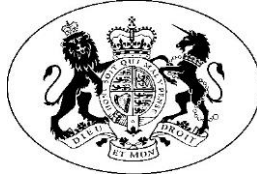


Case Numbers:

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EMPLOYMENT TRIBUNALS

Claimant: Mr R Ewujowoh

Respondents: 1. Jennings Racing Ltd
2. Mr P Jowett
3. Mr M Rogers

Heard at: East London Hearing Centre

On: 12-15 March 2019, 23 April 2019 & (in chambers) 24 April 2019

Before: Employment Judge C Hyde

Members: Mrs W Blake-Ranken
Mr M L Wood

Representation

Claimant: Mr S Martins (Legal Representative)

Respondents: Mr B Amunwa (Counsel)

JUDGMENT

The unanimous judgment of the Employment Tribunal was that: -

- (1) As claim number 3201310/2018 alleging sex discrimination (as amended on 30 August 2018 with the Leave of Employment Judge

Russell) had been withdrawn by the Claimant on 15 March 2019, it was dismissed forthwith by the Tribunal.

- (2) As the claim alleging breach of contract in case number 3200488/2018 had been withdrawn on 15 March 2019, it was dismissed forthwith by the Tribunal upon withdrawal.
- (3) As the allegations under 6.5.7 alleging direct race discrimination by way of dismissal on spurious grounds on 28 February 2018 and 6.11.3 alleging dismissal by way of victimisation had been withdrawn by the Claimant on 23 April 2019, they were dismissed forthwith by the Tribunal upon withdrawal.
- (4) As the victimisation complaint alleging that the Respondent deliberately failed the Claimant on his duty manager test (issue 6.11.2) had been withdrawn on 23 April 2019, it was dismissed forthwith by the Tribunal upon withdrawal.
- (5) As the allegations of post dismissal victimisation in claim number 3200958/2018 (use of the words “pay and suspension” on 8 March and refusal to delete such words on 15 March 2018 - issues 6.12.1 and 6.12.2) had been withdrawn on 23 April 2019, they were dismissed forthwith by the Tribunal upon withdrawal.

RESERVED JUDGMENT

The unanimous Reserved Judgment of the Tribunal was that

- (6) the remaining complaints of direct race discrimination under the Equality Act 2010 set out in paragraphs 6.5.1, 6.5.2, 6.5.3, 6.5.4, 6.5.5, and 6.5.6, and of victimisation in paragraph 6.11.1 of the Summary by Employment Judge Russell of the Preliminary Hearing held on 30 August 2018 and which was sent to the parties on 8 October 2018, were not well founded and were dismissed.
- (7) The name of the First Respondent was amended from “Jennings Bet” to “Jennings Racing Ltd” forthwith.

REASONS

1 The Tribunal made all its findings of fact on the balance of probabilities. However, they are only set out in these reasons to the extent that the Tribunal considered it necessary to do so in order for the parties to understand why they have won or lost. Moreover, the findings and conclusions were only set out in these reasons to the extent that it was proportionate to do so.

2 The Claimant presented four claim forms between 5 March and 22 June 2018. They alleged breach of contract, direct race discrimination, pre- and post-dismissal victimisation and sex discrimination. As set out in the judgment above, during the hearing all complaints other than most of the direct race discrimination and one of the pre-dismissal victimisation allegations were withdrawn. The Tribunal accordingly dismissed those complaints.

3 These complaints arose out of the recruitment by the First Respondent of the Claimant to a duty manager position. The First Respondent ran a number of betting shops and the Claimant was being trained to take up that position during the approximately three months of his employment from the tail-end of 2017 until the date of dismissal on 28 February 2018.

4 The Respondents presented responses in respect of each of these claims and in summary, they resisted the allegations on their facts. In addition, in relation to the victimisation complaints they disputed that the matters relied upon by the Claimant as protected acts amounted to such.

Evidence adduced

5 The parties had agreed a bundle of documents for use by the Tribunal which was contained in three lever arch files and comprised of some 1,600 pages. Further, during the hearing some additional documents were added. That bundle was marked [R1] and it was numbered continuously from start to finish. In addition, Counsel for the Respondents had prepared a cast list which the Tribunal marked [R2]. It also contained a helpful list of essential reading.

6 Further, Mr Amunwa prepared a very helpful written opening submission which set out the factual background by way of a chronology and then referred to the claims and the summary of the Respondents' submissions in relation to the claims. It was dated 11 March 2019 and ran to approximately 19 pages. This document was marked [R3].

7 At the Tribunal's request the parties prepared a draft timetable to cover the evidence that we were due to hear and also to allow time for pre-reading and then deliberation by the Tribunal over the six days which had been allocated to the case. That document was marked [R4].

8 Also produced by the Respondents was a schedule setting out each claim number, a summary of what the claims were and the relevant dates in terms of limitation periods, such as the ACAS Early Conciliation notification date, the dates the claims were filed, and the dates of the allegations. This document was marked [R5].

9 Given where the burden of proof lay by virtue of the allegations under consideration, the Claimant gave his evidence first. He relied on a very full witness statement marked [C1], which ran to some 125 paragraphs over 34 pages.

10 In addition, the Claimant had been granted a witness order to secure the attendance of Mr Mark Ballard, a customer who was present in one of the First Respondent's betting shops during one of the disputed incidents on 23 January 2018 and who had been contacted by the First Respondent at the Claimant's request, as part of the internal investigation. The witness order requiring Mr Ballard's attendance was discharged during the first hearing in March 2018, due to a misunderstanding by Mr Martins as to what the Tribunal was asking him when we asked whether he needed Mr Ballard to remain. At that point Mr Ballard had not produced a signed witness statement for use at the hearing although a summary had been prepared by the First Respondent of what they gathered from him during the internal investigation. That summary was in the Tribunal's bundle. From the back of the Tribunal room, during the discussion with Mr Martins, Mr Ballard appeared to indicate that he was not completely satisfied with the content of that note.

11 It subsequently became clear during the hearing in March, that Mr Ewujowoh indeed wished to secure Mr Ballard's attendance at the hearing. Mr Ewujowoh had not been in the room when Mr Martins appeared to have indicated to the Tribunal that Mr Ballard was not needed. The Tribunal therefore directed, among other things, that any application for reinstatement of the witness order which had been discharged, needed to be accompanied by a signed witness statement from Mr Ballard.

12 Shortly before the date of the resumed hearing, an application was made by the Claimant for Mr Ballard to be the subject of a witness order but it was not accompanied by a signed witness statement, simply a typed witness statement. This application was then renewed by Mr Ewujowoh and in support, he produced a document headed 'witness statement', signed by Mr Ballard and dated 25 March 2019. These appeared to be notes of the document which had been typed up. In the event, when Mr Ballard attended, he verified the contents of that handwritten statement dated 25 March 2019 [C2] and the typed statement which had been circulated to the Tribunal and the Respondents and which the Tribunal marked [C3]. The latter statement was signed and dated by Mr Ballard at the witness box on 23 April 2019.

13 The Tribunal also heard evidence from five witnesses on behalf of the Respondents. These were: Mr P Jowett; Mr J Crooks; Ms S Ryland; Mr P Broadbridge and Mr M Rogers. They all gave their evidence in chief by way of witness statements which were marked respectively [R6-R10].

14 Finally, both representatives made closing submissions. Mr Amunwa's closing submissions were oral and supplemented the document which he had produced at the beginning of the hearing [R3]. Mr Martins on behalf of the Claimant produced written submissions which were set out in a document which the Tribunal marked [C4]. It addressed the law and also the evidence given by the Respondents' witnesses.

The issues

6 The Tribunal has reproduced below the preamble to, and the list of issues which was formulated during the hearing before Employment Judge Russell on 30 August 2018 and which was set out in the summary of that preliminary hearing which was sent to the parties on 8 October 2018 (pages 259-267 of the bundle). It was not in dispute that the name of Mr Broadbridge was misspelt in Employment Judge Russell's Summary, and that he is the person referred to as 'Woodbridge' in the extract below.

"6. The Claimant and Respondent have each produced a list of issues but have not been able to agree a final list. I considered the contents of both draft lists and discussed their contents with the Claimant and Mr Amunwa. The final list of issues to be determined is as follows: -

Time Limits

- 6.1 Was the Claimant's complaint of sex discrimination presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")?
- 6.2 If not, is it just and equitable to extend time?

