;

j) By David Turner requiring C to report to SE (March 2017) – para. 4.10;

k) By SE discussing C’s lateness after approving his late arrival (10 April 2017) – para.4.11;

l) By David Turner questioning C’s commitment – (April 2017) – para. 4.12;

m) By SE calling in C to work outside his working hours to fix an IT problem and then ‘denigrating’ C – (May 2017) – para. 4.13;

n) By David Turner indicating to C that he could not “unilaterally decide his working hours” during his observation of fasting in Ramadan - (June 2017) – para. 4.14;

o) By being ostracised from any input in IT project and views not being acknowledged (June 2017) para. 4.15;

p) By R denying C the right to collect his possession personal possession before placing him on special consultation leave (June 2017) – para 4.15;

q) Being ‘ejected’ from the College before being able to make a grievance (June 2017) – para. 4.16;

r) By being notified of risk of redundancy by email and informed that if post was redundant and no alternative employment accepted that dismissal would arise – (22 June 2017) – para. 4.17;

s) By being required to communicate on matters relating to grievance and potential redundancy simultaneously (August 2017) – para. 4.19;

t) By correspondence with HR as to the selection of KS as grievance hearing officer before he was replaced (29 August 2017) – para. 4.20;

u) By being subjected to an unfair and discriminatory grievance hearing which was inappropriately conducted – without R following the ACAS guidelines (28/09/2017) – para. 4.23/4.24/4.25/4.26/4.27;

Victimisation

6. Contrary to Section 27 of EqA, did R subject C to a detriment by reason of C having done a protected act, by reference to the following:

a) By C's managers refusing to deal with his complaint about SE (February 2017) - para. 4.6;

b) By David Turner taking no action and telling C that he was being sensitive (February 2017) – para. 4.6;

c) By Davdi Turner/Simon Allison/SE subjecting C to a hostile work environment (February 2017) – para. 4.6;

d) By reason of the above treatment, denying C the opportunity to attend a social event (February 2017) – para. 4.6;

e) By Simon Alison undermining C in the carrying out of his work in the form of being stopped from carrying out essential updates upon computers and directed on other tasks and being given a dressing down in front of the IT Team (February 2017) -para. 4.7;

f) By David Turner calling C for a meeting and then raising his contact with female helpdesk members (February 2017) – para. 4.8;

g) By David Turner requiring C to report to SE (March 2017) – para. 4.10;

h) By David Turner questioning C's commitment – (April 2017) – para. 4.12

i) By David Turner indicating to C that he could not "unilaterally decide his working hours" during his observation of fasting in Ramadan - (June 2017) – para. 4.14;

j) By being ostracised from any input in IT project and views not being acknowledged (June 2017) para. 4.15;

k) By R notifying C that his post was at risk of redundancy and placing him on special consultation leave (June 2017) – para. 4.15;

l) By R denying C the right to collect his possession personal possession before placing him on special consultation leave (June 2017) – para 4.15;

m) Being 'ejected' from the College before being able to make a grievance (June 2017) – para. 4.16;

n) By being notified of risk of redundancy by email and informed that if post was redundant and no alternative employment accepted that dismissal would arise – (22 June 2017) – para. 4.17;

o) By "not taking the grievance seriously" including choice of investigation interview venue, failure to convene second investigation meeting, failure to provide copy of notes to C and anonymity of C's witnesses – (25 July 2017 and subsequent) – para. 4.18;

p) By being required to communicate on matters relating to grievance and potential redundancy simultaneously (August 2017) – para. 4.19;

q) By correspondence with HR as to the selection of KS as grievance hearing officer before he was replaced (29 August 2017) – para. 4.20

r) By the promotion of Simon Allison and SE from acting to permanent management roles – (September 2017) – para. 4.21;

s) By being provided with information as assessment for auto-enrolment on 01/10/2017 during pending redundancy consultation (20/09/2017) – para. 4.22; By being subjected to an unfair and discriminatory grievance hearing which was inappropriately conducted – without R following the ACAS guidelines (28/09/2017) – para. 4.23/4.24/4.25/ 4.26/4.27;

