# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
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| **Mr J Hilaire** | **v** | **Luton Borough Council** |

**Heard at**: Watford **On**: 17, 18, 19, 20, 21, 24, 25, 26, 27 June 2019 and 23, 24, 25, 26, 27 September 2019

**Before:** Employment Judge Smail
Miss J McGregor
Mrs I Sood

**Appearances**

**For the Claimant:** In Person
**For the Respondent:** Mr N Caiden (Counsel)

# RESERVED JUDGMENT

1. The claimant was disabled by reason of depression from September 2013 and the Respondent had at least constructive knowledge of that fact from then onwards.

2. The claimant's claims of race and disability discrimination are dismissed.

3. The claimant's claim of unfair dismissal is dismissed.

4. The claimant's claim for holiday pay has been agreed between the parties.

# REASONS

1. The Claimant brings claims of:

   1.1 Direct race discrimination. The Claimant is of black Caribbean ethnic origin.

1.2 Failure to make reasonable adjustments. The disabilities relied upon are depression and/or arthritis.

1.3 Direct disability discrimination.

1.4 Unfair redundancy dismissal.

2. The Equality Act claims are set out in the appendix attached to this Judgment. The appendix has developed to record the issues that remain for determination following preliminary hearings. The appendix is an essential part of this Judgment and must be read alongside it.

**APPLICATION MADE BY CLAIMANT TO HAVE THE EMPLOYMENT JUDGE RECUSE HIMSELF**

3. On the first morning of the full merits hearing, the Claimant applied to have Employment Judge Smail, that is to say myself, recuse himself because he presided over the preliminary hearing that took place on 30 January 2019. This is the judgment of the full Tribunal on that application. At the preliminary hearing I made the following judgment:

3.1 The claims in 3331275/2018 are struck out as having no reasonable prospects of success.

3.2 Without undermining the effect of order number 1, the reconsidered acceptance date for the 2018 claim form was 3 January 2019.

3.3 I ordered that the definitive list of claims and issues that will be determined at the full merits hearing in the present case is that contained in the schedule before Employment Judge Sigsworth at the preliminary hearing on 9 January 2018 with one addition made at that hearing. (That is the present appendix.)

3.4 That the Respondent's application for costs against the Claimant was refused.

4. There were detailed reasons set out over the subsequent ten pages. So the Claimant's submission is because I decided those matters, in particular striking out the 2018 claim, it is not appropriate for me to sit on these proceedings. It is implied in the application that there would be some ostensible or apparent bias.

5. We reject this application. Scanning the reasons over the 10 and 11 pages, there are no views expressed - not even preliminary views expressed at all - on the subject matter of this claim in respect of the issues which are to be determined over the next 9 days. There was a discreet matter as to whether the 2018 claim raised any new matters or raised matters which had been withdrawn in the course of the proceedings and for the very detailed reasons set out in the judgment, not the least the fact that the pensions contract claim

had been clearly withdrawn so as to preserve the option of the Claimant suing in the County Court, it was my judgment that there was nothing new in those proceedings, and accordingly to resurrect matters that had been dealt with previously in the 2018 claim form amounted in effect to abuse of process or offended the rule in Henderson v Henderson meaning it had no reasonable prospects of success. That matter is very different from forming any judgment, and I had no provisional views whatsoever, on the substantive allegations that fall to be determined in these proceedings.

6. At the preliminary hearing on 30 January 2019 I had to make a decision as to what version of the issues would be those issues determined at this hearing and I went into considerable detail to track the history of the matter to establish that the list of issues ruled as being the list of issues for this hearing (now the appendix) were in fact the result of work done by Mr Jackson, the Claimant's solicitor who had expressly sought to reflect the issues in the ET1 in the list of issues. There have been one or two amendments to that list of issues to reflect matters that have been withdrawn or amendments successfully made but the fact remains that the schedule (now the appendix) is the Claimant's schedule, the Claimant's solicitor, Mr Jackson, having prepared it, ostensibly to reflect the claim form. There is no distinction between the claim form, on the one hand, and the list of issues, on the other. On the contrary, Mr Jackson, the Claimant's then solicitor drew up the list of issues so as to reflect the issues in the case as best put.

7. But those rulings that I made on 30 January 2019, in no way pre-judge or impact upon the merits of the Claimant's claim and there is no basis upon which I could or should recuse myself and on that basis the Claimant's application is rejected.

8. I should add that the Claimant has appealed Order 1 of the preliminary hearing judgment. His appeal did not pass the sift at the Employment Appeal Tribunal. He took up the option of a rule 3.10 hearing to try and persuade the Employment Appeal Tribunal that the President of the Employment Appeal Tribunal, Mr Justice Choudhury's initial view that the appeal is inarguable was wrong, and he has been successful in that regard, as we learned when deliberating on the merits of these claims after all the evidence was heard and submissions made. However, the appeal did not proport to encompass Order 3 - the judgment on what would be the definitive list of issues. There is no appeal up and running in respect of that matter and even if there were, that would not be a basis upon which I should recuse myself. I had no preliminary views on the substantive issues.

9. So, for all of those reasons, the Tribunal remained seised of the issues consisting of the three of us.

10. In his application for recusal, the Claimant also asked for the proceedings to be recorded. There is no basis in this case for any diversion from the usual position which is that proceedings are not recorded. Accordingly, the proceedings will not be recorded.

## VICTIMISATION AND WRONGFUL DISMISSAL

11. The Claimant withdrew his claims of victimisation and wrongful dismissal by e-mail dated 6 June 2014, that is why they do not figure in the appendix issues.

## PROCEDURAL MATTERS AROUND SUBMISSIONS

12. Concluding submissions were originally due to be made on 27 June 2019. The Claimant was unwell and did not attend. The Tribunal then ordered that submissions would take place on 23 September 2019 and the Tribunal would deliberate over the following 4 days. The Claimant was to send in written submissions by 5 July 2019, the Respondent had emailed theirs to the Claimant and the Tribunal on 27 June 2019. The Claimant sent in his submissions by 5 July 2019 and withdrew those sent in on 28 June 2019. There was no difficulty with any of this.

13. Oral submissions, including from the Claimant, duly did take place on 23 September 2019 and the Tribunal deliberated for the rest of the week
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14. On 25 September 2019 the Claimant emailed in a witness statement dealing with the Respondent's inclusion in the original bundle of the 2005 version of the disciplinary, policy and procedure rather than the 2011 version. The 2011 version was added in the course of the hearing. The hearing was adjourned early on 21 June 2019 and reconvened on 24 June 2019 to enable the Claimant to take some rest to deal with the pressures of the case. Those included pressures around this documentation. The change in documentation, in any event minor in substance, did not prevent the Claimant from putting his case over the remainder of the hearing. It did not prevent the Tribunal from ascertaining the relevant facts. The facts in this case are comprehensively documented. Sending in the statement during the period of the Tribunal's deliberation was surprising bearing in mind it was not sent in between the adjournment of the hearing on 27 June 2019 and its reconvening on 23 September 2019, and not raised in oral submissions. The statement was nevertheless read.

15. On 26 September 2019 the Claimant sent in a further document entitled 'Unprofessional/dishonourable/malicious behaviour by the Respondent'. This was read. The Claimant complained that the Respondent had sent in '625' pages of legal authorities by emails dated 18 and 19 September 2019 and in paper form on the day of oral submissions. He told us in this statement that the Respondent had directed him to new authorities which he spent the weekend of 21 and 22 September reading. He suggested this was all designed to distract him from his oral submissions. The document included a list of matters whereby the Claimant asserted the Respondent had sought to disadvantage him procedurally. Again, it was surprising to the Tribunal to receive this document in the course of deliberations when these matters were not raised orally on 23 September 2019. The Claimant had sent in his written submissions by 5 July 2019.

16. The issues in this case do not turn on case law interpretation of the statutory provisions. The issues are all factual. The facts are very substantially documented. The Claimant has put his version of the facts before the Tribunal. The Tribunal has been able to make comprehensive findings of facts and has not, for example, been disadvantaged by the passage of time. There has been no evidential prejudice to the Claimant.

## THE LAW

17. Direct discrimination is defined by section 13, sub-section (1) of the Equality Act 2010: a person A discriminates against another, B, if because of a protected characteristic, A treats B less favourably than A treats or would treat others. In this case, two protected characteristics are relied upon. The first is race, the Claimant being of black Caribbean ethnic origin. The second is disability in connection with allegation number 36 only.

18. By section 23, sub-section (1), on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case. By sub-paragraph (2), the circumstances relating to a case include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability. What this means in the case of direct discrimination on the grounds of disability is that the Claimant and the comparator's abilities must have no material difference. The point being that the disabled person and the non-disabled person have the same or similar abilities but one is stigmatized as disabled.

19. Section 20 relates to the duty to make reasonable adjustments. By sub-section (3), the first requirement of the duty is a requirement, where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. Substantial means more than minor or trivial.

20. By schedule 8, paragraph 20 of the 2010 Act, sub-paragraph (1), A is not subject to a duty to make reasonable adjustments if A does not know and could not reasonably be expected to know that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in section 20 of the Act.

21. Burden of proof is important in disability cases. By section 136, sub-section (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. By sub-section 3, sub-section 2 does not apply if A shows that A did not contravene the provision. What this means in practice is that the Claimant must show a prima facie case of discrimination; where such a case is shown, the burden transfers to the Respondent to show that discrimination played no role whatsoever; Igen v Wong 2005, EWCA CIV 142.

22. Time limits in discrimination cases are dealt with under section 123 of the Act. By sub-section (1) proceedings on a complaint may not be brought after the end of a) the period of three months starting at the date of the act which the complaint relates or b) such other period as the Employment Tribunal thinks just and equitable. By sub-paragraph (3)(a), conduct extending over a period is to be treated as done at the end of the period and (b) failure to do something is to be treated as occurring when the person in question decided on it.

23. By section 94 of the Employment Rights Act 1996 an employee has the right not to unfairly dismissed by his employer. By section 98 (1), it is for the employer to show the reason or the principal reason for the dismissal. By sub-section (2), redundancy is a potentially fair reason. By sub-section (4), where the employer has shown a potentially fair reason, the determination of the question, whether the dismissal is fair or unfair having regard to the reason shown by the employer, (a) depends on whether in the circumstances including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating as a sufficient for reason for dismissing the employee and (b) shall be determined in accordance with equity and the substantial merits of the case.

24. Redundancy is defined in section 139 of the 1996 Act. By sub-section (1), for the purposes of the Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to be the fact that the requirements of the business (i) for employees to carryout work of a particular kind; or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

## FINDINGS OF FACT ON THE ISSUES

25. It is sensible to start the Tribunal's findings allegation 3. We make findings on the events relevant to the allegations in the case. Specific conclusions on specific allegations are to be found under the conclusions section.

<u>The instruction to work at Hockwell Ring</u>

26. On 15 June 2007, the Claimant signed a change in particulars of employment. These superseded the relevant terms in his written statement of particulars dated 1 January 2005. As from 1 June 2007, the Claimant's place of work was described as follows:

> "from 1 June 2007 you will no longer be working at Welbeck Youth Centre and you will be relocated to Halyard Youth Centre on a permanent basis.

The other general conditions of service remained unchanged. Halyard subsequently became known as Barnfield West, as we understand it.

27. On 25 October 2010, the Respondent proposed a change in hours backdated to 1 April 2009 in respect of the Claimant's two positions of Youth Support Worker. One was for nine hours at 48.95 weeks, the other was for nine hours at 45.23 weeks. The idea was that there would be a merger of the two contracts. The Respondent wanted a meeting with the Claimant about that on 2 November 2011. The meeting was arranged by Sarah Lawlor, the team manager. The Claimant did not attend that meeting and one was rescheduled for 9 November 2011. The invitation letters record that the Claimant was entitled to be represented by a Trade Union, friend or colleague. By letter dated 9 November 2011, the Claimant stated he was only available for meeting within his contracted hours. The meeting was re-arranged to 25 November 2011 at 2 o'clock. The meeting was to discuss the merger of the two contracts and also roles and responsibilities, and the reporting procedure whilst the Claimant's then line manager was not in service. The Respondent also wanted to discuss potential changes to particulars.

28. The individual meeting was to take place on 25 November, and a team meeting was held on 18 November 2011. The Claimant was in attendance. Welbeck Youth Centre had changed its name to The Barnfield West Academy. A problem had arisen in terms of access to the youth zone. Access was only available to young people through the main entrance. The main entrance was closed at the time of the sessions the Claimant was to attend. The proposal was for the session to be held at Hockwell Ring instead. It was proposed to start on Monday 21 November, that is to say, the immediately following Monday. The Claimant was to attend those sessions, as were two of his colleagues. The minutes of the team meeting on 18 November 2011 suggest that the new timetable of youth work sessions was shared and discussed and agreed by all members of staff present. The Claimant takes issue with that.

29. The Claimant did not attend on 21 November. He advised them at 18:02 that he would not be at the Hockwell Ring that night. He was telephoned the following day to enquire why he was not at work and said that he had not been consulted about the changes and was not prepared to discuss it at that time. The Claimant was due to start at 18:00 on 21 November. The Claimant had let it be known to other colleagues that he was a support youth worker and was only happy to perform that role.

30. It had been Sarah Lawlor who had attempted to make contact with the Claimant about his apparent absence at Hockwell Ring the following day. The assistant branch secretary of Unison contacted Sarah Lawlor to say that their member had objected to the fact that he had received a phone call on one of his days off. It was noted that a meeting had been arranged for 25 November when the Claimant would attend. The union asked Sarah Lawlor to refrain from trying to discuss matters with the Claimant until then. Unison indicated its intention to attend the meeting. Sarah Lawlor replied to Unison making her point that the Claimant's non-attendance as a youth support worker had put young people and staff at potential risk that day. A text message had also been received on 23 November saying that the Claimant had a doctors' appointment next week and would not be at work. Sarah Lawlor wanted to clarify whether he would be off sick and if so for how long.

31. The meeting did take place on 25 November 2011. Sarah Lawlor and Simon Ashley attended the meeting on behalf of the Respondent. In a letter dated 1 December 2011, it was recorded that they discussed what they described as the Claimant's unauthorised absence from the Hockwell Ring session on Monday 21 November. The Claimant had given the reason for the absence as not being consulted to the change of session. The Respondent enclosed a copy of the team meeting where the new timetable was shared, discussed and agreed. Sarah Lawlor stated that as the Monday Hockwell Ring session was agreed at the team meeting, the Claimant's non-attendance was a refusal of a reasonable management request. It was suggested that the Claimant had confirmed that he had refused a reasonable management request. The Claimant had queried his place of work and Ms Lawlor suggested that his contract stated:

> "all part-time youth worker appointments are on a town-wide basis and as such you may be required to work at any club or centre in order to meet the demands of this service"

32. She noted his complaint that he had been contacted on a rest day. At the meeting, the Respondent had tried to establish why he had refused to attend work. The Claimant went on to request stress leave. He was told that he could not request stress leave without a doctor's note. It seems that the meeting was not an easy one because at the end of the meeting the Claimant was asked to consider his position carefully. He was asked to confirm if he would be off sick or would be reporting to work by telephoning on the morning of Monday 28 November. The meeting outcome would be discussed by Simon Ashley and HR with a view to whether the matters discussed needed to be dealt with formally via HR policy and procedures.

33. On 30 November 2011 the Claimant obtained a 2 weeks sick note for depression owing to stress at work. Ms Lawlor referred him to occupational health.

