



EMPLOYMENT TRIBUNALS

Claimant: Mr H Qureshi

Respondent: The Commissioners of Her Majesty's Revenue and Customs
Heard at: North Shields

On: 5,6,7,8 and 9 August 2019

Deliberations: 26 September 2019

Before: Employment Judge Shepherd

Members: Ms S Mee
Mr M Brain

Appearances:

For the Claimant: Mr Bakhsh
For the Respondent: Mr Crammond

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claims brought by the claimant of harassment and victimisation relating to race and religion or belief are not well-founded and are dismissed.

REASONS

1. The claimant was represented by Mr Bakhsh and the respondent was represented by Mr Crammond.

2. The Tribunal heard evidence from:

Humran Qureshi, the claimant;

Linda Bell, Senior Intelligence Officer;
Geoffrey Mills, Intelligence Officer;
Keith Nicholles, Intelligence Officer.

3. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 544. The Tribunal considered the documents to which it was referred by the parties.

4. The claims brought by the claimant were for harassment relating to race and religion or belief, and victimisation. In the notes of the Preliminary Hearing before Employment Judge Hargrove on 8 June 2018 it was noted that the claimant describes himself as being of black Asian minority ethnic background and that he brings claims of various acts of discrimination on grounds of race and religion or belief (Muslim). Following a judgment of Employment Judge Johnson on 25 January 2019 and sent to the parties on 4 February 2019 the remaining allegations to be decided by the Employment Tribunal were identified as follows:

4.1. Allegation 1 dated 4 April 2016, being allegation of harassment contrary to section 26 (1) of the Equality Act 2010.

4.2. Allegation 2 dated 7 April 2016, being an allegation of harassment contrary to section 26 of the Equality Act 2010.

4.3. Allegation 3 dated 13 April 2016, being an allegation of harassment contrary to section 26 of the Equality Act 2010.

4.4. Allegation 4 dated 12 May 2016, being an allegation of harassment contrary to section 26 of the Equality Act 2010.

4.5. Allegation 11 dated 18 September 2017, being an allegation of harassment contrary to section 26 of the Equality Act 2010.

4.6. Allegation 12 dated 21 September 2017, being an allegation of victimisation contrary to section 27 of the Equality Act 2010.

5. The Issues

The parties agreed a joint list of issues to be determined by the Tribunal as follows:

Preliminary jurisdictional issue: Time Limits/bar

Does the Tribunal have jurisdiction under section 123 of the Equality Act 2010 to determine any of the claimant's complaints?

- a. Do any of the acts/admissions complained of fall outside the relevant three-month period (allowing for early ACAS conciliation insofar as appropriate)?

- b. If so, was there any “conduct extending over a period” that must be treated as done at the end of the period and, if so, was the end of this period within the relevant three-month period?
- c. If any complaints are out of time, is it “just and equitable” to extend time under section 123 (1) (b) of the Equality Act 2010?

Substantive complaints

issue 1

5.1. Did the respondent harass the claimant on 4 April 2016, contrary to section 26 (1) of the Equality Act 2010, as alleged (83 – 84, 148)?

- a. Did the respondents’ employees engage in the conduct described?
 - i. Did Sue Bax inform the claimant that not shaking hands may be an issue?
 - ii. did Sue Bax ask about the claimant’s religious commitments?
- b. Was that conduct unwanted?
- c. If yes, was that conduct related to religion?
- d. If yes, did that conduct have the purpose of –
 - iii. violating the claimant’s dignity?
 - iv. creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
- e. If not, did it have that effect, having regard to –
 - v. The claimant’s perception of the conduct,
 - vi. The other circumstances of the case, and
 - vii. whether it is reasonable for the conduct to have that effect?

Issue 2

5.2. Did the respondent harass the claimant on 7 April 2016, contrary to section 26 (1) of the Equality Act 2010, as alleged (85 – 86, 149)?

- a. Did the respondent’s employees engage in the conduct described?
 - i. Did Sue Bax ask why keys had been left on a desk?
 - ii. was the claimant told he breached data security?
- b. Was that conduct unwanted?
- c. If yes, was that conduct related to religion?
- d. If yes did that conduct have the purpose of-
 - i. violating the claimant’s dignity?
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
- e. If not, did it have that effect, having regard to-
 - i. The claimant’s perception of the conduct
 - ii. the other circumstances of the case, and
 - iii. whether it is reasonable for the conduct to have that effect?

Issue 3

5.3 Did the respondent harass the claimant on 13 April 2016, contrary to section 26 (1) of the Equality Act 2010, as alleged (87, 149)?

- a. Did the respondent's employees engage in the conduct described?
 - i. Did Linda Bell give the claimant a verbal warning for lateness?
- b. Was that conduct unwanted?
- c. If yes, was that conduct related to religion?
- d. If yes, did that conduct have the purpose of –
 - i. violating the claimant's dignity?
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
- e. If not, did it have that effect, having regard to –
 - i. The claimant's perception of the conduct
 - ii. the circumstances of the case
 - iii. whether it is reasonable for the conduct to have that effect?

