



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Bhuiyan

**Respondents:** Valuation Office Agency

**Heard at:** Reading On: 15, 16, 17, 18, 19 October 2018  
4 April, 7 June 2019 and (in  
Chambers) 20-21 June 2019

**Before:** Employment Judge Gumbiti-Zimuto  
Miss S P Hughes and Mrs F Betts

**Representation:**

**For the Claimant:** In Person

**For the Respondent:** Mr R Moretto (Counsel)

## RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

## REASONS

1. In a claim form presented on the 7 December 2016 the claimant made complaints of discrimination on the grounds of race. In a response received on 6 January 2017 the respondents defend the claimants' complaints. The claimant made claims against the Valuation Office Agency, Mrs Tessa Costin, Mr Andrew Ricketts, Mr Nicolas Riggott and Mr Alan Todd. The claimant's claims against Mrs Tessa Costin, Mr Andrew Ricketts, Mr Nicolas Riggott and Mr Alan Todd were discharged on the 8 March 2017.
2. A case management preliminary hearing took place on the 8 March 2017, a further preliminary hearing to determine a number of preliminary issues was listed take place on 15 August 2017, the full merits hearing was listed to take place on 22 January 2018.
3. On the claimant's application the further preliminary hearing was postponed and relisted on the 30 November 2017. On the 30 November 2017 there was no judge available to hear the case and the preliminary hearing was postponed by the Tribunal and relisted on the 16 January 2018.

4. After considering representations from the parties and bearing in mind the proximity of the preliminary hearing (16 January 2018) to the full merits hearing (22 January 2018), the preliminary hearing was vacated.
5. On the 16 January 2018 the claimant applied for the full merit hearing to be postponed. The application was refused.
6. On 19 January 2018 the full merits hearing was postponed because a tribunal to hear the case was not available. The case was relisted for hearing on 15 to 19 October 2018. The case proceeded between the 15 and 19 October 2018. Regrettably it was not possible to complete the hearing of the case in the five days allocated and the case was initially relisted to continue on the 16 and 17 September 2019, fortunately it was later possible to find other convenient dates and list the resumed hearing on the significantly earlier dates of 4 and 5 April 2019. The case resumed hearing on the 4 April 2019 and adjourned part heard to the 5 April. On the morning of the 5 April 2019 the claimant did not attend the Tribunal hearing (he explained the reason for his justifiable absence) and the case was relisted for hearing to resume on the 7 June 2019 when the evidence was to be concluded (this hearing went ahead as planned) and the dates of 20-21 June 2019 were used for the Tribunal's chambers discussions.
7. The preliminary hearing that had been envisaged at the case management discussion preliminary hearing on the 8 March 2017 never did take place. There was never a hearing at which the issues to be decided by the Tribunal was discussed with the parties. An agreed list of issues was never produced by the parties. Mr Moretto (counsel for the respondent) did produce a list of issues which was prepared by reference to the claimant's claim as pleaded in his grounds of claim, dated 7 December 2016 and further and better particulars of March/April 2017. This is a useful document which in our view fairly sets out the scope of the claimant's claim against the respondents: the claimant did not demur from the list of issues as put forward by Mr Moretto. It is to be noted however that the claimant in his witness statement evidence and in his oral evidence did not cover each point which might appear to be a claim or issue to be decided by the Tribunal. We note that the claimant's written submissions leave out significant parts of what was raised in the ET1 and further particulars.
8. In this judgment we have followed the chronology of events as they appear from the grounds of claim and sought to determine the issues as they appear from that document. The further and better particulars provide clarification of the claims as they appear in the grounds of claim.
9. The claimant gave evidence in support of his own case. The respondents Mrs Tessa Costin, Mr Andrew Ricketts, Mr Nicolas Riggott and Mr Alan Todd all gave evidence in support of their own cases. The respondents also relied on the evidence of Mrs Helen Zamitt-Willson. All the witnesses produced written witness statements as their evidence in chief. The parties also produced a trial bundle of documents in two volumes

containing a total of 1024 pages of documents. From these sources we made the following findings of fact.

10. The claimant is British Bangladeshi. He was married in September 2008, later divorced and remarried in 2013. He has two children.
11. The claimant has a degree in law and has passed the bar exams.
12. The claimant joined the civil service on 11 February 2013 as a Debt Management and Banking Officer in HMRC. The claimant's place of work was based in Birmingham and the claimant commuted from London to Birmingham. In 2014 the claimant moved to the Home Office and was working in London.
13. In November 2014 the claimant applied for a role of Non-Domestic Ratings case worker in the Valuation Office Agency. The Valuation Office Agency is an executive agency of HMRC. The claimant was successful in his application.
14. On the 27 January 2015 the claimant was offered employment with the respondent. The claimant accepted the offer. On 6 February 2015 the VOA Head of People Operations wrote to the claimant: "*You should now be speaking with your line manager about when you can be released. Once you have agreed a start date, please can you let me know the outcome.*" The claimant wrote back the same day stating: "*Following your email, I spoke to my manager and agreed the release date. ... I am confirming that I will join the VOA on Monday 16 February 2015.*" On the 12 February 2015 the resourcing team wrote to the claimant offering him an appointment as a HEO caseworker in Non-Domestic Rating Operations based in Reading Valuation Office. The claimant was told that his first day of duty will be 16 February 2015 and that he should report for work at 9.30 am to Mrs Costin. The claimant was given a contact telephone phone number for Mrs Costin
15. Mrs Costin was not informed that the claimant would be joining the respondent before the claimant arrived on the 16 February 2015. The claimant did not contact Mrs Costin before his start date. In Mrs Costin's experience the speed with which the claimant moved from the Home Office to the VOA was unusually fast. She stated in evidence that from notification of the offer on 27 January 2015 to starting on the 16 February 2015 is a shorter period than she would expect: the recruitment process takes time and then when offered a role there is a requirement to give notice and Mrs Costin said that "*takes at least a month*".
16. On 16 February 2015 Mrs Costin was on annual leave. It was necessary for her to be contacted and asked to come into the office to meet the claimant. The claimant and Mrs Costin disagree about what took place during this first encounter.
17. The claimant describes his first day in the following way: "*On Monday the 16<sup>th</sup> February 2015, I started my journey to VOA Reading Office around*

*10am. ... Upon arrival ... Linda Bennet told me that Tessa Costin was not in office as she is on leave... Linda Bennet contacted with Tessa Costin via phone. ... Around 1 pm Tessa arrived ...Tessa Costin came to the kitchen area and started rude behaviour with me. Even before introduced with me Tessa shouted to me that why I did not call her before come to the office. Then Tessa asked me "WHERE I AM FROM". ... Then Tessa Costin repeated the question by raising her voice. I then replied to her I travelled from South East London. Then Tessa asked me "Originally where I am from". I then told her I am from Bangladesh. Then she asked me what kind of identification document did I bring with me today. I told her Passport and Bank Statement. Tessa then asked me do I have visa to work. I then replied to her "I have British Passport". ... Finally Tessa Costin left the office without saying anything to me... Nick Riggott ... later on came to me and told me that Tessa Costin left the office and he will look after my day to day work until Tessa Costin come back from her annual leave."*