34. On 1 December 2011, Ms Lawlor approached HR for advice on stopping the Claimant's pay. On 1 December at 12:33 she described the Claimant as having been absent without permission from 21 November. She then, the following day informed HR about the sick note from 30 November 2011 for two weeks. HR confirmed the position on 22 December 2011 that the Claimant should be paid from 30 November 2011 as his absence was covered by a doctor's certificate. The period from 21 November to 29 November, however should be unpaid. The outstanding salary was to be paid by BACS as soon as possible.

35. Ms Lawlor wrote to the Claimant on 1 December 2011 to say she had been appointed as the investigating manager in respect of an allegation of misconduct, namely that the Claimant failed to report for a pre-arranged youth work session at Hockwell Ring on 21 November 2011. The alleged misconduct was disobedience to orders in the form of a refusal to obey a reasonable management instruction.

36. Sita Hall also wrote to the Claimant on 1 December 2011. The letter was entitled "absent without permission". She stated that he had been absent from work since Monday 21 November and during the period of absence he had failed to comply with the absence reporting procedures. Sita Hall was the Claimant's interim line manager. She reported to Sarah Lawlor. She stated that she tried to contact him on the phone with no success. It seems that the Claimant did not attend an investigatory meeting on Wednesday 14 December. Accordingly, Ms Lawlor wrote a letter that day, inviting him to a meeting on 5 January 2012.

37. On 23 December 2011, the Claimant wrote a grievance complaining about the instruction to remove location and change the times of hours worked at Hockwell Ring. Secondly, about the fact that his December salary was stopped without his knowledge or consent. A third element to the grievance related to unpaid salary for training courses attended and completed during summer 2011. He was claiming being owed 15 – 17 hours salary.

38. The investigatory meeting was rescheduled to Wednesday 11 January 2012. The Claimant suggested that he had not sufficient notice to arrange union representation.

39. On 5 January 2012, Ms Lawlor acknowledged that there may be some confusion regarding the Claimant's status with HR. She confirmed that the Claimant was off sick from only 21 November, a three-hour session, needed to be deducted from his pay.

40. On 10 January 2012, Simon Ashley, the integrated services manager, to whom Ms Lawlor reported, decided that the first two grievance matters were closely related to the disciplinary investigation which had already begun. In keeping with the policy, he decided, and he consulted HR on this, that there was no basis for hearing the grievance 1 and 2 before dealing with the disciplinary matter. That did not impact on the third element of the grievance. The relevant policy stated that it would only be in exceptional circumstances that existing disciplinary proceedings would be suspended pending a grievance raised during the course of the disciplinary proceedings. The clear rationale for this is to ensure that grievances cannot be used to derail otherwise legitimate disciplinary processes and appeals.

41. The investigatory interview under the disciplinary proceedings took place with the Claimant on 11 January 2012. The Claimant had a union representative. Present at this was the Claimant, his union representative, Sarah Lawlor, Donna Shaw of HR and Rhana Shar, a note-taker. The meeting was conducted by Sarah Lawlor, assisted by Donna Shaw. The allegation related to the failure to report between 6 and 9pm at Hockwell Ring on 21 December 2011. He claimed to be based at Barnfield West Academy being with the Council for 21 hours, and was contracted 18 hours a week. He answered what his normal pattern of work was. On Mondays he worked with young people who disrupt classes (1 – 4pm, 7-10pm except in the winter when it is 6:30pm – 10pm because it gets dark earlier.) On Tuesdays through to Fridays he worked at the lunch club and then the after-school club, also known as the twilight

session (3-6pm). He agreed he was expected to be flexible to meet the demands of the service and that he attended the meeting on 18 November. He was asked to go to Hockwell Ring at that meeting, Sita had phoned him at work and told him that he was going to have to start Hockwell on the following Monday. He did speak with the union, he did not raise any matters with the management. The Claimant said he should not be asked to comply with the timetable in front of other members at the team meeting. The Claimant was asking why he should start work at 6pm. He did not want to discuss his issues in front of the rest of the team.

42. He accepted that he did not raise any concerns regarding work patterns and change of working pattern with any members of the West team. He recalled being invited to meetings on 2 and 9 November to discuss roles and responsibilities. He did not attend them because they were outside of his working hours. It was not his working time because it was his lunch break. The Claimant contested that his contract said he needed to be flexible to meet the demands of the service. He said he could not attend at 6pm because he had to pick up the kids at 5:30pm. He was in the habit of working 6:30pm – 9:30pm twilight sessions. He used to work from 6pm but the child's mother had gone to university. He claimed that he enquired what was happening with the grievances that he had lodged. Simon Ashley and Hillary Griffiths, he was informed by the Respondent, had discussed the investigation and the disciplinary and had requested that Ms Lawlor continued with the investigation. She was simply following instructions, she said. His grievance would be dealt with as a separate matter by Simon Ashley. In answer to the question what was the usual procedure for reporting absence, the Claimant answered that he did not know and returned the question as to what was the normal procedure for moving staff. The Claimant cited union support in the decision not to move centres. It was the Claimant's case that he had not had a reasonable request to report to work at Hockwell Ring. He maintained he had not been treated fairly and felt bullied. At the conclusion of the meeting, the Claimant was informed by the Respondent that if they found there was a disciplinary case to answer the notes of the meeting and any other relevant information would be presented to a disciplinary panel. In the event, as we know, that did not happen.

43. On 15 February 2012, Tracey Quinn records that she had a meeting with the Claimant and told him that there would be no further investigation into the three hours absent without leave matter. She said she would put this in writing when back from her holidays. They went through some working hours they would like him to do and he seemed pleased and fine about them. He was asked when he would be returning to work from sickness and he said he was waiting for Simon to get back to him about his grievances. He wanted to return to work as soon as possible but did not want to work with Sarah owing to his grievances, etc. She got the impression that he would drop the grievances as Sarah was moving on as long as he did not have to work with her in the meanwhile. She would let Simon sort that one out. It seems that Tracey Quinn did not confirm this in writing to the Claimant. She left it that she had communicated orally with him.

44. On 6 February 2012, the Claimant wrote to Simon Ashley with a number of concerns. In addition to his grievance of 23 December 2011, he noted that his sickness had been recorded as "mental ill-health" conditions, "which he regarded as defamatory". He wanted the words "stress at work" to be the recorded reason. He had not had an outcome of the disciplinary investigation as at 6 February 2012. He felt unable to return to work whilst there was a risk that Ms Lawlor would order him to change his place of work.

45. The distance between Barnfield West Academy and the Hockwell Ring youth club was approximately 1.6 miles, a 35 minute walk. It seems that the Claimant's objection to working at Hockwell Ring related to the desired 6 o'clock start time. He maintained in the investigatory meeting on 11 January 2012 that he had to pick up his kids from their mother who was doing a University degree at 5:30pm which meant that he would struggle to get there for 6. He was used to work from 6:30pm to 9:30pm. He was reminded that he had once started work at 6pm. The University course was given as an explanation for the difficulty. The Respondent's point was that none of this was raised in the team meeting on 18 November when it seemed that all these matters had been agreed. That included timetables.

46. As at 12 January 2012 it seemed that the Claimant was still owed 8 days' pay from 22 – 29 November. Sarah Lawlor said she would approve the request and gave an expenditure code.

47. On 23 February 2012, Simon Ashley replied to the Claimant's letter of 6 February which Simon Ashley said he had received on 16 February. 'Mental ill-health condition' was a term the Council used in its recording system and could not be changed. He noted the description 'harassment at work' on the medical certificate and he stated that it would be helpful if he could specify quite what the harassment was so it could be stopped. Gardening leave was not the appropriate term. He says that as Sarah Lawlor was leaving the Council within the next few weeks, he would not be able to pursue that part of the grievance. He was still pursuing the question of pay and would report back when clarified.

48. Tracy Quinn, the IT Manager for the north and west held a return to work meeting with the Claimant on 9 May 2012. She agreed with him that she would draft a letter confirming the investigation was not taking place and look into clarifying his extra hours/money issues. She confirmed that in an e-mail to Simon Ashley.

49. On 3 May 2012, Christina Beddows, on behalf of Unison, wrote directly to Hillary Griffiths, Head of Service, stating that the Claimant was awaiting formal responses to his grievances. Hillary Griffiths referred the matter to Simon Ashley.

50. Mr Ashley responded to the chase from Unison. He stated that his conversations with the Claimant made it clear that the concerns related to Sarah Lawlor. Once Sarah Lawlor left he thought the problem would disappear. Mr Ashley's recollection of his discussion with Donna Shaw of HR was that he would write to the Claimant advising him that he would not be

pursuing his complaint against Sarah Lawlor as she was on the point of leaving. As he had received no response or acknowledgement from the Claimant of that letter, it was assumed that he was not unhappy with it. It would appear that he has now changed his mind, was Mr Ashley's angle.

51. He asked Tracy Quinn to get to the bottom of the matter of pay. As to that, Mr Ashley wrote:

> "I am not aware that he raised it as an issue at the time, but decided to raise it as part of his complaint against Sarah. It's not easy to trace exactly what did or did not happen but Tracy is trying to get to the bottom of it. I think that is the outstanding issue that he needs to be written to about".

52. Mr Ashley did write the following as to the non-attendance at work, which if pursued would have been controversial:

> "This itself, of course, could have resulted in in disciplinary proceedings, although it did not, because I wanted to try to achieve a resolution without resorting to this, but given Julian's keenness for procedures as he sees them to be followed properly, I will look at this again."

53. Donna Shaw commented on the state of play saying she concurred with Mr Ashley's statement. She gave the history about the problem operationally at Barnfield West Academy. She recorded that Simon and Sarah met with Julian to establish his reason for being absent from work. Following that meeting, it was recorded that Sarah Lawlor took advice from Willy White and decided that they would take formal action. Ms Shaw also observed that the Claimant, when he did not report to work at 6pm on the Monday, having been scheduled to work at that time, had in fact been at work earlier that day with the WIC and made no mention that he would be absent for work later. In other words, she was making the observation that there could have been advance flagging of the issue. Donna Shaw attended the investigatory meeting which eventually took place on 11 January 2012. Following that meeting, Donna Shaw did speak to Simon Ashley and expressed the view that it was not appropriate for Sarah Lawlor to continue with the disciplinary process given that the Claimant had raised a grievance against her. Simon Ashley agreed and asked Tracy Quinn to take over the investigation. She records that Simon Ashley met with the Claimant and informed him that Sarah would be leaving the Council and therefore he would not be pursuing the complaint against Sarah.

54. Ms Shaw's understanding was that Mr Ashley was still going to look into the matter regarding the monies and feed back to the Claimant. She believed the issue regarding money still remained unresolved.

55. Tracy Quinn determined that she would not continue with the formal disciplinary process; instead she would meet with the Claimant and explain what the expectations were and remind him about the procedure for reporting an absence. Ms Shaw understood that Tracy was going to confirm the outcome of the meeting with the Claimant in writing. She believed that the issues at Barnfield West Academy had since been resolved and Julian had returned to work.

56. Willy White forwarded Donna Shaw's understanding to the Head of Service, Hillary Griffiths. Hillary Griffiths said to e-mail Simon Ashley directly copying-in the advice from Donna Shaw and Willy White in the e-mail chain. She noted that the e-mail from Unison suggested that the Claimant had not received the letter. She noted that the grievance policy did require a response in writing to the employee. If his letter addressed all the aspects of the grievance, including how the Council was addressing the issue of non-payment of salary, then she thought he would need to re-send the e-mail with a covering letter. If it did not cover all aspects of the grievance and that was still outstanding then the grievance needed to be tidied up. Willy White's advice was that the action needed to sit with Mr Ashley rather than Tracy Quinn and a letter covering all aspects of the grievance needed to be sent, including an apology if appropriate for non-payment of salary in December. Given the length of time that had elapsed, this needed to be done urgently. Hillary Griffiths wanted to be informed when it had been resolved.

57. In response to Hillary Griffith's instructions, Simon Ashley cut and paste much of his letter dated 23 February 2012 in a letter dated 17 May 2012. Alongside that he wrote a letter dated 21 May 2012 which more directly addressed matters. In this letter Mr Ashley wrote that when they met the Claimant they discussed the fact that Sarah Lawlor would be leaving. It was suggested that the Claimant said that once she left the problem would in any case be resolved for him. He had explained in a previous letter that as Sarah Lawlor was due to be leaving, he would not be in a position to pursue the complaints against her. He did say he would look into the question of pay, he heard nothing from the Claimant in response. Picking up the two issues relating to pay, with regard to the Claimant's December salary being stopped, Sarah Lawlor did inform him at the meeting on 25 November 2011 of her intention not to pay for the time he was absent without leave. He knows that there was a problem with the salary for the whole of December being stopped. At the time Sarah Lawlor had made the arrangement, she had received no notification that he was signed off from work. Once Sarah Lawlor became aware of the medical certificate she contacted payroll to advise them to reinstate pay. He was told that payroll did not deal with this matter in time for the deadlines, hence the delay. He understood that the situation with pay for November and December has now been resolved and that what he was owed has been paid to him, other than for session missed on 21 November 2011.

58. Dealing with what amounted to the third part of the original grievance, the question of pay from last summer holidays, it appeared that payroll did not process claims for the period in question despite there being given to them. These would now be paid in his May salary. Mr Ashley expressed the view that he should now have answered concerns about pay.

59. So, the third part of the grievance was finalised on 21 May 2012.

<u>The function of the youth work at Luton Borough Council</u>

60. This was explained to us by Sarah Lawlor. She made the point that it was a strategic decision to have Council involvement at youth centres in the town in order to deal with potential problems of extremism that are known to exist in Luton. It is a matter of common knowledge that Luton has an ethnically diverse population with a history of racial tensions. The role of the youth workers was to engage with all sections of the community and tackle matters of deprivation and the like. She emphasised that the council had a service to run.

Notes of the disciplinary investigation

61. The minutes record that at the conclusion of the investigatory meeting, the Claimant was informed that if the Respondent found there was a disciplinary case to answer, the notes of the meeting and any other relevant information would be presented to a disciplinary panel, it being implicit that he also in that event would get all that information. As we know, the decision ultimately was that this would not progress to a disciplinary. Therefore it follows that there was no commitment at that time that the Claimant would get the notes of the meeting and any other information.

Second stage grievance continued

62. On 20 August 2012, the Claimant wrote to the head of service wishing to progress his grievance to a the next stage. It focused on alleged bullying and harassment he had endured by Sarah Lawlor, the unlawful deductions of salary made without notice or discussion in respect of December 2011, not receiving copies of the minutes of the investigatory meeting and not receiving a written confirmation of the outcome of the investigation by Sarah Lawlor. Jo Fisher, the new head of service, in respect of Prevention and Early Intervention rejected the second stage grievance on the basis it was out of time. Mr Ashley had written to him on 18 May 2012 representing the end of stage 1. His letter was not until August 2012. It was noted that the Claimant's family had suffered two bereavements in September 2012, regret was expressed about that but his appeal was still out of time. The Claimant took issue with that position on 22 October 2012 by letter. He pointed out that his grievance was first submitted in December 2011. Mr Ashley replied in May 2012, the Claimant submitted that itself was late and did not address all matters in any event. He listed 19 matters of concern in addition to protesting about the failure to conclude his first grievance.

63. The 19 points as put by the Claimant were as follows:

    63.1 Bullying suffered by me in the workplace;
    63.2 Failing to identify that I was being treated unfairly;
    63.3 Failing to act on my complaint that I was being treated unfairly;
    63.4 Failing to ensure my manager adhered to the LBC Managers' Policies & Procedures.