Breach of contract

- 6.3 Was paragraph 12.9 of the Employee Handbook a term of the Claimant's contract? If so, did the Respondent breach it by conducting an investigation which was not independent and/or by dismissing the Claimant?
- 6.4 Did the Respondent breach the implied term of trust and confidence by conducting an investigation that was not independent and/or by dismissing the Claimant? If so, does the Tribunal have jurisdiction to hear such a claim?

Section 13: direct discrimination because of race against the First Respondent

- 6.5 Did the following conduct occur:-
 - 6.5.1 6 & 8 January 2018: Mr Crooks threatened the Claimant with violence?
 - 6.5.2 The Respondent failed to investigate adequately or at all the complaint by the Claimant against Mr Crooks made on 12 January 2018?

- 6.5.3 Email by Mr Woodbridge on 23 January 2018 that the Claimant be dismissed?
- 6.5.4 Suspension of the Claimant on 24 January 2018 and the failure of the Respondent to follow its company procedures?
- 6.5.5 Failure to take disciplinary action against Mr Crooks?
- 6.5.6 25 January 2018 Mr Rogers conducted a bias investigation interview with the Claimant?
- 6.5.7 Dismissed on spurious grounds 28 February 2018?
- 6.6 If such conduct occurred, was it less favourable treatment because of race? The Claimant relies upon a hypothetical comparator.

Direct discrimination because of sex against the First and Third Respondents

- 6.7 Was the Claimant's dismissal a predetermined decision? If so, was this because of sex? The Claimant relies upon a hypothetical comparator.
- 6.8 Was the claim presented within the appropriate time limit or was it just and equitable to extend time?
- 6.9 In respect of the Third Respondent, pursuant to section 110(3) of the Equality Act 2010 he relied on the statement of his employer that he was not in contravention of the act and that it was reasonable of him to rely on such a statement.

Victimisation: section 27 Equality Act 2010 pre-dismissal

- 6.10 The Claimant relies on protected acts on: (i) 12 January 2018 his complaint against Mr Crooks; and (ii) on 24 January 2018 his complaint of discrimination and bullying. Are these complaints protected or they made not in good faith and are substantially false?
- 6.11 Was the Claimant subjected to a detriment because of any protected act? The Claimant relies upon:
 - 6.11.1 the failure to carry out an independent investigation;
 - 6.11.2 deliberately failing him on his duty manager test; and
 - 6.11.3 dismissal.

Post dismissal victimisation

6.12 The Claimant relies upon the further protected act of his first Tribunal claim. Was the Claimant subjected to a detriment because of that protected act:-

6.12.1 On 8 March 2018 when the words “pay on suspension” were included on his pay slip?

6.12.2 On 15 March 2018 when the Respondent refused to delete such words?

6.13 Is the Second Respondent entitled to rely upon the statutory defence in section 110(3) that he was reasonably relying on a statement of his employer that he was not contravening the act.

6.14 Finally, to what compensation is the Claimant entitled?”

7 The issues that remained by the end of the hearing for the Tribunal to determine were 6.5.1 - 6.5.6 and 6.11.1. Although for the purposes of determining the live victimisation complaint, paragraphs 6.10 - 6.11.1 were both relevant.

8 At the hearing on 30 August 2018, the Claimant had been given leave to withdraw the allegation of sex discrimination as it appeared in the claim form and to rely instead on an alternative allegation of direct sex discrimination in that the decision to dismiss him had been predetermined. This amended allegation, among others, was then withdrawn on the third day of the hearing on 15 March 2019.

Relevant law

9 The Tribunal agreed with Mr Amunwa that this case raised no unusual points of law. The Tribunal considered that we simply needed to refer to the statutory provisions and the now well-established guidance in the cases of *Madarassy v Nomura International Plc* [2007] EWCA Civ 33 and *Igen Ltd v Wong* [2005] IRLR 258 CA in terms of assessing whether it was appropriate to draw an inference or for the burden of proof to shift in terms of the direct race discrimination claims.

10 The primary statutory provisions governing the race discrimination complaints are to be found in sections 13 and 39 of the Equality Act 2010. Section 13 is a general provision defining direct discrimination and section 39 provides that an employee may complain of discrimination in respect of the types of treatment set out. Finally, section 9 identifies that discriminatory treatment related to race is one of the protected characteristics about which complaint can be made.

- 11 The main statutory provision in relation to victimisation is section 27 of the 2010 Act. In order for a person to be able to argue that a detriment to which they have been subjected was victimisation, the claimant first has to show that he has done a protected act or that the person alleged to have victimised believes that he has done or may do a protected act.
- 12 The statutory provisions define what could amount to a protected act as follows:
- (a) Bringing proceedings under the Equality Act 2010;
 - (b) Giving evidence or information in connection with proceedings under the Equality Act 2010;
 - (c) Doing any other thing for the purposes of or in connection with the Equality Act 2010; and/or
 - (d) Making an allegation (whether or not expressed) that a respondent or another person, has contravened the Equality Act 2010.
- 13 Importantly, however section 27(3) then provides that giving false evidence or information, or making a false allegation, was not a protected act if the giving of the evidence or information or the making of allegation was done in bad faith.
- 14 It was not in dispute that section 136 of the Equality Act 2010 applied in this case - see Mr Martins' closing submissions at page 4.
- 15 Mr Martins also included in his closing submissions the proposition from the *Igen* case, which is now commonly accepted, that it is for the Claimant to prove on the balance of probabilities, facts from which the Tribunal could conclude, in the absence of an adequate explanation, that a respondent has committed an act of discrimination against a claimant that is unlawful. These are referred to below as "such facts". He cited the relevant principles as follows:
- a. If the claimant does not prove such facts their discrimination claim will fail.
 - b. It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves.
 - c. In deciding whether the claimant has proved such facts, remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

- d. It is important to note the word “could”. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
- e. In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.
- f. These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw ... from an evasive or equivocal reply to a questionnaire ...
- g. Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
- h. Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of [eg race], then the burden of proof moves to the respondent.
- i. It is then for the respondent to prove that he did not commit that act.
- j. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of race, since “no discrimination whatsoever” is compatible with the Burden of Proof Directive.
- k. That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that race was not a ground for the treatment in question.
- l. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

Very little direct discrimination is overt or even deliberate. The tribunal should look for indicators from the time before or after the decision, which may demonstrate that an ostensibly fair-minded decision was, or equally was not affected by racial bias **(see Anya v University of Oxford [2001] ICR)**.

Your principal guide must be the straightforward language of S136 EqA itself.”

Findings of fact and Conclusions

- 16 Although a good deal of time was spent during the hearing investigating the precise chronology in terms of the start date of the Claimant and whether he was at work on various dates in late November and early December 2017, the Tribunal did not consider that it was proportionate or necessary to make specific findings about this. The general picture was not in dispute. The Claimant was initially recruited by the First Respondent to be a duty manager in about November 2017. Thereafter it was not in dispute that as a result of information that was provided to the First Respondent following a Disclosure and Barring Service (“DBS”) search, the First Respondent was informed that the Claimant had previous criminal convictions which had led to the imposition of a term of imprisonment in excess of four years. We found that in line with the First Respondent’s usual policy, the offer of employment to the Claimant was then withdrawn.
- 17 The information that the First Respondent was aware of at the end of November 2017 was that on 29 July 2011 at Croydon Crown Court, the Claimant had received two sentences of five years’ imprisonment to run concurrently, for conspiracy/making false representations to make gain for self or another or cause loss to another/expose another to risk. Mr Jowett who was Head of Compliance and Licensing with the First Respondent understood this to be a description of fraud/fraudulent activity. The First Respondent’s policy not to offer employment in such circumstances was also consistent with one of the three licensing objectives under the Gambling Act 2005, namely: “preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime”.
- 18 That decision was communicated to the Claimant on around about 30 November 2017. He did not protest about this.
- 19 The Tribunal accepted the evidence of Mr Jowett that on 2 December 2017, he attended a talk delivered by a lecturer at a university that he was visiting with his daughter to see if she wished to attend it. The talk happened to be about psychology and criminology. Parts of the speech made him reflect further on the decision to withdraw the offer of employment to the Claimant, and as a result he rang Mr Peter Broadbridge who was Area Manager of the area in which the Claimant had been recruited to work, and requested that Mr Broadbridge contact the Claimant and ask him to call Mr Jowett on his mobile.
- 20 Although there was some dispute about who initiated the various contacts at about this time, the Tribunal did not consider that it was necessary or proportionate to resolve these conflicts either.
- 21 It was not in dispute that the Claimant met Mr Jowett on Monday 4 December

2017 at the First Respondent's East Ham Regional/Training Office to discuss the Claimant's situation. Had the Claimant's offer of employment not been withdrawn, he would have been due to commence the induction course at that location on that day. Mr Jowett therefore considered that if all went well with the discussion with the Claimant and he reversed the decision to withdraw the offer of employment, the Claimant could be reinstated and attend the course as originally planned. In any event, the Claimant would be paid for his attendance at the meeting with Mr Jowett as if it were a full day's work. There was no dispute that the Claimant was indeed paid on the basis that he was reinstated on 4 December 2017, therefore there was no loss of income on his part from the date of the original offer of employment.