Issue 4

5.4 Did the respondent harass the claimant on 12 May 2016 contrary to section 26 (1) of the Equality Act 2010, as alleged (88, 150)?

- a. Did the respondent's employees engage in the conduct alleged?
 - i. Did Linda Bell ask the claimant to prioritise the meeting over the mosque?
 - ii. did that amount to unreasonable "pressure?"
- b. Was that conduct unwanted?
- c. If yes, was that conduct related to religion?
- d. If yes, did that conduct have the purpose of –
 - i. violating the claimant's dignity?
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
- e. If not, did it have that effect, having regard to –
 - i. The claimant's perception of the conduct,
 - ii. the other circumstances of the case, and
 - iii. whether it is reasonable for the conduct to have that effect?

Issue 5

5.5. Did the respondent harass the claimant on 18 September 2017, contrary to section 26 (1) of the Equality Act 2010, as alleged (96, 153)?

- a. Did the respondent's employees engage in the conduct described?
 - i. Did Jeff Mills write "Humran then mentioned that due to his belief that he was being bullied/victimised he had contacted his local union rep and met up with her last Thursday"?
- b. Was that conduct unwanted?
- c. If yes, was that conduct related to religion?
- d. If yes, did the conduct have the purpose of –
 - i. violating the claimant's dignity?
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
- e. If not, did it have that effect having regard to –
 - i. The claimant's perception of the conduct,
 - ii. the other circumstances of the case, and
 - iii. whether it is reasonable for the conduct to have that effect?

Issue 6

5.6. Did the respondent victimise the claimant on 21 September 2017, contrary to section 27 of the Equality Act 2010, as alleged (153 – 154)?

- a. Did the claimant carry out a protected act within the meaning of section 27 of the Equality Act 2010, namely the claimant's written grievance of 22 September 2017?
 - i. Did the claimant's written grievance of 22 September 2017 -containing allegation (whether or not express) that the respondent had contravened the Equality Act 2010.
 - ii. was the allegation false?
 - iii. was it made in bad faith – i.e. was it made with an honest belief?
- b. Did the respondent's employees engage in the conduct described?
 - i. Did Linda Bell write to the claimant on 21 September 2017 inviting him to a meeting on 25 September 2017 to discuss further feedback on the EST course?
 - ii. was this "subjecting (the claimant) to a detriment"?
 - iii. if so, was the claimant subjected to this detriment because the claimant had done a protected act?

Remedy (if appropriate)

5.7. If the Tribunal finds the claimant's complaints are well-founded and within its jurisdiction, what, if any, amount of compensation and interest is payable to the claimant for injury to feelings (the claimant having identified the figure of £12,000 for injury to feelings)?

Findings of fact

6. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings the Tribunal made from which it drew its conclusions:

6.1. The claimant was employed by the respondent as an Intelligence Officer from 4 April 2016 having transferred from the Passport Office where he had worked as a civil servant from 2011.

6.2. As a newly recruited Intelligence Officer the claimant was required to pass the Training Assessment Period (TAP). This includes completing a Practical Training Workbook (PTW). The claimant's line manager was Linda Bell and his Practical Training Officer was Sue Bax followed by Geoffrey Mills from 30 September 2016.

6.3. On 4 April 2016 the claimant met Linda Bell, his line manager. Linda Bell introduced herself and put her hand out for the claimant to shake. The claimant said he politely declined. The claimant said that Linda Bell never asked him why he had refused to shake hands. Linda Bell said that she could not recall exactly

what was said at the time but she thought he said something like 'I'm sorry, I don't touch women'.

6.4. Linda Bell said that she was already aware that some Muslim men did not touch women due to their religious beliefs and she thought that she said something like 'that's absolutely fine' and asked the claimant to take a seat. She said she was not offended by the claimant's refusal and did not press him any further.

6.5. The claimant said that he was told by Sue Bax on 5 April 2016 that his non-shaking of hands may become an issue if, for example, he had to meet a senior police officer who was a woman. The claimant said that he explained that he was not being discourteous and it was because of his firmly held religious beliefs. He also said that he told Sue Bax that he would have expected any person in a senior position to be aware that his non-shaking of women's hands was not an act of discourtesy but was due to his religious beliefs. The claimant said he was made to feel awkward and deeply embarrassed by the manner in which this was put to him. -

6.6. A one to one meeting record dated 5 April 2016 shows that a discussion between Susan Bax and the claimant in which it was stated:

"Humran said he does not have any personal, family or health issues which stop him from taking part in the Training Assessment Period. He normally attends his Mosque for prayers on Fridays between 13:00 and 14:00. Humran said that it would not be a problem for him if he was required for surveillance or training and he could not attend but that he would not wish to miss more than three Fridays at a time. Humran prefers not to shake hands with female colleagues for religious reasons. We discussed OST training and the fact that he may be required to train with female colleagues and Humran said that this would not be an issue as physical contact would not be by choice but necessary as part of the training."