63.5 Failing to stop the harassment I had endured from my line manager;
63.6 Failing to support me when my line manager attempted to impose unlawful changes to my contract;
63.7 Failure to stop said line manager from taking disciplinary action on me for disagreeing with these unlawful changes;
63.8 Failing to identify discrimination by a line manager in the workplace;
63.9 For failing to identify and act upon a manager breaking employment law, despite me bringing it to the attention of LBC;
63.10 Deducting money from my wages without informing me despite being advised that the disciplinary action against me was no longer being pursued;
63.11 Stopping my wages altogether two days before Christmas, and ruining it for my family and me;
63.12 Failure to stop harassment, not only in the workplace at my home address by turning up at my home address during the Christmas period;
63.13 Adding defamatory and inaccurate information to my personnel file during my absence work for work related stress;
63.14 Tarnishing my professional reputation;
63.15 Failing to respond to repeated requests for information I am entitled to have;
63.16 Failing to ensure I was given an adequate 'back-to-work' interview;
63.17 Failing to deal with the grievance I lodged in December 2011;
63.18 Waiting five months before replying to my grievance;
63.19 Failing to accept my correspondence requesting this matter be progressed into the stage 2 part of the grievance procedure, particularly considering all of the issues and appalling lack of response by LBC.

He concluded:

> "I have been an employee of the LBC for over 20 years and have provided a valuable contribution to the service which I am proud of. However, this experience leaves me with little confidence in the policies and procedures that are designed to protect me in the workplace from the very type of experience I have endured, or LBC's willingness to implement them. I strongly feel this was racially motivated and feel certain that this prolonged distressing experience would not have occurred if I were not the colour I am".

So, plainly, the Claimant was raising the matter of race discrimination at this stage.

64. The Respondent did agree to consider the matter under the second stage of the grievance procedure. Nick Chamberlain, Integrated Services Manager for Children and Learning was appointed.

65. Mr Chamberlain met with the Claimant and Christina Beddow, the Claimant's union representative, with a note-taker present on 10 January 2013. On 17 January 2013, the Claimant made written representations including relevant documentation.

66. Mr Chamberlain's outcome letter was dated 27 February 2013. Mr Chamberlain was investigating the grievance; he was not investigating allegations of unfair discrimination, harassment or bullying under the

harassment and bullying policy and procedure. He was also not engaging the sickness absence procedure. All of this he clarified. Mr Chamberlain met with Simon Ashley and Donna Shaw from Human Resources, as Sarah Lawlor and Tracy Quinn had left the employment, he did not meet with them. The first issue was why Simon Ashley as the first stage investigator officer did not deal with the grievance against Sarah Lawlor when it was first raised as there was time to do so before she left Luton Borough Council's employment. It was noted that Mr Ashley had written to the Claimant on 11 January 2012 concluding that two of the grievances related directly to ongoing disciplinary investigation and that therefore the disciplinary investigation would take place first. Mr Chamberlain agreed with Mr Ashley's position here. He understood that in their meeting on 1 February 2012, Mr Ashley and the Claimant agreed that as Ms Lawlor was leaving Luton Borough Council, the problems would be resolved for the Claimant in that way. Ms Lawlor left the employment on 18 March 2012. It was reasonable, concluded Mr Chamberlain, that Mr Ashley could take the Claimant at his word when he said Ms Lawlor's departure would solve the matter for him. That was a satisfactory informal resolution for the Claimant. That was Mr Chamberlain's assessment of what the Claimant's position as communicated was.

67. Mr Chamberlain upheld the Claimant's criticism that Mr Ashley did not send the Claimant a copy of the grievance resolution procedure. Mr Ashley acknowledged that as an oversight, even though the Claimant may already have had a copy, he should have been sent another one. Reminding Mr Ashley that the grievance resolution procedure should have been sent should satisfactorily resolve the matter.

68. Mr Chamberlain rejected the Claimant's position that his grievance against Sarah Lawlor had not been handled in a professional way by everyone involved. The first stage grievance meeting had been held on 1 February 2012; Mr Ashley wrote to the Claimant on 23 February 2012 and 17 May 2012; in between time, Ms Quin had met with the Claimant. The outcome in the letter of 21 May 2012 was clear. The Claimant had been kept informed of the position following the meeting on 1 February 2012.

69. As to criticism of not receiving notes of the meeting of 11 January 2012: Mr Chamberlain noted that the Claimant had written on 19 and 26 January and 6 February, and 20 August, requesting a copy of the notes of the meeting. Mr Chamberlain upheld his grievance that he should have had them before February 2013. Mr Chamberlain concluded that he should have had the notes following the meeting of 11 January 2012. He would arrange for a copy of the notes to be sent which would be a satisfactory resolution to the matter.

70. Mr Chamberlain also upheld the Claimant's complaint that he did not receive a letter detailing the outcome of the investigation. Tracy Quinn took this over on 26 January 2012. She subsequently met with the Claimant and advised him that the matter would no longer be dealt with. Mr Chamberlain found that it should have been sent and would arrange for the matter to be sent following the grievance outcome, which would amount to a satisfactory resolution.

71. The Claimant's next point was that Sarah Lawlor should not have been involved in the investigation in the first place, given that he had initiated a grievance against her. Mr Chamberlain rejected this because the letter inviting to an investigation was dated 1 December 2011, whilst the Claimant's grievance was dated 23 December 2011. The point was that Miss Lawlor's letter came first and the grievance procedure cannot be used to prevent progress of the disciplinary process under the council's disciplinary policy. In the event Ms Quinn was appointed as a new investigating manager anyway.

72. The Claimant made the point that in his view, procedures for moving an employee to a new place of work and changing working times were not followed. Mr Chamberlain did not uphold this allegation. The relocation to the Hockwell Ring youth club was to be on a temporary basis. The Claimant had been told this by his interim line manager, Sita Hall. The minutes of the staff meeting on 18 November also recorded the matter without the Claimant protesting in any way. The Claimant had been invited to a series of meetings, which he had not attended prior to the team meeting on 18 November.

73. The Claimant had made criticisms of the fact that his pay had stopped for December, notwithstanding his certification of sickness. Mr Chamberlain rejected the grievances around this point. Ms Lawlor acted in accordance with procedure by requesting that the Claimant's pay be suspended as he was absent from work on 21 November and had not followed the correct absence reporting procedure. When Ms Lawlor had suspended his pay, she had not received any notification, either a telephone call, self-certificate or a GP certificate, confirming that the Claimant was unwell which would be the correct procedure. The text message on 23 November stated "I will not be at work I have a doctor's appointment next week" did not comply with the Council's absence reporting procedures. On 2 December 2011, Miss Lawlor had confirmed she had received a GP certificate stating that the Claimant was unfit to work from 30 November 2011. She informed payroll of that fact. The last date to make updates to December salaries was 29 November. The deadline for December pay is always earlier than usual owing to December salary being paid earlier, seasonally, and that accounted for the fact that his pay was not reimbursed until January 2012. Some pay was made to him in December 2011. As no self-certificate had been received for the youth work session on 21 November, it remained the case that that salary had been deducted. Mr Chamberlain concluded that Ms Lawlor had broadly followed the correct and authorised absence from work procedure. A self-certificate covering any sickness from work for the session on 21 November 2011 has still not been received. All of the Claimant's pay, with the exception of the 3 hour session on 21 November had been paid as soon as the Council's processes allowed.

74. The Claimant complained that Ms Lawlor had hand delivered a letter to his house on 30 December 2011 when asked not to contact him. Mr Chamberlain rejected this grievance. Ms Lawlor did hand deliver a letter inviting the Claimant to attend an important interview as part of the disciplinary procedure as he had failed to attend the previously arranged interview on 14 December. Mr Chamberlain stated that whilst he understood the Claimant had requested not to be contacted on days off work, there did appear to be an issue in

responding promptly or at all to communications from managers. Hand delivering the letter to ensure it arrived safely was, in those circumstances, appropriate. There was not much difference in any event, between Ms Lawlor hand delivering the letter and a postman hand delivering it.

75. The Claimant complained that his current absences from work had been recorded as mental ill-health conditions and not work-related stress, as stated on the certificates. Mr Chamberlain regarded this as a matter under the Council's sickness absence procedure, which he was not investigating. He noted that Mr Ashley had written to the Claimant on 23 February 2012, explaining mental ill-health condition is the generic term that the authority uses in its Trent record system and cannot be changed.

76. Mr Chamberlain rejected a complaint that essential information had been removed from his personnel file and then not updated with fresh information. Donna Shaw, HR Advisor had looked at the file. The Claimant's original contracts were on the file. Mr Chamberlain could not conclude whether anything was specifically missing from the file. He was able to confirm contracts of employment and a number of changes in particular going back to 1990. Mr Chamberlain also rejected a complaint that the Claimant had not had access to personnel file. Mr Chamberlain could not find any request for access to the personnel file in any letter. Therefore he rejected the complaint. He provided the details of HR who would provide access to his file if he wanted it.

77. Mr Chamberlain upheld the complaint that it had taken payroll several months to pay back the additional hours worked in the summer months of 2011. This was not paid until May 2012. There had been an oversight on the part of payroll and those additional hours should have been paid in 2011 just after they had been worked. This was down to human error.

78. He also upheld a complaint that the Claimant had never received a full breakdown of pay in order to clarify his salary concerns. The Claimant had requested this by letters dated 23 December 2011 and 20 August 2012 but had not received any. Payroll would now attend to that matter and that would be a satisfactory resolution.

79. The Claimant made a generic grievance that all his issues had not been handled appropriately and that he had not been supported or protected by the Council's management or policies. Mr Chamberlain's response was to address the specific complaints as he had done rather than this unclear generic one.

80. In their meeting on 10 January 2012, the Claimant had suggested that a resolution for him to would be to receive an apology where mistakes had been made. Mr Chamberlain duly gave that apology in respect of the matters upheld. Mr Chamberlain went on that as this was the end of the second stage of the grievance resolution, it would therefore be the final response by the Council in respect of all the grievances raised. There is evidence in the bundle that Mr Chamberlain then followed through on what he had said he would do.

<u>Holiday pay and sickness</u>

81. In a letter dated 8 March 2013, Mr Chamberlain adopted the following position in relation to the question of sick pay and holiday. The Claimant had two contracts which are for school term time and are for 39 and 42 weeks a year to allow the Claimant to take most of the school holiday periods off work. The salary was still paid over the annual 12 month cycle. Human Resources had informed Mr Chamberlain that the Claimant's long term sickness absence from work in the current leave year had been from November 2012 until March 2013 and as he was away from work as usual during the Easter and summer 2012 school holiday periods and not on sick leave, he had used all his proportion of annual leave during those periods. He was not then entitled to have his holiday back. That confirmed position adopted by the Respondent and an internal enquiry on 31 May 2012 concluded that the Claimant was not entitled to claim back holiday entitlement as over the course of 2011/2012 he had taken annual leave in line with his contract over that year.

82. In the course of the hearing, the Claimant's holiday pay claim was resolved between the parties. We had the impression that the issue engaged a matter of European Law, namely whether holiday pay needs to be paid during periods the Claimant was otherwise sick. We had such a discussion with counsel for the Respondent at the time. The Claimant's claim in the schedule of issues relates to race discrimination in this regard and we deal with it as such below. We understand that a payment was made to the Claimant in respect of holiday pay during the course of the hearing.

Bullying and harassment complaint

83. The Claimant sent a formal notice of complaint under a letter dated 30 April 2013. The Claimant maintains that it was during the investigatory meeting on 10 January 2013 at the second stage of the grievance that he first learned that he could bring a complaint under this procedure. He claimed that his work-related stress was a direct consequence of the Council's behaviour towards him since 2011. Stress, further, was a contributing factor to arthritis, the stress was aggravating his arthritis, he was having to increase remedies prescribed by the specialist hospital he attends so that he could carry out his normal day-to-day functions. Willy White acknowledged the complaint under the discrimination, harassment and bullying procedure on 28 May 2013 and appointed Caroline Dawes to examine his concerns supported by Helen Ginty, one of the HR Advisors. Caroline Dawes was a school improvement advisor. Mr White expressed the view that the provisions of the unfair discrimination, harassment and bullying procedure did not constitute a further opportunity for reconsideration of issues already dealt with under the grievance procedure. He asked for particulars as to what was discrimination which had not been looked at in the grievance procedure. A meeting was held on 4 July 2013 between Caroline Dawes and the Claimant; Helen Ginty was in support as was the Claimant's union representative and a note-taker. The purpose of the meeting was to establish what the complaints were. At the conclusion of the meeting, Caroline Dawes recorded the scope of the investigation that had resulted from the meeting:

83.1 The Claimant felt that he was treated differently to other colleagues by Sarah Lawlor in relation to the service changes which resulted in his work place moving.

83.2 He felt that Simon Ashley did not deal with the grievances in a timely fashion and that this was a deliberate action aimed at the Claimant personally.

83.3 He felt that the processes, policies and procedures had not been followed correctly or in a timely fashion. For example, the grievance regarding payroll, communications with Jo Fisher, documentation from his personal file. The Claimant felt that these actions were deliberate and personal towards him.

Ms Dawes focussed on those matters. Whilst the investigation was ongoing, the Claimant submitted a 17-page letter seeking to clarify a few points. On examination it was her view that the Claimant was seeking to shift the basis and the scope of the investigation. As the scope had been agreed, Ms Dawes did not stray from it.

84. The investigation outcome was sent on 1 August 2013. None of the allegations were upheld. In summary, Ms Dawes concluded that all the Claimant's grievances investigated by a manager since 2011 including those looked at by Ms Dawes, stemmed from:

(a) An unauthorised absence by Mr Hilaire subsequent to his change of work place;

(b) Failure of youth service management systems resulting in significant error on the part of Sarah Lawlor regarding withholding an employee's pay;

(c) Failure of payroll management systems resulting in the significant error of taking an employee off the payroll, rather than withholding a portion of pay.

There was no evidence to suggest that 2 and 3 constituted bullying, harassment or discrimination. She wrote -

> "As regards the Claimant's position: the quality, quantity and timing of communications from Mr Hilaire could lead one to conclude that he was, while not necessarily misleading, certainly clouding issues. He had written numerous letters addressing multiple issues which had been addressed many times before and he had written to many different people about the same things. There is a pattern of him not attending meetings and not responding to letters sent to him. This obfuscation has resulted in a near impenetrable web of lines of communication which has in turn obstructed the very process Mr Hilaire claims to want carried out."

> "Not withstanding Mr Hilaire's pattern of behaviour regarding communications, grievances and allegations, this investigation has exposed some shortcomings in some management systems. This report therefore recommends that management processes are reviewed in the youth service and payroll to ensure that effective protocols are followed, particularly in regard to withholding an employee's pay. Lessons need to be learned in these two services to ensure that the kinds of experiences Mr Hilaire has had cannot be repeated."

85. As to the allegation that Sarah Lawlor treated him differently to other colleagues in relation to the service changes, which resulted in him moving work place, Alan Hunt was put forward as a comparator by Mr Hilaire. Mr Hunt is also black person. The finding was that there was no evidence to suggest that the Claimant was treated any differently to a colleague in a similar position. He was given plenty of opportunities to meet on a one-to-one basis about the change in working arrangements. The Claimant chose not to attend any of the meetings owing to them being outside his contracted hours, despite having a flexible approach to his contracted hours for other purposes.

