EMPLOYMENT TRIBUNALS

Claimant: **Mr Mark Edmunds**

Respondent: **The Mayor and Burgesses of the London Borough of Tower Hamlets**

Heard at: **East London Hearing Centre**

On: **20, 21 (reading), 22, 23, 26, 27 & 28 August 2019 and 10, 11, 12 December 2019 (in public) (In chambers) 13 & 19 December 2019**

Before: **Employment Judge John Crosfill**

Members: **Ms L Conwell-Tillotson**
Mr L O'Callaghan

Representation

Claimant: **Francis Hoar of Counsel, instructed by direct access.**

Respondent: **Anya Palmer of Counsel, instructed by the Respondent.**

JUDGMENT

The judgment of the Employment Tribunal is that:-

1. **The Claimant's claim for unfair dismissal brought under part X of the Employment Rights Act 1996 is not well-founded and is dismissed.**

2. **The Claimant's claims that he suffered detriments on the ground that he had made protected disclosures brought under Section 47B and 48 of the Employment Rights Act 1996 are dismissed.**

3. **The Claimant's claims of direct discrimination under sections 13 & 39 of the Equality Act 2010 are dismissed.**

4. **The Claimant's claims for harassment under Section 26 & 40 of the Equality Act 2010 are dismissed**

REASONS

1. The Claimant worked for the London Borough of Tower Hamlets from 25 January 2010 until his dismissal which took effect on 25 March 2018. This case concerns the period between around May 2014 until the dismissal during which the Claimant worked as an investigator into allegations of fraud and corruption by employees in the Youth Service. The Claimant has given an account of events during that period and says he was discriminated against both because of his race and sex. He also says that some actions amounted to harassment related to race. He says that after he raised allegations of wrongdoing he was subjected to detriments in retaliation. These are his 'whistleblowing claims' brought under Part IVA of the Employment Rights Act 1996. The Claimant brought his first claim before he was dismissed.

2. The Respondent accepts that it dismissed the Claimant but says that the work he was employed to do had ended or was expected to end. The Claimant disagrees. He says that his dismissal for the purported reason of redundancy was a sham. He suggests that the present administration shut down his investigations for improper political purposes. He has brought a claim of unfair dismissal but also further discrimination claims in which he says that his dismissal was because of his race or sex. These claims are set out in his second claim.

3. This case has attracted considerable interest from the press. The allegations of fraud and corruption investigated are a matter of public importance. That said, as a tribunal, we are obliged to deal with the claims presented by the parties and that is all. We should not allow ourselves to be distracted from that task by straying into areas where it is not necessary for us to make findings of fact.

4. This decision is long. This is principally because the manner in which the case was put on behalf of the Claimant required the tribunal to analyse the reasons for a large number of acts and omissions spanning almost 4 years. The parties asked us to determine a large number of issues. Without being unduly critical, this task has been very much harder than usual because of the organic way the case developed and the fact that the case was not presented within the documents in a chronological order.

5. This case has a long and complex procedural history. We set out a summary of that history below to explain how the case evolved.

Our approach to using the names of people involved.

6. In this decision we refer by name to all the witnesses and to those people who, whilst not witnesses, are said by the Claimant to have discriminated against him. We have used the names of some of the Respondent's staff where they are not otherwise easy to identify. We have taken a different approach with some other individuals. The Claimant has provided documents and evidence within which he sets out a number of allegations of serious wrongdoing. Some of the individuals referred to have been dismissed by the Respondent, some were not. As far as we were made aware, none of these allegations resulted in court proceedings, civil or criminal, the outcome of which would be binding upon us. Whilst it was relevant for us to consider the scope

and gravity of the matters the Claimant was investigating, it was not necessary for us to make any specific findings as to whether any particular allegation of fraud and corruption was made out. Accordingly, unless it was necessary to do so, we have not used the name of those individuals or anybody else where their identity is not relevant to any matter we must decide.

Procedural history

7. The Claimant presented his first claim form ('ET1') on 8 June 2017. A party is expected to set out the whole of their claim in their ET1 and cannot add to that unless they have the permission of the Employment Tribunal. The Claimant completed his ET1 with only the assistance of his trade union (no doubt doing their best). The claims identified were claims of race and sex discrimination. In the section of the ET1 where a party is invited to set out the details of their case the Claimant set out a single paragraph of text containing a short description of the events he said were discriminatory. The Respondent was required to file a response ('ET3') and did so.

8. It is usual in discrimination cases for the tribunal to hold a preliminary hearing to make sure that the issues in the case are clear and to make orders to progress the matter to a final hearing. Under the rules of procedure that apply to these claims set out in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the parties are obliged to co-operate and act in a sensible and proportionate manner to progress any case. Generally, only one preliminary hearing is necessary and after that the parties are expected to get on with the task of preparing for a hearing.

9. By the time of the first preliminary hearing that took place on 14 August 2017 before REJ Taylor the Claimant had realised that his claim form did not include all the claims that he wished to bring. He had prepared some further particulars of his race and sex discrimination claims and suggested he wished to bring a claim alleging that he had been subjected to detriments because he made protected disclosures (often referred to as whistleblowing claims). At that hearing the Claimant was represented by a barrister (not Francis Hoar). REJ Taylor was willing to allow the Claimant to give further details of the claims already brought but told him that if he wanted to add additional claims he would need to make a formal application in writing. He was given until 11 September 2017 to do that.

10. A further hearing before REJ Taylor took place on 23 October 2017. At that hearing the Claimant was represented by Francis Hoar. The Claimant had sent the Respondents three documents that added detail to his initial claim. The last of these was entitled the 'Re-amended details of Claim' and as we understand it was the first to be drafted by Francis Hoar. REJ Taylor expressed her concern that the Claimant had gone beyond adding detail to his existing sex and race discrimination claims by adding claims which were entirely new. In addition, the Claimant was seeking to add a whistleblowing claim. She considered that the whistleblowing claims were not sufficiently clear. She directed the Claimant to prepare a single document and required the Claimant to give certain details of his proposed amendments.

11. Whilst a final hearing had been fixed in November 2017 by a notice to the parties dated 20 July 2017 it was clear that the matter was not going to be ready in time. The final hearing dates were vacated and a further preliminary hearing fixed for 1 December 2017. The purpose of this hearing was to determine what claims had been

brought and to decide whether the Claimant should be allowed to add to the claims that he had brought.

12. The hearing on 1 December 2017 was conducted by EJ Moor. It is clear from the Case Management Summary that she was unimpressed with the presentation of the case. She said: *'This is the third Preliminary Hearing held for this claim. Its procedural history reads as an exercise in how not to prepare a case for hearing'.* EJ Moor spent some time identifying exactly which claims had been included in the original claim form supplemented by the further detail supplied by the Claimant. These were identified as claims of direct race and sex discrimination but also for harassment related to race. These are all claims brought under the Equality Act 2010. She then identified which claims were new and therefore ones that the Claimant needed permission to bring. In seeking to persuade EJ Moor that she should grant permission to amend the Claimant was critical of his previous advisors. In a long and careful decision EJ Moor balanced the factors in favour and against granting permission to amend the claim form. She then allowed some, but by no means all, of the proposed amendments. Neither party appealed that order. EJ Moor ended her Case Management Summary with a plea for brevity suggesting that the Claimant put his best claims forward and discard any 'make-weights'.

13. The claims that were to be included in the first ET1 were finally identified in the last iteration of the ET1 which was served on the Respondent after that hearing. It is worth repeating that the Claimant had not been given permission to bring all the claims that he might have wished.

14. By the time the claims were sorted out in the first claim the Claimant had been dismissed. He brought a second claim on 9 July 2018 in which he complained about his dismissal. Before he did so he had contacted ACAS for the second time for the purposes of early conciliation. Engaging in early conciliation (usually) has the effect of extending the time limit for bring a claim. The Respondent in its response took the point that the Claimant had already contacted ACAS (for the purposes of the first claim). It argued that the Claimant could not benefit from the extension of time and that the Tribunal had no jurisdiction to hear the claims.

15. A hearing took place before EJ Prichard on 27 November 2018 to decide whether the claims had been presented in time. The Claimant said that they were and, if they were not, applied to amend the existing claim to include the second claim. EJ Prichard agreed with the Claimant that he was entitled to rely on the second approach to ACAS as extending time but if he was wrong about that he gave permission to amend the claim. He directed that the cases be heard together in April 2019. Mr Hoar has at various times criticised the Respondent for taking the stance that it did. Whilst the point taken failed, it was plainly arguable. EJ Prichard considered the matter sufficiently complex that he reserved his decision which was sent to the parties on 14 February 2019. Unfortunately, the delay meant that the final hearing could not proceed in April. It was relisted for the dates in August 2019 given above.

16. The parties then had from 14 February 2019 to 20 August 2019 to prepare for a final hearing. At that stage, acting very responsibly, the parties sent agreed directions to the Employment Tribunal. These included an agreement that a final bundle would be agreed by 28 June 2019 and witness statements exchanged by 19 July 2019. Had the parties continued to co-operate the matter could have been dealt with far more efficiently.

17. A draft bundle was prepared by the Respondent by 7 July 2019. This was later than agreed and the draft was not the product of any meaningful discussion. It is sufficient to say that the process of agreeing any changes to that bundle stalled. As the deadline for exchange of witness statements approached the Claimant said that he wished to rely upon his own bundle which included all 3000 pages of the documents he had disclosed to the Respondent and was paginated at that stage. That bundle was said to be organised 'thematically' and was not, as we usually expect, in chronological order. The Respondent suggested that this was unorthodox and that he should supply any additional documents for inclusion in the bundle which would then be redacted to remove third party information. This gave rise to a further dispute about the necessity for redaction.

18. The parties agreed an extension of time for the exchange of witness statements to 23 July 2019. The argument about the bundle continued to rage on. The Respondent pressing for a single chronological bundle with redactions with the Claimant wishing to rely on his bundle or incorporating his pagination into an agreed bundle.

19. On 22 July 2019 the Respondent made an application for a case management hearing and a postponement of the final hearing complaining about the lack of co-operation by the Claimant. On the same day the Claimant retaliated by seeking an unless order debarring the Respondent from relying on any witness statements that had not been exchanged.

20. The Claimant had prepared his witness statement by 23 July 2019 referring within it to his own bundle.

21. On 24 July 2019 the Respondent made an application to adjourn the hearing on the basis that Ms Ronke Martins-Taylor was unwell. This was resisted by the Claimant. At the same time the Claimant made an application that the Respondent's ET3s be struck out or that they be debarred from relying upon any evidence.

22. The application to adjourn the hearing to accommodate Ronke Martins-Taylor's health was refused on the basis that it would be possible to accommodate her giving evidence outside the listed hearing dates if that proved necessary. On 7 August 2019 EJ Massarella reminded the parties of the requirement that they co-operate. He directed that a core bundle be produced by 13 August 2019 and the Claimant was to provide a supplementary bundle by 15 August 2019 with witness statements to be exchanged the same day. He directed that any application to strike out the Respondent's case be considered at the outset of the hearing. That direction was met with some unedifying correspondence which we shall not set out.