22 The Claimant agreed to meet with Mr Jowett.

23 The Tribunal also accepted the evidence of Mr Jowett in his witness statement, which was not contradicted in cross-examination, that the explanation that the Claimant gave of his history minimised the severity of the misconduct. Thus, for example, he stated that he had only served about 12 months of his sentence of imprisonment. Despite this, he remembered thinking that this was an invaluable employment opportunity for a 51-year-old black man with a criminal history and he decided to stick to his original decision to employ him and thus give him a chance.

24 It was also not disputed that the Claimant presented as a well-dressed and polite gentleman (evidence of Mr Mark Ballard). Further, the Tribunal bore in mind that the reason for the termination of the Claimant's employment with the First Respondent was not related to this conviction or to any allegation of dishonesty.

25 The Tribunal has included these findings about the start of the Claimant's employment, not just because they formed part of the oral and written evidence, but also because they painted a very clear picture of Mr Jowett as a very fair man, and as someone who took positive action to assist a black candidate for a position, in circumstances in which he would have been justified, on non-discriminatory grounds, to have declined to employ the Claimant. It was also relevant in this context that Mr Jowett then played an important part in the events which led to the termination of the Claimant's employment; and that the dismissal was related to a failure to perform to an adequate standard, not a matter related to the Claimant's honesty.

26 In December 2017 the Claimant spent time at the East Ham branch on the staff induction course for three days ending on about 7 December 2017. The Claimant was then posted to the Commercial Road branch from 12 to 31 December 2017. He also returned to the branch after the Christmas break and was there until 8 January 2018. His training manager there was Jamie Crooks against whom one of the direct race discrimination allegations was made. However, Mr Crooks was not at the branch for most of December 2017, so his cover, Mr Martin Cooper, oversaw the Claimant's training in the absence of Mr Crooks. Mr Cooper was the

other full-time manager at the Commercial Road branch, but was not a designated trainer.

- 27 The First Respondent used a system whereby certain store managers were designated as training managers. Mr Crooks was one of these and so was Ms Ryland. Mr Cooper was not. This was something which the managers could volunteer to do.
- 28 The Claimant also spent time at the Leyton branch on 9 December 2017. That placement of a day apparently passed off without incident.
- 29 Mr Crooks had provided a folder to the Claimant which contained material which was relevant for the completion of his training and specifically to assist with the preparation for the duty manager examination. The First Respondent's case was that all members of staff when recruited were told that they would have to pass the relevant examination for the post to which they had been recruited. The Claimant did not recollect this but the Tribunal accepted that this was the practice, not least because on 2 January 2018 the First Respondent notified the Claimant by email that he needed to take the duty manager test (p324). Mr Rogers sent the email to the Claimant telling him that the exam had now been sent to his portal ready for completion by the end of that week. He also informed the Claimant that he must:
- 29.1 Allow himself up to two hours undisturbed either in a Jennings Bet shop with a branch manager present, or at the East Ham training office and he asked the Claimant to contact him to check availability of the latter premises;
- 29.2 That he must have a calculator, duty manager workbook and betting control chart which could be used throughout the exam;
- 29.3 Not to forget to check and submit the answers at the end.

He then wished the Claimant good luck.

- 30 The Claimant took this examination on 5 January 2018 but failed it (pp326 onwards). The Tribunal accepted the Respondents' case that the pass mark was 80%, because this was not and could not be contradicted by the Claimant. The Claimant's position throughout was that he had had something like two years prior experience as a manager of a betting shop with William Hill.
- 31 The Respondents' position was that with that experience the Claimant would have been expected to sail through the examination but that in any event, regardless of prior experience, recruits were only allowed to take the examination twice.
- 32 At this stage the Claimant was still working at Commercial Road and was now being observed and trained by Mr Crooks on the latter's return to the branch.

- 33 Later in January 2018, when a serious difficulty arose between the Claimant and his then training manager Ms Ryland, Mr Rogers who was the Training and Compliance Manager asked both Mr Crooks and Mr Cooper to provide him with a description of their impressions of the Claimant's training period at the Commercial Road branch (pp.359-362). The Tribunal considered that these reports (B76 – B78) were relatively contemporaneous although they were not created until 24 January 2018, a couple of weeks after the Claimant had last worked at Commercial Road.
- 34 Although Mr Crooks' report was fuller, a picture emerged from both their reports of the Claimant not taking up the opportunity to use the training opportunities available to him and that he reacted poorly to Mr Crooks' questioning his knowledge of the basic principles of betting and products. Mr Crooks also recorded that before leaving for his Christmas break he had provided a document to brief the team and that he had briefed the Claimant specifically about his training in his absence and also prepared the folder for him to work through during Mr Crooks' holiday. Mr Cooper related to Mr Rogers that unfortunately the Claimant had not progressed well and had not shown a good attitude to work in the period before Mr Crooks' return after Christmas. Their working relationship had become strained, and Mr Cooper had the impression that the Claimant had displayed a reluctance to learn and had demonstrated no initiative or motivation to progress.
- 35 Mr Crooks worked with Mr Ewujowoh on 6 January 2018 from the time the betting shop opened until 17.40. He recorded that he had a similar impression to that reported to him by Mr Cooper of the Claimant and especially of his attitude. Thus, when the Claimant reported to Mr Crooks that the shop had been too busy for him to make any attempt to work through his training book or carry out another task, Mr Crooks challenged this but was met with a belligerent attitude from the Claimant. It was not in dispute that there was a strained atmosphere between the two men as the afternoon progressed although Mr Crooks recorded that they shook hands before the Claimant left the shop and agreed to start afresh when they next worked together on 8 January. The Claimant agreed that hands had been shaken and about the atmosphere being poor on this occasion.
- 36 On the next shift that they worked together on 8 January, matters escalated. The Claimant had arrived punctually outside the shop but did not have access and had to wait until Mr Crooks arrived about 10 minutes later. Mr Crooks recorded that the Claimant seemed to be struggling with the task that he had given him to do and that when Mr Crooks intervened to attempt to clarify what needed to be done, the conversation quickly broke down into an argument.
- 37 In his 24 January 2019 report (p362) Mr Crooks maintained that he remained calm and did not raise his voice or use expletives but that the Claimant was extremely worked up, swore at him and that he denigrated Mr Crooks' position and his reason for leaving his last employer.

- 38 The Tribunal accepted that Mr Crooks had said something at some point to the effect that he thought he was going to either 'lose his patience' (as Mr Crooks said during the investigation) or 'lose his cool' (as the Claimant alleged). The Tribunal did not consider that determining which of these words were actually used. We were satisfied that both accounts indicated that Mr Crooks was getting somewhat frustrated with training the Claimant. The Tribunal considered that the reasons for this were as set out above because the Claimant did not appear to take correction very well.
- 39 The Tribunal also noted that this incident occurred some two or three days after the Claimant had unsuccessfully attempted the duty manager test. Although the Claimant had not yet been told that he had been unsuccessful, his performance in the examination tended to corroborate the Respondents' case about the Claimant not having made good use of the training on offer.
- 40 The point was reached at which Mr Crooks decided that it was appropriate to ask the Claimant to collect his things and leave the premises. The Claimant then refused to do this despite two further requests from Mr Crooks to leave. Mr Ewujowoh's case was that he had tried to telephone Mr Broadbridge and although he was initially unsuccessful, he eventually got through to Mr Broadbridge to tell him that Mr Crooks was threatening him, that he must leave the shop before he lost his cool. Mr Broadbridge told him to leave the shop immediately and to come over and meet him at the East Ham Centre where Mr Broadbridge was based.
- 41 When Mr Rogers was challenged about the decision that Mr Crooks had made, Mr Rogers' position was that as a manager of the store, it was within Mr Crooks' discretion to determine that Mr Ewujowoh should leave the shop. The Tribunal found no fault with that approach.
- 42 Mr Crooks also was questioned by Mr Martins about whether he had ever required a member of staff to leave the premises. He indicated that he had done this on one previous occasion and that the member of staff in question was a white female. He had considered it appropriate because she was not displaying appropriate behaviour in the shop. She was agitated and swearing. There was no other evidence to contradict this.
- 43 When Mr Broadbridge invited the Claimant to come to talk to him at the East Ham office on 8 January 2018, he also got in contact with Mr Rogers and asked him to join him at the East Ham branch. At that stage, before Mr Ewujowoh had passed the store manager test and while he was still on probation, Mr Rogers remained strictly speaking the Claimant's manager. We considered that it was definitely completely appropriate for Mr Broadbridge to have invited Mr Rogers to attend the meeting. There was nothing to contradict Mr Rogers' evidence, on the balance of probabilities, that Mr Broadbridge had not gone into any detail as to what the difficulty was between the Claimant and Mr Crooks.