18. Mrs Costin's account is very different she states that she came to the office met the claimant carried out some administrative formalities relating to him then left to resume her annual leave.
19. Mrs Costin denied asking the claimant for his passport. Mrs Costin states that she would have asked for a passport sized photograph of the claimant. A passport sized photograph is what the claimant is required to bring with him. However, the claimant supports his claim that Mrs Costin asked for his passport because part of Mrs Costin's responsibilities on this occasion would have been to ensure that the claimant was entitled to work in the United Kingdom and she did this by asking for his passport.
20. The Tribunal accept that the claimant attended on the first day with his passport. We are satisfied that it is likely that the claimant would have produced his passport and that Mrs Costin would have looked at it. Otherwise we prefer the evidence of Mrs Costin, we do not consider that it is likely that Mrs Costin would have spoken to the claimant in the way that he suggests. We had the opportunity of considering her demeanour in giving evidence and observed the fact that she was willing to acknowledge and accept when she had reacted unprofessionally. She impressed us as a witness who was telling us the truth as she believed it to be.
21. While we recognise that it is now the claimant's case that Mrs Costin was aggressive, rude and treated him differently because of his race and colour "*from day 1*". This was based on information discovered during the proceedings. However, it is noted by the Tribunal that the encounter does not appear in the claimant's claim form as one of the complaints he makes about Mrs Costin whom he says was discriminating against him on the grounds of his race before he discovered information supposedly supporting the existence of discrimination on grounds of race "*from day 1*". This first encounter is not only the first occasion he meets Mrs Costin and therefore likely to be a memorable occasion but is also an incident, in the claimant's version, where Mrs Costin displays animus to the claimant which could be based on race. We consider that if the incident happened

the way the claimant reports it in his witness statement it would have appeared on the original version of the claim form.

22. The first matter that the claimant complains about is an allegation that on the 23 February 2015 Mrs Costin shouted at him for no reason in an open plan office and this was overheard by other members of staff. Mrs Costin denies this. Mrs Costin's evidence was that there was no incident on the 23 February 2015.
23. The claimant was asked to provide details of the words that were used by the claimant on the 23 February 2015. He gave this information in his further particulars as Mrs Costin stating: *"Why you are waiting for me? Your colleague Dorothy Brook is here you should take support from Dorothy and you did not ask anything from Dorothy"*. This however does not appear in the claimant's evidence as set out in his witness statement. When the claimant was challenged that this incident did not occur as he alleges the claimant explained his failure to include in his statement by saying that he had *"more serious issues than this"* and that he found *"it not appropriate to include evidence about that in my witness statement."*
24. We prefer the evidence of Mrs Costin and are satisfied that nothing of note happened on the 23 February 2015.
25. The claimant says that on the 24 April 2015, Mrs Costin doubted the claimant's flexi-time recording and instigated a *"secret observation which as totally inappropriate way under VOA policy/guidance."*
26. The claimant's evidence on this complaint was that when Mrs Costin was asked by Ms Janet Hart, during an investigation into allegations about the recruitment and behaviours of the claimant, when she first had concerns about the claimant's flexitime she stated that in *"March she had a conversation with [the claimant]"*. This was on the 1 May 2015. The claimant points out that in an email to Mr Riggott and others commenting on the claimant's flexi-time, Mrs Costin stated: *"I have been suspicious since day 1, that [the claimant] has not been recording his flexi-time accurately."* The claimant says this email shows a strong intent to discriminate against him.
27. Mrs Costin gave evidence that she had concerns about how the claimant recorded his flexi-time and that she spoke to him about it at a one to one meeting on the 29 May 2015. The notes of that meeting show that Mrs Costin explained to the claimant that she had been concerned about the way that the claimant was recording his flexi-time, she explained the irregularities she had found and she explained how to record it correctly. Mrs Costin told the claimant she would make a note of their conversation and send a him copy before forwarding the note of their meeting to HR, which she then did. The claimant accepted that the notes of the meeting were accurate and that there was cause for concern about his recording of flexi-time because he was recording his flexi-time inaccurately.

28. Mrs Costin did monitor the claimant's flexi hours, she did so after having spoken to the claimant about the way he was recording his hours of work and because she was concerned about the way that the claimant was recording his hours.
29. The claimant alleged that Mrs Costin told him that he was *"not to eat homemade Asian food" in his desk and openly criticised the claimant for eating Asian food in the desk.*
30. The Claimant's witness statement does not set out how this issue arises. The claimant states that in his appeal Mr Todd failed to deal with his allegation that Mrs Costin harassed and victimised him when he approached her for his legitimate employment rights, in specific 'special paid leave', Office closing time, and Asian food eating in desk.
31. The claimant accepted that he did not include any evidence in his witness statement about this allegation. The claimant's explanation was that *"it does not need to be included in my witness statement -stronger evidence is available."*
32. The claimant's version of this event is set out in his meeting with Mr Todd. The claimant said that he was eating food at his desk when he was approached by Mrs Costin who told him that he cannot eat food at his desk, that he should eat food in the kitchen. The note of the appeal makes no reference to Asian food, however, in cross examination the claimant insisted that Mrs Costin said that the claimant was not to eat *"homemade Asian food"*. The claimant says he was treated differently to other staff who did not get told they were not to eat food at the desk.
33. Mrs Costin accepts that she spoke to the claimant about the agreed etiquette about eating hot food at desks and reminded the claimant that there was a large kitchen/staff room to eat in. Mrs Costin denied that she had used the words "homemade" or "Asian".
34. The respondent has produced a document headed "Office Etiquettes" which includes the direction that: *"Any hot or warm food to be consumed in the kitchen."* The claimant denied that he discussed this with Mrs Costin but accepted that he did discuss it with Mr Andrew Corkish who told him about the policy. The claimant stated that Mrs Costin *"did not explain any policy to me. She said that I should eat in kitchen"*. The claimant said there was a colleague eating at the desk who was not told this.
35. The Tribunal accepts the evidence of Mrs Costin about this issue. The dispute between the parties appears to be about whether the claimant was told not to eat "homemade Asian" food. The claimant accepts that he was informed of the office etiquette and what he describes Mrs Costin saying to him was consistent with that.
36. On the 8 September 2015, it is alleged by the claimant that Mrs Costin told the claimant in a regular one to one that she does not like the claimant because she does not like the claimant's colour, race and ethnicity.