23. The previous order that the first day of the hearing be a reading day was varied to accommodate any application by either party.

24. The parties made some efforts to trim down the bundle but did not comply with the order of EJ Massarella. Witness statements were exchanged shortly before the hearing.

The hearing

25. The parties attended at the final hearing with separate bundles. The Claimant's bundle was in 3 lever arch files it ran to some 3000 numbered pages (although some had been removed) and was not in chronological order. The Respondent's was in two files and included 1347 pages. That bundle did follow the conventional order.

26. At the outset of the hearing the Employment Judge raised the fact that he had, until his appointment as a salaried judge been in the same chambers as Mr Hoar. He informed the Respondent that, as the hearing before EJ Prichard had approached, Mr Hoar had discussed the time point that was decided at that hearing with him. He said that he had no recollection that the facts of the dispute had been discussed. He said that he had expressed a view that coincided with the decision of EJ Prichard. Mr Hoar was then asked if he agreed that that was an accurate summary of the discussion. He confirmed that that was his recollection.

27. The Respondent was given some time to consider whether it wished to make any application for the Employment Judge to recuse himself. Ms Palmer took instructions before confirming that, on the basis that the conversation had gone no further than a discussion of the preliminary point that had been decided, she had no objection to the Employment Judge continuing to sit.

28. Mr Hoar on behalf of the Claimant then made an application that the Respondent be debarred from calling any evidence. His submissions covered the background to the case (which Ms Palmer wryly referred to as his opening speech). He relied upon authorities dealing with the position under the Civil Procedure Rules 1998 to argue that the failure to provide witness statements upon the date ordered meant that unless the Tribunal was prepared to grant relief from sanctions the Respondent should be debarred from calling any evidence. He suggested that the Respondent was culpable for taking the time/early conciliation point determined by EJ Prichard. He suggested that that was itself unreasonable and that months of preparation time had been lost as a consequence. He placed the blame for the delay in agreeing the bundle at the feet of the Respondent. He said that he had been severely prejudiced in his preparation of the case as he had informed the Respondent and the Tribunal that he had pre-booked leave in the week before the hearing. He said that he was in no position to cross examine the Respondent's witnesses. He suggested that the Respondent had significant resources and was wholly to blame for the poor preparation.

29. Ms Palmer disputed that the Respondent was responsible for the delay in producing the bundle. She suggested that the Claimant had acted unreasonably in becoming wedded to his own bundle of disclosed documents rather than co-operating with the Respondent in preparing a joint bundle. She said that she too would be prejudiced in her preparation if the evidence started on the second day of the hearing as planned. She submitted that not permitting the Respondent to give evidence was the equivalent of striking out the response and that that would not be appropriate for breach of any order if some lesser sanction would suffice. She accepted some failings by the Respondent's solicitors but explained that that was due to a lack of resources. She took issue with the suggestion made by Mr Hoar that the Respondent should be regarded as an organisation with bottomless resources. Ms Palmer indicated that she thought she would be able to finalise her preparation of her cross examination by Friday 23 August 2019.

30. It took several hours for each party to make their submissions.

31. Having taken time to consider the Claimant's application, coupled with the Respondent's implicit application for an adjournment. We announced that we intended to start the evidence on the morning of 22 August 2019. We stated that we would give our reasons later. In the event the parties agreed that we should simply set out our reasons in this decision.

32. We find that the Respondent had left preparing the bundle and dealing with some aspects of disclosure until very late in the day. There had been little or no constructive discussion about the structure or what should be included in the bundle until after the agreed date had passed. That said we accept that the Claimant became wedded to his own bundle and became somewhat intransient very quickly. He was unnecessarily resistant to the bundles being redacted to remove personal details irrelevant to the issues we had to determine. This later caused some difficulties when the press later sought access to the bundles. The overriding objective requires the parties to co-operate and we saw little evidence of co-operation on either side.

33. We accepted Ms Palmer's submission that there was no automatic sanction attached to the failure to supply witness statements on the date agreed between the parties. We accepted also her submission that the strict approach in the Civil Procedure Rules is not directly applicable to the employment Tribunal – see ***Harris v Academies Enterprise Trust & others*** **UKEAT/0097/14/KN.**

34. We also accepted the submission that not allowing the Respondent to rely upon any evidence at all came perilously close to striking out the case as it provided the Claimant with an almost open goal.

35. We took the view that the proper questions would be whether a fair trial was possible and whether the balance of prejudice favoured the admission of the statements and/or an adjournment.

36. We accepted that Mr Hoar was faced with a number of witness statements and that he had quite properly sought to agree the exchange of statements before he took pre-planned leave. For a fair trial to take place he must have adequate time to prepare his cross-examination. We noted that his cross examination would not start until after the weekend and that would mean that he had some time to prepare his cross examination. The pressure on him was the only obvious prejudice caused by the late exchange of statements.

37. The prejudice to the Respondent of having its statements excluded was substantial. The witnesses would not be able to explain their actions.

38. If the matter was adjourned it was likely to be at least 12 months before it could be relisted. We considered that this prejudiced not only the parties but also the other tribunal users.

39. The prejudice to the Respondent in deciding to proceed was that we would be unable to give Ms Palmer as long as she had asked for to prepare her cross examination of the Claimant and still make sufficient progress within the existing hearing dates to avoid a long delay in relisting the matter.

40. We decided that a fair trial was possible. The interests of justice favoured proceeding in order to avoid a lengthy delay in relisting the matter. The fact that the Claimant would call his evidence first minimised any prejudice to the Claimant. This, whilst not ideal, meant that Mr Hoar had evenings and a full weekend plus one working day to prepare his cross examination (We were not expected to sit on Monday 25 August 2019).

41. Ms Palmer had prepared a list of issues and a comprehensive chronology. We found it was likely she had a good command of the facts. In those circumstances whilst it was unfortunate that the Respondent's failures meant that Counsel had to pick

up the slack she would be able to adequately prepare her cross examination if we spent the following day reading (as we had planned to do on the first day).

42. We therefore directed the parties that the evidence would start at 10am on Thursday 22 August 2020 with the Claimant's evidence. We should record that Ms Palmer's cross examination of the Claimant was well structured and apparently well prepared. The advocates co-operated in discussing the order of witnesses and we did not understand Mr Hoar to suggest that our decision to proceed meant that he was unprepared to cross examine any witnesses. As it turned out we needed additional days to accommodate the evidence and submissions. In their closing submissions neither advocate suggested that their client had not had a fair trial.

43. The case aroused considerable interest from the press and from Councillors interested in holding the administration to account. Some considerable time was spent during and between the hearing days dealing with the issue of press access to the pleadings, witness statements and, most controversially the bundles. Ultimately, we directed the parties to allow access to all documentation save that we directed that some personal information was redacted prior to the supply of any bundle. Our reasons are set out in 2 separate judgments and there is no purpose in repeating them here. It is sufficient to say that these applications did slow the proceedings and contributed to the need to add additional days to the hearing.

44. As set out above the Respondent's solicitors had informed the Tribunal that Ronke Martins-Taylor was undergoing medical treatment and may not be fit to give evidence. At an early stage we looked for additional hearing dates and dates in December were identified as being the first possible dates. In the event Ronke Martins-Taylor did feel well enough to give evidence. She attended on Thursday 28 August 2019 and, with the agreement of Claire Belgard, who was mid-evidence, interposed her to minimise the time that she spent in the Tribunal. This was done with the agreement and co-operation of all parties.

The issues

45. The parties had prepared an agreed list of issues that built on the list of issues identified by EJ Moor. We shall not set out that list here as some matters were abandoned by the Claimant during the hearing. We refer to each issue in our discussions and conclusions below and where we do so we refer to the paragraph numbers of the final version of the agreed list of issues.

Additional documents

46. During the hearing additional documents were produced. These were admitted into evidence without objection by either party.

The witnesses

47. We spent Wednesday 21 August 2019 reading in the absence of the parties. We then heard from the following witnesses:

47.1. The Claimant who gave evidence on 22 and 23 August 2019 finishing in the afternoon on 23 August; and

47.2. Lorraine Walsh who was an investigator who worked alongside the Claimant from July 2014 who gave evidence on the Claimant's behalf on the morning of 26 August 2019.

47.3. Andy Bamber was the Claimant's Manager from July 2014 to April 2016 and who held the title 'Service Head Safer Communities'. He attended pursuant to a witness order and the Respondent was permitted to ask him questions in lieu of a witness statement. Andy Bamber gave evidence until 15.35 on 26 August 2019 whereupon we heard applications from the press and other attendees.

47.4. Dealing with applications from the press took up the morning of 27 August 2019. Clair Belgard who was appointed Interim Head of the Youth Service in late 2015 gave evidence for the remainder of that day and in the morning when her evidence was interrupted to hear from Ronke Martins-Taylor.

47.5. Ronke Martins-Taylor gave evidence on the morning of 28 August 2019. She was appointed as a Project Manager tasked with re-organising the Youth Service from January 2015 and thereafter took a permanent appointment. After her evidence concluded, Claire Belgard completed her evidence.

48. Once Claire Belgard had completed her evidence we discussed how many additional days would be needed to complete the hearing. The Tribunal could sit on the week commencing 9 December 2019 for the full week. That was convenient to all parties save that Ms Palmer had a professional commitment on 9 December that she indicated might mean she was unable to attend on that day. We agreed to resume on 10 December 2019. We directed the parties to agree a timetable for all outstanding evidence and submissions that left us with a day and a half for deliberations. We further asked the parties to revise the list of issues in the light of concessions made by the Claimant during the hearing (which we record in our discussions and conclusions below).

49. The hearing resumed on 10 December 2019. We were told that Debra Southgate, who had provided a witness statement was in hospital and would not be able to attend. It was suggested that any questions relating to her involvement could be directed to Alun Goode. We then heard from the following witnesses:

49.1. Mark Baignet, the Interim Director of Housing and Regeneration and one of the people asked to deal with the Claimant's complaint under the Respondent's Combatting Harassment and Discrimination Policy ('CHAD'); and

49.2. Mala Jones, a Senior HR Business Partner who had various dealings with the Claimant; and

49.3. Karen Davis, a Senior HR Business partner and one of the subjects of the Claimant's first CHAD complaint.

50. On 11 December 20219 we heard from the three remaining witnesses who were:

50.1. Alun Goode, who at the Time of his involvement with the Claimant was an Anti-Social Behaviour Support Manager and who discussed the possibility of an alternative post with the Claimant; and

50.2. Ann Corbett, the Divisional Director for Safer Communities who gave evidence about redeployment opportunities for the Claimant; and

50.3. Mark Keeble, a Senior HR Business Partner who had discussed the Claimant's employment status and his two CHAD complaints with him and his trade union representative; and

50.4. Will Tuckley, the Chief Executive of the Respondent from October 2015 who dealt with his failure to answer correspondence from the Claimant and his Trade Union Representative.

51. On 12 December 2019 we had agreed a later start to give the two advocates a little more time to prepare their submissions. We started at 11.30am. Both advocates had prepared written submissions and added to those submissions orally. We mean no discourtesy by not setting those submissions our if full. We deal with the arguments necessary for us to reach our conclusions in our discussions below.