The claimant agreed that he had seen this note and acknowledged it on the computer. When giving evidence the claimant accepted the accuracy of the information in the notes but stated that this was incomplete

6.7. The claimant said that, on or around 7 April 2016, he was questioned by Sue Bax as to why he had left some keys on a desk and that it was a breach of data security. He said that he was told that this was a very serious matter. He explained to Sue Bax that had been instructed to leave them there by Geoffrey Mills as the claimant did not have a code for the secure cabinet. Geoffrey Mills said that he had no recollection of this incident whatsoever. He did not think it was plausible that he would have asked the claimant to leave the keys on the table. The claimant said that Sue Bax later apologised and said that Geoffrey Mills had confirmed what the claimant had said.

6.8. On 13 April 2016 the claimant was 8 minutes late for a prearranged meeting organised to take place with Fraud Investigation Service colleagues. They were

due to assemble and then head out to the North Shields Quay and Newcastle Airport. The Tribunal had sight of an email dated 11 April 2016 in which it was suggested that a meeting take place at 8:00 am. The claimant said that he had received conflicting information with regard to the time they should assemble. The Tribunal had sight of the email suggesting that they meet at 8:00 am. The claimant gave no coherent reason for his lateness on that occasion.

6.9. On 13 April 2016 Linda Bell gave the claimant a verbal warning for lateness. She stated that the claimant had been five minutes late on his first day at work on 4 April 2016. On that occasion the claimant said he had been held up at reception. Linda Bell had also been informed that the claimant had been 45 minutes late for his interview in October 2016. The verbal warning was for lateness and Linda Bell said that the claimant's role in the Intelligence Development Team meant that there was no room for such behaviour without a valid explanation.

6.10. A meeting was to take place on Friday, 13 May 2016. This was to be the final joint team meeting with Risk and Intelligence Service and Intelligence Development team colleagues in Leeds. The claimant said that on 12 May 2016 Linda Bell asked him in front of everyone why he was not going. He explained that on Fridays he attended Mosque for prayers. He said that Linda Bell then pressured him into going stating that it would be best for him and that he should go. He said that others were excused for not attending this meeting in York and he felt intimidated and embarrassed as this was in front of colleagues. Linda Bell said she did not have a clear memory of this meeting. She denied pressing the claimant but did encourage him to attend. She referred to the claimant having said that he would not wish to miss more than three consecutive Friday prayers at the Mosque.

6.11. The claimant received positive feedback in July 2016 following Criminal Justice foundation training. At a review on 18 July 2016 it was indicated that the claimant confirmed that he was happy with the team/line management he had been allocated and had no issues with his colleagues, manager or workload. It was also stated that he was happy with the PMR process and had started gathering evidence to support his Practical Training Workbook.

6.12. On 26 July 2016 there is a record of a one-to-one meeting with Sue Bax in which it is stated:

“Great feedback from the trainers Humran – well done.”

In the trainee comments the claimant indicated that he greatly appreciated the feedback from all parties and that he looked forward to gaining experience through practical work. In an email of the same date Linda Bell wrote to the claimant stating:

“Very good feedback, well done! Now time to put it into practice on some live cases which I'm sure you will enjoy.”

6.13. Geoffrey Mills took over as the claimant's Practical Training Officer in September 2016 as a result of Sue Bax going on extended leave. Geoffrey Mills was on the same level as the claimant. Sue Bax travelled to the United States and then Australia. The claimant sent a message to Sue Bax on 27 September 2016 indicating that he hoped she enjoyed her time away. He thanked her for "all the help support, development and baby gift." He said he hoped to see her again in the near future and said that "it's been a pleasure working with you".

6.14. There were concerns about the claimant's Practical Training Workbook. This was raised with the claimant in a number of one to one meetings. Geoffrey Mills was of the view that the claimant was not 'proactive'. On 16 January 2017 Geoffrey Mills sent an email to Linda Bell stating:

"Attached is a copy of my last one to one with Humran which was on 08/11/16. From our discussion of the evidence produced Humran has obviously done some good work but at that time he had failed to add anything to his PTW. I gave him various tasks to complete and he has started to populate his PTW but he is still way behind my other trainees. Humran is obviously capable but not very proactive and I am pretty sure that I will need to be on his back constantly once he returns from paternity leave. If you need anything else let me know."

6.15. On 16 March 2017 the claimant had an end of year PMR discussion with Linda Bell the note of this discussion shows:

"Humran and I discussed his position on the wave. I advised that I considered that he had moved up the wave slightly and now sat on the cusp of development needed and achieved. As the EOY moderation took the whole year into account he may well remain in the ND at EOY. Humran accepted this and advised that he felt the discussion we had had earlier in the year has made him look at his own performance and he could see that it needed to improve. He felt that the experience had been a positive one and he felt rejuvenated in his approach to work. He was happy and felt that he was now becoming an effective member of the team."