37. The claimant's evidence on this was that: *"I had a one-to-one meeting with Tessa Costin on 08<sup>th</sup> September 2015 where I discussed about informally working in Bromley. I asked to work in Bromley two days a week. At one point of the meeting Tessa Costin said to me "She does not like me". I strongly believe that the only reason Tessa Costin told me because she does not like my ethnicity and Colour."*
38. In his oral evidence the claimant said that Mrs Costin said to him *"I do not like you"*. The claimant accepted that Mrs Costin did not make any reference to his race, colour or ethnicity. The claimant explained that the meeting at which this comment was made came about after the claimant had been working from the Bromley office one day a week and the claimant was asking to be permitted to work two days a week from the Bromley office. The claimant stated that he could not remember what was said beyond what he stated in paragraphs 125-126 of his witness statement. When the notes from Mrs Costin's day book were put to the claimant he denied them stating that *"it is a lie"*. The claimant was asked if he took notes of the meeting he stated that he did not take any notes of the meeting. The claimant was shown an email that he wrote on 9 September 2015 which he refers to *"taking note some of your comments yesterday"* and makes the offer: *"I can forward it to you"*. The claimant then said *"I can't recall I had written notes. I did not forward them to her because she did not ask me."*
39. Mrs Costin's account of this meeting, the circumstances leading up to it and what happened after the meeting are clearly set out in her witness statement. Mrs Costin made a detailed note of the meeting in her day book. The critical part of Mrs Costin account is that she states that during the meeting the claimant was angry and voiced his anger, and that it was the claimant who said to Mrs Costin, *"I Know you don't like me."*
40. In his email to Mrs Costin sent at 15:42 on 9 September the claimant wrote: *"I appreciate you do not like me (as you mentioned yesterday)"*. Mrs Costin replied in terms which included the passage: *"On the topic of you believing 'I do not like you'. Firstly, this is your perception, but it is untrue. ... I thought until yesterday that we had a good working relationship..."* We accept the evidence of Mrs Costin that she found the claimant frustrating to deal with *"because he was, from a management perspective, time-consuming and difficult to deal with."*
41. The claimant complains that on 28 September 2015 Mrs Costin deliberately did not follow the correct procedure regards to "Reading Office closure".
42. The claimant says that on 28 September 2016, Mrs Costin sent an email to those individuals who were working late (7pm) in the office, stating the new opening times for the office. The claimant says that the decision was taken by Mrs Costin without discussion and was implemented with immediate effect. The claimant's view was that the change was "unreasonable and disproportionate". The claimant says that when he discussed the matter with Mrs Costin she shouted at him and was not

happy with his response. Later the same day the claimant wrote an email to HR and copied this email to Mrs Costin. Following an exchange of emails the claimant met with Mr Andrew Corkish on 21 October 2015. Mr Corkish wrote to the claimant on 21 October 2015 summarising the discussion. The claimant says that Mrs Costin mishandled the matter and that she did it *“on purpose to give me the hard time as I was the person who had the worst effected because of that decision. ... Tessa Costin treated me differently to harass me.”*

43. Mrs Costin explains that there was a need for a temporary arrangement because the member of staff responsible for locking up the Reading Office at 19:00 had broken her leg and as a result would not be able to lock up to two or three months. Mrs Costin discussed this situation with the claimant after she was copied into the claimant's email to HR. When the claimant stated that he wished to raise the matter as a formal complaint Mrs Costin informed the claimant that he should address the complaint to Mr Corkish. Mrs Costin says that her decision was entirely in accordance with the VOA policy and that the temporary arrangement was put in place due to the staffing issue. It is further pointed out that at the time the claimant was not making any complaint of race discrimination but was complaining about how it impacted on his family life. Mr Corkish's response to the claimant's complaint supports Mrs Costin's decision.
44. Although the claimant refers to a deliberate failure to follow the correct procedure he has not explained what the correct procedure is. We have assumed that the claimant considers the failure to consult with him or other affected staff before the decision was taken as the deliberate failure on the part of Mrs Costin. In that regard we are satisfied that Mrs Costin's decision was a reasonable decision taken having regard to the needs of the business. We further note that Mr Corkish, whose email of the 21 October 2015 the claimant accepted was an accurate record of the meeting the claimant had with him, states that the claimant understood *“why the office hours have been altered and you accept that the business need takes priority, but you feel there was no discussion about the matter and potential solutions.”*
45. The claimant alleges that Mrs Costin deliberately did not follow the correct procedure or VOA policy in handling his special leave request.
46. In November 2015 the claimant's father had a heart attack and the claimant went to Bangladesh to provide family support and comfort. The claimant sent a text message and email to Mrs Costin to explain the situation but he received no response or other contact from her. Upon his return to work the claimant applied for special paid leave. Mrs Costin asked the claimant to produce his flight tickets, a copy of the claimant's passport and the subsequently to bring his passport to show her.
47. The claimant believes that he was treated differently, and Mrs Costin was suspicious about his honesty and integrity. The claimant contrasts the way that he was treated in 2016 when he got a message from Bangladesh that his father had a heart attack again and he flew immediately to Bangladesh.



On this occasion when he sent a text message and email to his line manger, the line manger acknowledged the email and subsequently sent several emails to get an update from the claimant while he was in Bangladesh. Upon his return to the UK, the claimant applied to my line manager to allow him special paid leave and this was granted by the senior management. The only documentation that was asked for was the electronic copy of his airline ticket via email.

48. The claimant states that the level of scrutiny applied by Mrs Costin asking for evidence beyond what the respondents policy required in his case was an act of discrimination.
49. Mrs Costin remembers that the claimant asked to be granted special leave to cover his absence in Bangladesh in November 2015. She liaised with HR about the issue and sent an email to the claimant requesting that he provide her with proof for *“an audit trail to show that I have taken all reasonable steps to investigate that the application genuine.”* The claimant was asked to provide *“the original email sent to you by the airline, when you booked your flight, rather than a copy of the text. Please could you also provide your passport, rather than copies of the pages.”* Mrs Costin explained that she was doing as advised by HR. In the course of her questioning by the claimant she stated: *“I did not ask to see your passport. I asked to see the date you booked ticket. Not your passport. You brought your passport. If you provided me date of booking I could have provided you with the special leave. I went to HR and go advice. She told me which documents to check.”* Mrs Costin was clearly wrong when she said in her evidence that she did not ask to see the claimant’s passport as she clearly did in her email to the claimant on the 25 November 2015. It is also clear that Mrs Costin was taking advice from HR and that she was wary as a result of the way that a one to one meeting with the claimant had gone. Mrs Costin sent an email to Janet Hart on the 24 November 2015 in which she stated that the claimant *“has provided the booking details but has left the date of the booking off. I have asked for this and explained to qualify, it is has to be a ‘drop everything and go’ situation. He does not want to provide this ... Goolam cut short the meeting and said he needs 10 minutes to compose himself, as he feels his honesty is being questioned. I have apologised and informed him, that there are protocols that I must stick to. I do now want to stick with my request for him to provide the booking date, as his reaction was so extreme, that I cannot think of a reason why.”*
50. There is in our view little between Mrs Costin and the respondent about what happened in this instance the question between them appears to us to be why things were done the way they were. Was it a discriminatory action by Mrs Costin or was she just following protocols as she understood them?
51. The claimant makes a complaint that on 15 November 2015 Mrs Costin and Mr Riggott collaborated to make a false accusation in the claimant’s end of year report. This complaint emanates from a sentence that is

contained in the claimant's performance report that reads as follows: *"This is because the SEO was giving up 75% of his time to assist Goolam."*