- 44 Thus, the Claimant attended the East Ham office to meet both Mr Broadbridge and Mr Rogers the training manager.
- 45 The Claimant was not made aware of his failure on the duty management exam until 8 January 2018 when Mr Rogers emailed him to inform him that his score was 67%, below the 80% pass mark. Mr Rogers suggested a retake in the week commencing 29 January 2018 (p.324).
- 46 The first direct race discrimination complaint at 6.5.1 was the allegation that on both 6 and 8 January 2018, Mr Jamie Crooks had threatened the Claimant with violence. At no point during the hearing did the Claimant put his case any higher than the comment which he put in his witness statement, namely that he alleged that Mr Crooks had said that the Claimant should get out of the shop before Mr Crooks "lost his cool".
- 47 The Claimant disputed in his evidence that he had sworn at Mr Crooks repeatedly.
- 48 The Claimant produced the telephone records which confirmed that he had attempted to contact Mr Broadbridge on 8 January and the Tribunal also had the still pictures taken from the CCTV within the betting shop which showed Mr Crooks also on the telephone at the relevant time to Mr Broadbridge. Mr Crooks displayed no visible sign of being agitated.
- 49 There was no specific evidence put forward on behalf of the Claimant to assist the Tribunal to reach a finding which would lead to the burden of proof being shifted in terms of Mr Crooks' reaction to the Claimant being on grounds of race.
- 50 The Tribunal also noted in the context of the first of these race discrimination allegations, that the particular aspect of race on which the Claimant relied was not articulated by him as part of the issues. During the course of some of the cross-examination comparison was drawn with white members of staff. The Tribunal therefore treated this as a case in which the Claimant was saying that the discrimination was related to the fact that he was black.
- 51 The Tribunal considered that Mr Crooks' description of the run up to this breakdown in terms of the Claimant not performing to an adequate standard which was corroborated by Mr Cooper tended to suggest that there was a reason which was unrelated to race as to why he had responded with some exasperation to the Claimant.
- 52 Further, Mr Crooks gave evidence about his history as a trainer. He had worked in the industry for approximately 14 years and trained about 25 managers. About 50% of those were black. There was no suggestion that he had previously had any difficulties in terms of an allegation of race discrimination made against him. Further, in his oral evidence he elaborated on the points which he had made in his report to Mr Rogers of 24 January 2018.

- 53 The meeting between the Claimant, Mr Broadbridge and Mr Rogers took place within an hour of the incident at the Commercial Road branch. Mr Rogers received the telephone call asking him to attend while he was in his car going through the Blackwall Tunnel. He had been on his way to the office anyway and so he was able to attend the premises quite promptly.
- 54 The matter was resolved informally and promptly. The Tribunal accepted that the Claimant agreed to the proposal that he should continue with his training by moving to the Leather Lane shop to work with an alternative in-house trainer, from the week commencing 15 January 2018. Mr Rogers was very clear that he had given the Claimant the option of accepting this course and that the Claimant had been quite happy to do this. If this had not been the case, the Tribunal considered that other options would have been explored at the meeting.
- 55 There was another issue that was in dispute which was relevant in terms of our assessing whether the allegation of race discrimination was made out. This concerned what the Claimant had said to Mr Rogers and Mr Broadbridge at the meeting on 8 January about his interactions with his managers up to that point. There were no notes taken of the meeting and the explanation given for this by Mr Broadbridge and Mr Rogers was that at the time they saw this as an instance of a trainee and training manager not getting on. This was not an exceptional situation and they believed at the time that it had been resolved informally to the Claimant's satisfaction.
- 56 They disputed that the Claimant had alleged to them that he had been threatened by Mr Crooks. The Tribunal took into account the First Respondent's subsequent actions when a formal grievance was raised by the Claimant on 24 January and the swiftness with which they investigated the allegations formally. The Tribunal considered that it was indeed likely as both Mr Broadbridge and Mr Rogers maintained that they were not made aware in the meeting of the elements of the interaction which the Claimant subsequently raised, namely an allegation of a threat of violence and certainly not on racial grounds. They saw this as not exactly a routine occurrence but they knew that it was not unknown for a trainer and trainee not to get on.
- 57 It was also relevant to take into account that the first record of the Claimant indicating that he had been threatened by Mr Crooks was a communication, probably by text or WhatsApp, with Marcie Fleming on 12 January at about 9am. The contact between them had started on 9 January at 6pm. Her responsibility was to deal with operational matters relating to the First Respondent's staff. The Claimant relied on his message to Marcie Fleming on 12 January 2018 that the matter had not been resolved and that Jamie Crooks had threatened him twice on Saturday and on the Monday. He indicated that he wished to lodge a formal complaint against him although he erroneously typed "me". He continued: "I have just been moved to another shop I do not know what is happening".
- 58 The Claimant's case, as set out in the List of Issues, was that he was threatened by Jamie Crooks on more than one occasion. In the event, as set out above, the

Claimant only relied in the hearing on the one incident on 8 January when Mr Crooks required the Claimant to leave the shop otherwise he would lose his cool. Whilst alleging that he had been threatened in the message of 12 January to Ms Fleming, Mr Ewujowoh made no reference to this being an allegation of race discrimination.

- 59 The Tribunal also accepted that Ms Fleming's role was that of being responsible for arranging things like rotas and duties, and not as the Claimant asserted, that of a senior manager. This was consistent with the record of her initial message to Mr Ewujowoh at about 6pm on Tuesday 9 January when she was talking about where the Claimant would be working as from 10 January. They had spoken earlier on the telephone, but that conversation had apparently been interrupted. Although the intention was that the Claimant would be placed with Ms Ryland at the Leather Lane shop, Ms Ryland was not available for two or three days and therefore in the short term the Claimant was allocated to the East Ham shop where he could work with the training manager there. It appeared that one of those days was to be with Ms Fleming (p.1129). Then at 6.04pm, still on 9 January 2018, Ms Fleming wrote: "Also the issue on Commercial Road. I take it thats been sorted with Peter and Matt?". She stated that she would call Mr Ewujowoh the next day.
- 60 The next message was from Mr Ewujowoh on Friday 12 January 2018 at 8.52am. He stated that the matter had not been resolved and that Jamie (Crooks) had threatened him twice. Ms Fleming (who did not give evidence) responded to the Claimant at 9.09am that after seeing Mr Ewujowoh's comment about making a formal complaint she had now contacted Mr Broadbridge and that Mr Broadbridge was to contact the Claimant about meeting the Claimant at Leather Lane along with Human Resources.
- 61 There was no dispute that no such meeting took place. Nor was there any reference in the messages to Ms Fleming to race discrimination or any other breach of the Equality Act 2010.
- 62 Mr Broadbridge disputed that he had been told about the message from the Claimant to Ms Fleming. It was not in dispute that Mr Broadbridge did not at this point take up any issue nor did the Claimant chase up with Mr Broadbridge a failure to act upon a complaint. Indeed, at this stage it was not in dispute that no formal complaint had actually been made.
- 63 During those three days at East Ham, Mr Rogers visited the Claimant. The Claimant disputed that Mr Rogers was there to check on his progress. Although he accepted that he was indeed aware that Mr Rogers was on the premises, he did not raise the issue of Mr Crooks' alleged threat or of any dissatisfaction with the plan which had been settled on in the meeting with Mr Rogers on 8 January that he would change trainers (p.1087). This evidence was elicited from Mr Rogers during the investigation with Mr Jowett on about 25/26 January 2018. It

was therefore also quite contemporaneous. The Tribunal accepted it as accurate on the balance of probabilities.