6.16. On 16 May 2017 the claimant sent an email to Linda Bell in which he stated:

"I know this is short but I feel it summarises our conversation.
PMR end of year review, brief summary:
Linda and I met to talk about my end of year performance review. I updated Linda regarding my PTW and casework. I am working as case officer on 2 new cases. I have 2 units in my PTW signed off. I have evidence which need to be added into my PTW which will then mean I can have more units signed off very shortly. We discussed the positive feedback from HOs regarding some of the work I have done and how to progress further next review year. We discussed where I was on the performance wave and why, which I accepted."

6.17. The claimant attended a two-week practical residential course on Enhanced Surveillance Techniques (EST). The claimant did not reach the required standard to pass the course.

6.18. On 22 May 2017 the claimant telephoned Linda Bell indicating that he was unwell and would be off sick. He informed Linda Bell that he felt the recent EST course feedback had contributed to his stress but, other than that, he had no issues at work making him stressed. The claimant remained on sick leave until 28 June 2017.

6.19. On 26 May 2017 Linda Bell sent an email to the claimant providing feedback from the EST course. She stated:

“I think the feedback is balanced and shows some evidence of very good work by you over the two weeks. I am happy to recommend that you are put forward for the next available course but we can discuss it when we are both back in the office.”

6.20. On 21 June 2017, during a ‘keeping in touch’ visit at the claimant’s home address, he informed Linda Bell of an allegation that female students had been treated more leniently in respect of the mistakes had been made on the EST course. Linda Bell carried out some investigations. She spoke with the course trainers and other attendees and found no evidence of inequality of treatment.

6.21. On 17 July 2017 Keith Nicholles raised some concerns with his line manager, Sue Quinan–Hanson with regard to the claimant’s conduct on the EST course. These concerns were provided to Linda Bell and she met with Keith Nicholles and Sue Quinan-Hanson. Sue Quinan-Hanson said that she had a responsibility to disclose the matter to Linda Bell as it was potentially gross misconduct. Keith Nicholles was asked to provide a report. Linda Bell said that Keith Nicholles was reluctant to get involved and his first draft report did not reflect the issues that had been raised and he was asked to provide a further report.

6.22. The issues raised relating to the claimant having been missing for a significant period of time during a surveillance exercise and the care of radio equipment that had been issued to him. Linda Bell felt that, due to the seriousness of the situation and issues of honesty and integrity, this had to be followed up. She contacted Internal Governance to seek advice and was advised that she should ensure, where possible, that the allegations were not malicious before taking matters further. She did not approach the claimant at this stage because she wanted to investigate matters before putting it to him.

6.23. There were concerns about the claimant’s performance. Geoffrey Mills had regular conversations with the claimant as his workbook was lacking relevant evidence.

6.24. On 7 August 2017 Linda Bell met with the claimant to discuss concerns over the quality and quantity of evidence he had gathered for his Practical

Training Workbook Linda Bell said that the claimant was a clever and capable individual and she was genuinely trying to be supportive.

6.25. On 13 September 2017 Geoffrey Mills met with the claimant for a one to one. There were discussions with regard to the claimant's progress with his PTW. In the notes it is stated:

"I did reiterate that as far as I was concerned if someone received "more development required" then the student needed to look at other options to attain the required level.

At the end of the meeting Humran argued that he was feeling victimised/bullied at the minute as he felt that he had been made to provide more PTW evidence than his other colleagues.

I stated that my main objective was to get his PTW to the required standard but if he had any concerns then these should be raised with his SO."

6.26. On 18 September 2017 a meeting took place between Linda Bell, Geoffrey Mills and the claimant. The notes of this meeting were prepared by Geoffrey Mills. They were on a template which was headed 'Criminal Justice Foundation training one to one meeting record'. Geoffrey Mills indicated that he had made the notes in this format as he was not sure of how else to record the meeting. He agreed that this was not a one to one meeting and that if there was an error in the format, it was his fault. This meeting was arranged to discuss the claimant's accusation that he was being bullied and victimised. The claimant stated that the only feedback he ever received was negative. In the notes, written by Geoffrey Mills, it is stated:

"Humran then mentioned that due to his belief that he was being bullied/victimised he had contacted his local union rep and had met up with her last Thursday. Linda then asked Humran whether he would be making an official complaint against her and to begin with Humran said that he was only be making an "informal" verbal complaint...

Humran also accused Linda of collecting information behind his back. Again, Linda calmly replied that her job was to ensure that Humran was treated the same as everyone else ...

Linda then asked Humran whether he would be making an official complaint against her and he said he was and his next step would be to contact Keith Barry...."

In the trainee comments to these notes, the claimant stated:

"I do not agree with the above fully, please note I said I felt bullied and victimised but I did not state why, so this bit of the notes, " Humran then mentioned that due to his belief that he was being bullied/victimised", is incorrect as I only give examples of where I felt victimised and bullied but I did not understand or state why."

6.27. In his witness statement for the Tribunal hearing the claimant stated that he became aware that the notes of the meeting referred to concerns about his

'beliefs' and that the notes conclude that the claimant felt issues were being raised against him due to his religious beliefs.