52. We conducted our deliberations in what time remained on 12 December 2019 and on 13 December 2019. We ran out of time and arranged for a further day of deliberations on 19 December 2019. We were able to conclude our discussions on that day.

53. Employment Judge Crosfill apologises for the time it has taken to prepare this judgment. We have endeavoured to present the facts in chronological order and/or by theme in order to explain the events to any third party. The parties witness statements dealt with matters on an issue by issue basis which required untangling. This had been done in between other hearings and duties and has unfortunately caused some delay.

Introduction

54. We include this introduction for two reasons. Firstly because of the amount of interest that this case has generated in the press it is possible that this decision will be read by some who are unfamiliar with the local politics of Tower Hamlets (sometimes referred to as 'the Borough'). We have attempted to summarise some key events.

55. Additionally, the events described below were known to the parties in this case and their perspective on, or understanding of, those events may have influenced their reaction to the events giving rise to the claims we have had to decide. To that extent only are they relevant to the decisions we needed to make. We make our findings on the issues in the case in the section below this.

56. Mr Hoare invited us to have regard to the findings made in the case of ***Erlam & Anor v Rahman & Anor*** **[2015] EWHC 1215 (QB)** as providing the background to the present case. That case concerned an electoral petition presented with the aim of quashing the result of the mayoral election that took place in 2014. Commissioner Richard Mawrey QC set out the background to the dispute before him as it was relevant to the issues he had to decide as it is on this case. He gave the following short history of the successive waves of immigration into the borough:

171. It is a truism to say that Tower Hamlets is a multi-racial community. The area now covered by the London Borough Hamlets has always been one of the most multi-racial areas, if not the most multi-racial area of the United Kingdom. In the Middle Ages, weavers from northern Europe moved into the parishes east of the City of London and their numbers were greatly increased by the influx of French Huguenots following the Revocation of the Edict of Nantes in 1685. Although weaving declined in the 18th century, the area retained its connection with cloth and the clothing industry and, in the 19th century, Jews moved into the Hamlets, refugees from persecution in Central and Eastern Europe, a high proportion of whom were engaged in that industry.

172. Along the Thames, the development of the Port of London took off in the 18th century with the beginning of the construction of the huge docks that dominated the area for two centuries. Like all ports, the Thames-side area became very cosmopolitan, with South Asian seamen (known as Lascars) and Chinese moving into docklands. In the 19th century, in common with many port areas at the time, Tower Hamlets acquired an unenviable reputation for poverty and crime, culminating in the notorious murders perpetrated in Whitechapel by 'Jack the Ripper' in 1888.

173. Twenty-first century Tower Hamlets contains a wide social mix, with areas of relative deprivation in the poorer parts of the Borough and areas of middle-class affluence, particularly in the area of the former St Katherine's Dock. Canary Wharf is, of course, one of the major financial centres not only of London but of the world. The Borough also contains, of course, the Tower of London itself.

……

174. Tower Hamlets has had a Bengali population since at least the 18th century and by the 1920s there was a significant Bengali population, caused by Bengali seaman being paid off, or jumping ship, in London's docks, particularly in the aftermath of the Great War. The main influx of people from East Pakistan (after 1971, Bangladesh) came in the 1960s and 1970s. Of those immigrants, the majority hailed from the Sylhet Division in the north-east of Bangladesh, famous for its tea plantations. The language (other than English) spoken by almost all the Bangladeshi community is Bengali, with many using the Sylheti dialect.'

57. The Borough is no stranger to political controversy often concerning race or immigration. In 1919 rioting took place pitching demobbed servicemen against the black and Asian workers on the docks. In 1936 Cable Street was the site of a pitched battle between the Fascists of Oswald Mosely and a coalition of local Jews, communists and anarchists. In 1970 protests against social conditions on the Isle of Dogs led to a 'UDI' and the barricading of the bridges leading onto the Island. In the 1980s every Sunday would see the National Front attempting to sell magazines at the end of the Brick Lane market. In 2013 the so called 'English Defence League' chose to march through the Borough.

58. Richard Mawrey QC sets out a history of the infighting within the Labour Party in Tower Hamlets in the 1990s at paragraphs 187 to 217. He suggests that there was a propensity to level allegations of racism with or without foundation where necessary

to score political advantage. He went on to make similar findings against Lutfur Rahman.

59. By 2010 Lutfur Rahman was the leader of the Labour group which had overall control of the council. That year there was a referendum to decide whether to change the system of governance to having a directly elected mayor and at the same time there were local elections. The Labour group won a substantial majority and was returned to power. The outcome of the referendum was in favour of having a directly elected mayor. As Richard Mawrey QC points out at paragraph 226 Lutfur Rahman might reasonably have anticipated his appointment as the official Labour candidate having just lead the Labour group to a resounding victory. In the event the national Labour Party chose an alternative candidate. Lutfur Rahman chose to stand as an independent. He achieved a substantial victory and was appointed mayor.

60. The system of governance with a directly elected Mayor involves the appointment, within the gift of the Mayor, of a cabinet. As Richard Mawrey QC explained, after Lutfur Rahman's election a number of councillors defected to support him principally from the Labour party. He went on to describe the events that followed:

> *'254. Now we come to the more sensitive areas. The bald fact is that all the defecting Councillors were Bangladeshi. The Mayor's unofficial party was seen as being a Bangladeshi party and, it must be said, (contrary to the protestations of the Mayor and his witnesses), the party came to see itself as the Bangladeshi party. Although stoutly denied by Mr Rahman's partisans in evidence, the reality is that the focus of the Mayor and his cabinet became more and more on the Bangladeshi community. This perception was heightened by the policy adopted by Mr Rahman towards grants of Council money and it was not assisted by the fact that, on one view of the figures, the Council's housing budget had been skewed toward those areas of the Borough (mainly in the western wards) where support for the Mayor and his associates was strongest.*
>
> *255. As time passed and criticism of the Mayor and his administration mounted both within the Borough and in the national media, the Mayor and his close associates withdrew into their bunker. In their minds, they were being targeted because they were Bangladeshi and Muslim: so their critics were necessarily racists and Islamophobes. The Mayor's refusal to engage with Councillors (other than those of his unofficial party) became more marked. This led to two incidents which were explored in evidence.*
>
> *256. The first incident occurred when Mr Rahman was being pressed in the Council Chamber to answer Councillors' questions but refused to do. The Council's Monitoring Officer (in effect, Head of Legal) intervened to say that requiring him to answer questions was in breach of his rights under the European Convention on Human Rights. The court was asked to accept that the Monitoring Officer had come up with this preposterous advice entirely off her own bat but common sense would seem to indicate that she would never have intervened in this way unless she had been put up to it by Mr Rahman. Needless to say, her intervention did not convince the Mayor's critics and the court remained baffled by this interpretation of the ECHR.*
>
> *257. Secondly, the Councillors who were not aligned with Mr Rahman became so exasperated that they proposed a motion to attempt to compel him to answer questions in the way that all other elected mayors answer questions. At this*

point, the Deputy Mayor, Councillor Ohid Ahmed shouted that the motion was only being proposed because Mr Rahman was Bangladeshi. Once more the cries of 'racist' were heard.'

61. In 2013 Lutfur Rahman and those councillors who had supported him formed a new political party 'Tower Hamlets First' for the purposes of contesting the Mayoral and local elections that were to be held in 2014.

62. On 30 March 2014 the BBC broadcast an episode of Panorama entitled 'The Mayor and Our Money' within which allegations of corruption were made. These included a suggestion that Lutfur Rahman had awarded £3.6m to Bengali and Somali groups, despite recommendations by council officers that they should receive just £1.5m. It seems that this prompted action by the central government. On 4 April 2014 Eric Pickles, then Secretary of State in the Department for Communities and Local Government commissioned Price Waterhouse Cooper ('PwC') to undertake a 'best value inspection' under Section 10 of the Local Government Act 1999.

63. On 22 May 2014 elections took place both for the office of Mayor and local elections for Councillors. The two leading candidates for Mayor were Lutfur Rahman, then the official candidate for Tower Hamlets First and John Biggs the Labour candidate. Lutfur Rahman won the most votes (under the transferrable vote system) and was re-elected as Mayor. Tower Hamlets First secured 18 council seats, Labour 22 and the Conservatives 5. The system of governance left the levers of power in the hands of Lutfur Rahman and Tower Hamlets First.

64. It was at about this time that the Claimant was first appointed by the Respondent to undertake investigations. We shall return to his involvement below.

65. The 2014 elections were mired in controversy. It was by any standards a bitter fight. In a rare show of unity, a group of individuals opposed to Lutfur Rahman banded together to challenge the outcome of the election. They were Andy Erlam, Debbie Simone, Azmal Hussein, and Angela Moffat who, whilst they had diametrically opposing political views, had a common goal of exposing corruption in the election. The particulars of wrongdoing relied upon by the petitioners included (but were not limited to) allegations of voting irregularities, payment of canvassers, bribery, treating and the improper use of spiritual influence. The full particulars are set out at paragraph 62 of Richard Mawsley QC's judgment.

66. Despite an attempt by Lutfur Rahman (or more correctly the Borough) to bring the investigation to an end by seeking a judicial review of their appointment, PwC produced their report on 16 October 2014. That report roundly criticised the levels of financial control at the Borough. Summarised the conclusions in respect of grants made to community organisations as follows:

462. What the report shows is that:

a) a high proportion of grant decisions were made by Mr Rahman personally, aided by one or two close associates, normally Mr Choudhury and Councillor Asad;

b) in an abnormally high number of instances, the decisions substantially altered or completely ignored the results of the investigation and recommendation procedures carried out by officers of the Council;

c) enormous sums of public money had been paid to organisations in excess of that which Council officers had recommended and, in many instances, to organisations that had not even applied for grants;

d) the reason offered by Mr Rahman and Mr Choudhury for these discrepancies was that they were applying 'local knowledge', though what that 'local knowledge' involved other than local knowledge of the needs of their own political careers was never made clear to the court;

e) the processes by which the final figures were reached were largely undocumented.

463. By way of an example, one may cite two paragraphs of the PwC report:

4.71 Of the 327 applications that were successful in the final MSG 2012-2015 awards, a total of 15 applications receiving aggregate funding of £243,500 did not meet minimum eligibility criteria and so were not scored by officers. Officers did not recommend any applications for awards that did not meet the minimum eligibility criteria, rather recommendations for funding were made by Members in September 2012 for all bar one of these 15 ineligible applications. The remaining ineligible application was one of the 32 increases to recommended awards following the final review process where the applicant had not requested a review, as discussed in 4.54 above.

4.72 Further, 21 applications totalling £455,700, which did meet the minimum eligibility criteria, but did not meet the minimum quality threshold score of 40, were successful in the final awards. This was 18 applications and total awards of £407,700 more than those recommended by officers, as discussed in paragraph 4.36 above. We note one organisation, which was recommended by officers but did not meet the minimum quality threshold, was not successful in the final awards.

464. By way of another example, grants totalling just under £100,000 were handed out to ten organisations, all Bangladeshi or other Muslim organisations, for lunch clubs when none of them had even applied for a grant.