86. In relation to the allegation that Mr Ashley did not deal with the grievance in a timely fashion and that was a deliberate action targeted against him personally, the finding was that there was a period of 16 weeks between the first stage grievance procedure meeting and the final outcome letter. The final outcome letter was written in response to a request from the union. That was an unsatisfactory length of time. Communication between initial letter and meetings was satisfactory and broadly in line with the policy guidelines. The Claimant brought the grievance but did not follow the policy correctly in the first instance. He sent his grievance to HR rather than his line manager or next level line manager. He also did not respond to requests for meetings and wrote addressing different separate issues. This was despite the fact that it was Mr Hilaire himself who raised the grievances. This lack of dialogue mitigated against the smooth investigation process. Despite the fact that length of time elapsed between the first meeting and the conclusion letter was unsatisfactory, there was no evidence to suggest, she found, that this was aimed at the Claimant personally. The delay was inefficiency on the part of Simon Ashley, rather than bullying or harassment and there was no evidence to suggest it was discriminatory.

87. Lastly, as to unsatisfactory procedures and processes, which Ms Dawes did find, there was no evidence, however, to suggest they were deliberate and personal towards the Claimant. Inefficiencies and poor management systems did not in this particular case constitute bullying, harassment or discrimination. In her letter of 1 August 2013, Ms Dawes gave the Claimant five days in which to appeal against the manner and process used in the investigation of the complaint in line with the unfair bullying and harassment procedure.

<u>6 August 2013 grievance</u>

88. On 6 August 2013, the Claimant purported to raise a new grievance. At paragraph 1 of the grievance the Claimant acknowledged that Ms Dawes was

investigating his bullying and harassment complaint at the time he wrote the grievance. This then was not an appeal against the outcome. In July 2013 his salary had been stopped without anyone from management or payroll informing him that this was to occur.

7 August 2013 application to extend time to appeal bullying and harassment outcome

89. On 7 August 2013, the Claimant wrote a letter recording that he had had a conversation with Willy White in which he had learned that an outcome had been sent and that there was a short deadline to appeal. He said that in his state since his wages were stopped once again without his knowledge, he has not been physically able to open up the mail. He did not have the strength to open up the outcome for his mental and physical wellbeing. He had had to take a break from the constant stress. He did not doubt the response was in his unopened mail, but he applied for an extension of the deadline to respond to the outcome if necessary. The letter in which this request is written was a perfectly cogent one. We do understand however that the Claimant would get his sister to write his letters.

90. Mr White responded on 7 August 2013. It was, in Mr White's view, inappropriate to raise matters with Caroline Dawes and Helen Ginty who had completed their work. The only new issue related to stoppage of pay in July 2013. That had been raised by the Claimant's union representative. It had been passed on to the payroll manager. The matter was being resolved between Barbara Chapman, the manager and Paul Farley, the union representative. The Claimant was reminded that grievances should normally be dealt with in an informal way first. He was asked to allow Paul or Barbara to conclude their communication.

91. That letter from Mr White addressed the new grievance, it did not address the request for further time. In response to that request, Mr White sent an e-mail dated 14 August 2013. Mr White wrote:

> "I need to advise you that the business of your employer will not grind to a halt for the period that you feel unable to open our correspondence to you. Could I therefore suggest that you either get a loved one to open the mail on your behalf and advise you of the content, or enlist further support and help from your trade union? Alternatively, if you would like us to read the content over the phone, that can be arranged."

Mr White continued:

> "I further note that you would like to ask for an extension on the deadline so that you are able to go through it and respond accordingly if necessary. I assume by this you mean exercising the right of appeal if you are unhappy with the manner and processes used in the investigation of your complaint. I note you give no indication whatsoever as to when you feel you might be able to examine the outcome report. I also note that while you advise that you feel unable to even open the letter concerned, your state of health did not preclude you from registering a new grievance with me on 6 August 2013, ie the previous day."

92. Mr White went on to say that the policy was clear: an appeal has to be registered within five working days of receiving the outcome letter. He was advised of that in the letter. He had not registered an appeal within the required timeframe. The matters of which the Claimant had complained had been going on for far too long, allowing his request would in effect result in them continuing to go on ad infinitum. That was in no-one's interest. Additionally, they had effectively stayed the management of the considerable period of sickness absence pending the outcome of the investigations into the complaints. They could no longer do so. They had consulted the head of HR who had agreed with his position, there would be no extension of the right of appeal. Mr White was the team manager, advice and support HR operations team.

Sickness Absence

93. The Claimant's employment ended on 22 January 2014. The Claimant was off work for 186 days between 15 November 2012 and his redundancy. The reason given was stress at work, which the Respondent recorded as "mental ill-health conditions". He was off work for 1 day, 26 July 2012, three days 2 May 2012 – 8 May 2012. Those four days absence were down to musculoskeletal conditions. The Claimant had been off for 45 days between 30 November 2011 and 12 March 2012. Earlier periods of absence have no real relevance to the matter. He had been off for 107 days for musculoskeletal reasons between 8 April and 12 October 2008.

94. The Claimant had a sickness absence procedure - outcome of attendance review meeting on 6 December 2012. The periods of absence recorded above starting 29 November 2011 through to 26 July 2012 were under consideration. Mr Ghafoor of HR noted that the Claimant had exceeded the sickness triggers being three periods of absence, or 10 working days in a row in a 12 month period, or a single period of 20 consecutive working days. He currently was absent and had been so since 15 November 2012. As he was absent owing to stress, and it was unclear when he was likely to return, there would be a referral to occupational health. A stressor assessment would be conducted once he returned to work, he would ensure that the information on the Trent recording system was accurate. The Claimant had previously indicated that he was unhappy with the phrase "mental ill-health conditions" and wanted "stress".

95. Targets were set. First that the Claimant returned to work at the end of his current fit note; secondly, that he had no absence in the ensuing three month period. His attendance would be re-examined in three months' time, or earlier if it was evident that he had failed to meet targets. If the unsatisfactory level of absence recurred within one year, he would move to the first formal stage of the procedure. If a satisfactory level of attendance could not be achieved, the Claimant needed to be aware that dismissal from employment was a possibility.

96. There was a review on 14 February 2013. The Claimant had continuously been absent since 5 November 2012 with stress. The Claimant informed the

Respondent that he had no intention of returning to work until the ongoing grievance had been dealt with because that was what was causing him stress. The Claimant had asked for gardening leave during the period the grievance was being looked into but had been refused. A warning was given that the matter would progress to final review if a return to work or an accepted level of attendance had not been achieved within a set period. The target was for the Claimant to return at the end of the current medical certificate on 30 April 2013 and thereafter sustain an improvement in his attendance. The overall aim was to reduce his absence levels back to those acceptable to the Council, which is less than three occasions of 10 days or 20 working days for long term. The option to progress to a final review was in place for one year, and attendance would remain under review for that period. At any point during that review period, the matter could progress to a final review if an unsatisfactory level of absence recurred. In those circumstances, dismissal was an option.

Sickness Absence Warning Appeal

97. The Claimant appealed the warning to the head of service. The appeal hearing took place on 27 September 2013. It was heard by David Bruce, Head of Integrated Commissioning Team, Children Families and Paul Quips, HR Advisor. The appeal was upheld and the written warning was cancelled. The finding was that there had been significant management failings in carrying out the sickness absence procedure. No reasons were given in the outcome letter.

References to Occupational Health

98. The Claimant was seen by Susannah Ebdon, Occupational Health Advisor, on 5 January 2013. She reported that the Claimant attributed the cause of his stress and subsequent depression solely to work factors, specifically citing being told at very short notice that his working hours and work location would change. He also maintained that colleagues were invited to attend meetings and were consulted and written to regarding this but not him. He told her that he felt that he has been treated differently and as a result of this treatment he felt unable to remain at work. She suspected that a return to work was unlikely until the above-mentioned issues had been resolved. On 22 January 2013, having seen the Claimant, Ms Ebdon repeated that until such time as his work issues had been resolved, the Claimant did not feel able to resume work. There was a telephone review on 4 April 2013. The grievance had not been resolved to his satisfaction and the Claimant was appealing it. In the light of that, the Claimant told Ms Ebdon that he still did not feel able to resume work when his current fit note expired on 30 April 2013. He maintained that his absence had been caused by his treatment at work and that he had no faith in the system. Ms Ebdon was a witness in the appeal against the sickness absence warning. She reiterated that the Claimant had always informed her that until everything was resolved he was unable to return to work.

99. It seems that the Respondent asked Ms Ebdon if the Claimant's stress fell under the definition of 'disability'. She is recorded as having said that she believed the stress to be caused by work-related issues but that stress on its own was not a medical condition. She was unable to answer whether the Respondent might have done more to secure his return to work. The Claimant asked Mr Ebdon if she was aware that stress was an industrial disease. She replied that stress was not a medical illness or condition. It seems to the Tribunal that those answers did not really assist the panel as to whether there was a disability or not.

Psychiatric Report for Employment Tribunal

100. Dr J K Appleford, a Consultant Psychiatrist, produced a report for the purposes of the Employment Tribunal proceedings on 9 February 2015. He assessed the Claimant on 30 January 2015. This was a jointly instructed report. Clearly, it was obtained after the Claimant had left work. In January 2012, the Claimant was noted to be enjoying his usual activities and playing sports. The account of his functioning and his score on depression screening did not suggest that he was depressed. He returned to work from March or April to November 2012 and resumed sports. He reported depressed mood, reduced motivation, reduced appetite and weight loss and increased need for sleep, tiredness, reduced enjoyment, interest and motivation and memory and concentration problems between November 2012 and January 2014. He reported that he did not socialise or answer the telephone, did not continue his sporting activities, would sleep in a chair, forget meetings, appointments and to collect his children. The records indicated low mood and headaches in December 2012. By August 2013 there were reports of increased alcohol consumption and mild depression. In September 2013, Mr Hilaire injured his groin playing football. A test score suggested moderately severe depression. It is at this point that anti-depressant medication was first prescribed. By September 2013 a diagnosis of depression had been made. It was Dr Appleford's opinion that the Claimant had become depressed by this point. Testing suggested a diagnosis of a moderate depressive episode with somatic syndrome. He remained depressed, continuing to meet the criteria for moderate depressive episode with somatic syndrome at the point of examination.

101. The effects of the impairment had an adverse impact on day-to-day activities. They were listed as: staying in bed all day and sometimes not eating until 6 or 7pm; withdrawal of contact with friends; he would stay on the sofa and would not answer the door or the telephone; reduced contact with children, disengagement from playing table tennis or football on account of lack of energy; lack of motivation and interest; arthritis, lack of motivation to watch football. Memory and concentration problems led Mr Hilaire to forget appointments, take medication, to sign on, to top up the electricity metre and to collect the children from school. Excessive sleep, tiredness and lack of energy: he could become tired within 30 minutes of waking. For the purposes of the Equality Act 2010, Dr Appleford found that it would be reasonable to conclude that there was a substantial adverse effect upon normal day-to-day activities, persistent general low mood, motivation or loss of interest in every day activities, persistently wanting to avoid people; significant difficulty taking

part in normal social interaction and forming social relationships, for example because of mental health condition or disorder, persistent distractibility and difficulty concentrating. In his opinion, the available information suggested that September 2013 was the relevant turning point.

102. There is plainly an argument that the Claimant was disabled from September 2013 and that the Respondent knew or ought to have known this given that it was open to them to ask detailed questions about the extent of the stress.

103. The Respondent concedes that the claim is disabled by reason of arthritis. It is unclear however what relevance that has to the matters before us. There is a report from Dr Webley, Consultant Rheumatologist dated 8 April 2015. This details a long-standing tendency to arthritis. There are references to rheumatoid arthritis in 2005 and 2006. He was however, still playing sports. He ceased playing basketball in 2008. Issues of stress at work in 2011, 2012 are noted. We see reference in September 2013 to headaches and insomnia and being prescribed fluoxetine for depression. He was referred to orthopaedics because of a left groin injury. He was still playing football at that time. So the rheumatology report makes reference to the matters of depression consistent with the report of Dr Appleford. Nothing was being prescribed at this time for arthritis, moreover, the Claimant was playing sport. So, the Tribunal does struggle to see the relevance of arthritis to the case, although it notes long standing references to problems.

<u>7 October 2013 grievance – Laura Church</u>

104. Following the outcome of the sickness absence formal warning appeal, believing he had new e-mail evidence, on 7 October 2013 the Claimant sought formally to lodge grievances against managers and the council as a whole for allowing continual bullying, harassment differential treatment, discrimination and victimisation. Allegations were made against Simon Ashley, Linda Farmer, Nick Chamberlain, Caroline Dawes, Willy White and the council in general. On 21 October 2013, Laura Church, Head of Business and Consumer Services, was appointed to consider this grievance. She held a meeting with the Claimant in the presence of a note-taker on 4 November 2013. There was a further meeting on 10 December 2013. Her outcome was completed on 20 January 2014. Her response was in two parts. Part 1 dealt with those areas where she acknowledged that the Claimant had made valid points. Part 2 represented detailed reasoning for rejection of particular grievances. She upheld the following matters:

104.1 She considered that his original grievance should have been considered under the unfair treatment, bullying and harassment policy, or at the very least it should have been established which policy he believed his complaints to be heard appropriately under. She could find no evidence of him being asked as to what was the appropriate procedure for the complaint. She had been unable to find any evidence that his allegation of bullying and harassment by Sarah Lawlor was appropriately investigated at the time he made the allegation, even through the

grievance process. He was clearly advised that the matter would be considered as part of the disciplinary case against him, however, that was concluded 13 months later without formal action being taken and so he was not offered the opportunity to raise those matters at a disciplinary panel. She appreciated that this had left him feeling that the matter was not taken seriously by the management. However, in reviewing this case she took account of the fact that the disciplinary case had been reallocated to Tracy Quinn. The Claimant was asked for further information about the nature of harassment in February 2012 and it appeared he did not provide that and there was a discussion with Simon Ashley where he agreed that Sarah Lawlor leaving the council meant that he did not need to progress his complaints. She acknowledged that the Claimant did not dispute that agreement. She could see that management felt that matters had been closed with Sarah Lawlor leaving the council and his subsequent return to work. Given the length of time that had elapsed by January 2014, Ms Church did not see any benefit in reopening an investigation into his original allegations against Sarah Lawlor. She did acknowledge that the council did not fully investigate the issues he had raised at the time and on behalf of the council she apologised for that.

104.2 Secondly, Miss Church would be asking the Children and Learning department to ensure that bullying and harassment investigations are concluded, even if an employee will be leaving the employment of the council. It was the council's policy that investigations under the bullying and harassment policy should be formally concluded even if the employee will be leaving the council. That allows the matter to be fully closed and dealt with appropriately. Laura Church would remind the Children and Leaning department of this requirement.

104.3 Further, she would be advising the Children and Learning department that withdrawal of a grievance can only be made by the complainant in writing. It was clear to her that the management side thought that they had agreed with the Claimant that the matters in relation to his allegations against Sarah Lawlor were not being progressed as she was leaving the organisation. However, there was nothing from the Claimant in writing. That failure added to the Claimant's perception that management had ignored his concerns.

104.4 Further, Miss Church would be asking the head of Human Resources and legal services to review the advice given by managers in relation to appeals and the extension of deadlines where special circumstances allow under the unfair discrimination, bullying and harassment policy. On her analysis of the dates, he would have received the bullying and harassment outcome letter on 2 August, the recorded delivery receipt shows that. He would have had until 9 August to appeal. He requested an extension for the time on 6 August in writing and his request was turned down on 14 August. She noted that his request for an extension was received within the deadline to appeal. He clearly identified the reasons for the delay in responding relating to more pressing issues in

relation to his pay, stopped at the time. She considered that a more appropriate action would have been to allow a short extension of time. Ms Church did not have difficulty with the fact that the outcome decision had been sent rather than given in person. She acknowledged that the Claimant asked for a meeting. That would not, however, have changed the result.