52. The claimant says that on 26 November 2015 he received his midyear report written by Mrs Costin in which Mrs Costin deliberately provided wrong information in writing the quoted passage. The claimant says that *"this is simply a lie as the relevant SEO has spent only 7% of his time to assist me"*.
53. Mrs Costin explained that the claimant, like others, worked with a SEO who provided technical advice. The SEO that the claimant and three other HEO's work with was Mr Riggott. Mrs Costin considered that the claimant was very dependent on support from Mr Riggott. During Mr Riggott's one to one meetings, Mrs Costin recalls Mr Riggott stated that the claimant was taking up as much as 75% of his time available for supporting HEOs. It was this statement that was being relayed in the performance report. Mrs Costin in cross examination stated that the figure was not intended to be taken literally but was meant to convey the fact that the claimant was taking up a lot of Mr Riggott's available time. Mrs Costin conceded that the point was not written well in the performance report but she stood by the sentiment in the comment.
54. Mr Riggott accepts that he made a statement concerning the amount of time that he spent working with the claimant. He states that the statement he made would have been true at the time that he made it. Mr Riggott states that the comment he made would have been a 'snapshot'. Mr Riggott stated that the claimant would have been taking up to 75% of his time when he and the claimant were both in the office. The matter was raised with Mr Riggott during an interview with Mr Todd. Mr Riggott stated: *"The issue of 75% was raised in my interview with Alan Todd (HR). ... I ... As I recall, was questioned as to whether 75% of all my time between April and October was taken up in assisting the claimant. I answered no to that question. Had I seen the MYR report, the context of Ms Costin's comment clearly shows this was not what was being said. In this case I think this is a slight misinterpretation, by the claimant, to what Ms Coston had written."* When questioned about this by the claimant Mr Riggott said: *"I could have said he was taking up "all of my time" it was never meant as literal. It was for brief period. ... I was spending a lot of time with you. ... It was a comment to say you using a disproportionate amount of my time. I accept you did not spend 75% of my time."*
55. We are of the view that there was no collusion. Mr Riggott made the comment or a comment very much like that which was recorded by Mrs Costin. The comment was intended to convey that the claimant was taking up a lot of Mr Riggott's time. This is in fact the case. It was not only what Mrs Costin had been told but it also chimed with what she had observed. In completing the Mid-year review Mrs Costin believed at the time that she had accurately recorded what she had been told.
56. The claimant says that Mrs Costin purposely used misleading information to decline the claimant's legitimate request and always kept a hostile

working environment for the claimant. The claimant was asked to provide further information and provided the following further particulars: *“Andrew Ricketts is the line manager of Tessa Costin; Tessa Costin was the line manager of Nick Rigott; and Nick Riggot was the supervisory of the claimant. Thus the involvement of the respondent’s senior officers persistently either committing discriminatory acts or omitting to take steps to relieve the claimant from discriminatory behaviour made a hostile working environment over the period of time.”*

57. The claimant’s witness statement did not elaborate or lead evidence which touches and concerns this aspect of the claimant’s case against the respondents in this regard.
58. When pressed on this in questions from Mr Moretto the claimant stated that he had been sent by Mrs Costin to carry out an inspection. However, Mrs Costin had sent him out without the correct documentation. The claimant appeared to suggest that this had placed him in some sort of jeopardy.
59. In questioning Mrs Costin accepted that on 4 March 2015 she should not have sent the claimant to carry out a task which involved measuring a piece of land. Explaining why she did so Mrs Costin stated that she was *“over enthusiastic”* to put the claimant on a job and that she thought the claimant *“would enjoy going out and learning the role.”* She accepted that she got this wrong by sending the claimant out without a letter of authority or an ID card. Mrs Costin also accepted that the claimant was required to have completed his mandatory training before the claimant could go and carry out an inspection. Mrs Costin denied that the claimant was placed in any danger or that he was at risk of getting into trouble as a result: *“I was the one in trouble for sending you out.”*
60. The claimant says that Mr Andrew Ricketts breached the VOA policy regarding occupational health report and intentionally refused to give him a copy of the occupational health report in good time.
61. On the 26 November 2015 the claimant informed the first respondent that he would not be attending work due to stress and did not feel secure enough to return to work under his current management. On the 3 December 2015 the claimant agreed to a referral to occupational health. The claimant was moved from the line management of Mrs Costin to Mr Ricketts.
62. The claimant’s OH report was sent to the first respondent in December 2015. The report was not provided to the claimant until 28 April 2016. Mr Ricketts thought that OH would send a copy of the report to the claimant at same time as they send the report to the first respondent, however this did not happen because the claimant had not asked for a copy of the OH report to be sent to him. The claimant was away from work from 1 January 2016 until 1 April 2016 the claimant did not inform Mr Ricketts that he had not received a copy of the report until April, had he done so Mr

Ricketts would have provided the claimant with a copy of the report. The claimant and Mr Ricketts discussed the claimant's OH report at a one to one meeting on the 29 April 2016.

63. On the 15 December 2015 Mr Ricketts carried out a stress risk assessment with the claimant at the Bromley office all the points identified were subsequently carried out. Mr Ricketts originally intended to provide the claimant with a copy of the notes of the risk assessment, however, Mr Ricketts failed to write up the claimant's risk assessment and send a copy to the claimant as promised. The claimant was absent on sick leave until the 17 December 2015.
64. The claimant worked from the Bromley office on his return from sick leave until 1 January when the claimant went on unpaid special leave.
65. The claimant states that it was agreed by Mr Ricketts that once he received the claimant's OH report he would review the claimant's work location having regard to the OH recommendations, his GP report and the stress risk assessment. When Mr Ricketts carried out the risk assessment, he allowed the claimant to work from the Bromley office for an interim period but refused a permanent transfer. Mr Ricketts states that he made this decision in the best interests of the claimant's development and performance of his role taking into account staffing requirement at the Reading Office. The claimant was shocked by the decision which he states was against his GP's recommendation and the OH report.
66. The claimant's complaint that he made a request for a change of his working desk which was turned down by Mr Ricketts in collaboration with Mrs Costin based on their own created policy is not dealt with by the claimant in his witness statement.
67. The evidence given on this issue by Mr Riggott was that it was his decision alone not to grant the claimant a change of desk. The Tribunal accept that Mrs Costin was not involved and there was no collaboration on the matter. Mr Riggott explained his reason for refusing the request as being because he wanted the new SEO to sit at that desk. The desk had traditionally been used by the senior surveyor in the office; the seat is more private and therefore allow the surveyor to have more filing as well as quieter space to get on with work and discuss people's cases when they come for advice. Mr Riggott wanted the new surveyor to have the desk.
68. The claimant's witness statement makes not reference to the claimant's complaint that he requested parental leave on 7 July 2016 and that Mr Ricketts did not follow the guidelines issued by the 1<sup>st</sup> respondent in handling parental leave.
69. This allegation is not correct as stated in the claim form because Mr Ricketts did grant the claimant's request for parental leave. The consequence of the claimant being granted parental leave was that the claimant would be invited to a poor performance meeting because the

claimant had already received a must improve marking in his 2015-2016 appraisal and was missing essential training that had been arranged for him.