- 64 In all the circumstances we accepted the Respondents' case that the managers who were witnesses in this case had been told nothing about threats of violence having taken place, or of suspicions or allegations of race discrimination.
- 65 The next allegation was that the Respondents failed to investigate adequately or at all the complaint by the Claimant against Mr Crooks made on 12 January 2018. The complaint referred to, was the whatsapp/text message set out above from the Claimant to Ms Fleming. This was a complaint about the alleged acts or omissions of Mr Rogers and Mr Jowett.
- 66 The Respondents' first response to this was that the Claimant had not actually made a complaint. The Tribunal considered that this was a fair point. The Claimant expressed an intention to complain on 12 January, and indeed he directed this at the duty manager who he had been conversing with about issues of his place of work, not about the incident. There was no evidence from the Claimant that he had made an actual complaint, or even stated an intention to complain after the meeting on 8 January, to either of the two relevant managers, Mr Broadbridge or Mr Rogers, until the complaint on 24 January 2018.
- 67 The Tribunal rejected the complaint about failure to investigate adequately because the Claimant had not established that there had been a complaint made. The Tribunal has already referred to the later occasion when it was clear that a complaint was being made, and the promptness with which the First Respondent, including these managers, conducted a full and detailed investigation.
- 68 Mr Broadbridge gave evidence about speaking to Marcie Fleming after the incident on 8 January, but his evidence was simply to the effect that Ms Fleming had advised that the Claimant seemed unsure as to what was happening with him. This was evident from the exchange between the Claimant and Ms Fleming. Mr Broadbridge described that he thought this was odd considering the meeting that had taken place on the Monday and that he advised Ms Fleming that he had already told the Claimant that he would be seeing him the following week in Leather Lane, his new training shop.
- 69 From Tuesday 16 January 2018, the Claimant started work at the Leather Lane branch and was trained by Ms Stephanie Ryland (p.1063). For his first few days Ms Ryland mainly observed him as the Claimant still had a number of matters to learn. On the second day at the branch on 17 January 2018, Mr Broadbridge met with the Claimant informally to discuss progress at Leather Lane. The Claimant did not report any concerns to him nor indeed did he refer back to the Crooks incident in any way.
- 70 The Tribunal had a fair amount of contemporaneous evidence about the Claimant's performance as a store manager in training whilst he was placed under Ms

Ryland. Thus, for example, on Friday 19 January at 21.48 she sent a text message to Mr Broadbridge asking him to adjust the rotas for herself and Mr Ewujowoh to a 9.30pm finish because she was showing him how to close, and the wages cut off was that Sunday. She then continued on 21 January 20.18 at about lunchtime (p.1133):

“Pete, this guy has two years experience but his knowledge of the job is poor, doesn’t even know what a Yankee is, so far he isn’t taking me seriously on certain things, and has now accused me of speaking to him “like Jamie did” which I take offence to, I’m trying my best to teach him. I’m not saying I don’t want to train him but I’m saying I’m finding this one hard (between me and you please).”

Mr Broadbridge indicated that he would get back to her during the week.

71 Unfortunately, by the Sunday evening it was apparent that things had not improved. On Tuesday 23 January 2018 Ms Ryland left a voicemail on Mr Broadbridge’s telephone at 7.49pm. There was a transcript of the message she left on that date (p.1024-1025) in the following terms:

“Hi Pete, its Steph from Leather Lane ERM. In regards to training Reuben, erm I am having a hell of a lot of trouble training this guy up. He doesn’t listen to me then he takes what I am saying as something offending. My training methods obviously don’t suit him. I am not too sure where to go from now but everything I say to this man he takes offence and then basically his answer is quite aggressive and quite rude. He has no respect for me I am not too sure where to go from here but I am having a hell of a lot of trouble. Could you please call me and advise. I am sorry to put this on you. Thank you bye bye”.

72 Ms Ryland followed this call up immediately with a text message to Mr Broadbridge sent at 19.50 saying: “Peter I can’t train this guy please help or advise” (p.1135). In Mr Broadbridge’s response he stated: “I think the best thing is to contact Matt Rogers he can meet with him. Sorry Steph it was Matt who said to put him with you”. This was sent a couple of hours later at 9:20 on the same day.

73 At 21.25 Mr Broadbridge responded to Ms Ryland as follows: “I have asked Matt to get involved as soonest Steph hopefully tomorrow he will call or come to the shop”. This was then followed by an email from Ms Ryland at 9.28pm (pp.1136 and 1138) as follows:

“OK Pete, I will ring him tomorrow morning, he has really upset me I’m still in the shop, trying to stop crying. Can I tell Reuben to do his manager books downstairs tomorrow until I speak to Matt. His attitude stinks and its making me really upset, I’m good at my job and a good trainer but this guy is taking the Mick.” (p.1134b)

74 Mr Broadbridge then responded at 9.34 pm as follows: “Yes again I am really sorry. Try and call Matt first thing I have emailed him.” Ms Ryland sent a further message at 9.39 as follows: “I will, thank you for your support it means a lot and I

don't blame you or Matt for this guys attitude. I am willing to train and look forward to it most of the time but this guy ... I'll leave you alone now till tomorrow. Thank you again".

75 It was during the course of this exchange with Ms Ryland that at 21.24 on 23 January 2018 (p.323) Mr Broadbridge sent a short email to Mr Rogers along the following lines:

"It seems like Reuben is not playing the game with Steph she is struggling to get him to listen he is getting aggressive with her can we just call it a day if possible. Both her and Jamie can't be wrong we have given him enough chance."

76 This was the background to Mr Rogers becoming aware of the deterioration in the working relationship between the Claimant and Ms Ryland at the Leather Lane branch. This email from Mr Broadbridge was also the subject of one of the direct race discrimination complaints at 6.5.3.

77 The witness who was required to attend by way of a witness order, Mr Ballard, gave evidence about the events in the shop which formed the background to Ms Ryland's messages on 23 January.

78 Ms Ryland had worked for the Respondent for over five years but had been in the betting industry for 17 years. She had been involved in training in the preceding four years and off the top of her head could recollect having trained maybe four or five managers. One was black of mixed race when she worked for Coral. There was no suggestion that Ms Ryland had had any issues raised with her previously about discriminating against black staff.

79 There were many hours of CCTV recordings of both the Commercial Road and the Leather Lane premises on the relevant occasions. The Tribunal was extremely grateful to the Respondents for having prepared a guide to the stills which were included in the bundle. There were no challenges from the Claimant to the summary of the stills. Further, a CD containing all the CCTV recordings was also included in the documentary evidence by the Respondents.

80 The Tribunal made findings about the events of the afternoon and evening of 23 January 2018 at the Leather Lane shop. The Claimant started his shift at 1.30pm. This was the date on which Ms Ryland had told the Claimant that she was going to start assessing him on him using his initiative.

81 The Claimant described in paragraph 38 of his witness statement that there was another manager also on duty by the name of Lynda who finished her shift at 5pm. He described Mr Ballard and a Chinese male customer being present in the shop during Lynda's shift and he described that Ms Ryland was extremely rude to the Chinese male customer and swore at him several times in the presence of Mr Ballard.

- 82 The Tribunal deduced from the Claimant's witness statement at paragraph 38 that Mr Ballard had been at the betting shop for some time before the other manager, Lynda, finished her shift at 5pm. Further, no-one disputed that Mr Ballard was still present when the incident between the Claimant and Ms Ryland occurred at about 7.30pm.
- 83 At some point after 5pm but before the incident involving the Claimant and Ms Ryland, the customer (who was variously described as Chinese or Vietnamese) was losing a lot of money, having been playing on a machine which the First Respondent said he was engaged on for at least a couple of hours. Mr Ballard estimated this loss at over £3,000. Each time he won, he had the option of pressing a button which would give him a credit so he could reinvest his winnings. He was either unfamiliar with or ignorant of that possibility, because he would go instead to the counter to try to cash in his winnings. Ms Ryland apparently became somewhat irritated that he continued to approach her and at some point questioned whether the customer had not understood what she had been trying to tell him about the use of the credit facility on the machine.
- 84 One of the difficulties which followed from Mr Ballard giving his evidence almost at the end of the case, after Ms Ryland had given her evidence and certainly before a signed witness statement from Mr Ballard was available, was that she did not have the opportunity to address in evidence any of the matters that he raised relating to her interactions with the customer. The Tribunal noted also that in the Claimant's written grievance sent early on 24 January 2018, he had made no reference to Ms Ryland's interaction with the Chinese/Vietnamese customer.
- 85 There was a brief reference by Mr Ballard in the note of the telephone conversation with Mr Jowett on 6 February 2018 to the interaction between Ms Ryland and the Chinese/Vietnamese customer. Further the Claimant made the point in the meeting with Mr Jowett on 25 January 2018 (p.1044) that Ms Ryland had previously used bad language to a Chinese customer. However, this earlier incident was not raised by the Claimant during the investigation meeting with Mr Jowett on 5 February 2018 into the claims of hostility and aggression by him towards Stephanie Ryland (pp.1105-1113).
- 86 The Tribunal considered that in all the circumstances, it would not be consistent with justice to make findings against Ms Ryland in relation to matters which were not put to her and about which she had little notice, given that Mr Ballard gave evidence in the second sitting after she had concluded her evidence on the first occasion.
- 87 The Tribunal considered that in any case, there was no evidence before the Tribunal other than a difference of race between the two of them to suggest that any negative reaction to him was on racial grounds. There was no other evidence of other interactions with customers in similar circumstances. There was further nothing expressly racial said by her or alleged to have been said by her to or about

the Chinese/Vietnamese customer. It was therefore not adequate background evidence to support a race discrimination allegation.