465. The so-called '954 Fund', apparently taking its name from the fact that the initial amount available for grants from the Fund was £954,000, was again criticised by PwC who said[48]: 'Of the £522,000 approved awards from the 954 Fund, £352,000 was awarded without an open application process and [the balance of] £170,000 related to the Mela…'.

67. Following receipt of the PwC report Eric Pickles exercised his powers to appoint ‘Commissioners’. On 17 December 2014 Max Caller and Sir Ken Knight took over the financial management of the Council.

68. The hearing of the election petition started on 2 February 2015 and continued into March. The judgment was handed down on 23 April 2015. Lutfur Rahman was found to have engaged in ‘corrupt and illegal practices’. The result of the Mayoral

election was annulled and Lutfur Rahman banned from holding an elected office for 5 years. Richard Mawrey QC added the following paragraphs at the bottom of his judgment:

> *'AFTERWORD*
>
> *681. The evidence laid before this court, limited though it necessarily was to the issues raised in the Petition, has disclosed an alarming state of affairs in Tower Hamlets. This is not the consequence of the racial and religious mix of the population, nor is it linked to any ascertainable pattern of social or other deprivation. It is the result of the ruthless ambition of one man.*
>
> *682. The real losers in this case are the citizens of Tower Hamlets and, in particular, the Bangladeshi community. Their natural and laudable sense of solidarity has been cynically perverted into a sense of isolation and victimhood, and their devotion to their religion has been manipulated – all for the aggrandisement of Mr Rahman. The result has been to alienate them from the other communities in the Borough and to create resentment in those other communities. Mr Rahman and Mr Choudhury, as has been seen, spent a great deal of time accusing their opponents, especially Mr Biggs, of 'dividing the community' but, if anyone was 'dividing the community', it was they.*
>
> *683. The Bangladeshi community might have thought itself fortunate to have been the recipient of the Mayor's lavish spending but in the end the benefits were small and temporary and the ill effects long-lasting. It was fool's gold.*
>
> *684. Central government has already had to intervene once, and, on 4 November 2014, the Secretary of State, Mr Eric Pickles, announced the appointment of commissioners to take over a number of functions of the Mayor and Council, particularly in relation to grants. It is obviously not for this court to suggest, still less recommend, any further course of action but it seems likely that the governance of this Borough will have to be examined in the not too distant future.*
>
> *685. On past form, it appears inevitable that Mr Rahman will denounce this judgment as yet another example of the racism and Islamophobia that have hounded him throughout his political life. It is nothing of the sort. Mr Rahman has made a successful career by ignoring or flouting the law (as this Petition demonstrates) and has relied on silencing his critics by accusations of racism and Islamophobia. But his critics have not been silenced and neither has this court.'*

69. A second Mayoral election was held on 11 May 2015. On this occasion John Biggs, the Labour candidate von the most votes and was appointed as Mayor. He was re-elected in 2018.

General Findings of Fact

70. Within this section we make the general findings of fact that have enabled us to reach our conclusions in this case. We shall not in this section make secondary findings such as the reasons why various actions took place but return to those matters in our discussions and conclusions below. We should stress that we were presented with a great deal of evidence some merely illustrative of the general points being made. It would be disproportionate for us to make findings in respect of every

disputed point and we have not attempted to do so. In reaching our conclusions we have had regard to all of the evidence we have heard and all of the documents we were expressly referred to.

71. The Claimant's background and experience was set out in a number of job applications contained within the bundle of documents. He graduated in 1990 from Bristol University with a degree in Sociology and Social History. He then worked for a number of years for Turning Point, a charity assisting people with drug and alcohol issues. He later worked for the Home Office rising to the position of a Senior Researcher responsible for drugs and crime research at the same time as carrying out academic research. Thereafter he worked for a number of years as a consultant offering services to public bodies including local authorities.

72. On 25 January 2010 the Claimant started working for the Respondent as an Olympic Strategy Data Support Manager. He was given a fixed term contract that expired on 25 January 2012. The Grade associated with that role was 'LP06). Documents produced by the Claimant in his bundle show that his contract was extended on 3 occasions ultimately expiring on 30 March 2013. None of the complaints made by the Claimant relate to that period of employment and we infer from the fact that the Claimant was offered further work that the Respondent had been satisfied with the services he provided.

73. The Claimant knew that his contract would expire and was able to secure a further roll with the Respondent through a redeployment process. From 27 February 2013 the Claimant worked as a Drug and Alcohol Action Team Coordinator to cover for the substantive post holder who was on maternity leave. This role was graded as an LP08 and attracted more pay than the Claimant's previous role. The letter of appointment provides that the contract will expire on 31 December 2013. Once again, the Claimant's contract was extended on 2 occasions. The substantive post holder returned from maternity leave on 12 December 2012. The Claimant was told by a letter of 25 April 2014 that his contract would not be further renewed. He was directed to internal vacancy lists for any redeployment opportunities.

74. Again, none of the matters we have to decide arose during the period the Claimant worked in what he referred to as the DAAT role. However, in his witness statement he does refer to uncovering a lack of monitoring and scrutiny in the manner in which public funds were allocated to service providers and users.

75. Over the following months it is clear that the Claimant began undertaking investigations reporting to Andy Bamber who was then the Service Head Safer Communities responsible for the Youth Service. It appears that this transition was handled in a somewhat informal manner. No post was formally created for some time. On 23 July 2014 Andy Bamber sent an e-mail to individuals in the HR department where he said *'I need Mark off the redeployment list to complete a review of the youth service for me….in addition he is still undertaking the investigation for Shazia'*. A business case for the creation of a new post was drawn up but it does not appear any formal steps were taken to create a post visible within the Respondent's staff structure for some time. We are satisfied that this was due to incompetence rather than anything more sinister. Throughout our findings of fact, we identify things that should have been done better but were not through administrative incompetence. It is clear that Andy Bamber wanted the Claimant to work on investigations. There is no evidence to suggest that there was any 'push back' at that stage from the Claimant's managers.

There is certainly no evidence that a failure to put in place formalities was on the basis of sex or age.

76. The failure to formally create a post for the Claimant was not without consequence. Where a post was created it would be expected that the job description was assessed under a job evaluation process. From this the appropriate pay grade would be allocated. This was not done for a considerable time and the Claimant, who had hoped that the post was allocated a higher grade remained on the same pay scale. The Claimant's pay continued to be drawn from the budget of the DAAT rather than from the Youth Service budget. Finally, the failure to formally allocate the Claimant a position made it difficult to manage his annual leave.

77. The draft business case that was produced identified the main purpose of the job as being:

> *'To lead on the review of the Youth Service and to align it with the issues emerging from the PWC audit'*

78. From that point in time the Claimant worked on investigations concerning members of the Youth Service. In July 2014 the management structure was that the Claimant reported to Andy Bamber who in turn reported to Steve Halsley who was then the 'Head of Paid Services'. The Head of Paid Services was the most senior employee in the Council.

79. The first incident that the Claimant says was an unlawful act took place on 17 July 2014 and concerns Dinar Hussain who was then the Head of the Youth Service. The Claimant's pleaded case is that Dinar Hossain threatened and intimidated him and that that amounted to unlawful harassment related to race and/or sex. In his amended ET1 he purported to set out the contents of an e-mail memo sent to Andy Bamber on 18 July 2014 and claimed that this was an accurate record of events. In the pleaded account the purported quote from the Memo included information that when the Claimant had a chance encounter with Dinar Hossain at lunchtime on 17 July 2014 he was standing with 2 Bangladeshi males. He then describes a conversation during which Dinar Hossain described the PwC investigation as nonsense and pressed the Claimant to disclose his own role in the investigation. He says that Dinar Hossain intimated by gesturing with his mobile telephone that he had the support of the Mayor. The purported quote ends by describing Dinar Hossain pinching the back of his hand and asking, 'is it because of this'.

80. During her cross examination of the Claimant Ms Palmer pointed out that there were material discrepancies between the purported quotation on the ET1 and the memo itself. The memo did include information summarised above but made no mention of the fact that Dinar Hossain was standing with 2 Bangladeshi males and said nothing about him pinching his skin or asking, 'is it because of this'. The Claimant said that the pleading had been intended as a full account and if it read as if it incorporated a verbatim quote from a contemporaneous document that was inadvertent. We must say that in our view the ET1 can only be read as suggesting that it is quoting and relying upon a contemporaneous record. Unsurprisingly Ms Palmer put it to the Claimant that he had added references to race and skin colour to bolster his case.

81. The Respondent had asked for and were granted a witness order requiring Andy Bamber to give evidence. He told the tribunal that the events of 2014/2015 had

made him unwell and suggested that he had taken a very long time to recover. We shall return to other aspects of his evidence below. Andy Bamber was asked by Ms Palmer whether he had discussed what had happened with the Claimant. Andy Bamber said that he had. He said that the e-mail sent by the Claimant was written at his suggestion. He said that he asked for it to be written after a discussion about what had occurred in order to have a record of the event. He went on to say that in his view the conduct referred to by the Claimant was at the lower end of the scale in comparison to what was going on elsewhere.

82. He was then asked whether there had been any mention of race. He volunteered that the Claimant had said that Dinar Hossain had pinched his skin. We should record that Andy Bamber had not been present at the time the Claimant was cross examined. What is more at the time he volunteered this information the Claimant's claims included suggestions that Andy Bamber had discriminated against him on the grounds of race and or sex (those were abandoned shortly afterwards). He did go on to say that there was a possibility that he had conflated more than one event but he did not retreat from his account that the Claimant had referred to Dinar Hossain pinching the skin on his hand.

83. We entirely accept Ms Palmer's argument that the Claimant's ET1 includes a misleading suggestion that there was a contemporaneous reference to Dinar Hossain pinching his skin. That should not have been included in the ET1. Despite this we do accept that the Claimant's account of events given in his e-mail sent on 18 July 2014 and additionally accept that either then, or if not then around that time, Dinar Hossain pinched the skin on his hand and asked whether the Claimant's attitude towards him was 'because of this'. In other words, he asked whether the investigation of himself or the youth service was racially motivated.

84. In reaching our conclusion that the Claimant's account of events was (broadly) accurate we have had regard to the fact that:

84.1. The Claimant mainly, but not exclusively, gave evidence in a measured way and made concessions where the evidence did not support his beliefs; and

84.2. We considered that Andy Bamber's evidence was spontaneous and given at a point where the Claimant was levelling serious allegations against him. It was not suggested that there was any collusion between them; and

84.3. The allegation is consistent with the background set out above and some of the evidence before us where some individuals when investigated immediate response was to suggest that the investigation was racially motivated; and

84.4. The suggestion in the e-mail of 18 July 2014 that Dinar Hossain was obstructive and was prepared to suggest that he had the Mayor's ear is consistent with the events that were unfolding in the Borough at that time.

85. We have come to that conclusion based on the evidence before us but more than 5 years after the events and without hearing from Dinar Hossain. We return to the significance of that in our discussions and conclusions below.