70. On 9 September 2015 the claimant raised a complaint against the Mrs Costin and he alleges that Mr Ricketts *“put the claimant’s formal grievance under the carpet and did not take any action on the grievance.”*
71. The claimant’s view of matters is that on the 9 September 2015 he spoke to Mr Ricketts and raised concerns about Mrs Costin. Mr Ricketts informed the claimant that he should put his concerns in writing. On 14 September 2015 the claimant set out his complaints about Mrs Costin in writing. On the 1 October 2015 the claimant met with Mr Ricketts and *“discussed the full details of my concerns.”* Mr Ricketts suggested, and the claimant agreed to the use of a mediator to try to resolve the issues. At the meeting the claimant expressed his concerns about Mrs Costin including the fact that he felt that she did not like him and that she discriminated against him.
72. The claimant states that he waited a period of ten weeks and then wrote to Mr Ricketts and raised the fact that there had been an unreasonable delay in dealing with his concerns. The claimant wrote to Mr Ricketts on the 20 November 2015 and again on the 26 November 2015 and it was only then that he was asked to attend a meeting with Mr Ricketts on the 15 December 2015.
73. Mr Ricketts states that when he received the claimant’s email he contacted HR for advice and was advised to have an informal meeting with Mrs Costin. After arranging to meet Mrs Costin, Mr Ricketts informed the claimant of that fact and asked the claimant to arrange a time to meet with him. Mr Ricketts with Mrs Costin on the 22 September and then met with the claimant on the 1 October 2015. At the meeting with the claimant Mr Ricketts suggested a mediator and did not consider a formal grievance because he hoped that mediation would resolve matters.
74. Following the meeting with the claimant Mr Ricketts sent the claimant his note of their meeting. The claimant subsequently sent him a reply with some amendment/additions to the note. Mr Ricketts contact HR and they were going to arrange a mediator. Mr Ricketts also spoke to Mrs Costin again to confirm that she was willing to use a mediator. By the 20 November 2015 when the claimant sent an email to Mr Ricketts stating that as he had not seen any action to resolve matters for the past 10 weeks he wished to pursue a formal grievance. Mr Ricketts had still not made arrangements for a mediator.
75. The claimant states that on 20 November 2015 he requested to switch his existing complaint to a formal grievance, but Mr Ricketts attempted to put this matter under the carpet. The claimant stated in his email that since raising his concerns he had suffered *“several difficulties and discriminatory treatments”* from Mrs Costin.

76. On the 26 November 2015 Mr Ricketts wrote to the claimant and in his email he included the following a passage: *"I attach a link to "the Guide", section 17 which details how to make a formal complaint. You will find a form to complete in appendix 3. This can either be sent from your office computer or from home, however please ensure it is sent to HR enquiries at [hrenquires@voa.gsi.gov.uk](mailto:hrenquires@voa.gsi.gov.uk)."* The claimant did not take action to raise a grievance until 9 May 2016.
77. The claimant states that when he did raise his grievance 9 May 2016 Mr Todd did not *"deal with the grievance as per VOA grievance policy and unintentionally misdirected himself from VOA grievance policy."*
78. Mr Todd gave evidence about how he dealt with the claimant's grievance. It is not clear to the Tribunal exactly how it is that the claimant contends that Mr Todd failed to comply with the 1<sup>st</sup> respondent's grievance policy.
79. The claimant complains that Mr Todd discriminated against him for using his legitimate channel of his employment right and was aggressive in writing the grievance outcome letter.
80. The claimant considers that the grievance decision sent to him by Mr Todd was an act of discrimination. The claimant objects to the way that Mr Todd stated that the 1<sup>st</sup> respondent would normally only consider a complaint which related to events which occurred within three months of its submission date and that an exception had been made in the claimant's case.
81. The claimant says that although Mr Todd found that there was a lack of timeliness on the part of the respondent he did not investigate whether the lack of timeliness was on purpose or not; whether because of management lack of timeliness the claimant was subject of any further discriminatory acts or not; Mr Todd has failed to find out who is that management that caused delay and whether the delay was on purpose or not; the claimant states that it was a specific allegation that Mr Ricketts deliberately took an unreasonable time to deal the matter; the claimant considers that Mr Todd should have accepted his allegation that Mr Ricketts deliberately caused unreasonable delay to the claimant's case.
82. The claimant says that Mr Todd did not investigate the matter properly because he failed to conduct a face-to-face meeting Mrs Costin, Mr Ricketts and Mr Riggotts; Mr Todd failed to explain why he did not conduct the interview with Mrs Costin; and that the claimant was treated differently because he was "interviewed thoroughly" but there was no face to face interviews with others.
83. The claimant says that the investigation was flawed because Mr Todd failed to find out Mrs Costin had made a formal complaint against the claimant. The claimant contends that facts that *"recently come to the light because of the respondent discloser was not found in the grievance*

*investigation process by Alan Todd. The illegal, immoral and inappropriate works conducted by Tessa Costin between 16<sup>th</sup> of February 2015 and 1<sup>st</sup> May 2015 had a significant role in establishing her motivation of racial discrimination.”* The claimant says had Mr Todd investigated in accordance with the 1<sup>st</sup> respondent’s policy the “*grievance should have different outcome*”. The claimant contends that Mr Todd was biased.

84. The Tribunal have considered the grievance outcome letter and report; this is not aggressive.
85. In respect of the timeliness of dealing with the claimant’s queries and concerns Mr Todd found that in some cases this “*fell short of the required Agency standard*” but “*was not material to the correct policy outcomes which resulted.*” Mr Todd found that there was no attempt to sweep the claimant’s complaints under the carpet. In the case presented by the claimant to the Tribunal this appeared to the Tribunal to be the gravamen of the claimant’s complaints about the lack of timeliness with which the claimants concerns were addressed by the 1<sup>st</sup> respondent and Mr Ricketts
86. The claimant is not correct in his statement where he says that Mr Todd did not have a face to face meeting with Mr Ricketts and Mr Riggott: he did have face to face meetings with them. Mr Todd did not carry out a face to face interview with Mrs Costin because he had other case work with more immediate decision deadlines and was due to go on leave and wanted to progress matters with Mrs Costin in his absence rather than have further delay so he decided to send Mrs Costin a questionnaire with questions relating to her dealings with the claimant.
87. The Tribunal have come to the conclusion that Mr Todd conscientiously carried out an investigation into the claimant’s grievance and came to his conclusions without reference to any bias against the claimant. We recognise that the claimant did not like the outcome and was disappointed by it. However it is clear from the evidence given by Mr Todd that the claimant is wrong when he states that Mr Todd failed to find out Mrs Costin had made a formal complaint against him. When questioned about the documents created by the HR Advisors Cerys Price and Janet Hart, Mr Todd stated: “*All this was on your file. I am familiar with all this. I was satisfied investigation took place and matter concluded. Tessa Costin was disappointed with the outcome: she said so in an email.*”
88. The claimant then subsequently appealed the decision made by Mr Todd and his appeal was considered by Mrs Helen Zammit-Wilson. The way that Mrs Zammitt-Wilson dealt with the claimant’s appeal is set out in her witness statement her evidence was not in substance challenged by the claimant. To some extent the claimant sought to hold her out a model of how the decision on his grievance should have been set out by Mr Todd.