- 88 The Tribunal next had to consider the evidence of the Claimant as corroborated to a certain extent by Mr Ballard to the effect that during the later incident Ms Ryland had been shouting at him and pushing him and that she had generally behaved appallingly towards him.
- 89 There were however a considerable number of inconsistencies in the accounts of the Claimant and Mr Ballard. The first of these was that in the complaint which the Claimant submitted in writing within about 14 hours of this incident in the morning of 24 January 2018, he did not allege that Ms Ryland had pushed him. At (p.341) he described that Ms Ryland “barged out of the counter and started shouting at me”. The Claimant elaborated by describing at paragraph 40 that Ms Ryland walked towards him in a very aggressive manner and snatched a marker pen that he was holding from him, pushed him and started writing the scores on the board and that this was witnessed by Mr Ballard. He described that this took place in what was referred to as the “football section”.
- 90 All parties agreed during the hearing that if anything had taken place at the football section, Mr Ballard would not have been able to see it given where he was sitting. This was confirmed by the CCTV screenshots. In his witness statement the Claimant maintained that the CCTV evidence would support his version. He continued at paragraph 40 that he told Ms Ryland to stop pushing him and that he walked back to the counter but that Ms Ryland pushed him as she walked past him and got back behind the counter. He clearly was describing aggression and actual physical assault from Ms Ryland towards himself on the shop floor. The screenshots did not support this evidence. The CCTV recordings were available at the Tribunal hearing, yet when the Tribunal and the Respondents gave the Claimant an opportunity to corroborate his account by reference to relevant parts of the CCTV, the Claimant declined to do so.
- 91 Indeed, when the parties returned to the Tribunal after an adjournment especially to give the Claimant and his representative an opportunity to view the CCTV on Mr Jowett’s portable computer, the Claimant indicated that he did not wish to continue to press for the CCTV to be viewed. Moreover, he withdrew the sex discrimination complaint.
- 92 The adjournment for the Claimant and his representative to view the CCTV was granted because up to that point, the Claimant had maintained that he could not access the CCTV in a format that he could view on his own laptop.
- 93 The screenshots undermined his account of Ms Ryland walking towards the Claimant in an aggressive manner and of being pushed by Ms Ryland and of Ms Ryland snatching the marker pen from him. In relation to this last point a marker pen was seen in the Claimant’s hand both as he went towards the football section and as he left it. Whilst it was of course possible that Ms Ryland snatched it from

him and had then given it back to him, the Tribunal considered that on the balance of probabilities the CCTV screenshots undermined the Claimant's account in that respect also, on the balance of probabilities.

- 94 The further thing about the marker pen was that this was a new detail which the Claimant had not previously provided. Once it became clear that the relevant CCTV screenshots did not tend to support his account he then started giving further new evidence about what may have happened to the marker pen. On the balance of probabilities, the Tribunal did not find this evidence credible.
- 95 As far as Mr Ballard was concerned, the Tribunal considered it likely that he had seen or heard something which had led him to intervene and to provide his contact details to the Claimant on 23 January. This did not in itself necessarily lead us to a finding that Ms Rylands' conduct had been culpable in some way. In this context we took into account our findings below about some of the comments he had made to Mr Jowett during the telephone interview, and the light these cast on his own possible prejudices.
- 96 We found that Mr Barnard was a somewhat unreliable witness in that he tended to become very easily excitable at the witness table and did not give very clear or cogent evidence. The Claimant relied very heavily on this witness to corroborate certain aspects of his complaint.
- 97 Mr Jowett had made two contacts with him, the first being on 29 January 2018 by telephone. The Tribunal commended the First Respondent for the standard forms which they used in investigations which provided space for the investigator to enter their own name, the name of the person being interviewed, the name of the notetaker or HR representative with the relevant job titles, the date of the contact as well as the start and finish times. There was also a box for the investigator to enter the reason for the meeting.
- 98 During that first conversation, Mr Jowett introduced himself to Mr Ballard and was then told by Mr Ballard that he was abroad until 6 or 7 February. They therefore agreed that Mr Jowett would make contact with Mr Ballard again after his return.
- 99 The next contact was on 6 February 2018, once again by telephone, although Mr Jowett would have been happy to have met Mr Ballard. Mr Ballard explained that he was a business man with a jeweller's store in Hatton Garden and in the hospitality business. In Mr Jowett's note, he described Ms Ryland's behaviour as "fitting in well in Brixton, Brockley etc!"; that "she may have been on her period or something else to act so rude"; and when describing the location of where Ms Ryland may fit in best i.e. Brixton etc, he said: "It's dark there in the middle of the day".
- 100 At the outset of the questioning of Mr Ballard on this issue, the Respondent's Counsel attempted to get Mr Ballard to indicate whether he agreed that the note made by Mr Jowett of their conversation as part of the investigation into the

Claimant's grievance (pp.1102-1104) was accurate. It consisted of some 8 short handwritten paragraphs on one page. Having accepted that he had not seen this document before, and without reading it with any care, despite having the opportunity to do so, he stated that the record of the discussion was correct. Mr Amunwa then attempted to obtain a rather more considered opinion from Mr Ballard about whether he agreed that the account was accurate. He asked the witness to go through each of the paragraphs with him and then to indicate whether he confirmed the accuracy of each paragraph. The paragraphs consisted of 3 to 5 lines of text, at the most. When this exercise was undertaken Mr Ballard again confirmed that the note was correct, including the three phrases cited above.

- 101 He was adamant that the note was correct.
- 102 Mr Amunwa subsequently questioned Mr Ballard about some of the detail of the allegations. He questioned what Mr Ballard had meant by the comments cited above and whether these were an indication that Mr Ballard was someone who could readily reach stereotypical views about someone relating to their sex and/or race. At this point, quite contrary to his previous very strong position, Mr Ballard started to suggest that the quotations were not correct. The Tribunal did not find his evidence on this issue convincing at all.
- 103 Alongside this Mr Ballard also said that he heard the Claimant say "don't push me" a couple of times. In the notes which he had previously confirmed were accurate (p.1104), he conceded to Mr Jowett that he did not actually see any pushing because the Claimant and Ms Ryland were in the lobby area and "out of sight".
- 104 In summary, we found that Mr Ballard's oral evidence was inconsistent with the note which he agreed was correct which was given to Mr Jowett on 6 February 2018. The Tribunal took into account that Mr Ballard also agreed on several occasions at the start of his evidence that that note was accurate. He quite clearly said in the contemporaneous note of 6 February 2018 that he heard the Claimant complain that he was being pushed but that he did not see it. He described that this had taken place after the Claimant and Ms Ryland had gone through the door into the staff area near the counter. In his oral evidence he gave quite a florid description of the Claimant being pushed by Ms Ryland over a distance of some three meters apparently on the shop floor. He said that this happened a few times and that it happened three to five times. He had previously referred to it occurring alongside verbal abuse of the Claimant which he also described as "a barrage of non-stop abuse". The Tribunal considered that this evidence was exaggerated. We found that his descriptions of the treatment of the Claimant by Ms Ryland differed from the Claimant's contemporaneous description in his grievance of 24 January 2018.
- 105 In his original grievance written the morning after this incident occurred, Mr Ewujowoh did not describe any physical contact by Ms Ryland against him. Nor

indeed did he give any detail of verbal abuse by Ms Ryland (pp.340-341). Rather, he referred to about six comments which he said that Ms Ryland had used against him which were “bullying and snide” comments but none of these described any physical contact between the two, as suggested by Mr Ballard. The closest that he got to that was a complaint that Ms Ryland had said to him “stop breathing on me”.