86. In November 2014 the Claimant was asked by Carol Wilson if he could prepare a job description for himself. She was concerned that he was still formally occupying a role in the DAAT team and his role had not yet been formalised nor evaluated. The Claimant was surprised by this. Whilst it is not a usual request the circumstances in this case were that a role had been carved out for the Claimant to meet an emerging need and he was as in as good a position as anybody to describe his responsibilities. In December 2014 and early January 2015 HR were chasing Andy Bamber for a job description. On 12 January 2015 Andy Bamber sent an e-mail to the Claimant forwarding on the e-mails chasing him. He wrote:

> '*We have spoken! It's still not complete. Unfortunately without one I have to start the termination process.'*

87. The system used by the Respondent to fix rates of pay is the 'Single Status' job evaluation scheme. This is a system designed to produce an objective evaluation of the value of any role and to eliminate any gender pay gap. The process involves evaluating a job description in consultation with the recognised trade unions. One reason why the Claimant was keen for the job evaluation process to take place was that he felt that his new role merited a higher rate of pay than his role in the DAAT team.

88. The Claimant had categorised that e-mail as a threat to dismiss him. Having heard from the Claimant and Andy Bamber it is clear that the Claimant had been asked to provide a draft job description for approval by Andy Bamber. It is also clear that a job description was long overdue and that they both knew that. In that context we find that the e-mail was not intended as a threat to dismiss the Claimant but was intended as a prompt to complete a task that was long overdue. The Claimant did then produce a draft job description. It was unclear whether Andy Bamber ever approved it at the time. In evidence before us he thought it accurately described the Claimant's role in most material respects. It seems that despite the Job Description being completed there was still no formal evaluation at that stage.

<u>An overview of the Claimant's work as an Investigator</u>

89. It is appropriate at this stage to set out a description of the Claimant's work during the period from May 2014 to the middle of 2016. The Claimant's broad remit was to carry out a review of the Youth Service. He was not expected to work alone. Andy Bamber was closely involved and the Claimant was working alongside PwC and in 2015 another firm of Accountants/auditors Mazars as well as liaising with the Metropolitan Police.

90. We do not intend to set out everything that the Claimant was involved with. What is more, in describing the product of the Claimant's investigations we do not reach any conclusions about whether any or the organisations or individuals that were the subject of those investigations were guilty of any wrongdoing. That is not necessary in order to determine the issues we have to decide. It is however relevant to describe the scope and gravity of those investigations. This is relevant to assessing the Claimant's evidence that he was threatened by those he was investigating and then poorly protected by the Respondent. For the avoidance of doubt, we had regard to this evidence when reaching our conclusions about the incident on 17 July 2014.

91. One strand of investigation started with a complaint from an individual or individuals who remained anonymous sending e-mails referring to themselves as

'Whistler Lbth'. Some e-mails had been sent as early as 2011 but had not been acted upon. Given the gravity of the allegations made this is surprising. The Claimant was given access to those e-mails in 2014. There were further e-mails during 2014 which made further allegations. The nature of the allegations included:

91.1. Suggestions that appointments had been made of unqualified individuals who were the family and friends of Dinar Hossain (and other managers); and

91.2. That grant monies from three funds, the Youth Opportunities Fund, the Summer Grant Fund and the Mayor's Activities for Young People Fund has been allocated improperly.

92. Some allegations that grant monies had been wrongly allocated were investigated by Mazars. We had a copy of their report dated May 2015. That report sets out the various sources of funding for youth work within the borough and details the processes including the checks that ought to have been applied when any public funds were allocated. The report focuses on 8 organisations who between them had received something in the order of £284,300 in the years 2013/2014. The auditors had visited the premises named in the applications for funding but had been unable to contact any of the organisations at the addresses supplied. In one instance the address given turned out to be a concrete garage to the rear of a shop. None of the organisations were registered charities although 6 of the names appeared to refer to registered companies. In their applications the organisations were required to give the Disclosure and Barring Service reference numbers for individuals who would work with children. In some instances, the numbers given were found not to match the names given. In other instances, no number were given at all. The conclusion in the report was that the organisations simply did not exist (as an organisation) and that it was impossible to verify that any services had been provided at all.

93. What came out of this strand of the investigation was firstly that the grants had been made or authorised by the senior managers of the Youth Service without any proper controls being in place. In addition, individual members of the Youth Service staff had connections with many of these organisations. The Claimant embarked on investigating these individuals and writing reports where disciplinary action was warranted. Without making any specific findings we consider that the Mazar's report makes for shocking reading. It describes at the very least a disturbing lack of financial control and at the worst widespread fraud and corruption.

94. During this period the Claimant worked alongside Lorraine Walsh who gave evidence on his behalf. She started working on investigations at much the same time as the Claimant and worked alongside him.

<u>The Claimant's employment status in 2015</u>

95. In May 2015 the Claimant was told that Andy Bamber had had to act to 'secure his position'. He sent an e-mail on 22 April 2015 to a Business Partner in the Respondent's HR and Workforce Development team. He said that he had no formal arrangement in place and asked for advice on his contractual situation. He had to chase for a response on 28 May 2015 got a reply which said:

> *'not sure what details you require, but as it is at present you are a Project Officer, carry out specific tasks for Andy Bamber on your existing grade and terms and conditions.*

> *If this work was to cease then you would, as with anyone over two years' service [sic], be issued with 12 weeks' notice to end your contract with the Council, placed on the Councils redeployment list for the next period, and if not successfully redeployed then you would receive redundancy payment [sic]*

96. The Claimant responded on 29 May 2015 asking to be provided with any relevant paperwork relating to his transition to the Project Officer role. The Claimant had said in his witness statement that around this period he had had a meeting with Andy Bamber and a member of the Human Resources team. He says that after this meeting he was unexpectedly sent a calculation of an estimated voluntary redundancy payment. He suggests that this is consistent with the desire to remove him from the organisation. When he gave his evidence Andy Bamber denied that that was the case. He said that he was committed to investigating the allegations of fraud and that the Claimant was important to that process. The Claimant ultimately abandoned all his allegations against Andy Bamber. What we take from this is that the subsequent events have tended to cloud the Claimant's perception and have led him to believe that some innocuous matters have a more sinister connotation. We have no doubt that those beliefs are genuinely held.

The anonymous telephone call of 30 October 2015

97. It is the Claimant's case that on 30 October 2015 he received an anonymous telephone call whilst working at home. In his witness statement he says that the caller was a female who he believed was Asian/Bengali. He says that this person said, "something is going to happen" in what he describes as a sinister tone before hanging up telephone. It is clear from emails sent immediately afterwards that the Claimant reported those facts to both Andy Bamber and to the police officer with whom he was then working investigating potential fraud. It appears that he was instructed to complete an 'Intel report' at the time. In those emails Claimant says that before any words were used the person laughed. When the Claimant was cross-examined it was pointed out to him that in his amended ET1 he had referred to receiving an anonymous call on that date from a male rather than a female. The Claimant said that that was simply a typing mistake.

98. The Claimant's account is consistent with the contemporaneous record that he made. At the time the Claimant was working on a number of investigations into a number of individuals alleged to have been involved in fraudulent activities. We heard from Andy Bamber who told us that he believed that there had been threats made against him and others designed to discourage the investigations. He recounted an occasion where a manager was stopped by three men and told to "back off". He recounted an occasion where he found a toy gun on the driveway of his home. He suggested that files had "gone missing" from his office. From the totality of this evidence we are prepared to infer that those people who were subject to investigations were deeply resentful and some were prepared to exert pressure to frustrate those investigations.

99. In respect of the telephone call on 30 October 2015 we have no evidence of who made the call other than the Claimant's suggestion that it was an Asian female. We are asked to infer that the call was made either by, or on behalf, of an employee of Respondent. We accept that is a possibility but it is not the only possibility. The words 'something is going to happen' are not necessarily sinister. Even if a threat were intended there is no actual evidence that any then current employee instigated that threat rather than an ex-employee or a friend or family member of such an employee

of their own volition. The standard of proof that we must apply even when drawing inferences is that the facts we are asked to infer are more likely than not. We are unable to say that is more likely than not that this call amounted to a threat made by any employee or agent of Respondent. We do however accept that the Claimant strongly suspected that was the case and that he was concerned for his own safety.

100. The Claimant's case initially included a suggestion that Andy Bamber failed to protect him and that this was an act of direct race discrimination. This allegation was subsequently withdrawn. We think that concession was rightly made. On the same day Andy Bamber sent an email to Steve Halsey and others, in which he said:

> '*We need to do another quick risk assessment….. I have managed my own personal risk and my own threat but now Mark appears to be in the frame and he is worried about his family. We know from two interviews that staff and investigation have received threats about talking.'*

101. The responses to that email were unanimous in condemning any threats and intimidation. On second of November 2015 Steve Halsey agrees with the proposal to prepare a risk assessment. There is nothing to suggest that the Claimant's line managers at that stage were anything other than supportive. The Claimant was charged with preparing the first draft of the risk assessment and did so by 10 November 2015. It was agreed that one means of mitigating any risk to the Claimant was to provide him with a parking permit in order that he could park at the Respondent offices at Mulberry House rather than parking nearby as he had been. The Claimant was directed to speak to an individual in the facilities team who was responsible for issuing permits. On 5 January 2016 that individual told the Claimant he needed to complete an application form and have it approved by Steve Halsey. The Claimant completed the application form but it took until 24 March 2016 for Steve Halsey to approve it. As a matter of fact, the Claimant could park in the underground car park at Mulberry house whilst awaiting the issue of that permit.

<u>The transfer of the Youth Service into Children's Services</u>

102. In the paragraphs that follow we need to step back in time to set out a history of where Youth Services sat in the structure adopted by the Respondent. Historically the Youth Services had been a part of the Children's Services Directorate but by 2014 it sat within the Communities Localities & Cultural Services Directorate. The Claimant suggested that that move entailed a relaxation of regulation which may have contributed to the fraudulent/improper activities he came to investigate. He may be right but that is not something we need to decide.

103. In 2014 a decision was taken to place the Youth Service within the Children's Services Directorate. This would entail a restructure. Andy Bamber told us that he had been asked to manage this process. He had been very reluctant to do this as he considered the Youth Service and, in particular, its senior managers (including Dinar Hossain), to be dysfunctional. He said that he went on holiday and on his return discovered that despite his reservations he had been saddled with the responsibility for the re-organisation. A decision was taken that Youth Services would fall under the ambit of the Children's Services Directorate from April 2016.

104. Andy Bamber told us that the placing of the Youth Service within Children's Services led to an announcement that applications for voluntary redundancies would be considered. He said that Dinar Hossain came to him and asked to take voluntary

redundancy. It seems that that request was granted. As a consequence, Dinar Hossain's role in widespread allegations of fraud and corruption within the Youth Service have never been investigated or we should add established. We note that in an early presentation setting out the progress made in the investigations written in September 2014 under a heading 'Next Steps?' poses the question 'What do we do about DH?'. The answer that materialised was that he would be permitted to take voluntary redundancy.

105. The departure of Dinar Hossain led to a vacancy and the Respondent recruited Claire Belgard as the Interim Head of Youth Services in November 2015. Claire Belgard had over 10 years of experience in managing Youth Services and Offending. She was therefore well qualified for the operational aspects of that role.