### **Statutory Provisions**

89. Race is a protected characteristic. Race includes colour; nationality; ethnic or national origins.
90. Section 39 (2) of the Equality Act 2010 (EqA) provides that an employer (A) must not discriminate against an employee of A's (B) as to B's terms of employment; in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service; by dismissing B; by subjecting B to any other detriment.
91. Section 13 (1) EqA provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
92. Section 19 EqA provides A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if A applies, or would apply, it to persons with whom B does not share the characteristic, it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, it puts, or would put, B at that disadvantage, and A cannot show it to be a proportionate means of achieving a legitimate aim.
93. Section 26 EqA provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i)violating B's dignity, or (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B. Section 26 (4) EqA provides that In deciding whether conduct has the effect of (i)violating B's dignity, or (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B, each of the following must be taken into account the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.
94. Section 27 EqA provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. Each of the following is a protected act: bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Equality Act; doing any other thing for the purposes of or in connection with the Equality Act; making an allegation (whether or not express) that A or another person has contravened the Equality Act. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

**Parties submissions**



95. The claimant and the respondents' counsel provided written submissions which they complemented with some further oral submissions.
96. In paragraph 4 of the claimant's final submission the claimant argues that on 16 February 2015 Mrs Costin "asked the question about "*which country the claimant from?*" This was denied by Mrs Costin. The Tribunal for the reasons set out above accepts the evidence given by Mrs Costin and we did not conclude that the claimant asked the question. The Tribunal did not conclude that Mrs Costin lied about his (see paragraph 5 of the claimant's final submission).
97. The claimant stated that Mrs Costin stated that "*I should not get the job because of my level of English knowledge.*" (See paragraph 9 of the claimant's final submissions). This is not part of the claimant's complaint and it is not dealt with in the evidence that the claimant gave to the Tribunal. The claimant seeks to rely on the contents of the Hart/Price Investigation and relies on the following passage: "*A number of individuals within the reading office had mentioned that GB's spoken English was very poor, this information can not be evidenced in writing /email.*" The passage does not support the claimant's point and does not show that Mrs Costin stated that the claimant should not get the job because of his level of English knowledge.
98. The claimant says that Mrs Costin was aware that the claimant had made a racial discrimination complaint against his previous line manager and "*therefore treated [him] differently than any other person should have treated in the same circumstances.*" The claimant says that Mrs Costin accepted in answer to questions that as a result of finding out that he had made a racial discrimination complaint that she formed the impression that she should "deal with your day to day more carefully."
99. The claimant pointed out that following the Hart/Price investigation Mrs Costin admitted that she was "*very disappointed and extremely frustrated.*" The context in which the statement was made however related to the recording of flexi hours. In an email dated 26 May 2015 Mrs Costin wrote: "*I understand that there is a protocol to be followed, but given I have had more than one conversation with Golam, concerning recording and using flexi clock and that he has only recently undertaken the e-learning on the topic, I am very disappointed that I can not hold a formal meeting with Golam and I hope you can sense my frustration at having to continue to manage this issue.*"
100. The claimant relied on the fact that Hart/Price investigation resulted in no action being taken against the claimant. The claimant describes the outcome as follows: "*none of her complaints were upheld by VOA.*" The claimant's comments however do not reflect the complete picture. The decision maker Ms Anita Palmer stated: "*The issues that have been raised*

*are generally minor but I can see how the frequency of these issues can be both challenging and frustrating for a line manager. I do not believe formal disciplinary action is the correct approach at this time of the reasons have already mentioned. It is vitally important that issues such as these are addressed promptly as and when you become aware of them to encourage improvement and follow due process."*

101. The Tribunal did not find that the Mrs Costin told the claimant that she did not like him. It was the claimant who said "*I Know you don't like me.*"
102. The Tribunal do not accept that the respondents attempted put the claimant's grievance under the carpet. We did not find that the criticisms made of Mr Alan Todd's grievance investigation have any sound basis.

### Conclusions

103. In setting out our conclusions we deal with each of the points as they appear in the claim form.

**"On 23<sup>rd</sup> February 2015, the 2<sup>nd</sup> Respondent shouted for no reason to the C in an open plan office which was overheard by other members of staffs. The 1<sup>st</sup> Respondent, who was C's line manger at the material time."** (Grounds of claim paragraph 7)

104. The reference to 1<sup>st</sup> respondent is intended to be a reference to Mrs Costin, who is the 2<sup>nd</sup> respondent. The claimant complains that this is harassment.

105. The conclusion of the Tribunal is that this allegation is not proved. This did not happen.

**"On 24<sup>th</sup> April 2015, the 2<sup>nd</sup> Respondent doubted about the flexi-time recording and instigated a secret observation which was totally inappropriate way under VOA policy guidance."** (Grounds of claim paragraph 8)

106. The claimant says that this is an allegation of indirect discrimination (see paragraph 5.2 of the claimant's "better and further particulars". The complaint is misconceived. Mrs Costin did doubt the claimant's flexi-time recording and instigated observation by senior members of staff however there is no basis for saying that it could have put those of a particular race at any particular disadvantage. The claimant accepted that his flexi-time recording was in any event inaccurate.

**"The 2<sup>nd</sup> Respondent asked the claimant not to eat "homemade Asian food" in his desk and openly criticized the C for eating Asian food in the desk."** (Grounds of claim paragraph 9)

107. The claimant complains that this is direct discrimination and or harassment.
108. The claimant has not given evidence about this in his witness statement.
109. The Tribunal accepts the evidence of Mrs Costin about this issue namely that Mrs Costin spoke to the claimant about the agreed etiquette about eating hot food at desks and reminded the claimant that there was a large kitchen/staff room to eat in. Mrs Costin did not use the words “homemade” or “Asian”.
110. The Tribunal are not satisfied that the claimant has been able to show that he was treated less favourably. Further the Tribunal are not satisfied that there is a basis for saying that the treatment was on the grounds of the claimant’s race.
111. We have considered whether what Mrs Costin’s conduct has the purpose or effect of violating the claimant’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In doing so we have taken into account the perception of the claimant; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. We consider that speaking to the claimant about the agreed etiquette about eating hot food at desks and reminding the claimant that there was a large kitchen/staff room to eat in is not harassment.
- “On 8<sup>th</sup> September 2015, the respondent said to C that “she does not like the claimant” in a regular one to one and subsequently it expressed by the 1<sup>st</sup> respondent that she not like C’s colour, race and ethnicity.” (Grounds of claim paragraph 10)**
112. This is an allegation of direct discrimination.
113. The Tribunal has come to the conclusion that this did not happen the way that the claimant states. The Tribunal concluded that the correct version of events was explained by Mrs Costin, this was not less favourable treatment of the claimant. There is no basis for concluding that the treatment of the claimant was on the grounds of his race.
114. In paragraphs 11-24 the claimant makes complaints of victimisation.
115. The claimant has set the basis of his victimisation complaint in the better and further particulars. The claimant was asked to provide details of the protected act on which he relies. The claimant’s response was set out in the following terms:

- (a) 9 September 2015, first verbally contacted via phone with Simon Booth (Business Manager in Wimbledon Office) to raise a complaint and a brief details of the complaint.
  - (b) The words of Tessa Costin, she does not like me because of my race, colour and ethnicity.
  - (c) Verbally over the phone to Simon Booth (Business Manager in Wimbledon Office) on 9 September 2015, then verbally (on face to face & over the phone) meeting over the phone to Andrew Ricketts
116. The comments set above at (b) alleged to have been made by Mrs Costin in our view cannot amount to a protected act within the meaning of section 27 EqA as there is no act of the type described in section 27 (2) (a) –(d). In any event we have come to the conclusion that the words were not said by Mrs Costin. Had the claimant's case been that the words were spoken by him then that could have been the basis of an argument that there was a protected act, however, that is not the claimant's case.
117. The claimant has given no evidence about the protected act relating to Mr Booth and Mr Ricketts. It was not put to Mr Ricketts that there was any allegation of race discrimination at the time. The claimant could not recall any dialogue about his September complaint. The claimant's complaint at the time made no reference to race.
118. There may be a protected act where there is an allegation (whether or not express) that a person has contravened the Equality Act.
119. In this case we have not been able to find that the claimant has made out the protected acts on which he purports to rely. The evidence presented analysed against the statutory provisions fails to establish a protected act for the purposes of section 27 EqA. However, if the Tribunal's conclusion in that respect is wrong we have gone on to consider each of the alleged acts of detriment.
- “On the 28<sup>th</sup> September 2015, the second Respondent deliberately did not follow the correct procedure in regards to “Reading Office closure.””**  
(Grounds of claim paragraph 11)
120. The claimant's complaint is about the procedure followed. That appears to be the detriment to which he was subjected, the claimant says it was mishandled by Mrs Costin she did it *“on purpose to give me the hard time as I was the person who had the worst effected because of that decision. ... Tessa Costin treated me differently to harass me.”*
121. The Tribunal have not been able to accept the claimant's position in this regard. We found that there was a need for a temporary arrangement; the situation was discussed with HR; the claimant's complaint was considered by Mr Corkish who supported decision. As regards the failure

to consult with the claimant it was a decision for Mrs Costin and the decision she took was a reasonable decision having regard to the needs of the business. At the time the claimant understood the reasons for altering hours.

122. The conclusion of the Tribunal was that the claimant was not subjected to a detriment. It was a set of circumstances in which in our view a reasonable employee would not take the view that they had been disadvantaged in the circumstances in which they had thereafter to work as a result of the temporary change arising in the given circumstances. In any event we are also satisfied that the decision was not in any sense related or by reason of the claimant's protected act. The claimant resented the decision because it affected his work life balance it meant that he had to change his routine which impacted on his family and personal responsibilities. It was nothing to do with any protected act.

**“The 2<sup>nd</sup> respondent deliberately did not follow the correct procedure or VOA policy in handling the claimant's special leave request.”** (Grounds of claim paragraph 12)

123. When the claimant's father had a heart attack and the claimant went to Bangladesh Mrs Costin was required to authorise the claimant being given special leave. The claimant was asked to provide more documentation by Mrs Costin than the claimant was by Mr Ricketts (in November 2015 and July 2016). The claimant alleges that the level of scrutiny applied by Mrs Costin in his case, asking for evidence beyond what the respondents policy required, was an act of discrimination. The claimant failed to identify how the policy was breached by Mrs Costin.
124. The evidence we accept is that Mrs Costin liaised with HR about the issue and sent an email to the claimant requesting that he provide her with proof and explained the reasons why. In doing so she was acting as advised by HR. While Mrs Costin was clearly wrong when she said in her evidence that she did not ask to see the claimant's passport we are satisfied that she was acting in accordance with advice as she understood it.
125. We have come to the conclusion that Mrs Costin's actions were not intended to be discriminatory. Mrs Costin was acting as she understood she was required to. We note that there is a difference in the way that the matter was dealt with by Mrs Costin to the way that a similar request was dealt with in July 2016. Mrs Costin in our view would have dealt with the request from any other employee in similar circumstances in the same way.
126. We are satisfied that Mrs Costin actions were not related to or because of the claimant having done a protected act.

**“On 15<sup>th</sup> November 2015, the 2<sup>nd</sup> Respondent and 4<sup>th</sup> Respondent collaborated to make a false accusation in the Claimant’s end of year Report.”** (Grounds of claim paragraph 13)

127. There was no collaboration between Mrs Costin and Mr Riggott to make a false accusation in relation to the claimant’s Mid-year report. Mr Riggott made a comment that Mrs Costin recorded in the mid-year report because it conveyed the position as both Mr Riggott and Mrs Costin understood it to be. The claimant was taking up a lot of Mr Riggott’s time. It was what Mrs Costin had observed and she believed to be the case. Mrs Costin believed at the time that she had accurately recorded what she had been told.
128. There was in our view no detriment to the claimant as the comment was accurate.
129. The comment was made not because the claimant had done a protected act or because of his race but because it was what Mrs Costin reasonably believed to be the truth.

**“The 2<sup>nd</sup> Respondent on purposely using misleading information to decline the Claimant’s legitimate request and always kept a hostile working environment for the claimant.”** (Grounds of claim paragraph 14)

130. This general allegation was not expressed by the claimant so as to be understood and required clarification. The further information provided by the claimant did not provide detail to understand the complaint being made. The claimant’s witness statement contained no evidence understood as to be on this issue. In answer to questions the claimant stated that he had been sent out by Mrs Costin to carry out an inspection without the necessary documentation.
131. Mrs Costin accepted she should not have sent the claimant to carry out a task without proper documentation. Mrs Costin explained that she was *“over enthusiastic”* to put the claimant on a job and thought he *“would enjoy going out and learning the role.”*
132. To the extent that the claimant might have suffered a detriment as result of the actions of Mrs Costin in this instance, the Tribunal is satisfied that the purpose of sending the claimant out was to enable him to get out into the field and get out from behind his desk. Mrs Costin was not seeking to subject the claimant to a detriment. It was not because the claimant had done any protected act.

**“The 3<sup>rd</sup> Respondent has breached the VOA policy in regarding to the Occupational Health Report and intentionally has refused to give a copy of Occupational Health Report in good time”.** (Grounds of claim paragraph 15)

133. Mr Ricketts received a copy of the claimant’s OH report in December 2015. The claimant did not ask for a copy of the report from Mr Ricketts. Mr Ricketts did not know that the claimant did not have a copy of the report or that the claimant wanted a copy of the report. Mr Ricketts would

have been entitled to think that the claimant was likely to have been provided with a copy of the report because the claimant was entitled to insist on being provided with a copy of the report before it was sent to the respondent. When the claimant requested a copy of the report Mr Ricketts provided him with a copy of the report.

134. The claimant was away from work from 1 January 2016 until 1 April 2016. In this period the claimant was studying for his law exams. The claimant was not concerned about the OH report in this period. Had he been concerned he would have requested it either from the respondent or occupational health.
135. The reason that the claimant was not given his report was not connected in any way to a complaint he had made. The reason he did not receive the report earlier was because he was not concerned to receive it earlier and had not requested it earlier. When he requested the report, it was provided to him promptly without any undue delay. We reject the contention the Mr Ricketts refused to give the claimant a copy of the OH report in good time.