- 106 In his grievance of 24 January 2018, the Claimant did not set out what would be commonly considered “abusive” comments. The most they amounted to were, as he himself stated, “bullying and snide”.
- 107 The First Respondent’s investigation into the grievance started very promptly, with a request to the Claimant from Mr Rogers (p345) for more details of his allegations of bullying and race discrimination, followed by a meeting between the two men on 25 January 2018. However, because the Claimant objected to Mr Rogers carrying out the investigation into his grievance, Mr Rogers stepped back and Mr Jowett took over.
- 108 The Claimant was asked in the investigation with Mr Jowett to give some detail about his allegations. Despite Mr Jowett carefully going through all of the allegations in the Claimant’s letter of grievance, the Claimant did not suggest that Ms Ryland had used abusive language towards him. He said in the investigation meeting on 25 January: “she was shouting at me that I was doing it wrong”. He then described Mr Ballard intervening and saying: “stop bullying this man” and that shortly after that Ms Ryland was in tears.
- 109 The Tribunal found that we could not be satisfied that the Claimant’s race, or indeed considerations of race, had anything to do with his interaction with Ms Ryland. The Tribunal was also unable to conclude that any of the Claimant’s allegations against Ms Ryland was made out on the balance of probabilities. We concluded that it was likely that she was irritated with him because of his failure to make appropriate progress in his training role. This generated friction between them and we found that she considered that the appropriate way of conveying her instructions to him was to revert to what she described as “formal mode”. The Tribunal considered that it was quite likely that Mr Ewujowoh saw this as Ms Ryland being rude and abrupt. We rejected on the balance of probabilities the allegations made by Mr Ballard that she had called him “stupid” or “an idiot”. These allegations were not raised contemporaneously and they were only raised by Mr Ballard a long time after the event.
- 110 There was no dispute that Ms Ryland was in tears and crying by the end of the incident. In his oral evidence Mr Ballard reacted scornfully to the reference to her tears and suggested that Ms Ryland had been play acting. The Tribunal has outlined the communications from her to Mr Broadbridge on the evening of 23 January. We found that she was genuinely distressed at the time.

111 The Claimant complained at Issue 6.5.3 about the email which Mr Broadbridge sent to Mr Rogers on 23 January in which he invited Mr Rogers to dismiss the Claimant. The Tribunal accepted the Claimant's allegation that Mr Rogers was being invited to terminate the Claimant's employment and to bring the probation to a halt. It was clear to the Tribunal that the reason Mr Broadbridge was of this view was because he believed that despite the First Respondent's and indeed his and Mr Rogers' best efforts, the Claimant had not been able to forge a successful working relationship with two managers who he considered to be competent at training and that therefore this was unlikely to succeed.

112 This was not an unfair dismissal complaint. It was not of primary importance whether Mr Broadbridge's was the correct approach. It clearly was not. What was important however was that Mr Rogers did not act on Mr Broadbridge's suggestion.

Instead he put into place the procedures for investigating the Claimant's complaints promptly. In due course thereafter, he also postponed the next examination from the previously scheduled date of 29 January, to 27 February 2018 (p.333). This appeared to the Tribunal to be an act designed to assist the Claimant to pass the examination. Further, the First Respondent transferred the Claimant, after suspending him for a short period, to work with a manager who was regarded within the First Respondent as extremely capable.

113 Indeed, the suggestion in Mr Broadbridge's email of termination of the Claimant's employment was also disregarded by Mr Jowett. He knew about the suggestion because it came up during the course of his investigation into the Claimant's allegations and into the events of 23 January 2018. He asked Mr Rogers about it when he interviewed Mr Rogers a few days later. Further, the Tribunal considered that the very detailed, prompt and thorough investigation conducted by Mr Jowett was further evidence of his neutral approach. It also confirmed his case that he had no reason to want to bring the Claimant's employment to an end having, as he himself described it, "stuck his neck out" to reinstate the Claimant after finding out about his criminal record; and despite the fact that he would have been fully entitled not to proceed with the Claimant's employment having regard to the First Respondent's policies and the objectives of the betting industry's Code.

114 The Respondents' case was that the manager with the power to terminate the probation was Mr Rogers as training manager, not Mr Broadbridge. This case was accepted on the balance of probabilities as it was credible and not contradicted by any evidence.

115 At 6.5.4 the Claimant complained that his suspension on 24 January 2018 and the failure of the First Respondent to follow its company procedures constituted direct race discrimination. The Claimant's case was that Ms Ryland should also have been suspended under the First Respondent's procedures. The Tribunal did not accept that the procedures required the First Respondent to suspend anyone. However, in any event, despite the fact that as far as the managers were

concerned, complaint was first made by Ms Ryland through Mr Broadbridge during the evening of 23 January 2018, they suspended Ms Ryland as well.

- 116 The chronology was that Mr Rogers did not initially wish to take immediate action against the Claimant but invited the Claimant to return home on 24 January 2018 and just to let matters cool down. The Claimant interpreted this as a suspension and he referred to this in his letter of grievance on 24 January 2018 which was sent just after 11:10 in the morning on 24 January. When Mr Rogers responded to that grievance and to the Claimant's question as to why he had been suspended, he explained that this was due to the Claimant's in-shop trainer making Mr Rogers aware of repeated hostility and aggression from the Claimant towards Ms Ryland in the workplace (p.342). This email was sent at 2.33pm and copied to Mr Jowett.
- 117 In the circumstances, the Tribunal accepted Mr Rogers' account that he had spoken to Mr Jowett once he had become more aware of the background of the events of 23 January 2018 having also spoken to Ms Ryland. He had initially believed that it was simply another instance of a personality problem but then when he spoke to Ms Ryland at Mr Rogers' suggestion, he gathered that matters were more serious. In the circumstances, the Tribunal considered that his initial invitation to the Claimant to simply leave the workplace and cool down was measured and appropriate. The Tribunal also accepted, because it was consistent with Ms Ryland's contemporaneous messages, that she had led him to believe that she did not feel safe working alongside the Claimant. In all the circumstances, the Tribunal considered that this provided ample explanation for Mr Rogers asking the Claimant to leave the premises and then subsequently converting this into a suspension, having spoken to Mr Jowett.
- 118 The Tribunal noted that in the email Mr Rogers opened by acknowledging receipt of the complaint and stating that he intended to carry out a full investigation regarding the matters that Mr Ewujowoh was complaining about in accordance with the First Respondent's company grievance procedure.
- 119 Having given the Claimant the reason for the suspension he then asked the Claimant if he could provide him with more specifics concerning the claim of bullying and race discrimination and he also noted that up to that point that no claims of bullying or threats had been made against the previous in-shop trainer at Commercial Road, Mr Crooks. He then continued by inviting the Claimant to attend an investigation meeting the following day. He told the Claimant that he had copied in Mr Jowett to the correspondence as he was Head of the Governance department. The Tribunal had no criticism of Mr Rogers for the tone or content of that email.
- 120 There was some confusion in the Claimant's case as to which comparators were being relied on. One of Mr Amunwa's main submissions in relation to the comparators was that the Claimant had not chosen comparators in the same or similar circumstances. Thus, he made the point in relation to 6.5.3 that the First Respondent should have

suspended Jamie Crooks when the incident between the Claimant and Jamie Crooks occurred on 8 January 2018. The Tribunal accepted the Respondents' submission that it was not appropriate to compare the Claimant's situation with that of Mr Crooks.