6.28. On 18 September 2017 Linda Bell sent an email to Keith Barry, her manager indicating that she had had a meeting with the claimant and Geoffrey Mills and that the claimant wished to make a complaint about her and other members of the team.

6.29. On 21 September 2017 Linda Bell sent an email entitled EST course to the claimant and Geoffrey Mills stating:

“Hi both

Can we get together on Monday morning pleased to discuss feedback from this course?...”

6.30. The claimant replied on 21 September 2017 stating that he thought they had already discussed feedback from this course following his return to work.

6.31. On 22 September 2017 the claimant sent an email to Keith Barry stating that he would like to raise a grievance against Linda Bell. He enclosed a lengthy grievance document with a substantial number of appendices.

6.32. Linda Bell was on annual leave on 22 September 2017 and did not see the grievance until some time after the meeting on 25 September 2017.

6.33. On 25 September 2017 a further meeting took place between the claimant, Linda Bell and Geoffrey Mills. Once again, the notes of this meeting were erroneously headed as a one to one meeting. At this meeting Linda Bell raised issues in respect of the claimant having gone missing for a protracted period whilst on the surveillance training and that this had not been mentioned in the subsequent debrief. She also went on to highlight an incident that happened in the first week of the training course in which it appeared that the claimant went missing for a two hour period. There was a further issue raised with regard to a covert radio which had been signed out to the claimant. It was concluded that Linda Bell would write up her notes surrounding these incidents and they would be passed up the management chain to Keith Barry for his thoughts and recommendations.

6.34. On 26 September 2017 the claimant went on sick leave and did not return until 10 January 2018.

6.35. The claimant did not successfully complete his Training Assessment Period. He did not return to the Intelligence Development Team but he remains employed by the respondent.

6.36. A review of the claimant's Practical Training Workbook was carried out by a Senior Investigation Officer, Jenny Ashton. On 26 January 2018 she provided a conclusion that the claimant's Practical Training Workbook had not been completed to the required standard.

6.37. The conclusion of the claimant's grievance was that no evidence of racial or religious discrimination had been found.

6.38. The claimant appealed. The appeal was not upheld and it was stated this was because no new evidence was provided which either suggested the original decision was flawed or to support the claim that the claimant had been treated differently due to his race and/or religion.

6.39. On 18 January 2018 the claimant presented a claim to the Employment Tribunal. He claimed discrimination on grounds of race and religion or belief.

The Law

Time limits

7. Section 123 of the Equality Act 2010 states:

(1) ...Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

...

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) a failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

8. The Court of Appeal made it clear in **Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686**, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an "ongoing situation or continuing state of affairs" as

opposed to “a succession of unconnected or isolated specific acts”. It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

9. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the Tribunal that it should do so, and *'the exercise of discretion is the exception rather than the rule'* (**Robertson v Bexley Community Centre [2003] EWCA Civ 576 per Auld LJ at para 25**).

10. The Tribunal's discretion to extend time under the 'just and equitable' formula is similar to that given to the civil courts by section 33 of the Limitation Act 1980 for extending time in personal injury cases (**British Coal Corpn v Keeble, [1997] IRLR 336**). Under section 33, a court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular:

1. The length of and reasons for the delay;
2. The extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time; the conduct of the respondent after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant;
3. The duration of any disability of the claimant arising after the date of the accrual of the cause of action;
4. The extent to which the claimant acted promptly and reasonably once he knew of his potential cause of action. Using internal proceedings is not in itself an excuse for not issuing within time see **Robinson v The Post Office** but is a relevant factor.
5. The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

11. Time limits are short for a good purpose- to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant The Tribunal can make a constructive recommendation. Left unresolved, even minor omissions by employers of ten have devastating consequences which it is too late to remedy in that way.

Burden of Proof

12. Section 136 of the Equality Act 2010 states:

“(1) This Section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –

(a) An Employment Tribunal.”

13. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** (a sex discrimination case decided under the old law but which will apply to the Equality Act) and approved again in **Madarassy v Normura International plc [2007] EWCA 33.**

14. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

15. A claimant cannot rely on unreasonable treatment by the employer as that does not infer that there has been unlawful direct discrimination; see **Glasgow City Council v Zafar [1998] ICR 120**. Unreasonable treatment of itself does not shift the burden of proof. It may in certain circumstances be evidence of discrimination so as to engage stage 2 of the burden of proof

provisions and required the employer to provide an explanation. If no such explanation is provided there can be an inference of discrimination **Bahl v Law Society** [2004] IRLR 799.

Harassment

16. Section 26 of the Equality Act provides

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

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

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

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

17. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

18. In the case of **Grant v HM Land Registry** [2011] IRLR 748 the Court of Appeal said that:

"Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

19. In the case of **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336 the EAT stated

"We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other

grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

Victimisation

20. Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

- (a) Bringing proceedings under this Act;
- (b) Giving evidence or information in connection with proceedings under this Act;
- (c) Doing any other thing for the purposes of or in connection with this Act;
- (d) Making an allegation (whether or not express) that A or another person has contravened this Act.