**“The 3<sup>rd</sup> Respondent has conducted a Stress Risk assessment as per VOA policy. The 3<sup>rd</sup> respondent intentionally did not follow the VOA guidance in managing the stress risk assessment and also failed to provide the claimant a copy of a meeting notes.”** (Grounds of claim paragraph 16)

136. When Mr Ricketts carried out a stress risk assessment, he promised the claimant that he would provide the claimant with a copy of the notes. However, Mr Ricketts failed to write up the claimant’s risk assessment and so did not send a copy to the claimant as promised. The claimant was absent on sick leave until the 17 December 2015 and then on his return to work he worked from the Bromley office until 1 January when he went on unpaid special leave.
137. The conclusion of the Tribunal is that Mr Ricketts forgot to write up the stress risk assessment. We are satisfied that the failure was not deliberate. The claimant has not set how if at all this failure cause him any harm. The Tribunal has not been able to conclude that there was any connection between the claimant’s race and the failure to provide the risk assessment or the fact that the claimant had done any protected act.

**“The claimant made a request for change of his working desk and his legitimate request was turned by 4<sup>th</sup> Respondent in collaboration with the 2<sup>nd</sup> Respondent. Based on their own crated policy.”** (Ground of claim paragraph 17)

138. The claimant’s complaint that his request for a change of his working desk was turned down by Mr Riggott in collaboration with Mrs Costin is not correct. The decision was Mr Riggott’s alone. He gave his reason for

refusing the request which was in no sense connected with the claimant's race or the claimant doing a protected act.

**“The claimant requested a parental leave on 7<sup>th</sup> July 2016 and the 3<sup>rd</sup> respondent did not follow the guidelines issued by VOA in handling the “Parental Leave Request””** (Grounds of claim paragraph 18)

139. The claimant was granted the parental leave he requested; this allegation is not established by the evidence presented.

**“On 9<sup>th</sup> September 2015, I raised a complaint against the 2<sup>nd</sup> Respondent to the 3<sup>rd</sup> Respondent. The 3<sup>rd</sup> Respondent put the C’s formal grievance under the carpet and did not take any action on the grievance.”** (Grounds of claim paragraph 20)

140. There is no doubt that the instruction of a mediator was dealt with in a tardy manner by Mr Ricketts. There is no explanation for the failure to deal with it more promptly. We note that for part of the time the claimant was on leave. While we are not satisfied that there was an attempt to sweep the matter under the carpet there was a delay. Mr Ricketts took a number of steps to address the claimant's complaint, but he did not get anywhere near arranging the mediation

141. Is there any evidence from which we could conclude that the claimant's race or the fact that the claimant did a protected act that played any part in the failure to deal with the claimant's complaint? At the time that the complaint was presented by the claimant on 9 September 2015 until 20 November when the claimant asked that the matter be dealt with formally there is no indication that the complaint that the claimant was on the ground so race. When the claimant expressed a wish to make the matter formal he referred to being treated differently and discriminatory treatment but still made no mention of race.

142. Mr Ricketts had approached HR and was seeking advice from them. The claimant had agreed to mediation and the claimant did not chase up Mr Ricketts in the intervening period. There is no comparator evidence.

143. The Tribunal is satisfied that Mr Ricketts was intending to deal with the claimant's complaint as he promised i.e. by mediation. This took too long but there is no evidence from which the Tribunal is able to conclude that the claimant's race played a part in the delay. We accept that there was a delay but we are not satisfied that the delay was because the claimant had made a protected act.

**“On 20<sup>th</sup> November I requested to switch my existing complaint as a formal grievance to the 2<sup>nd</sup> respondent. But the 2<sup>nd</sup> Respondent attempted to put this matter under the carpet.”** (Grounds of claim paragraph 21)



144. When the claimant sent an email to Mr Ricketts stating that as he had not seen any action to resolve matters for the past 10 weeks, he now wished to pursue a formal grievance, Mr Ricketts wrote to the claimant explaining how to make a formal grievance. The claimant did not do so until 9 May 2016. The conclusion of the Tribunal is that there was no attempt by Mr Ricketts to sweep the matter under the carpet no action was taken because the claimant did not do what was required to make the grievance formal.

**“The 5<sup>th</sup> Respondent on purposely discriminated the Claimant for using his legitimate channel of his employment right and was aggressive in writing the grievance outcome letter”** (Grounds of claim paragraph 19)

**“The 5<sup>th</sup> Respondent did not deal with the grievance as per VOA Grievance policy and intentionally misdirected himself from VOA grievance policy”** (Grounds of claim paragraph 23)

145. The claimant’s complaint that Mr Todd did not deal with his grievance in our view is not well founded. The outcome letter deals with the points arising from the claimant’s grievance. The claimant complains that Mr Todd discriminated against him and was aggressive in writing the grievance outcome letter. The grievance outcome letter is not aggressive. The Tribunal has not been able to conclude that Mr Todd failed to comply with the 1<sup>st</sup> respondent’s grievance policy. A number of the points the claimant alleged such as the suggestion that Mr Todd failed to conduct face to face meetings with Mr Ricketts and Mr Riggott were simply wrong. In so far as he did not have a face to face meeting with Mrs Costin this was explained by Mr Todd. In any even the extent that there may have been a failure to adhere to a model investigation practise does not without more point to a discrimination. We found no basis from concluding that Mr Todd was biased.

146. The Tribunal conclude that Mr Todd conscientiously carried out an investigation into the claimant’s grievance and came to his conclusions without reference to any bias against the claimant.

**“I appealed against the outcome of the grievance on 7<sup>th</sup> July 2016 and Helen Zammit-Wilson conducted the appeal where she also failed to deal with my appeal.”** (Grounds of claim paragraph 24)

147. While the claimant makes the allegation against Mrs Helen Zammit-Wilson conduct of the appeal he has failed to set out a credible basis for impugning her actions. This complaint is also not made out.

148. We have found that the claimant’s complaints are not made out. The claimant’s complaints of discrimination on the grounds of race victimisation or harassment are without merit. The claimant did have a sense of grievance, which to him was no doubt genuine. It arose from the fact that the claimant wanted to transfer to Bromley for the understandable reason that it improved his work life balance and allowed him to better discharge

is domestic and family responsibilities. It seems to have led the claimant to making unfounded complaints of discrimination in order to use as leverage to gain his move.

149. This is best illustrated by the claimant's complaint about the risk assessment, it was not the failure to provide him with notes of the risk assessment that was the issue of concern it was the fact that Mr Ricketts did not transfer him to Bromley on a permanent basis after the risk assessment. The claimant said it was a decision which shocked him, yet in his claim to the Tribunal he accuses Mr Ricketts of discrimination in failing to provide him with note that he did not make, rather than about a decision which he did make.
150. In other instances, the claimant has made allegations which he has entirely failed to support with evidence. For example, the claimant failed to deal in his statement with the alleged behaviour of Mrs Costin on her first day back after holiday that suggested that Mrs Costin behaved inappropriately by shouting at him for no reason and if true would have supported a claim of race discrimination. The claimant's enigmatic but difficult to credit explanation for this was that he had *"more serious issues than this"* and that he found *"it not appropriate to include evidence about that in my witness statement."*
151. The claimant's complaints are not well founded and are dismissed.

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Employment Judge Gumbiti-Zimuto  
Date: 03.07.19

Sent to the parties on: ..11.07.19.....

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For the Tribunals Office