104.5 Further, Ms Church made the important point that her review of matters in effect acted as an appeal. The Claimant got an appeal, therefore.

104.6 In terms of delays by Simon Ashley, Laura Church heavily hints that Mr Ashley was taken to task about this by managers, the detail of which would have to remain confidential in her opinion.

105. So those were the matters where Ms Church found in favour of the Claimant. She rejected many other of his points however, she concluded that given Tracy Quinn line-managed him when he returned to work in 2012, he was protected from any further management harm if indeed he experienced any at the hands of Sarah Lawlor. Ms Church also expressed disappointment that the reasoning for the sickness appeal hearing outcome had not been given. She did note that management had tried to manage sickness and she could also see evidence of frustration from management, asking whether the procedure could be fast-tracked to dismissal because of a lack of engagement from the Claimant. As Laura Church noted, ultimately, management's actions were overturned at the appeal hearing. The fact that this appeal had been allowed, suggests Ms Church, shows that council's policies and procedures do have appropriate checks and balances in place.

106. The Claimant had complained that there was a failure to recognise that the work-related stress causing depression amounted to a disability. Ms Church responded that this matter was addressed at the sickness hearing where Ms Ebdon confirmed that work related stress was not a medical illness or condition and so was not to be treated as a disability. In so far as arthritis was concerned, Ms Church noted that the Claimant had not raised this with occupational health as reflected in the memos from them.

107. As to the Claimant's suggestion that there had been a conspiracy to use his sickness as a means to dismiss him: Ms Church repeated her analysis that she could see evidence that management was trying to manage sickness and had expressed frustration and had considered whether or not the procedure could be fast-tracked to dismissal. Ultimately their actions were overturned at a sickness appeal hearing. Whilst the reasoning was scant, the actions were overturned. In any event, trying to manage absence and showing frustration did not amount to a conspiracy to dismiss someone in her view. The Claimant of course had not worked since 15 November 2012. At the time of this letter that was one year and two months.

108. The Claimant had suggested that derogatory statements had been made about him in the course of his sickness absence management. The matter related to two e-mails sent by Linda Farmer on 15 January 2013 and 1 May 2013. In the

first she commented "Julian has advised 'Gaff' he will remain off sick until his grievance is sorted out. He is just playing a game and has no intention of returning any time soon in my opinion". The 1 May 2013 email recorded Ms Farmer as saying "he advised Gaff that he will not return to work any time soon as he believes that whilst he is on sick leave he cannot be made redundant". The Claimant disputed what he said to Gaff. Ms Church had been unable to confirm with Gaff what was said. In her analysis, whilst it was clear that the e-mails were sent and the tone of them shows the manager's frustration with the process, she considered that the outcome of the sickness hearing was evidence that the Claimant had an opportunity for his case to be heard and that he did receive fair and impartial treatment.

109. We note that Ms Ebdon, occupational health, also recorded the fact that the Claimant would not return to work until matters were sorted. Ms Farmer in evidence before us, expressed the view that had his absence been managed properly, he would have been dismissed long before.

110. In terms of Nick Chamberlain, she had reviewed the grievance decision provided by Nick Chamberlain. She considered that Mr Chamberlain had conducted a thorough investigation into the issues that he had raised. Mr Chamberlain had upheld elements of his grievance and had apologised where matters had been upheld.

111. As to Caroline Dawes: she was entitled to not admit the letter of 17 July 2013, because the letter was outside the scope of the agreed issues for consideration under the unfair discrimination, bullying and harassment investigation. Ms Church concluded that Caroline Dawes had undertaken a thorough review of the three areas that she had agreed were the scope of her investigation. A number of individuals had left the council and so could not be interviewed.

112. In respect of Willy White, the decision to deny the right to appeal the unfair discrimination, bullying and harassment outcome was a decision not made by Mr White but by the head of HR and legal services. That decision was criticised by Ms Church but her position was that the grievance she considered effectively amounted to a right of appeal anyway. Other criticisms of Mr White were also rejected.

113. Ms Church did indeed write to the Head of Service, Jo Fisher, with her management recommendations. These were acknowledged and said to be actioned by Ms Fisher on 22 January 2014. She discussed the outcome with the Claimant at a meeting on 30 January 2014.

114. The Claimant initially intended to appeal Laura Church's outcome. A meeting was organised with Mr Clapp, Head of Procurement and Shared Services but in the event by e-mail dated 3 April 2014 the Claimant decided that he would go down the legal route rather than stay within the council.

<u>Failure to provide SSP1 form to the Claimant</u>

115. On 7 October 2013, the Claimant lodged a grievance with Mr Williams, a business manager within HR complaining about the fact that he had not received any statutory sick pay payments for over three months. He had formally lodged complaints back in June and July of 2013 in relation to stoppage of pay and non-receipt of an SSP1 form. He was led to believe that Mr White of HR and Ms Chapman of payroll were dealing with this but he was now being told that he must formally lodge the grievance with Mr Williams as Mr Williams had taken over from Ms Chapman. The Claimant was contending that the SSP1 form should have been sent to him in June 2013. His grievance was on the grounds that he was not paid or given any notification that he had not be paid since June 2013; the SSP1 form still had not been sent to him despite much correspondence; there was no explanation as to why the SSP1 form had not been sent to him and why it had taken from June 2013 to 7 October 2013 to be told that he had to approach Mr Williams.

116. Mr Williams concluded his formal investigation into the grievance raised by the Claimant in respect of these matters on 11 February 2014. Mr Williams upheld the grievance that there had not been notification of the end of sick pay entitlement. HR were meant to notify the relevant manager that contractual sick pay entitlement was ending. The relevant manager is then to raise it with the employee concerned. In the Claimant's case no e-mail could be found from HR to a relevant manager.

117. Mr Williams also upheld the Claimant's complaint that the SSP1 form had not been sent out at the relevant time. The Claimant's first day of sickness was 15 November 2012. Half contractual sick pay started on 23 January 2013. Statutory sick pay ended on 2 June. Final sick pay entitlement ended on 24 July 2013. Standard payroll procedure was to obtain the relevant sick notes from an employee's manager, attach the completed SSP1 and send out to the employee's home address. The Claimant's SSP1 had a date of 7 August 2013. These were sent second class to the Claimant's home. The most likely date for this was the 7 August 2013. The Claimant was right to point out that HMRC require the SSP1 form to be sent out much earlier as also the council's payroll procedure required. This was clearly, in Mr Williams's judgment, an administrator error/oversight and once the Claimant was able to raise the issue with Barbara Chapman, she clearly acted on the enquiry to ensure the form was sent out as quickly as she could. Barbara Chapman's intention was to wait until 5 August, which matched the return from holiday of the payroll administrator. The Claimant claimed she did not respond after that date and in Barbara Chapman's absence Mr Williams could not confirm what had happened. Mr Williams found that it was clear the SSP1 form was sent out late. The follow-up by the Claimant was acted upon but unfortunately the form had been lost in the post. It was sent out on 7 August 2013, he found, but all parties agree it should have been sent earlier.

118. The non-issue of an SSP1 form was an oversight. That was not acceptable and internal review had been conducted as to why it occurred. It was difficult to place all responsibility on a relatively junior member of staff when all payroll staff were currently operating in a very difficult environment. The Luton

Borough Council payroll section was responsible for running eleven payrolls. In practice there is one payroll administrator per payroll. Working practices were very much out of date with all calculations being made manually. Sick pay monitoring still operated on a manual card system. That was all meant to have been corrected by an integrated payroll system in September 2012. For a number of reasons, the implementation did not go well which meant that not all upgrades were implemented and a large amount of follow-up corrective work was required. In short, human error was put forward as the explanation but that did not mitigate the inconvenience that the Claimant had suffered. It provided some background as to why it happened.

119. The next element of this grievance was that there had been a slow response to the Claimant's request for a resolution concerning non-payment of sick pay. Mr Williams set out a detailed chronology. The Claimant's union representative e-mailed Willy White of HR on 26 July 2013 stating that the Claimant had not received pay. Mr White immediately sent the query to Barbara Chapman. Mr Farley of the union followed up on 30 July 2013. Mr White forwarded that to Barbara Chapman. Barbara Chapman replied that afternoon to Mr White explaining why the Claimant was no longer receiving pay. Mr Farley was copied in the following day. Mr White then received a letter from the Claimant raising a number of concerns. Mr White advised that these payroll concerns should be raised informally in accordance with the procedures. The payroll manager was the correct person but the union had already raised the matter. On 27 September, two months on, the Claimant sent an e-mail to Willy White explaining that he had still not received any further communication. Mr White was under the impression that the Claimant was still being represented by the union and so the union should be communicating. Solicitors wrote in on behalf of the Claimant on 18 September. Mr White wrote to the union to clarify who was representing him. The union replied on 19 September 2013 confirming that Unison had not instructed a solicitor and under Unison rules if a member instructs a solicitor then the union withdraws. Mr Hilaire confirmed that on 20 September 2013, he was being represented by a solicitor. In exchange with the solicitors on 27 September 2013, Mr White checked the SSP1 form situation with the payroll administrator who confirmed it had been sent on 7 August 2013. On 27 September 2013, the solicitors request that the form should be re-sent. On 7 October the Claimant requested a formal investigation to his grievance.

120. On the basis of that timeline, Mr Williams suggested that all responses had been prompt. The problem was that the SSP1 form sent out on 7 August 2013 apparently had not been received.

121. Mr Williams acknowledged that the Claimant's grievance had highlighted a number of issues and practices which the council needed to address. As he had indicated, there was to be an ongoing comprehensive review of payroll but the following needed to be looked at:

(a) Introduction of automatic processing of sick pay and workflow alerts to managers;

(b) Standardised procedure for notifying employees of their sickness entitlement;

(c) The appropriateness of the use of second class post for most correspondence needed to be reviewed. He observed that although it was good practice for an employer to notify an employee of the end date for sick pay, it was very much an employee's responsibility to be aware of their sick pay entitlement. However, he accepted that the non-receipt of an SSP1 form was the council's responsibility that would have caused the Claimant inconvenience and may have caused loss of benefit entitlement. If that had been the case, Mr Hilaire was to contact him with claim details so that the council could contact the relevant parties to ensure the correct benefit was paid.

Short procedure for employee's absent without permission

122. There was, in the course of the hearing, a certain amount of confusion as to which version was the relevant version. As it happens it does not matter because the short procedure for an employee's absence without permission is identical whether under the October 2005 or the November 2011 version. The relevant bits were as follows:

> Where an employee has failed to comply with the council's absence reporting procedures the line manager should first try to contact the employee by telephone, personal visit via next of kin to ascertain the employee's personal safety. If the line manager is unable to make contact with the employee or a member of their immediate family for a period of 48 hours from their normal starting time, then the procedure applies. The line manager should write to the employee at their last known address requesting that the employee makes immediate contact to explain their absence. The letter should also be sent by recorded delivery. The line manager should also contact the exchequer services, manager, corporate and customer services department and ensure that any payments from the first day of absence are suspended. (There follows then a procedure engaging the disciplinary procedure).

123. It was under this that Ms Lawlor felt it appropriate to suspend pay.

Contractual terms as to place of work

124. The contract was signed and dated 27 April 1992 relating back to the Claimant's start date on 9 November 1990. Clause 5 provided "you may be employed in locations or on duties other than those to which you were originally appointed. Officers may be required to work anywhere within the County or outside it's area". That contract was with Bedfordshire County Council. An unsigned contract issued after 1995 again with Bedfordshire County Council provides that the Claimant would initially be employed at Luton Youth House but as a term of youth employment, you may be required to work at or from here or any of the areas youth service establishments as and when required by the area youth officer, although there will be consultation with you if it is proposed to move your work base. Your duties will be primarily those

agreed at the time of your appointment but you may be required to undertake such other duties commensurate with your grade.

125. There was then a contract with Luton Borough Council issued on 10 May 1999. The place of work provision was as follows:

> "All part time youth worker appointments are on a town-wide basis and as such you may be required to work at any club/centre in order to meet the demands of the service. The main address of the council is given above, however your initial/nominal work base and associated hours of work will be at Barnfield Youth Club for three sessions per week, three hours per session for 39 weeks per year."

126. It went on to say that any changes to location hours will be discussed with you in advance of implementation and any amendments or a statement of written particulars will be issued. Similar provision was in a contract dated 24 May 1999. Similar provision in the contract issued on 24 July 2001, save that the normal place of work was provided to be Luton Youth House. The next is dated 25 October 2001, similar provision, save that Halyard is given as the place of work. It was noted that Barnfield Youth Club was presently closed, the Claimant's normal location, and as such his work will be undertaken at Youth House until the club re-opens. On 15 September 2005, there was a change in particulars with Halyard Youth Centre recorded as the place of work. Other general conditions of service relating to the employment remained unchanged. On 1 June 2007, the place of work was described as follows.

> "From 1 June 2007, you will no longer be working at Welbeck Youth Centre and will be relocated to Halyard Youth Centre on a permanent basis. 1. The other general conditions of service relating to employment with the council remain unchanged".

127. We note that the contracts do not always keep up with the Claimant's principal place of work.

128. On 1 April 2009, the hours and weeks for the Claimant's two employments were set out, then on 25 October 2011, as we know, Sarah Lawlor wanted to discuss merging the two contracts and to discuss potential changes to his particulars.

129. We find as a fact that the Respondent had authority to instruct the Claimant to work elsewhere within Luton, in the event that it was not possible to work at his normal place of work. We find that the Respondent was contractually entitled to ask him to work at Hockwell Ring whilst Barnfield West Youth Centre was inaccessible.

<u>The redundancy process</u>

130. We accept from Ms Veronia Charles, Principal Human Resources Advisor in the human resources transformation team, that since 2010 the Respondent had undergone major transformation as a result of central government spending reductions. Each department had been required to identify savings in order for the Respondent to reach its overall budget reduction of £36 million by 2014. A savings target of £500,000 was set for the Integrated Youth

Support Service for the financial year 2013 to 2014. Savings of £378,000 had already been identified by reducing the Respondent's youth personal advisory services, however the remainder of £122,000 had to be found. The Respondent had to re-model youth services with a shift from youth activities and youth club provision to targeted youth work to support the most vulnerable youths. The Respondent's organisational change procedure was followed. That procedure had been agreed with the relevant trade unions. We are told and accept that the relevant trade unions were briefed on the proposals to re-model the youth service on 19 October 2012 and 25 January 2013. On 29 April 2013, permission was granted by the executive committee of the Respondent to commence the re-modelling of youth work services within Luton. A process of consultation of staff and trade union started on 28 May 2013. Consultation was extended to 22 July 2013. The organisational change assessment dated 31 May 2013 outlined the proposals consultation. The proposal was to delete 25.6 full time equivalent positions within youth work services and replace this with 17 full time equivalent new positions. The total included the proposed deletion of 4.97 full time equivalent youth support workers. The Claimant's employment in this area amounted to 0.44 FTE. The organisational change assessment was updated on 8 July 2013 to include a proposal to use redundancy selection criteria as well as interviews to appoint a post in the new structure. The proposal to use selection criteria was rejected by two of the trade unions, therefore the proposals for post deletions and the restructure remained as outlined as at 31 May 2013.