106. It had been planned that the transfer of the Youth Service back into Children's Services would be accompanied by a significant restructure. In the summer of 2015 the Respondent advertised for a person with the relevant skills and experience to project manage that restructure. That advertisement was answered by Ronke Martins-Taylor who was at that time working for the London Borough of Redbridge as a 'Chief Officer Services to Young People'. She too was a highly experienced manager within Youth Services. On 4 January 2016 she started working for the Respondent (initially by way of a secondment) as a 'Youth Services Project Manager'.

107. In his witness statement the Claimant complains about the appointment and remuneration of these two individuals both of whom were better paid than he was. We find that the work and level of responsibility of these two roles was very different to that of the Claimant. Whilst recognising the importance and difficulty of the Claimant's work he did not have the management responsibility of either of these two roles. We see nothing surprising about the fact that the Respondent recruited for these two roles. The plan to restructure the Youth Service required a skilled person to undertake the planning and implementation. In addition, the Youth Service needed a replacement head to deal with operational matters.

108. By late 2015 early 2016 the Claimant's work had begun to focus on wrongdoing by individuals within the Youth Service. He was essentially charged with investigating whether there had been any wrongdoing, making recommendations where disciplinary action might be warranted and liaising with the police, external auditors and the Commissioners. We find that he approached all his work in a thorough no-compromise manner. In her witness statement Lorraine Walsh describes an exchange with Phil Sapely a Fraud Investigator with Mazars during which Phil Sapely had said that the Claimant *'would find a conspiracy on the back of a matchbox..'*. Lorraine Walsh said that she had defended the Claimant pointing out that he had often been right. What we take from this and the other evidence is that the Claimant was very driven in his work to the extent where some of his colleagues would question the lengths he would go to where there was a possibility of corruption or wrongdoing.

<u>The dismissal of Habibur Rahman</u>

109. It is necessary to refer to two of the many investigations carried out by the Claimant. The first concerns Habibur Rahman. We name him because he gave evidence in open tribunal. The Claimant's investigation started in June 2015 and finished in November of the same year. The allegations investigated were in two separate strands. The first was a suggestion that the Habibur Rahman had overclaimed wages by incorrectly filling in time sheets and submitting duplicate claims.

He accepted that there were overpayments but suggested that these were accidental. It emerged that in 2 years he had claimed £94,000 from the Respondent as a 'zero hours' youth worker. That said the overpayments established only 33 hours that was overpaid. Before us Habibur Rahman sought to dismiss those overpayments as trivial. We do not agree. This was public money that should have been spent providing services to young people in a deprived borough. Scrupulous care ought to have been taken in completing claims.

110. The second strand in the investigation concerned the involvement of Habibur Rahman with organisations which had received grant monies. The investigation revealed e-mails which showed that Habibur Rahman had been sent and had himself sent e-mails with grant proposals. He had forwarded some of these from his work to his personal account and vice versa. Some of these proposals related to organisations which the Mazars' report had concluded did not exist as functioning organisations. When interviewed in respect of these matters Habibur Rahman gave the names of 7 individuals who he said would explain any connection with those organisations. The Claimant did not interview those individuals as some had left the Respondent and others he considered to be potential suspects. On 14 April 2016 Habibur Rahman was dismissed by Andy Bamber. His suspension, on full pay, had at that stage been in place for over 1 year. Habibur Rahman was subsequently reinstated following an appeal. We shall return to the final outcome of the disciplinary proceedings below.

Complaints about and by the Claimant in February 2016 – the 1st CHAD

111. On 2 February 2016 the Claimant interviewed an individual who worked in the Youth Service on a casual basis. The invitation suggested that he was being interviewed as a witness. Nevertheless, he was permitted to be accompanied by his trade union representative. Following the interview, the Claimant sent the employee a series of follow up e-mails where he asked searching questions about the employee's involvement in applications for grant monies. The questions are politely phrased and invite explanation. The final round of questions resulted in the employee asking for a copy of the investigations policy rather than providing substantive answers. On 3 March 2016 the Claimant sent the employee what were described as witness interview notes. That prompted the employee to write to his trade union representative copying in the Claimant including the following passages:

> *'The statement from Mark is untrue & a whole lot of stuff has been added which I did not say or he made the sentences with his own words. Also the way the questions were asked was as if the interview was taking place in a police station and deliberately misleading me.*
>
> *I was not sure before but I hundred percent certain this is nothing but discrimination against me & also has racial motivation, not to forget how he threatened me.*
>
> *I want to file a CHAD against Mark Edmonds as he has forcefully bullied me into something whereby I simply complied naïvely and to later find out that this was his conniving way to lure me in and corner me and false records and statements in my mouth……..'*

112. On 17 February 2016 the employee's trade union representative sent an e-mail to the HR Officer who had also attended the meeting in the following terms:

'[the employee] was called as a witness by Mark Edmonds on 3rd February. We attended and I have to express both mine and [the employee's] concerns that it felt more like an interrogation than an interview, also have the atmosphere that it was a disciplinary interview against [the employee] rather than him being interviewed as a witness.

[The employee] has given his statement to Mark and that should be the end of it…..

113. From the contemporaneous documents we are satisfied that the employee and his trade union representative could have reasonably complained that what had been introduced as a meeting to take a statement from a witness had turned into an investigation without any warning. That said, it is very clear that the employee needed to give explanations about his involvement in obtaining grants for various organisations. It is disappointing that his reaction was to immediately suggest that the investigation, for that is what it was, was racially motivated.

114. The Claimant took great offence at the suggestion that he had acted as the employee had alleged and, in particular, that he was discriminating on the grounds of race. He was asked to attend a meeting with Andy Bamber and the HR Representative who had attended the interview with the employee. He was told by Andy Bamber that a discussion had taken place with the Directors about whether he should be removed from the investigation. Later correspondence from the Claimant suggested that he agreed with this decision but was unhappy about having to stand back. The Claimant considered this a spineless response. Standing back from things, as we can, we can see that the allegation that the Claimant ought to have informed the employee that he might be investigated before proceeding with questioning him about his own involvement had some force. It was important to note that the employees trade union representative took the same view. Whilst the allegation of racism appeared to be without any substance, and the employee had serious questions to answer, it was not in our opinion surprising that the Claimant was asked to stand back from this investigation.

115. The Claimant's response was to raise his own 'CHAD' by sending an e-mail to Andy Bamber on 6 April 2016. That abbreviation refers to the Respondent's 'Combatting Harassment and Discrimination' policy. The Claimant suggests that the allegations made by the Employee were false and malicious. The Claimant met with Andy Bamber on around 15 April 2016. Andy Bamber agreed in his evidence that at that meeting he tried to dissuade the Claimant from progressing his grievance. The Claimant says that he described it as 'career suicide'. We accept that Andy Bamber did try and persuade the Claimant to abandon his complaint. We would summarise the reasons he gave to us for taking that stance as being his view that being the subject of unfounded allegations of racism was an occupational hazard and that the Claimant should have been thicker skinned and risen above the fray.

116. Following this meeting the Claimant suggested that he might withdraw his CHAD if he received a written apology. Andy Bamber attempted to explain that with a counter allegation from the employee, the ongoing investigation and the involvement of the Trade Union, that was unrealistic. Nevertheless, he agreed to raise it. He told the Claimant that his response to the complaint underlined the reasons why he should step back from the investigation. Whilst the response to a false allegation is a subjective matter we consider that Andy Bamber's advice to the Claimant was realistic and pragmatic. The allegations of fraud were made against individuals who were all

Bengali. Given the removal of Lutfur Rahman and the controversy that surrounded that, it should not have surprised the Claimant when it was suggested that investigations were being targeted at a particular community.

117. The Claimant took a period of sick leave with flu. On his return Andy Bamber sought to organise an absence review meeting he explained that he was concerned to see whether there was any link between the CHAD episode and the absence. We find that he was worried that the Claimant was suffering because of the pressure of his work. The Claimant wrote a very hostile e-mail to Andy Bamber asking whether the meeting would be formal or informal and telling him that there was no link between the CHAD issue and his health.

118. It was at this point that Andy Bamber fell ill himself. His evidence was that the strain of the investigation, of dealing with the issues in the Youth Service and the push back and threats that had resulted, made him very ill. He said that he had barely recovered. Indeed, at certain points in his evidence he became visibly upset. With Andy Bamber away from work no formal steps were taken at that stage to deal with the Claimant's CHAD. For that matter nothing formal resulted from the employee's complaint. The absence of Andy Bamber meant that for a considerable period the Claimant had no direct line manager.

119. The proposed transfer of the Youth Service back into Children's Services continued to be progressed. In a letter dated 7 April 2016 from Mala Jones, the Claimant was informed of the Transfer of the Youth Service from the CLC Directorate to Children's Services. The letter contained the sentence; *'All staff directly affected by the change in reporting lines have been notified by letter'.* The Claimant responded by sending Mala Jones an E-mail in which he asked whether he had been seconded to the Youth Service, where the funding for his role was coming from and who was his direct line manager. Mala Jones responded the same day. She explained that her understanding was that the Claimant was not a part of the Youth Service. She said that *'you remain an employee of CLC on your existing terms and conditions and there has been no change to your line management or the funding for your post'.*

120. By this time Claimant's job description had not yet been formally evaluated. He wrote to Karen Davis on 26 April 2016 to ask about the timelines for this process. Karen Davis responded promptly suggesting that this was being picked up by other members of the HR Team.

<u>The speech by Councillor Saunders and the Second Risk Assessments</u>

121. In April 2016 a petition was being circulated criticising the Respondent for cutting back on the number of youth projects. The reality was that many youth groups had had their funding cut or withdrawn because of the serious concerns there were about those organisations both in respect of funding but also in respect of safeguarding. On 18 May 2016 Councillor Rachael Saunders, from the Labour Group, was to attend a public Council Cabinet meeting. She rightly anticipated criticism from the former Tower Hamlet's First Councillors. She met with Claire Belgard to discuss the situation. After that meeting Claire Belgard prepared an e-mail containing what she intended to be 'briefing notes' for Councillor Saunders to use. During the Cabinet Meeting Councillor Saunders quoted verbatim from a passage of that e-mail. She read the following passage:

> *'The Service has faced allegations of fraud, corruption, nepotism, failure to declare personal interests, failure to declare criminal convictions, breaches of recruitment and procurement processes, breaches of council financial regulations and breaches of health and safety and data protection legislation. Internal investigations into these are ongoing.'*

122. We accept that both the Claimant and Lorraine Walsh were shocked that the scope of their work was being referred to in public. Sitting far removed from these events we as a tribunal are surprised at the level of the reaction of both investigators. The passage read in public by Councillor Saunders does not identify any particular individual, whether investigator or suspect. It does contain a description of the sort of wrongdoing investigated. However, by this stage allegations of corruption in the Youth Service had been made in the PwC report. They had been referred to in the Election Petition Judgment. An extensive investigation had been undertaken by Mazars during which they endeavoured to contact various organisations that had received grants. The Claimant had interviewed a number of people who had worked in the Youth Service and the subject matter of those interviews covered similar territory. If the cat was not completely out of the bag at that stage, then the sound of mewing would have been readily apparent.