(3) 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.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

21. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

“The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so”.

22. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

23. To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has

been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says “Detriment does not ... include conduct which amounts to harassment”. The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 is applicable.

24. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent’s state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 and **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen’s Metropolitan Borough Council v Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors** EAT0086/10 the EAT said that:

“There would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable.”

25. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan v Agnew** [1994] IRLR 61. In **Owen and Briggs v James** [1982] IRLR 502 Knox J said:-

“Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination.”

26. In **O’ Donoghue v Redcar and Cleveland Borough Council** [2001] IRLR 615 the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

27. The Tribunal had the benefit of written and oral submissions from Mr Crammond on behalf of the respondent and oral submissions from Mr Baksh on behalf of the claimant. These submissions were helpful. They are not set out in detail but both parties

can be assured that the Tribunal has considered all the points made even where no specific reference is made to them.

Conclusions

Time limits

28. The claim was originally presented to the Tribunal on 18 January 2018. The named respondent was Linda Bell and, on 19 January 2018, the claim form was amended in order that the claim was against the respondent. Date A for the ACAS Early Conciliation process was 13 December 2017 and date B was 18 December 2017. This meant that claims in respect of allegations of discrimination which occurred on or before 14 September 2017 were presented out of time and the Tribunal would have no jurisdiction to hear those claims unless it considers it just and equitable to extend time.

29. The first four allegations are out of time. There are allegations of harassment in respect of dates at the commencement of the claimant's employment on 4 April 2016, 7 April 2016, 13 April 2016 and 12 May 2016.

30. There was a substantial length of time between those allegations and the fifth allegation which is in respect of an allegation of harassment on 18 September 2017 and the sixth allegation which is an allegation of victimisation on 21 September 2017. This is a gap of approximately 15 months. The allegations are in respect of different types of acts against different people. The Tribunal is not satisfied that there was evidence to establish that these were allegations of conduct extending over a period of time or that they were evidence of a continuing discriminatory state of affairs. The Tribunal is not satisfied that the alleged incidents were linked to each other and they were allegations of a succession of unconnected or isolated specific acts.

31. The Tribunal has gone on to consider whether it is just and equitable to extend time. The Tribunal has had regard to the guidance given by the EAT in *British Coal Corporation v Keeble*. With regard to the length of time and reason for the delay, the claimant said that he was a trainee and new to the Department and wanted to give a good impression and succeed in the job.

31. The Tribunal has gone on to consider whether it is just and equitable to extend time. The Tribunal has had regard to the guidance given by the EAT in *British Coal Corporation v Keeble*. With regard to the length of time and reason for the delay, the claimant said that he was a trainee and new to the Department and wanted to give a good impression and succeed in the job.

32. The claimant claims to have kept contemporaneous notes in a diary. However, it was well over a year before he raised the grievance. The claimant had the benefit of trade union advice at this time. He gave no indication that he had any issues with his managers. Indeed, he sent positive indications that he had no such issues and indicated that he was happy with the team and his line management. It is apparent that the claimant was capable of raising the issues with his managers. There was no suggestion that he was impeded in his ability to bring a claim. He was not under any disability with regard to his ability to bring a claim. The extension of time which the claimant is seeking is lengthy being well over one year.

33. The balance of prejudice is substantially against the respondent. The respondent's witnesses made it clear on a number of occasions that they were struggling to recollect issues from a significant period of time before. The claimant also said, on at least one occasion, that he could not remember what had been said. One of the witnesses against whom harassment is alleged had left the respondent for a career break abroad. Documents had been destroyed or gone missing.

34. The first four allegations of harassment are out of time and the Tribunal is not satisfied that it is just and equitable to extend time.

35. However, the Tribunal has gone on to consider each allegation as if it was issued within time.

Issue 1

36. The first allegation is that Sue Bax informed the claimant that not shaking hands may be an issue and that she asked him about whether his attendance at his place of worship would affect his work.

37. This was an entirely appropriate discussion in order to accommodate his requirements. Also, with regard to the shaking of hands and an indication that this may become an issue if he was to meet a senior police officer who was a woman. The claimant said that his initial meeting with Linda Bell had been awkward but that was not said to be an act of harassment. It was appropriate for it to be discussed as an issue. Also, the question of attending the Mosque on a Friday afternoon was appropriate to discuss. The respondent was, once again, considering ways to accommodate the claimant's requirements. He was allowed to rearrange his hours and the claimant indicated that it would not be a problem for him if he was required to carry out duties on a Friday but he would not wish to miss three Fridays in a row.

38. The claimant did not establish that this was unwanted conduct that had the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. He made no complaint at the time. The circumstances were such that it was an appropriate and reasonable discussion. It was related to the claimant's religion but it was submitted, on behalf of the respondent, that it related to accommodating the claimant in the workplace and not related to religion in the true and proper sense of the wording within section 26 of the Equality Act 2010. The Tribunal accepts this submission. Also, it was not established that this was unwanted conduct.