- 121 At the time that the Claimant brought this incident to Mr Broadbridge's attention on 8 January, the Tribunal accepted the evidence of Mr Broadbridge and Mr Rogers that there was no suggestion by the Claimant that Jamie Crooks had threatened him or that he had done anything on racial grounds. As set out above, the only reference to threats was in the message to Marcie Fleming. Then the Tribunal was satisfied on the balance of probabilities that this reference to a threat had not reached Mr Broadbridge in any event. The situation was therefore not comparable because the allegations being made against the Claimant on the evening of 23 January and on the following morning by Ms Ryland were far more serious and detailed than the reference to Ms Fleming of a threat having been made.
- 122 The submission also by was that the appropriate comparator would need to be a trainee duty manager against whom such allegations had been made. Mr Amunwa submitted that Ms Ryland was thus not an appropriate comparator. The Tribunal considered that this was correct. We noted in any event that the First Respondent had acted in a completely even-handed way in relation to the incident on 23 January 2018 as far as their procedures were concerned, as between the Claimant and Ms Ryland. She was also suspended on 24 January 2018 (p.368), probably in the early afternoon (witness statement of Mr Jowett at paragraph 23). During the meeting between the Claimant and Mr Jowett on 25 January which ran from 3.05 to 4.30pm the Claimant was told by Mr Jowett that Ms Ryland had been suspended already.
- 123 Thus, the Tribunal rejected the allegation at 6.5.4 because there was no evidence that the Claimant was less favourably treated than someone of another race would have been treated or was treated in similar circumstances. In any event there was no evidence on which we could properly find that the burden of proof had shifted in relation to race.
- 124 The reference to the company procedures was also not made out. The Tribunal was satisfied that the company procedures allowed the First Respondent a discretion in terms of whether to suspend a member of staff. It appeared to the Tribunal that where there were allegations of the sort being made against the Claimant, a decision to suspend pending investigation would be normal.
- 125 The allegation at 6.5.5 was related to the previous one. It was a complaint about a failure to take disciplinary action against Mr Crooks in relation to the incident of 8 January. The Tribunal accepted the evidence of the Respondents' witnesses that they understood this to be a matter of a training manager not getting on with a trainee and that they were not made aware of allegations that Mr Crooks had made threats against the Claimant at that time. When the Claimant subsequently made a proper complaint to this effect on 24 January 2018, this was fully

investigated by the First Respondent and was not found to be made out. Therefore, in any event, the Claimant failed to establish the premise to his complaint of race discrimination at 6.5.5. Further, there was no proper evidence on which the Tribunal could have concluded that the burden of proof shifted.

- 126 In issue 6.5.6, the complaint was that on 25 January 2018 Mr Rogers, the Third Respondent, conducted a biased investigation interview with the Claimant. The following day a meeting commenced between the Claimant and Mr Rogers. The reason for the meeting was stated to be: “allegation of hostility and aggression towards in-shop trainer”. The Tribunal considered that this was clearly a reference to the detailed complaint which Ms Ryland had now committed to writing about her difficulties with the Claimant. Indeed, at the beginning of the meeting Mr Rogers gave a copy of her statement to the Claimant so they could go through it. Mr Ewujowoh commented that her allegations were complete lies and that the CCTV was very important.
- 127 The meeting started at about 2.05pm. Some 10 minutes into it the Claimant objected to Mr Rogers conducting the meeting and stated that he did not think the interview was fair. He also raised an issue about the sufficiency of the meeting notes at the beginning of the meeting. That point may well have been justified because there is not much of a record of what occurred at the beginning of the meeting. The Claimant then went on to say that he wanted Mr Rogers to take a statement from Mr Ballard. Mr Rogers would not guarantee that he would do this. The Claimant then denied having displayed aggression to Ms Ryland and continued to express his discontent at Mr Rogers conducting the investigation. The meeting was then brought to an end within five minutes of that event and Mr Rogers played no further part in conducting any of the investigations. After that, both investigations into the grievances brought by Ms Ryland and by the Claimant were conducted by Mr Jowett.
- 128 Within an hour of the meeting between the Claimant and Mr Rogers being called off on 25 January, the Claimant was then in another meeting with Mr Jowett, a more senior manager, to discuss the events of 23 January. The Tribunal considered that this was extremely prompt and clearly indicated that the Respondents attached importance to determining these issues.
- 129 Mr Rogers confirmed to the Claimant by email sent on 29 January 2018 that his complaint had been passed to Mr Jowett, Head of Compliance, to deal with (p382). It certainly appeared that after the meeting between the Claimant and Mr Rogers on 25 January, Mr Rogers did not conduct any further interviews.
- 130 The Tribunal concluded that the allegation at 6.5.6 was not made out either. The Tribunal did not consider that there was any evidence that the investigation interview with the Claimant on 25 January 2018 with Mr Rogers was biased. Nothing was achieved other than to put the allegations to Mr Ewujowoh by way of him looking at Ms Ryland’s detailed account. The Tribunal considered that this was consistent with fair practice. There was a suggestion in cross-examination

that the Claimant should have been given the opportunity to have notice of the allegations. The Tribunal did not consider that this was a requirement of the First Respondent's or indeed ACAS guidelines in relation to an investigatory meeting. Further, the Tribunal noted, with approval, how structured all the interviews were in that they went through all the matters before the investigator, gave appropriate context to the person being interviewed, and then asked a series of relevant questions. Apart from having failed to establish that there was not a biased investigation interview on 25 January 2018 with Mr Rogers, the Claimant had also failed to establish any evidence which would lead the Tribunal to conclude that this could be a matter of direct race discrimination.

131 The next substantive complaint was in relation to victimisation. Under paragraph 6.10 the Claimant relied on two protected acts. The first was disputed, namely his complaint against Mr Crooks on 12 January 2018. The Tribunal rejected the contention that this was a protected act because there was no suggestion in the message to Ms Fleming that the Claimant suspected or believed or would allege race discrimination. There was no reference whatsoever to it.

132 The second matter relied on was the complaint of 24 January 2018. The Respondents did not accept that this amounted to a protected act either. However, the

Tribunal noted that the letter of complaint was headed "Bullying and Race Discrimination". The Tribunal accepted the Respondents' submission that there was no other factual matter being asserted in the document which could substantiate a race discrimination complaint. The Tribunal did not however consider that that was enough to take it outside of the scope of being a protected act in principle.

133 The second submission on behalf of the Respondents was that this complaint was made in bad faith and was in effect a response by the Claimant to his recent suspension and his realisation that the events of 23 January 2018 were likely to lead to potential difficulties for him.

134 Putting to one side the allegations of bad faith, the Tribunal looked at the one remaining detriment which was said to constitute victimisation.

135 The Tribunal has already made very positive findings above about the way in which the First Respondent conducted their investigation. The credit for this lies at Mr Jowett's door because he was the one who conducted the majority of the investigations and interviews. He took a very structured approach with each person interviewed and he put to each person all relevant matters. This was the case regardless of whether they were the complainant or the person being investigated or one of the management witnesses. Further, the Tribunal noted that the First Respondent, in the person of Mr Jowett, contacted Mr Ballard, to seek relevant information at the Claimant's behest, despite the fact that he was a customer of the First Respondent. Mr Jowett informed the Tribunal during his evidence, and there was no evidence to contradict this, that they would not normally contact a customer in relation to an internal matter unless it was an

allegation of fraud. There was no allegation of fraud in this case. The Tribunal thought it was to Mr Jowett's credit that he had indeed contacted Mr Ballard very promptly – apparently before the end of 24 January: p396 reference to this in email from the Claimant, and as confirmed by Mr Jowett in his oral evidence. Mr Jowett then persisted even when Mr Ballard was not available to speak to him in any depth on the first occasion, by making contact again with him on 6 February and getting an indication of what Mr Ballard's contribution was.

- 136 Also in this context, the Claimant compared the investigation that was carried out into Ms Ryland's complaint against him with the failure to investigate Mr Crooks' conduct at his request. The Tribunal has already made findings in relation to that above in the context of the direct race discrimination allegations. We did not consider that that was a valid ground for criticism.
- 137 Finally, as the Tribunal has set out above, the complaints about the actual dismissal were withdrawn by the Claimant at the very end of the case. The Tribunal however having heard evidence about this considered that even if the Claimant had not withdrawn his complaints about the dismissal, we would have been satisfied that the reason for the termination of his employment was because he had indeed failed the examination to be a duty manager on two occasions. The Respondents produced documentary evidence following an order requiring this by Employment Judge Russell about the statistics of success or otherwise of other duty managers in the three years or so starting with the period 1 January 2015 to 31 December 2015. The final timeframe provided by the Respondents was for the period 1 January 2018 to 10 November 2018, the date by which they were required to produce the statistics.
- 138 These spreadsheets confirmed the Respondents' case in relation to the grades achieved or to be expected by members of staff who had some industry experience and also about the fact that it was extremely unusual for a duty manager to fail the test twice. The only person in that timeframe who had done so was the Claimant. The spreadsheet also recorded the grades achieved by other candidates. The Claimant's mark of 67% was considerably lower than the nearest lowest score. In short, therefore, we had ample evidence before us to justify the decision to terminate the employment. Finally, also in relation to the dismissal, the Tribunal was persuaded by the evidence from Mr Rogers that as training manager it was in his interests to ensure that the duty managers passed the examination and went on to become qualified store managers. This was one of the criteria by which his own performance was judged.
- 139 In conclusion, we found that none of the remaining allegations was wellfounded. The remaining complaints were all therefore dismissed, as listed in the Judgment above, the complaints which the Claimant withdrew having been dismissed also.

**Case Numbers: 3200488/2018, 3200640/2018,
3200958/2018 & 3201310/2018**

Employment Judge Hyde

Date : 12 August 2019