t) By producing a grievance outcome which was a cover-up of unlawful discriminatory treatment of C – (03/10/2018) - para. 4.28;

u) By notifying C of a pending consultation meeting where on his part 'a failure to respond might result in C being given notice of redundancy (05/10/2018) - para. 4.29;

v) By R conducting a 'sham' redundancy meeting where there was no meaningful consultation and there was a 'pre-conceived' likely outcome – (13/10/2018) – para. 4.30;

w) By implementing the decision to dismiss C on grounds that his role was redundant – (19/10/2018) – para. 4.31;

x) By denying C the right to auto-enrol in the LGPS - para. 4.31;

y) By rejecting C's appeal against the grievance outcome – (03/11/2018) para. 4.33

C relies upon the following protected acts:

I. reporting SE's treatment of him to Simon Allison - February 2017;

II. reporting SE's treatment of him to David Turner - February 2017;

III. the making of a formal grievance -21 June 2017.

Indirect Discrimination

7. Contrary to Section 19 EqA, did R discriminate against C by applying to him a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of C's (race/religion) – C relies upon the following PCPs:

The PCPs relied on by the Claimant are:

"(a) RAMADAN WORKING HOURS

PCP - The policy from the manager that all staff take lunch break at set time and not use flexi-time to have no lunch and finish early.

Applied May/ June 2017

This would put the Claimant at a particular disadvantage because as an adherent Muslim he could not eat during the lunch hour and would have to sit in the common room watching others eat – this would place a heavy emotional and psychological burden on him.

Other persons of the same faith would be disadvantaged in the same or similar way. It would affect Muslims more than any other group and impact adversely on them.

(b) REDUNDANCY/ REDEPLOYMENT

PCP - The practice of using a manager's Personal Preference as a selection tool in redeploying staff in his section and deciding on who to make redundant.

Applied March 2017– October 2017

This put the Claimant at a particular disadvantage because the manager had a natural affinity with people who looked like him, acted like him and shared the same cultural and social values as him. The Claimant looking and being different as Black and Muslim would therefore not be preferred by the manager for redeployment, but would be for redundancy.

Other persons who share the same racial characteristics and are of the same faith as the Claimant would be similarly disadvantaged. They would not be considered for redeployment but would be considered for redundancy."

In determining whether not the provision, criterion or practice listed as (a) and (b) are discriminatory in relation to C's race or religion did —

(a) R applies, or would apply, it to persons with whom C does not share the characteristic,

(b) it put, or would put, persons with whom C shares the characteristic at a particular disadvantage when compared with persons with whom C does not share it,

(c) it put, or would put, C at that disadvantage, and

(d) R cannot show it to be a proportionate means of achieving a legitimate aim.

R's position in relation to each PCP in turn is:

a) In relation to Ramadan, the issue was not whether C could change his hours but that the college wanted to have a written record of the change;

b) There were no redundancy selection criteria applied there was not a selection process. C's role had disappeared as a result of the restructure.

Breach of Contract

8. R paid C in lieu of requiring him to serve his statutory period of notice. There was no PILON clause in C's contract of employment. C received pay equivalent to his full entitlement to wages for twelve weeks and four days' compensation for accrued but untaken entitlement to annual leave.

9. Did R breach C's contract of employment and therefore owes him compensation by way of damages for:

   a) Any days of annual leave which had accrued prior to 19/10/2018 but were not otherwise compensated for on the termination of C's employment?

   b) Not paying to him compensation for days of annual leave which would otherwise have accrued if C had worked the entirety of his notice period?

   c) If the answer to (a) or (b) is yes, how many days of leave is C entitled to be compensated for?

   d) Not auto-enrolling him in the LGPS and if so would C have been entitled to accrue pension benefits during any period of notice which he would otherwise have served but for R paying him in lieu of notice?

   e) If yes, what is the value of the contributions which R would ordinarily have made to LGPS on R's behalf?

Breach of ACAS Code

10. Did R breach the ACAS Code of Practice on disciplinary and grievance procedures in relation to failing to fully and properly investigate the Claimant's grievance?

11. If so, what if any uplift is C entitled to receive to any compensation payable to him?