39. Taking into account the claimant's perception of the conduct, the other circumstances of the case and whether it was reasonable for the conduct to have the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, the Tribunal is not satisfied that it did. The Tribunal considers that the claimant is an intelligent man and it is clear that this conversation would not have the purpose or effect of harassment.

40. The claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that there was an act of harassment on the grounds of the claimant's race or religion. The burden of proof did not shift to the

respondent. If it had so shifted, the respondent has established a non-discriminatory reason for the conduct, that of an entirely appropriate discussion in order to accommodate the claimant's requirements.

Issue 2

41. With regard to the second issue, this was an allegation that Sue Bax asked why the keys had been left on a desk by the claimant and said that the claimant was in breach of data security. This happened within the first few days of the claimant's employment. This was an entirely appropriate act of a manager and there was no evidence that the manner in which it was done was inappropriate or unwanted conduct that could amount to harassment. The comments did not relate to the claimant's race or religion. The claimant said that Sue Bax asked Geoffrey Mills about the situation and then returned to apologise to the claimant.

42. The conduct was not shown to have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The Tribunal has taken into account the claimant's perception of the conduct and the other circumstances of the case. The claimant did not dispute that he left the keys on the desk or that this could amount to a breach of security. In all the circumstances it was not reasonable for the conduct to have the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that there was an act of harassment on the grounds of the claimant's race or religion. The burden of proof did not shift to the respondent. If it had so shifted then the Tribunal is satisfied that the respondent has shown that the conduct was entirely appropriate and did not amount to harassment related to the claimant's race or religion.

Issue 3

43. Linda Bell did give the claimant a verbal warning for lateness on 13 April 2016. Clearly this was unwanted conduct but it was a warning for lateness. The conduct was not related to the claimant's race or religion. The claimant did not dispute that he was late on that day. He merely said that he was confused around the time to attend. The Tribunal is satisfied that Linda Bell had a perception that the claimant had a pattern of lateness and it was entirely appropriate for her to give the claimant a verbal warning in those circumstances. It did not have the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant did not challenge the warning or raise a grievance. Taking into account the claimant's perception and the other circumstances of the case it was not reasonable for the conduct to have that effect.

44. The claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that there was an act of harassment on the grounds of the claimant's race or religion. The burden of proof did not shift to the respondent. If it had so shifted then the Tribunal is satisfied that the respondent has shown that the conduct was entirely appropriate and did not amount to harassment

related to the claimant's race or religion or belief. The verbal warning was as a result of Linda Bell's concern about the claimant's lateness.

Issue 4

45. This was an incident in which Linda Bell, the claimant's line manager, indicated that it would be beneficial for the claimant to attend a meeting on Friday, 13 May 2016. The claimant did not have a specific agreement that he would be attending the Mosque on that specific Friday. The claimant said that Linda Bell asked him in front of everyone why he was not going. Linda Bell said that it was after a staff meeting. Others were present in the room and she agreed that it could have been overheard but it was a discussion between Linda Bell and the claimant. The claimant said that he was pressured into going and that Linda Bell said that it would be best for him and that he should go to the meeting. The circumstances of the discussion were reasonable and appropriate. Linda Bell was discussing attendance that she felt would be beneficial to the claimant.

46. There was nothing that would amount to unreasonable pressure. The claimant had indicated that he could miss going to the Mosque if it was required but not more than three in a row.

47. There was nothing that amounted to pressure. The claimant said that it was indicated that it would be best for him and that he should go. The Tribunal does not accept that it was otherwise than reasonable for Linda Bell to indicate to the claimant that it would be best for him to attend.

48. The Tribunal is not satisfied that this was unwanted conduct relating to the claimant's race or religion.

49. The conduct did not have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and taking into account the claimant's perception and the other circumstances of the case it was not reasonable for the conduct to have that effect.

50. The claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that there was an act of harassment on the grounds of the claimant's race or religion. The burden of proof did not shift to the respondent. If it had so shifted then the Tribunal is satisfied that the respondent has shown that the conduct was entirely appropriate and did not amount to harassment related to the claimant's race or religion or belief. Linda Bell indicated to the claimant that it would be best for him to attend the meeting which she felt would be beneficial for the claimant.

Issue 5

51. This allegation relates to the misinterpretation of the note created by Geoffrey Mills. It is quite clear that relevant part of the note of the meeting on 18 September

2017 does not relate to the claimant's religious belief. The evidence of Geoffrey Mills was entirely clear. The claimant misunderstood the note which referred to the claimant's perception that he was being bullied and victimised.

52. The conduct did not have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and, taking into account the claimant's perception and the other circumstances of the case, it was not reasonable for the conduct to have that effect. The claimant said that he agreed that he raised concerns about being bullied and victimised but there was no reference to his beliefs and he said that this was the prejudicial conclusion of Geoffrey Mills. This is a clear misunderstanding on the claimant's part and it is not reasonable taking into account the claimant's perception and the other circumstances of the case for the conduct to have the effect of harassment.