131. The Claimant did not attend any of the group consultation meetings but was given a hard copy of the organisational change assessment during an individual consultation meeting on 12 July 2013. The meeting had to be re-arranged because the Claimant failed to attend a meeting on 14 June 2013. On 12 July 2013, the Claimant met with Kerrie Vergo. He declined the offer of trade union representation. The formal consultation was recorded in a pro-forma consultation document over five pages. Seeing as he was given the organisational change procedure, together with an employee assistance programme leaflet, he did not wish to be considered for voluntary redundancy. When asked whether there were any personal circumstances that may be affected as a result of the proposals that he would like to be recorded, the Claimant said there were none.

132. Following the close of formal consultation, an implementation plan outlining the stages for appointing to post in the new structure, coupled with details of the application process was posted to the Claimant on 30 July 2013. The closing date for applications for posts in the new structure was 12 August 2013.

133. There had been an equality impact assessment of the redundancy process. It had been noted that there was a high representation of youth workers with minority and ethnic characteristics which totalled 40.91% of the affected work group. One of the action points as a result of identifying a negative impact was to encourage employees to access the change and separation support programs which would assist them with job search and interview techniques.

134. The closing date for applications for posts in the new structure was 12 August 2013. The Claimant's post of youth support worker was included within ringfenced arrangements and he was required to submit an application form to be considered for the new post of targeted youth work assistant. Thirteen other employees were ringfenced for that position. They too were required to submit an application form and attend for interview to determine their suitability. There was only an availability for 1.85 full time equivalent. All the employees totalled 6.75 full time equivalent, meaning that 4.9 full time equivalent was to be lost.

135. By e-mail dated 10 August 2013, the Claimant expressed interest in the alternative work opportunity. He said he would like to return to work after the work-related issues he had raised had been resolved. He observed that he had not been present for the meetings other staff may have attended to support them through the restructure. He felt that given his current work situation, management could have attempted to support him at the end of a formal sickness meeting by discussing issues relating to organisational change. He expressed the view that he had not had the appropriate support throughout the transition. Mr White copied Veronia Charles into that e-mail on 12 August 2013. Veronia Charles responded on 12 August informing the Claimant that he needed to put in an application by the deadline. 10 people, including the Claimant had not applied, 5 had requested voluntary redundancy, but not the Claimant.

136. Veronia Charles telephoned the Claimant on 16 August 2013 as she had no response to her e-mail of 12 August. She asked the Claimant whether he had received the pack. He advised her that he was bogged down in paper and that he had no time deal with the organisational change matter. She informed him that they would need an application form.

137. Veronia Charles allowed an extension for submission of the application form. She took some time to explain to the Claimant that he would only need to concentrate on four critical criteria, marked "C" on the person specification and that he should only focus on those. She confirmed the telephone conversation by an e-mail dated 16 August 2013. The extension was until 9am on Friday 23 August 2013. Mr Chamberlain would also post a hard copy again of the documents.

138. The Claimant e-mailed Veronia Charles and Mr Chamberlain on 21 August 2013. He asked for more time to submit an application. Ms Charles had a telephone conversation with him on 22 August and an extension was not possible beyond 23 August to submit the application form as an extension had already been granted. However, the time was changed to mid-day. In order to assist him she attached once more the application form where she had pre-cut and paste the four critical criteria onto the application form so that the Claimant could focus and concentrate on addressing those four criteria in order to be shortlisted for interview. She had not done this for any other of the employees that were in ringfenced arrangements.

139. Mr Chamberlain, by e-mail dated 22 August 2013, dealt with a number of points made by the Claimant in his e-mail of 21 August 2013. He made the point that he felt disadvantaged in the process and asked a series of questions, including that as he had been off with a 'mental ill-health condition' should he not have received some kind of help and support through the organisational change, as he had been unable to attend work to be part of the meetings and received information of its staff would have done so. Mr Chamberlain took on some of these points directly. He did have an individual meeting with Kerrie Vergo on 12 July 2013, and she confirmed that she had explained to the Claimant, the implications of the review for him and his current post. He could approach Veronia Charles for a further help if necessary. Mr Chamberlain refuted the fact that the Claimant had not had the opportunity to understand the review of youth work. All staff had been treated equally. Full details of the implementation plan had been sent and consulted upon. If he wanted support for interviews, he could contact Veronia Charles. The decision-making process and future staff appointments would be based upon a formal interview and did not include any consideration of sickness or any other aspect of the redundancy selection criteria. Mr Chamberlain was not however conceding that the Claimant's current sickness was as a result of work-related stress. The organisational change assessment did not include open access youth work in Barnfield West. The Claimant was encouraged to read the documentation. The Claimant had been sent all copies of paperwork, had been invited to group consultation meetings and had taken part in an individual consultation meeting after he failed to attend the first meeting that had been offered. They had also extended the deadline for the submission of his application form. Mr Chamberlain suggested that they had done everything that they could do as a reasonable employer to support him. He was again referred to Veronia Charles if there was anything else he felt could be done.

140. The Claimant submitted his application on 23 August 2013. The Claimant was invited for interview for the post of targeted youth work assistant by letter dated 28 August 2013. The interview was scheduled for 4 September 2013. The Claimant acknowledged receipt on 3 September 2013 and e-mailed advising that he had been signed off with depression by his GP for a further month. He also advised that he was not fit to attend any meetings or interviews. The Claimant was asked to indicate by 3 September 2013 when it was likely he would be fit to attend interview. He had not replied by 9 September and was then chased for a response. The Claimant was asked to advise by 13 September 2013 when he might feel able to attend for interview. The Respondent was holding back the outcome of the other candidate's interviews held on 4 September 2013. Veronia Charles concluded that she could not delay beyond 23 September 2013. Thirteen employees needed to be advised whether they had secured one of the new targeted youth work assistant posts or whether they were at risk of redundancy. In her view it would be unfair to wait any longer.

141. Veronia Charles considered whether there was a way other than interview. The unions had objected to redundancy selection criteria. She felt that to deviate from the agreed procedures without an adequate rationale would potentially cause significant problems for the Respondent in that employees

would be treated inconsistently. Further, even if they had decided to do selection criteria without the agreement of the unions it was likely that the Claimant would have been selected for redundancy owing to his sickness absence record. Veronia Charles maintained the need then to interview the Claimant. She explained that to him by letter dated 17 September 2013.

142. He was offered a final opportunity to attend on 23 September 2013. He was asked to confirm his attendance by 20 September. She also noted in the letter to the Claimant that he had not asked for help with interview techniques.

143. She telephoned the Claimant on 20 September 2013. The Claimant confirmed that he had received the letter but was not fit enough to attend for interview. The Claimant indicated in an e-mail sent at 11:48 that he would get back to her, having consulted representatives. She replied saying that he needed to get back to her by 5pm that day, 20 September. The Claimant failed to respond by 5pm to confirm whether he was attending. The Claimant responded at 17:53 by e-mail citing solicitor's advice that if he had been signed off, how could it be expected that he attend interview. He would not be able to attend an interview and requested she postponed it until the doctors felt he was fit to return. There was no indication from the Claimant when that might be.

144. Ms Charles responded on 25 September to confirm that the Respondent was not able to delay the process any further and the next stage would be to hold an at-risk meeting with him. The Claimant was written to on 1 October inviting him to an at-risk meeting on 10 October 2013. In an e-mail dated 3 October the Claimant stated the whole reason for not going through the interview process was owing to his not being fit enough to attend but he went on to say that even if he was not off sick with work- related stress causing depression, he still would not have attended for the interview. Following discussion with the head of service, Joanne Fisher who decided that independent managers would conduct the at-risk meeting with the Claimant, the Claimant declined to attend such meetings citing being signed off. On 17 October 2013, the Claimant was sent a letter formally advising him of the risk of redundancy. The Claimant was served a notice to terminate his employment by way of redundancy on 30 October 2013 and was advised that he had a right of appeal. The Claimant did not exercise his right of appeal. The Claimant was put on the Respondent's redeployment list, which involved the Respondent sending a weekly vacancy bulletin to the Claimant enabling him to apply for anything he was interested in.

145. Ms Charles sent copies of vacancies to the Claimant that she felt might interest him. The Claimant did not apply for any.

146. The racial breakdown of those selected for redundancy was that 5 employees left on voluntary redundancy, 4 of whom had BME characteristics. 12 employees were issued with notices of compulsory redundancy, of whom 10 shared the BME characteristics. There were 17 offers of suitable alternative employment, evidently part-time, 11 of those shared BME characteristics.

The comparator XX

147. It has been agreed by all that XX's identity can be kept anonymous. XX is a white female. She attended the Tribunal with a witness statement and the Respondent had no questions for her. She was employed by the Respondent for 13 years before taking voluntary redundancy in April 2015. She was diagnosed with endometriosis and it was accepted by the Respondent that this amounted to a disability. The disability was confirmed by Susannah Ebdon on 4 July 2013. As a consequence, XX was entitled to disability leave under the council's policy and procedures and sickness trigger targets could be extended if necessary in order to support her. All hospital appointments were taken as disability leave. XX had ovarian surgery. She was off work for 66 days between 27 February and 23 May 2013. She did return to work. The sickness review meeting was eventually held on 16 September 2013. The outcome was that normally a three month target would be set with no further absence for sickness in that time. However, by the time of the review meeting, XX had been back for four months and although she had suffered a few major flare-ups, none had been while she was on shift so she had no further sickness since being back to work in May. The review meeting in September 2013 recorded that XX returned to work in May even though she still had an open wound. She came back on a phased return for the first week. The second week she did some shifts and took some annual leave. By the third week she was back to normal shifts. She still needed some support if heavy equipment was needed to be put out. This was done with support from colleagues. By week four XX was back to normal and her wound had now closed.

148. XX differs from the Claimant's case in that there was a finding by the council that she was disabled. She was off for one extended period around an ovarian operation and came back to work with a phased return to work with no further difficulties.

## CONCLUSIONS

149. It is essential to read the appendix of allegations alongside these conclusions.

### Allegation Number 2.

150. Failing to remunerate the Claimant as a qualified first aider on 28 June 2004. This allegation is plainly out of time. It has no relevance to any of the allegations that follow, the first of which is over seven years later. We note however that the Claimant was paid for his first aider status in 2011 – 2013.

### The instruction to work at Hockwell Ring: allegation 3

151. We accepted Sarah Lawlor's evidence that she had a service to run. We noted that the rationale for youth workers working at youth clubs in Luton is to address areas of deprivation which can give rise to fundamentalism and resulting crime. Access to Barnfield West Academy had been obstructed

because it was locked by the school. The instruction to attend Hockwell Ring was plainly a reasonable one. Efforts had been made to meet with the Claimant prior to giving the instruction. They had been frustrated by the Claimant's refusal to attend meetings out of work hours, notwithstanding the limited number of hours he worked in the week. He attended the team meeting on 18 November 2011 when the timetable was handed out and voiced no opposition. He was telephoned by Sita Hall an interim line manager ahead of that. The Claimant communicated his non-attendance two minutes after it was due to begin by text to a work colleague who was not a manager but who worked at the centre. This simple instruction from Sarah Lawlor, and the Claimant's refusal to comply with it, has generated this entire litigation, most disproportionately. There were no youths to work with on Monday 21 November 2011 at Barnfield West. Sarah Lawlor's instruction was entirely reasonable. The Claimant's conduct entirely unreasonable. He should have attended Hockwell Ring; that is to say, he should have done his job. There is no prima facie case of differential treatment on the grounds of race here whatsoever. There was ample opportunity on the part of the Claimant to alert management to any concern that he had about the instruction. He did not take any of those opportunities. On the Tribunal's analysis there were three letters to the Claimant with view to discussing changes and there was a phone call from Sita Hall, as well as the team meeting. The Claimant had been invited to meetings and had been invited to bring a trade union representative or colleague. If there was any difficulty that the Claimant might have had with the start time, he needed to communicate that. He did not. It is not entirely clear to the Tribunal whether it is with hindsight that this move to Hockwell Ring was temporary, but it was temporary. It was recorded in writing to the extent of being circulated in a timetable at the team meeting and minuted.

**Allegation 4**

152. It was right that the Respondent did not pay the Claimant for Monday 21 November 2011. He did not perform the work he was meant to do. They acted in accordance with the relevant appendix of the disciplinary policy. There was no prima facie discrimination.

**Allegations 8 and 9**

153. It is true that it took some time to restore the Claimant's pay, and that unfortunately not all pay due to him in December 2011 was paid timeously, but the explanation for this was that the Claimant did not attend work on 21 November 2011 and provided a sick note (notably not covering the 21 November 2011) after Sarah Lawlor had correctly informed payroll to stop paying. The Claimant had suggested that on 21 November 2011 he presented himself to work at Barnfield West. The Tribunal is sceptical about that evidence but even if it is true, to his knowledge, there were no youths there to work with, so it would be a pointless gesture. The reason for the suspension of salary was the Claimant's failure to attend work on 21 November. There is no prima facie case that it had anything whatsoever to do with race. Similarly, if the Claimant was removed temporarily from the payroll system following the instruction from Sarah Lawlor not to pay the Claimant, that was not down to his

race: that was down to the fact he had not attended work on 21 November 2011. Race played no role here whatsoever.

**Allegation 7**

154. The Claimant suggests he was misled into attending a meeting on 25 November 2011. He suggests the meeting had been introduced to discuss roles and responsibilities but ended up as a disciplinary investigation meeting. It is right that the Claimant received an invitation on 16 November 2011 to attend a meeting on 25 November 2011 to discuss potential changes to particulars including the proposal to merge his two contracts into one contract. This letter repeated the content of two earlier letters. After that meeting, of course, the Claimant had attended the team meeting on 18 November 2011 without voicing an objection to Hockwell Ring and had failed to present to work at Hockwell Ring. It can have been of no surprise to him that this matter was raised at the meeting on 25 November 2011. The Claimant was disadvantaged in no way whatsoever and none of this had any relation to the issue of race. The decision to launch the disciplinary investigation in fact was taken after the meeting on 25 November, although of course, the questions about what had happened were asked at that meeting. Sarah Lawlor's position as the Claimant's non-attendance had put young people and staff at potential risk. We have not been persuaded that this position was wrong.

**Failure to hear the Claimant's grievance about Sarah Lawlor's alleged bullying and harassment: allegation 10.**

155. This has been the subject of extensive consideration by the council. The Tribunal agrees that it was appropriate in the first instance not to look at this grievance whilst disciplinary proceedings were proposed. It was appropriate for management not to allow that disciplinary process to be derailed by investigating a subsequent grievance. That is a position often adopted by employers when dealing with the relationship between disciplinary hearings and subsequent grievances. It is specifically in the Respondent's policy. The position changed, however, when it was decided not to take the disciplinary matter further.

156. Simon Ashley's position was then that the Claimant had agreed it would not be necessary to pursue the grievance against Sarah Lawlor when it became known she was leaving. This has been the matter of much internal investigation. Ultimately, Laura Church upheld the Claimant's concern about that. However, it has consistently been stated by Mr Ashley and the managers looking at it, that the Claimant agreed that position. Even if that is wrong, there is no prima facie case that this was tarnished by race. There is no actual white comparator: a hypothetical comparator is relied upon throughout. The reason, it seems, that this grievance was not pursued was because Sarah Lawlor was leaving and Simon Ashley therefore thought it would serve no purpose to pursue it and persuaded the Claimant to agree that position for a period, at least. That is not a matter of race. It may be that Mr Ashley's decision was rightly criticised by Laura Church as poor practice. That does not mean Mr

Ashley arrived at that solution, which involved less work for him, because the Claimant is black. The allegation is rejected.

157. The Tribunal does not see any realistic prospect that Sarah Lawlor would have been found to have bullied or harassed. She was doing her job, trying to run a service for the youth population of Luton.