123. We do not doubt at all that the reaction of the Claimant and Lorraine Walsh was genuine. They were both involved in investigating serious wrongdoing. They both feared retaliation. Lorraine Walsh said that after the event Claire Belgard took the time to ask if she was OK. The thrust of Claire Belgard's evidence was that Councillor Saunders had gone a little further than she had wished in quoting from her e-mail.

124. The Claimant promptly raised his concerns with Steven Halsey by an e-mail dated 6 June 2016. He referred to the disclosure of information and suggested that this increased the risk to him and Lorraine Walsh. He pointed out that whilst a parking permit had been approved he still had not actually been issued with one. We see no reason to think that Steven Halsey did not accept that the concerns were genuine. After meeting with the Claimant, he appointed Rachael Sagegh to carry out a risk assessment for the benefit of both the Claimant and Lorraine Walsh.

125. Having met with Lorraine Walsh, Rachael Sagegh prepared a draft risk assessment. The Claimant and Lorraine Walsh have criticised that risk assessment as it categorised the risk to them as 'low'. That said it included a number of recommendations aimed at reducing risk. These were:

125.1. Approving car parking at the Underground Car Park; and

125.2. Arranging for briefings/training for personal safety; and

125.3. Informing the police of any incidents; and

125.4. Providing panic alarms; and

125.5. Arranging for home security measures (CCTV, Panic alarm) if necessary; and

125.6. Ensuring robust reporting arrangements for staff members.

126. Neither the Claimant nor Lorraine Walsh were happy that the risk to them had been assessed as 'low'. They considered Rachael Sagegh to be inexperienced (which

she had herself accepted). A further risk assessment was commissioned and undertaken by another manager. That assessment completed on 8 August 2016 concluded that the risk was 'high'. The only material change to the recommendations was to suggest that the Claimant and Lorraine Walsh work in the CCTV Control Room which had restricted secure access. The home security measures referred to were put in place both for the Claimant and Lorraine Walsh. Lorraine Walsh was provided with a car parking permit promptly. We accept the Respondent's evidence that Lorraine Walsh had a different reporting line and manager to the Claimant. We shall return to the Claimant's situation below suffice to say at this stage he was not given a car parking permit although he continued to use the car park.

Did Habibur Rahman follow the Claimant on 6 June 2016?

127. It is the Claimant's case that on 6 June 2016 when he was driving to work Habibur Rahman, driving a white Mercedes and accompanied by two Asian males, attempted to overtake him and, when unable to do so, followed him to the roundabout near the estate where the Respondent's offices are situated. On 6 June 2016 having spoken to a senior manager Robin Beattie, the Claimant wrote to Steve Halsey drawing attention to the disclosure of information by Councillor Saunders. He specifically mentions threats such as the anonymised telephone conversation. He made no mention of any incident said to have happened that morning. The Claimant says that he did not include this because Robin Beatie suggested that he did not as he was not 100% sure of who was driving. When the risk assessment is revised on 5 August 2016 it contains an account given by the Claimant that he had been followed to work by an 'unidentified' vehicle. By the time the risk assessment is reviewed in 2017 the Claimant was saying that the driver was Habibur Rahman.

128. Habibur Rahman said that he had not ever followed the Claimant to work. He said he was working on that day at a Pupil Referral Unit at Globe Road. We accept his evidence in that respect because he provided us with an itemised payslip which shows him working on each day of that week. He said that he travelled to work by public transport and that he had never owned a white Mercedes.

129. Some aspects of Habibur Rahman's evidence were troubling. Firstly, we were unimpressed when he sought to trivialise the overpayment of wages made to him. He sought to portray himself as a victim of a campaign against him rather than acknowledge that at best his carelessness in overclaiming wages had brought his troubles on his own head. The explanations he gave for having a number of grant applications sent to his computer certainly called out for explanation. That said there was nothing that directly contradicted what he said about the events said to have taken place on 6 June 2016.

130. We have no doubt that the Claimant's description of a vehicle trying to overtake him in an irresponsible manner are correct. Such incidents are regrettably commonplace. We would accept that the Claimant now genuinely believes that this car was driven by Habibur Rahman. We cannot find that it is more likely than not that that is the case. Had the Claimant been sure at the time we are certain he would have mentioned it in his first email of 6 June 2016. Even later on when giving information about the risk assessment the Claimant refers to the vehicle as unidentified. We would not rule out the possibility that the Claimant has at some point seen Habibur Rahman behind the wheel of a car. We find that it is more likely that it is the passage of time and the subsequent reinstatement of Habibur Rahman that has convinced the Claimant that he was followed to work. We do not criticise the Claimant for jumping at

shadows as we conclude it is symptomatic of the stress that he and others were subjected to. Accordingly, we do not find that these events took place in the manner described by the Claimant.

The tender evaluation exercise June 2016

131. In early June 2016 the Claimant had been asked by Claire Belgard to join her and Ronke Martins-Taylors on a panel evaluating tenders for the summer program that was to run by the Youth Service in 2016. During that meeting the Claimant awarded a number of organisations low scores as he considered that many of the applications had missing or inadequate information. It had been agreed that is 60% score was the base level for taking any bid forward. This had not been made clear in the tender process and was simply agreed between the three panel members. A disagreement ensued during which Ronke Martins-Taylor expressed her concern that if the Claimant took the stance he did there was a danger of the Summer Program not going ahead. The Claimant declined to amend his scores. Given the language used in subsequent email correspondence we do not find that the disagreement was heated at this stage.

132. There was some follow up correspondence in which the Claimant suggested that some rationale would be required for introducing the 60% threshold. He also suggested that various additional safeguarding and regulatory checks take place before any contracts were awarded. On 4 July 2016 Ronke Martins-Taylor sent an email to the Claimant and Claire Belgard in which she listed four organisations which on the combined scores of all three scorers had met or surpassed the 60% threshold. This was supported by the scores that had been given by each scorer. However, in her e-mail she explained that when they had done the scoring they had assumed that scoring on two questions was a score out of five whereas different criteria have applied. She told Claimant and Claire Belgard that she had amended the spreadsheet showing their individual scores in order to achieve the same outcome as in their original assessment. The Claimant declined to sign the amended spreadsheet but Claire Belgard, without checking the spreadsheet, did sign it. The Claimant has categorised this statement as fabricating scores. The low scores the Claimant had given some organisations were no longer reflected in the spreadsheet of individual scores.

133. Ultimately the propriety of changing the scores in this manner to match a different scoring criterion was investigated by the Clear Up Team. In their final report they concluded that the individual scores had been improperly manipulated by Ronke Martins-Taylor. We accept that conclusion as what was done was set out in Ronke Martin-Taylor's e-mail of 4 July 2016. The proper approach would have been to evaluate all the tenders again applying the correct scoring system to each criterion. It was disappointing to note that in Ronke Martins-Taylor's witness statement she stated that the Clear Up Project's findings found no case to answer in respect of fabrication of scores. That defies the words used in the report which includes the sentence: '*The individual scores included in the evaluation matrix for the SYP16 provided to the Procurement Team, which were purported to be the outcome of the Evaluation Panel had been fabricated by one of the evaluators …..'.* The recommendations leave the question of disciplinary action to the Chief Executive. When asked by Mr Hoar whether he considered the matter to be a serious finding Will Tuckley agreed immediately that the matter was serious. He explained that he had decided at the time that words of advice would be sufficient to avoid any repetition. We do not find that approach surprising or unduly lax. Ronke Martins-Taylor took an inappropriate shortcut but not for any personal gain or improper motive. Ronke Martins-Taylor appears to have

extrapolated from the absence of any sanction that there was no wrongdoing. She is wrong about that.

Claire Belgard's involvement with the Claimant's job description and her role as his line manager

134. In June 2016 a decision was taken to establish the 'Youth Services Project Group'. The purpose of this group was to continue with the work that had been started by Andy Bamber. On 28 June 2016 the Claimant sent an E-mail to Karen Davis. The Claimant stated that Andy Bamber had been absent for 63 days. He had been told by Claire Belgard that he was being paid from the Youth Service budget and that the investigations work had transferred to the Youth Service. He asked about his job description, whether he had transferred to the Youth Service and what reporting arrangements he should adopt. He complained that the absence of a line manager affected his ability to book leave. This correspondence prompted a discussion between HR and the senior managers. Ultimately a decision was taken that the Claimant would report to Claire Belgard. It seems that this decision was taken with little if any consultation with the Claimant.

135. In early July 2016 Claimant sent Claire Belgard a copy of the job description that he had drafted. On 6 July 2016 Claire Belgard sent an email to the Claimant in which she said:

> *'Mark thanks for this. It is a bit out of date in that it includes some things that have either moved on or being picked up elsewhere but I've been through and highlighted the bits I think are still relevant and might make up an interim post in the youth service……*
>
> *The reason for asking you if you knew which job evaluation scheme we use is because I've been a job evaluator at Lambeth and the LDA and the thing that had the biggest impact on the outcome using their models was management of resources-so numbers of people managed an amount / complexity of budget responsibility, some quite meaty jobs can come out really low without those elements so I need to think about that a bit*
>
> *Thought you might find it helpful to see [it] before I meet HR tomorrow.'*

136. The Claimant suggests that this was an attempt by Claire Belgard to undermine what he did. We do not accept that. She had in fact picked out many paragraphs of the job description which she considered to be currently relevant. Whilst Andy Bamber when giving evidence suggested that he believed that the job description provided by the Claimant was broadly accurate matters had moved on with the establishment of the Youth Service Project Group. We consider that there was room for reasonable disagreement. As such Claire Belgard was entitled to suggest that the job description might need to be updated. The last two paragraphs of her email suggest that she is endeavouring to be helpful. It is clear that what she needed to 'think about… a bit' is how to ensure that a 'quite meaty job' was not given a low evaluation. That was in the Claimant's interest. It is also clear that she is inviting discussion from the Claimant.

The Youth Services Project Group is established

137. By 29 July 2016 draft terms of reference were drawn up for the Youth Service Project Group ('YSPG') and the first meeting of that group took place. The introduction to the terms of reference reads as follows:

'The Youth Services Project Group will oversee the progress of investigations, current and future, into individuals and organisations that are known to the Integrated Youth and Community Service. This group will ensure that the IYCS inject pace and grit into the process of the investigations and other arising issues enabling management within the IYCS use due process to conclude all outstanding and new matters.'

138. The thrust of the terms of reference were that the process of investigations into the Youth Service should be continued and, if possible, sped up. On 29 July 2016 the inaugural meeting of the YSPG took place the Claimant was not invited to that meeting. However in the minutes of that meeting he is identified as a resource to be drawn upon in concluding the work that it was envisaged would be done. The YSPG was to be headed by Ronke Martins-Taylor. The minutes of the meeting record that at that stage it was thought that there were about 40 outstanding cases.

139. The Claimant has complained that he was not invited to that initial meeting. The purpose of the meeting was to agree the terms of reference. It was plainly envisaged that the Claimant would continue to play a role. We accept the explanation that we were given by Ms Ronke Martins-Taylor that it was not thought necessary or appropriate to invite the Claimant to the meeting establishing the group but that it was always the case that he would be involved.