53. The claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that there was an act of harassment on the grounds of the claimant's race or religion. The burden of proof did not shift to the respondent. If it had so shifted then the Tribunal is satisfied that the respondent has shown that the conduct was entirely appropriate and did not amount to harassment related to the claimant's race or religion. The claimant misunderstood the note of the meeting which was not a reference to the claimant's religious beliefs.

Issue 6

54. This issue is in relation to an allegation of victimisation pursuant to section 27 of the Equality Act 2010. The protected act relied upon and identified in the agreed issues is the claimant's grievance of 22 September 2017.

55. This is the protected act identified in the agreed list of issues and set out in the claimant's witness statement. It was not alleged that Linda Bell believed the claimant had done or may do a protected act prior to the presentation of the grievance on 22 September 2017.

56. The meeting of 18 September 2017 is not relied on as a protected act. Indeed, it is clear from the claimant's witness statement that he raised concerns about being bullied/victimised but he did not state at that point that it was due to his belief. In respect of issue 5 the claimant said that there was no reason for any reference to his beliefs when he had not raised any and this was simply the prejudicial conclusions of Mr Mills. As set out above, this was a misunderstanding on the claimant's part but he was clear that he had not raised complaints because of his beliefs in that meeting.

57. The claimant's case is that he submitted a formal grievance against Linda Bell on 22 September 2017 claiming that he had been subject to discrimination and that on 25 September 2017 she summoned him to a meeting.

58. Linda Bell summoned the claimant to a meeting on 21 September 2017. This was before the alleged protected act and Linda Bell was unaware of the protected act raising an allegation of discrimination until after the meeting on 25 September 2017. It was submitted on behalf of the respondent that it relied on section 27 (3) of the Equality Act 2010 on the basis that the claimant made a false allegation in bad

faith which is not a protected act. The claimant, who had trade union assistance at the time his grievance, could not reasonably and honestly have believed that the allegations he was making amounted to harassment pursuant to section 26.

59. The claimant raised matters dating back 17 months prior to the grievance. He did not complain or raise a grievance at the time of the alleged conduct. He made positive comments about his managers in the meantime. He made allegations of sex discrimination in respect of the EST course which shehe did not pursue. He said that he had been informed that there was something going on in the background with regard to his conduct around the EST course and it was only after this that the claimant raised his grievance.

60. It was submitted, that, in reality, the grievance was a reaction to his knowledge that serious issues were going to be raised in respect of the EST course and to deflect those issues and protect the claimant. The allegations were not ones that the claimant honestly or genuinely believed.

61. The Tribunal is satisfied that the allegation was made in bad faith. The claimant did not believe that the allegations were true. He was aware that there were legitimate criticisms of his conduct at the EST course and that these issues were going to be raised with him.

62. The detriment alleged is that Linda Bell wrote to the claimant inviting him to a meeting on 25 September 2017, however. Linda Bell wrote to the claimant on 21 September 2017. The alleged detriment was prior to the protected act relied upon.

63. The notes of the meeting on 25 September 2017 did not make any reference to the grievance and Linda Bell was not aware of a grievance having been made in respect of allegations of discrimination. The issues raised were because of genuine concerns about the claimant's conduct on the EST course and followed some informal fact-finding investigations by Linda Bell before matters were raised with the claimant. These were entirely proper issues to be considered in view of the information Linda Bell had received. The reason for the invitation to the meeting was as a result of those concerns and not as a result of the claimant's grievance of 22 September 2017.

64. The claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that there was an act of victimisation. The burden of proof did not shift to the respondent. If it had so shifted then the Tribunal is satisfied that the respondent has shown that the conduct was entirely appropriate and did not amount to victimisation because the claimant had done a protected act.

65. The claimant said, on a number of occasions that he had been the only Muslim member of the team and it was suggested that this was the reason he said that he had been bullied and victimised. The Court of Appeal In the case of **Madarassy** made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

66. The claimant has not established facts from which the Tribunal could conclude that the respondent had discriminated against him. The burden of proof has not shifted to the respondent. If it had shifted then the respondent has shown that the treatment of the claimant was in no way related to his race or religion or belief. There were clear non-discriminatory reasons shown for all the respondent's actions in respect of the claimant.

66. A substantial amount of the evidence of the claimant and the cross examination of the respondent's witnesses was with regard to fairness and the failure to follow procedures. Even if this had been established, it is not sufficient to shift the burden of proof. Unreasonable treatment of itself does not shift the burden of proof. All discriminatory treatment is unreasonable but not all unreasonable treatment is discriminatory. There was no substantial failure to follow procedures or unfairness established. In any event, if there had been any such unreasonableness or failure then it was not such as the Tribunal could conclude that it was discriminatory treatment.

67. In all the circumstances, these claims of harassment and victimisation related to race and religion or belief are not well-founded and are dismissed.

**Employment Judge Shepherd
27 September 2019**