**Allegation 11**

158. The Respondent was justified in not paying for 21 November 2011. That is because the Claimant did not attend work as instructed. It has nothing to do with race. The pay for December 2011 was sorted out in January 2012. It is right that some money was due for training attended in the summer of 2011. That was the third element of the Claimant's original grievance. It does seem that Simon Ashley was dilatory in dealing with this. Ultimately, the Claimant was paid but there is no prima facie case that Mr Ashely's delay in this regard had anything to do with race whatsoever. It is not enough that the Claimant's ethnic origin is black Caribbean. That of itself is not enough to generate a prima facie case of race discrimination.

**Allegation 12**

159. Asking Mr Ashley to conduct the investigation into the Claimant's complaints did not result in the efficient dealing with them. Mr Ashely was however, in the line of command and might be expected to investigate them appropriately. He was not selected as an act of race discrimination. There is no racial element to the decision to appoint Mr Ashley. It did not prove successful; that does not mean to say there is a prima facie case of race discrimination. We note from Laura Church's outcome that Mr Ashley was tackled about the manner in which he handled some of this.

**Allegation 13**

160. This relates to the decision not to progress the first two elements of the grievance dated 23 December 2011 because they were subject to extant disciplinary proceedings. The rationale, once again, was to ensure that a grievance could not be used to de-rail disciplinary proceedings. It is the Tribunal's view that Sarah Lawlor was acting well within her rights as the Claimant's manager to raise these matters with him and to act as she did. We do not see a prima facie case of bullying and harassment by her and nothing in relation to race discrimination. We understand the council's policy that grievances cannot be used to de-rail appropriate disciplinary proceedings. There was no question of the Claimant having to be protected from harm. The Claimant did, however, have to explain his decision not to attend at Hockwell Ring. That was entirely appropriate. Mr Ashley responded by letter dated 10 January 2012 to the Claimant's letter of 23 December 2011; bearing in mind the season, that was a prompt reply.

**Allegation 14**

161. As to the investigatory interview on 11 January 2012: the Tribunal does not regard this as baseless. There was a clear prima facie case of misconduct in that the Claimant had not attended Hockwell Ring between 6pm and 9pm on 21 November 2011 as instructed; and had not reported his intended absence in line with policy. In the event the Respondent decided not to progress the disciplinary matter further, the investigation interview was, however, entirely appropriate. Evidence was not destroyed of the meeting, we have the minutes in the bundle and these were produced to the Claimant eventually. That was a matter of internal consideration, namely the timing of their production. Again, none of this has prima facie connection with the Claimant's ethnic origin.

162. We are not entirely clear whether the Claimant is suggesting that as a matter of contract, he could only be asked to work at Barnfield West. If that is his position we reject it. We have seen a number of iterations of his contract which suggest the service is town-wide and that he can be asked to work elsewhere. That did not change in the version of his contract which described his base being permanently Barnfield West. It was a reasonable instruction, express or implied, that he attend work at Hockwell Ring whilst Barnfield West was inaccessible.

**Allegation 15**

163. That Ms Lawlor was investigating the matter was down to the fact that the disciplinary proceedings pre-dated the grievance. We have repeated the council's position that the grievance cannot be used to de-rail disciplinary proceedings. That is a common policy adopted by employers and one adopted by the Respondent in this case which was reasonable. It is true that Donna Shaw, after the meeting on 11 January 2012, expressed a view that it was best if Sarah Lawlor was not an investigator as opposed to a witness. Tracy Quinn was then given the role of investigating. That may be a reasonable change but it was neither wrong nor discriminatory from the beginning that Sarah Lawlor be involved. Again, the Claimant had expressed no opposition to the proposal in the team meeting on 18 November. The Claimant has suggested that it was not reasonable to expect him to raise this matter in front of his colleagues. He would not have to raise it in front of his colleagues: he could have taken Ms Lawlor to one side.

**Allegation 16**

164. It was a matter of internal consideration as to when the notes were provided to the Claimant. It has also been acknowledged by the Respondent that they should have been provided after the meeting. The fact that they were not does not indicate a prima facie case that this decision was related to race. The decision was related to the fact that a decision had been taken not to pursue the disciplinary further.

**Allegation 17**

165. It is a feature of not being given the notes that the Claimant could not contest the accuracy of them until he received them. Given that no disciplinary

proceedings were instigated, it is difficult to see what disadvantage the Claimant suffered from it. We see from the notes that Rhana Shar was in a role of note-taker. The notes seem relevant. Relevant questions are asked and relevant answers are given. This allegation is to be analysed in the same way as allegation 16. There is nothing prima facie discriminatory on the grounds of race.

**Allegations 18 and 19**

166. Tracy Quinn told the Claimant verbally that the disciplinary process was not being pursued. He had no reasonable grounds for believing that anything else was the case. It is true that the failure to put this into writing was the subject of internal grievances and it has been concluded that it would have been advantageous to have put it in writing. However, the Claimant had no reason not to accept what Tracy Quinn told him, not least because no disciplinary proceedings were pursued after she told him that there would be none. There is no prima facie relationship here with any question of race. It was on 15 February 2012 that Tracy Quinn told him.

**Allegation 20**

167. We have dealt with allegation 20 above, namely not addressing the bullying and harassment aspect of the Claimant's grievance raised against Sarah Lawlor. Mr Ashley had suggested that it was no longer relevant when she had left, a matter agreed for a period by the Claimant. That said, Laura Church was critical of this position. The Tribunal understands why Miss Church was critical. Mr Ashley's letter in response to the Claimant's original grievance did say that if there were any outstanding matters after the disciplinary process, they would be taken up. As we know, the disciplinary process was not pursued against the Claimant. That left outstanding the Claimant's assertion that he had been bullied and harassed by Ms Lawlor. That might have and should have been investigated. The Tribunal, however, does not see that Sarah Lawlor bullied and harassed the Claimant. She was taking legitimate managerial points in the face of the Claimant's failure to attend work at Hockwell Ring.

**Allegation 21**

168. As a matter of fact in 2012, the Claimant was not signed off during periods of holiday. This prompted Tracy Quinn to e-mail on 31 May 2012 that the Claimant was not entitled to claim back holiday entitlement as over 2011 to 2012 he had taken the annual leave in line with the contract over that year. That position was repeated by Mr Chamberlain in a letter dated 8 March 2013 which we have referred to above. Insofar as this claim relates to the period 15 November 2012 through to 22 January 2014, and that is not clear, then the Respondent had an understanding as to what its' entitlements and obligations were in respect of paying and withholding annual leave during periods of sickness. That was based upon an understanding of what the law was. We have been told by the parties that the Claimant's claim for outstanding holiday pay, whether or not pleaded before us, has been resolved. However, none of

this related to any issue of race. It related to the Respondent's understanding of what its' obligations were in respect of holiday pay and sickness. There is no prima facie racial element here at all.

**Allegation 22**

169. In the implementation of the sickness absence policy, the Claimant cites XX as a comparator. She is not comparator, she was recognised to be disabled. Her period of absence is one period of 66 days only. The details we set out above. She is cited as a comparator for the purposes of a race claim. It is true that she is white but in all other respects her position was not comparable to that of the Claimant. Her treatment does not generate a prima facie case of race discrimination because, not least, she was believed to be disabled. The Claimant was not.

170. It is true that there are statements from the Claimant's managers recorded in the documentation before us to the effect that he could be managed to a termination hearing by reason of his absence. He had of course been off work continually from 15 November 2012. It is perhaps not surprising that the manager's expressed a view that this might lead to a termination on the basis of capability. As we know, the sickness absence warning was overturned on appeal. Full reasons were not given for that decision but Laura Church surmised that it was because of comments made by the Claimant's managers that he might be managed out through capability. Linda Farmer's position before us was that had the case been properly managed under absence management, the Claimant would have been dismissed for capability reasons. We do not find that relates to matters of race. The Claimant was appropriately warned in respect of his absence on 21 March 2013. The Claimant had been continuously absent from 15 November 2012. The Respondent did not receive the Claimant's appeal against the decision addressed to Jo Fisher on 5 April 2013 and the Claimant had to supply a further copy on 25 July 2013. As a consequence of that the appeal was heard on 27 September 2013 when the appeal was allowed. Fundamentally, given the Claimant was absent from 15 November 2012, the Tribunal does not find that the Claimant establishes a prima facie case that any treatment of his under the sickness absence procedure was down to his race. There is no reason to believe a hypothetical white person in the same position would have been treated any differently. Under the sickness absence policy, the trigger points are three periods or ten working days or more absence in a rolling 12 month period; all long term absences over 20 consecutive working days; obvious patterns of absence, eg regular Friday and/or Monday absences. The triggers had clearly been met and Mr Ghafour set out an appropriate review period.

**The stage two grievance investigation conducted by Mr Chamberlain: allegations 23 and 24**

171. The Tribunal does not find that Mr Chamberlain conducted a "white wash" at this stage. His outcome letter was thoughtful. It upheld several of the Claimant's points. In no way whatsoever can it be said that any decision made

by Mr Chamberlain which the Claimant might disagree with was prima facie down to the fact that the Claimant is of black Caribbean ethnic origin.

172. In particular Mr Chamberlain was entitled to find, as the Tribunal also find, that the Claimant was absent without permission on 21 November 2011 when he failed to present himself for work at Hockwell Ring.

**Sick pay and SSP1: allegations 25 and 26**

173. There were failings in respect of the communication and administration by payroll around these matters. The matter was comprehensively looked at by Andrew Williams and set out in his grievance outcome dated 11 February 2014. There was an express finding that the SSP1 form had been sent out by the Respondent on 7 August 2013. The processes and process difficulties are described by Mr Williams. One cannot infer from the position he describes any prima facie case that any of these matters was down to the fact that the Claimant is of black Caribbean origin.

**Allegation 28**

174. As to the allegation of failing to assign the Claimant with a line manager in June 2013: it is right that several managers had moved on. The Claimant was not at work. Accordingly, the matter of a line manager was not of immediate necessity. Linda Farmer and Abdull Gaffoor were managing sickness absence. Mr Gaffoor left in June 2013. We accept that Kerrie Vergo was appointed line manager following the Claimant asking Mr White of HR as to whom had replaced Abdull Gaffoor. Any gap in appointment was not down to the fact that the Claimant is a black person it is down to the fact that he was not at work.

**Unfair discrimination, bullying and harassment investigation conducted by Caroline Dawes: allegations 29, 30 and 31**

175. The scope of this investigation was clarified by Caroline Dawes with the Claimant's input prior to her undertaking it. She did refuse to accept a further written letter from the Claimant submitted by him after the terms of the investigation had been agreed. She did so on the basis that it was wider than the investigation. Caroline Dawes, the Tribunal finds, conducted a good-faith investigation in matters and came to the conclusions she did. Her findings were reasoned and based in evidence. She noted shortcomings in management systems enabling errors to be made but none were personally directed at the Claimant, racially or otherwise.

176. It is right that the outcome was sent by letter and there was not an outcome meeting. Ms Dawes explained that this was owing to the timing of her outcome letter. Ms Church noted this matter and commented that it was unlikely that an outcome meeting would have made any difference. The Tribunal shares that view.

177. Mr White was criticised by Ms Church for his decision not to extend a period for appeal. Mr White was very critical of the Claimant's position that the Claimant could not face reading the outcome letter. Mr White might have come to a different decision by extending the period for appeal. The fact that he did not, in the Tribunal's judgment, does not amount to a prima facie case of race discrimination. There is no reason to think that Mr White would have treated a white person with a similar history to the Claimant in any different way.

178. We should add in passing that the Tribunal has considerable sympathy with Ms Dawes observations about the manner in which the Claimant has conducted himself in the course of the internal proceedings with the Respondent. We repeat that she wrote the following:

> "The quality, quantity and timing of communications from Mr Hilaire could lead one to conclude that he was, while not necessarily misleading, certainly clouding issues. He has written numerous letters addressing multiple issues which have been addressed many times before and he has written to many different people about the same things. There is a pattern of him not attending meetings and not responding to letters sent to him. This obfuscation has resulted in a near impenetrable web of lines of communication which have in turn instructed the very process Mr Hilaire claims to want carried out."

Regrettably, we agree.

**The selection for redundancy: allegations 5, 6 and 32**

179. The Claimant was a disabled person on the balance of probability from September 2013. We are assisted by Dr Appleford's opinion in this regard. The Respondent had, for a long period of time, received sick notes detailing stress at work. It had the means, we find, for knowing that the Claimant was a disabled person by reason of the mental impairment. They were on enquiry. We note the distinction made by occupational health between stress on the one hand, and depression on the other. That is insufficient to prevent the Respondent having constructive notice if not actual notice of the disability. They had the means for knowing there was a mental impairment having adverse consequences on day-to-day activities, including work.

180. The Respondent did apply a provision, criterion or practice to the Claimant in respect of the redundancy selection process. It did expect him to attend an interview. The Claimant had attended meetings during his period of sickness with the Respondent. He had met with Mr Chamberlain. He met with Caroline Dawes. He attended the appeal against the outcome of the first formal review meeting on 27 September 2013. The requirement to attend an interview did not put him at a substantial disadvantage. Notwithstanding this, on 20 September 2013, he e-mailed Veronia Charles to say that he would not be attending an interview in connection with the application for the jobs that were available in the redundancy process because he had been signed off.

181. The Respondent was acting reasonably in declining to await such time as the Claimant was signed back fit because they had the futures of other employees

to determine. We deal above with the adjustments Veronia Charles made to encourage the Claimant to engage in the process. We find he was able to engage with the process if he wanted to. He did not want to. That position was confirmed by his e-mail dated 3 October 2013. He contended that the whole reason for him not going through the interview process was owing to not being fit enough to attend; but he went on-

> "Even if I wasn't off sick with work related stress, causing depression, I still would not have attended this interview ….. the reason for this is, I have e-mails relating to me with discriminatory content from lower, middle, senior management and HR conspiring to dismiss me through my sickness, which shows I was never going to be supported or helped by management to return to work. Some of those managers were involved in the whole ringfence interview process and would have been sitting on the interview panel …… in regards to this letter, you have now sent me requesting I contact Lynda Farmer and attend a meeting with Nick Chamberlain, I would like to bring to your attention that I have evidence from LBC's internal systems that Lynda Farmer and Simon Ashley are two of the managers conspiring to dismiss me. I also have evidence that Nick Chamberlain was also involved. He was given information by Donna Shaw prior to him carrying out my stage 2 grievance which he chose to ignore because it favoured me. He then carried out his investigation which should have been fair and without bias or prejudice, yet he falsified his responses in order not to uphold my complaints and chose to support the behaviour of previous managers."

182. The point is that the Claimant had lost and confidence in the council. He had not claimed constructive dismissal but nonetheless he was not going to attend these interviews.

183. Veronia Charles, in her witness statement, emphasises that she had to progress the interests of the other employees who might be successful in obtaining the residual amount of work that remained prior to the restructure. No further adjustment was reasonable for the Respondent to have to take. The truth is, it would have been a more accurate reflection of the Claimant's position for himself to resign and claim constructive dismissal. The Claimant was not asking to be interviewed by anyone else. He was not going to be interviewed. He was forcing a dismissal.

184. Whether or not the Respondent recognised the Claimant was a disabled person, they had given consideration to his health and Veronia Charles had tried hard to engage the Claimant in the process, giving him additional support over others.

185. The Respondent had attempted to resolve the Claimant's workplace issues. Mr Chamberlain and Ms Dawes had looked at the matters in detail. The Respondent had not used his sickness as a means to dismiss him insofar as applying the sickness absence management policy might amount to that - that was halted at the appeal against the warning.

186. In short, whilst there was a provision, criterion or practice of requiring an interview, it did not put the Claimant at a substantial disadvantage. There were no further adjustments it was reasonable for the Respondent to take. Further,

none of this amounted to a prima facie case of race discrimination. A white person in the same position would have been treated in the same way.

**Allegation 34**

187. It is right that in a communication sent to all affected parties dated 29 July 2013 from Mr Chamberlain dealing with the review of youth work services, at paragraph 15, there was provision for an employee change and separation support programme. Mr Chamberlain wrote:

> "Full details of this programme and the reduced hours working scheme can be found on the intranet under Human Resources/advice and guidance/voluntary separation and reduced hours working schemes or by e-mailing the LBC separation support programme. If you do not have access to the intranet, please ask your line manager for this information. "

188. There was also a section entitled 'employee assistance programme', Mr Chamberlain wrote:

> "You are also reminded of the employee assistance program available for free and confidential support. [A freephone number is given] or by accessing the website: www.icasxtra.com."

189. The Tribunal has little doubt that if the Claimant wanted to access those matters he could. He did not want to. Offering them in that way did not amount to an act of race discrimination. We have noted above the extensive support offered by Veronia Charles. The Tribunal rejects the suggestion that the manner in which the Respondent conducted this redundancy process involves a prima facie case that the Claimant was treated less favourably on the grounds of his race.

**Allegation 35**

190. The facts relating to this are dealt with above under sick pay and SSP1. The Tribunal rejects the suggestion that there is any prima facie race discrimination there. This last allegation is an allegation of direct rave discrimination. The Claimant's work related stress was addressed in sickness review meetings. It was not recognised as a disability. It did not amount to a disability in any event until September 2013. We accept the findings of the consultant psychiatrist in that regard. A formal 'stress' assessment was not carried out because the Claimant had not returned to work. The Claimant was, in any event, very clear in his position which was that his grievances had to be resolved to his satisfaction before he would come back to work. There was, further, no direct discrimination on the grounds that he was a disabled person in this regard. A non-disabled person in the same position, with the same capacities would have been treated in the same way.

**Unfair dismissal**

191. The Respondent shows that redundancy was the reason for dismissal. The decision to dismiss was reasonable in all the circumstances. The Claimant had been given opportunity to participate in the process whereby alternative employment might have been found for him. For the reasons set out above, he declined so to engage, in effect, forcing the Respondent to dismiss him.

192. We have said above that a more accurate position reflective of the Claimant's point of view in this matter would have been for him to claim constructive dismissal at a significantly earlier point. He has chosen not to do that. He has contrived to demonstrate that this is all race discrimination. In the absence of any credible white comparator, and in any event, even in respect of a hypothetical white comparator, he does not succeed in adducing facts which credibly show race as a factor in connection with any matter about which he is dissatisfied.

193. This was a genuine redundancy situation. There was no discrimination in the way in which the process was implemented. The Claimant was clear that he was not going to participate in the process because he had lost faith in the management at the council. He was not unfairly dismissed.

_____
Employment Judge Smail

Date: 05 November 2019

Sent to the parties on: …20 November 2019

.....
For the Tribunal Office

The ET has four claims only and Scott Schedule has not been updated following unsuccessful application to amend claim (see notes to the right). The outstanding issues are at P.152:

(1) Unfair redundancy
(2) Direct race discrimination
(3) Failure to make reasonable adjustments as set out in the amended claim form 6/6/2014 (pp 48-66)
(4) Holiday pay claim

# The Appendix
# Watford Employment Tribunal
## Case No: 3400431/2014

## Mr Julian Hilaire Claimant ("C")
## V
## Luton Borough Council Respondent ("R")
## Scott Schedule

The following claims have been withdrawn/dismissed:

(1) Victimisation (p48 & P73)
(2) Wrongful dismissal/notice pay (P48 & P73)
(3) Breach of contract (P158)
(4) Deduction of wages (P150)

This Scott Schedule includes claims to which ET refused application to amend and hence these have been scored through (PP 148-150) namely:

(i) Direct disability discrimination
(ii) Harassment for race/disability
(iii) Victimisation

**C's claims set out below are on the basis of unlawful discrimination by R under the Equality Act 2010**

| Act No. | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 2 | 73 | 28/06/2004 | Failing to remunerate C as a qualified First Aider like other members of staff. | Respondent | Other first aiders employed. | Direct discrimination S13. |
| 3 | 17 | 18/11/2011 | Informing C that his place and new time of work would change from Monday 21 November 2011. C was not properly consulted about these changes or given adequate notice, nor given the right of to be accompanied by a Union representative or work colleague when informed. As identified in a later investigation, C was also never given this in writing, as per policy. | Respondent | Hypothetical | Direct discrimination S13 based on race. |
| 4 | 70 | 21/11/2011 | Failing to pay C's salary which was due on 21 November 2011 and not subsequently paying it. | Sarah Lawlor<br>Simon Ashley<br>Nick Chamberlain<br>Jo Fisher<br>Caroline Dawes<br>Laura Church | Hypothetical | Direct discrimination S13 based on race. |

| Act No. | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 5 | 53 | *May – October 2013 (as analysed by the tribunal)* | PCP: continuation of the organisational change process. | | | Failure to make reasonable adjustments S20. |
| 6 | 57-58 | *May – October 2013 (as analysed by the tribunal)* | PCP: continuation of redundancy/interview process continued. | | | Failure to make reasonable adjustments S20. |
| 7 | 28, 29, 30 | 25/11/2011 | Misleading C into attending a meeting he was informed would be with line management to discuss roles and responsibilities which was actually an evidence-gathering meeting with senior management preceding formal investigation into '*matters which could lead to disciplinary action*'. | Sarah Lawlor<br>Simon Ashley | Hypothetical | Direct discrimination S13 based on race. |
| 8 | 18, 67 | 1/12/2011 to present | Suspending C's Christmas salary without grounds and without informing him. Failing to give an explanation for this until 2013 and failing to ever give a factually correct explanation. | Sarah Lawler<br>Simon Ashley | Hypothetical | Direct discrimination S13 based on race. |
| 9 | 69 | 1/12/2011 | Removal of C from the payroll system so it appeared that he had been dismissed. | Respondent | Hypothetical | Direct discrimination S13 based on race. |
| 10 | 19, 23 | 23/12/2011 - present | Failure to hear C's grievance about manager Sara Lawlor's bullying and harassment.<br>Failure to provide an outcome to the grievance thereby subsequently denying C a right of appeal, breaching R's own policies and procedures and the ACAS code and guidelines. | Simon Ashley<br>Nick Chamberlain | Hypothetical | Direct discrimination S13 based on race |

| Act No. | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 13 | 21 | 10/1/2012 | Failure by senior manager Simon Ashley and HR to protect C from further harm and deliberately disadvantaging him by requiring C to directly raise the issues of C's grievance complaint about manager Sarah Lawlor's bullying and harassment of C, with Sarah Lawlor herself.<br>Also failure to communicate this proposal to C in a reasonable time as it was posted on 11/1/2012 so too late. | Simon Ashley<br>Human Resources | Hypothetical | Direct discrimination S13 based on race. |
| 14 | 31, 36 | 11/1/2012 | Subjecting C to further bullying, detriment and undue stress by conducting a baseless investigation into 'disciplinary action for disobeying a direct management order'. Failing to conduct an investigation or deliberately destroying all evidence of an investigation if it was carried out. Even after C submitted a Data Subject Access Request in May 2013 no paperwork relating to this investigation has been disclosed other than the meeting invitation letters. | Simon Ashley<br>Sarah Lawlor<br>Nick Chamberlain<br>Jo Fisher<br>Caroline Dawes | Hypothetical | Direct discrimination S13 based on race. |
| 11 | 24, 25, 26 | 23/12/2011 | Failing even to attempt to address the parts of the C's grievance concerning failure to pay his wages in July and December 2011 until May 2012, after C had made further complaints. (C still has not received pay for 21 November 2011). | Simon Ashley | Hypothetical | Direct discrimination S13 based on race. |
| 12 | 20 | January 2012 | Appointing senior manager Simon Ashley to conduct the investigation into C's complaints as he was inappropriate and lacking impartiality due to being involved in the decision to unilaterally vary C's contract, had permitted manager Sarah Lawlor to stop C's salary and had taken part in previous meetings between C and Sarah Lawlor. | Respondent | Hypothetical | Direct discrimination S13 based on race. |

| Act No | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 15 | 32 | 11/01/2012 | a. Permitting Ms Lawlor, an inappropriate person against whom C had an outstanding grievance concerning her bullying and harassment; to investigate C's alleged misconduct.<br>b. Ms Lawlor participating in such an investigation when she was clearly not appropriately involved. | Simon Ashley | Hypothetical | Direct discrimination S13 based on race. |
| 16 | 33 | 11/1/2011 - February 2013 | Depriving C of notes of the investigation meeting until February 2013 despite his repeated requests for them to HR, line management, senior management and the Head of Service. | Respondent | Hypothetical | Direct discrimination S13 based on race. |
| 17 | 34 | 11/01/2011 - Present | Denying C the right to contest the accuracy of these notes because of the delay. (A major detriment because of the number and range of factual inaccuracies they contain). To these inaccurate documents are still held on C's personal life. | Respondent | Hypothetical | Direct discrimination S13 based on race. |
| 18 | 35 | 11/01/2011 onwards | Causing undue stress and further detriment by denying C a formal conclusion to an investigation conducted by manager Sarah Lawlor which could lead to disciplinary action being taken against C. | Respondent | Hypothetical | Direct discrimination S13 based on race. |
| 19 | 40 | 19/01/2012 onwards | Deliberately ignoring C's many written requests for the conclusion to the Disciplinary Action Investigation, which Ms Sarah Lawlor was carrying out so that he could return to work. | HOS<br>Senior Management<br>HR<br>Line Management | Hypothetical | Direct discrimination S13 based on race. |

| Act No | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
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| 20 | 22 | 2/2/2012 | Not addressing the bullying and harassment aspect of C's grievance raised against manager Sarah Lawlor on 23 December 2011, on the grounds that Sarah Lawlor would be leaving despite her continued employment until 18 March 2012 and return attendance at meetings until April 2012. | Simon Ashley | Hypothetical | Direct discrimination S13 based on race. |
| 21 | 51 | 31/05/2012 ongoing | Informing C that he was not entitled to holiday while C was on sick leave when this was untrue. | Tracy Quinn<br>Nick Chamberlain | Hypothetical | Direct discrimination S13 based on race. |
| 22 | 49 | | Unnecessary and direct differential implementation of the sickness policy by R to set targets for the C that he had already achieved as a means of dismissing him through his sickness and also evidence by managers' statements from 20 March 2013 onwards of their intent to use C's sickness as a means to dismiss him.<br>This enabled the R to wrongfully give C a formal warning in March 2013 which could have led to his dismissal which C immediately appealed and was caused further suffering, stress and detriment by being made to wait until September 2013 to be told the outcome of the appeal. This appeal investigation found there had been sufficient managements failings in carrying out the sickness absence procedure. | Linda Farmer<br>Jo Fisher | XX<br><br>Failing to comply with the sickness absence procedure. | Direct discrimination S13 based on race. |

| Act No | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 23 | 37 | 10/01/2013 | Deliberate 'whitewash' and failure of stage 2 grievance investigation in not identifying failings highlighted in the UDB&H investigation conducted 5 months later. | Nick Chamberlain | Hypothetical | Direct discrimination S13 based on race. |
| 24 | 42 | 27/02/2013 | Concluding as part of the C's second stage grievance investigation that C had been AWOL on 21 November 2011 when that was obviously and evidently untrue as found in a later investigation. No investigation in this allegation has ever been conducted and later investigation found no evidence to sustain this allegation. | Nick Chamberlain | Hypothetical | Direct discrimination S13 based on race. |
| 25 | 72 | April 2013 | Failing to pay C in accordance with his contractual entitlement while on sick leave, and without notification or explanation was put down to half pay and then subsequently nil pay. Later investigation found procedure had not been applied correctly. | Respondent | Not ensuring that an employee on sick leave received his correct salary in accordance with the Council's policies and procedures. | Direct discrimination S13 based on race. |
| 26 | 75 | October 2013 | Failing to provide 'SSP1' form to C (despite requests) for nearly 6 months and not explaining why. R's withholding of this form prevented C from obtaining alternate financial assistance after June 2013. | Willy White<br>Barbara Chapman<br>Respondent | Hypothetical | Direct discrimination S13 based on race. |

| Act No | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 28 | 59 | June 2013 | Failing to support C by not appointing him a line manager when his current manager left leaving him unaware of who to turn to for support whilst off sick. | Willy White<br>Linda Farmer<br>Nick Chamberlain<br>Jo Fisher | Hypothetical | Direct discrimination S13 based on race. |
| 29 | 41, 44 | 4/07/2013 | Conducting a biased and flawed UDB&H investigation. This investigation failed to identify several factors identified in a later investigation, including that C's original grievance of bullying and harassment had never been heard. | Caroline Dawes<br>Helen Ginty | Hypothetical | Direct discrimination S13 based on race. |
| 30 | 43 | 1/8/2013 | Not applying policy fairly and equally so as to cause detriment to the C by refusing to accept written statement from C detailing the complaint points the investigating officers had missed from their notes therefore denying C point 5.7 of the policy C was also denied the opportunity to contest the findings of the investigation in an outcome meeting as required by section 6.1 of the published procedure and refusing C the right to appeal the decision stating he was out of time. A later investigation conducted C was in fact within deadlines and had had this right wrongfully refused. | Caroline Dawes<br>Helen Ginty<br>Willy White<br>Angela Claridge | Hypothetical | Direct discrimination S13 based on race. |

| Act No | Et1 Para | Date | Act/Omission | Individual Responsibility | Comparator & PCP | Applicable sections of Equality Act 2010 |
|---|---|---|---|---|---|---|
| 31 | 45 | 01/08/2013 | The findings of the UDB&H investigation and the background to the case evidence less favourable differential treatment of C by the management. | Respondent | Hypothetical | Direct discrimination S13 based on race. |
| 32 | 53 | 17/10/2013 | Selecting C for redundancy as the culmination of an extensive course of less favourable treatment.<br><br>No consideration given to C's health and disabilities as part in the conduct of the redundancy process. | Respondent | Hypothetical<br><br>Expecting (or at least suggesting that it was fair) that C take part in capability interviews when he was unwell because serious workplace issues had been ignored causing C to suffer a disability. | Direct discrimination S13 based on race. |
| 33 | 57, 63 | October 2013 | Failure to attempt to resolve C's workplace issues before the interviews which would have been conducted by people cited by the C in grievance against them due to their conduct of discussing, via email, using his sickness as a means to dismiss him. | Respondent | Hypothetical<br><br>Expecting (or at least suggesting that it was fair) that C take part in capability interviews when was unwell because serious work place issued he had raised were left unaddressed by R. | Direct discrimination S13 based on race. |
| 34 | 59 | 29/07/2013 | Offering C the 'employee change and separation' support program which was only available on R's internal intranet system and which R was aware C could not access while absent on sick leave. | Nick Chamberlain | Hypothetical | Direct discrimination S13 based on race. |
| 35 | 52 | 23/11/2013 | Not addressing the C's work related stress in sickness review meetings, nor a formal stress assessment being carried out. | Sarah Lawlor<br>Tracy Quinn<br>Jo Fisher<br>Nick Chamberlain | Hypothetical | Direct discrimination S13 based on disability. |