<u>The Claimant's second 'CHAD'</u>

140. On 2 August 2016 Karen Davies wrote to the Claimant setting out formally change of line management to Claire Belgard. In respect of the other queries raised by the Claimant she said this:

> *'…….Following the Transfer of the Integrated Youth Service back to Children's Services from CLC with effect from 1 April 2016, a decision has been taken to transfer your reporting line to Claire Belgard, Interim Head of Youth Service with effect from 1 August 2016. Given that you had been working to a project brief for Andy Bamber within Safer Communities involving investigations into practices within the Youth Service, Claire will review the contents of the draft job description that was drawn up between yourself and Andy with you. The purpose of the review of the job description will be to ensure it is reflective of the work you are carrying out in relation to Project Group that had its mobilisation meeting on Friday 29th July 2016.*
>
> *You have been employed on a series of fixed term contract since you originally appointed the role of Olympics Strategy and Data support manager and are currently employed as a Project Manager on grade LP08 (scp) 8…. Your existing contractual terms and conditions of employment remain the same and your current working hours arrangements will continue. However, should the revised job description evaluate at a lower grade then you will receive a salary protection for a period of two years. Your current role of Project Manager will be for a fixed term period of six months with effect from 1 August 2016 until 31st of January 2017. Three months prior to the expiry of your fixed term contract [your] position will be reviewed and if the decision not to extend further is taken you will be issued with three months' notice and place on the redeployment list where alternative employment will be sought for you.*

141. The Claimant took exception to what he was being told by Karen Davies within this correspondence and emails that followed. He suggested that he was being subjected to bullying and harassment by Karen Davies. We consider that this was an inapt description of the correspondence. It is correct to say that there had been no formal documentation in place for almost 2 years despite the Claimant pressing for a resolution. The Claimant had not been given a great deal of information about how long the project that he was managing would last. That said he must have, or ought to have, understood that he was engaged to undertake a particular task. That is inherent in the title that he had of being a Project Manager. In all the correspondence that he had received it was made clear that if that task ended efforts would be made to redeploy him. That said we accept that he would not welcome the imposition of a fixed term contract of six months which carries with it the implication that there was a possibility that the term would not be extended.

142. On 16 August 2016 the Claimant wrote to Marla Jones who had taken over the issue from Karen Davies and asked her to explain why the stance taken by the Respondent fell within employment law. He suggested that any response should include appropriate references. We take that to mean references to statutory provisions. Whilst the letter is polite it is combatative. It is clear in hindsight that the Claimant was asserting that as he had been engaged on a number of fixed term contracts he was entitled to be treated as a permanent employee. The Respondent's position was that he was engaged to do a particular task and that on completion of that task there was no guarantee that his employment would continue.

143. On 2 September 2016 Marla Jones suggested that a meeting take place with the Claimant, herself and Claire Belgard to resolve matters rather than engage in email correspondence.

144. Further correspondence did not resolve the matter and on 30 September 2016 the Claimant issued a further complaint under the Respondent's Combating Harassment and Discrimination policy. The individuals who complained about were Andy Bamber and Karen Davies. In his summary of his grievances the Claimant says:

> *'In brief, therefore, I believe the letter sent by Karen Davies was a deliberate attempt to misinform my current employment status to coerce me into accepting detrimental contractual terms and conditions. I also believe the details outlined in the letter were designed to mask and obscure my 'employment' irregularities - which if I had accepted would have resulted in me exiting the organisation soon after. Therefore, on both counts consider this to bullying and harassment which has had a detrimental impact on my position, work and my person.'*

145. On 3 October 2016 Mala Jones sent an e-mail to the Claimant within which she set out the Respondent's position as to the Claimant's contractual status as she understood it. She referred to the 'Fixed term Worker Regulations' – by which she meant the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 1999. She informed the Claimant that in her view the post he was then covering was not permanent and that there was no intention that it ever would be. She repeated what Karen Davis had said and stated that the 'current fixed term contract' would run for 6 months and the possibility of an extension would be looked at three months before it ended. She stated that the arrangements had been in place since 1 August 2016. It does not appear to have occurred to her that contractual arrangements require agreement. She states in terms that the Claimant did not have 'permanent status'.

146. The Claimant responded on 14 October 2016 he suggests that the law referred to by Mala Jones was out of date and her conclusions incorrect. He says that his previous CHADs had not been dealt with and rather bluntly suggests that this was because Mala Jones believed that his employment would end before it was necessary to address them.

147. The Claimant by this stage had joined the 'Employees General Union'. His representative was Kathy McTansey. Kathy McTansey then chased the progress of the Claimant's 2 CHADs on his behalf.

148. On 30 November 2016 Claire Belgard spoke with the Claimant. During that conversation the Claimant complained of the lack of progress on his complaints and in respect of his contractual position. In that conversation the Claimant suggested that he might bring a claim in an Employment Tribunal. Claire Belgard, correctly, concluded that the Claimant was very unhappy. She suggested that rather than litigation the Claimant consider a meeting to discuss whether there was an alternative way forwards asked the Claimant whether he wanted to have a 'protected conversation'. The Claimant said that he did not but that he would consider a meeting to discuss matters. Claire Belgard then reported the contents of that conversation to Mala Jones. We accept that what she wrote in that e-mail was an accurate account of the conversation. We note that she very fairly sought an explanation for the delay in dealing with the Claimant's grievances and suggested a frank response. She said: *'if it's a mess up or the answer is we do not really know then we should say so'.* She made the same point in respect of the outstanding matters from the risk assessment.

149. Mala Jones responded to Claire Belgard on 1 December 2016. She told her that the first of the Claimant's CHADs had been in Andy Bamber's hands when he fell ill. He had been hoping for an informal resolution. She said that a senior manager, Somen Banerjee had been asked to deal with the second grievance but that the Claimant had not yet been informed of that. She said that if there was to be a protected conversation it would be important to warn the Claimant of the consequences of this (that generally he would not be able to refer to it in certain types of tribunal proceedings). We note that this correspondence does not indicate any animosity to the Claimant rather than attempting to find a resolution to his concerns.

150. Claire Belgard made enquiries about the progress of the risk assessment. She chased up Rachael Sadegh to see what progress had been made. She was told that the risk assessment had been signed off by Steve Halsley some time ago. Claire Belgard met with the Claimant on 5 December 2016. She proposed that she deal with the first CHAD and the other employment issues. She told him that her understanding was that the risk assessment had been signed off. The Claimant was not happy about this and declined her offer. In the same meeting Claire Belgard raised the possibility of extending the Claimant's contract to the end of March 2017.

151. Later in same day the Claimant wrote to Claire Belgard. He refused the offer of an extension to his contract and asserted that his position was to be regarded as permanent. He stated that he was still managed by Andy Bamber and had never been informed in writing of any transfer of line management. He stated that the risk assessment had not been signed off or concluded. He asked, '*what authority or power you hold in relation to the above'.* He complained that the two meetings had been informal and asked that all future meetings concerning his employment be formal and with the attendance of his trade union representative.

152. We have some understanding why the Claimant was questioning Claire Belgard's authority. There had been inexcusable delays in dealing with his grievances and responding to him in a clear manner in respect of his employment status. That said this e-mail was not constructive. The Claimant was simply wrong to say that he had not been told that Claire Belgard was his line manager. He was told that clearly in the letter from Karen Davis of 2 August 2016.

153. One suggestion made by the Claimant is that Claire Belgard did not provide supervision and/or personal development reviews ('PDR') with him as he might expect from a line manager. There was no dispute before us that there had not been the sort of line management meetings that might have ordinarily been expected. On 7 December 2016 writing in response to the Claimant's e-mail of 5 December 2016 Claire Belgard accepted that matters relating to employment status could be dealt with formally with a trade union representative present but proposed monthly 1:1 meetings to discuss operational matters. On 8 March 2017 Claire Belgard sent the Claimant an e-mail proposing to meet him for the purposes of a PDR. The invitation was sent electronically and required the Claimant to respond. He did not do so. We are satisfied that had the Claimant taken Claire Belgard up on her offer she would have offered him supervision and PDRs even though their professional relationship was very poor indeed.

<u>The reinstatement of Habibur Rahman</u>

154. In November 2016 a hearing was held to consider Habibur Rahman's appeal against his dismissal. This was some 7 months after his dismissal and years after he was first suspended from his position. This process was slow by any standards. The outcome of that process was set out in a letter dated 14 November 2016. The headline was that Habibur Rahman was reinstated but that a final written warning was substituted for the decision to dismiss him. As we have set out above Andy Bamber had found both that he had dishonestly claimed wages for which he was not entitled but also that he was involved in or was a party to making fraudulent grant applications. The grant applications involved some of the organisations the Mazars report had concluded were non-existent organisations. Andy Bamber's decision had been made based on a report prepared by the Claimant.

155. Generally, it would have fallen to Andy Bamber to present the management case on appeal and/or answer any questions about his decision. He was unwell and so it fell to Claire Belgard to present the management case. It is clear from the outcome letter that Habibur Rahman suggested that Andy Bamber was meeting with individuals seeking information about wrongdoing on an improper basis. It is also clear from the outcome letter and the evidence of Mark Keeble (who attended the meeting) that the sub-committee were concerned about what they heard. Andy Bamber was not present and was not able to rebut any criticism of what he had done.

156. The Respondent's disciplinary process provided for appeals against dismissal to be heard by a sub-committee made up of 3 councillors. The sub-committee reached a majority decision with two members deciding that the penalty of dismissal was too severe. The sub-committee accepted as a fact that Habibur Rahman had overclaimed wages but found that the claim forms were not clear. They also appear to have placed some responsibility on the managers for not checking the forms. In respect of the allegations of involvement with non-existent organisations the sub-committee were not satisfied that Andy Bamber had adequately explained his reasons. They also noted that Habibur Rahman had identified 7 individuals during his interviews with the

Claimant that he said could assist with his involvement in the suspicious organisations. The Claimant suggested that these individuals were believed to be involved and he did not interview them for that reason. We can see why that might have lead the appeal panel to conclude that the Claimant was not prepared to follow lines of evidence that might point away from culpability.

157. Standing back from that process it is not easy to see why, if the sub-committee felt that there had been a failure to interview 7 potentially relevant witnesses, the proper outcome was to reinstate Habibur Rahman rather than directing that the matter be further investigated. The appeal hearing admitted fresh evidence in respect of other matters. They do not grapple with the documentary evidence referred to by the Claimant in his report that Habibur Rahman had been the author of grant applications which according to the Mazars report were made by organisations which did not exist at all. That said, it appears that Habibur Rahman was able to persuade the appeal panel that he had been negligent rather than dishonest in claiming payment and that the failure to give reasons/interview witnesses rendered his dismissal unfair.

158. The decision that was taken was perhaps a benevolent one. That said some reasons are given for it which are capable of supporting the conclusions reached. We are not concerned with whether the decision was right or wrong but whether it was taken as a means of acting unlawfully towards the Claimant. We deal with that in our conclusions below.

<u>The progress of the Claimant's Grievances and his inclusion in the Youth Service restructure</u>

159. On 6 December 2016 the Claimant met with Mark Keeble who had provided HR support at Habibur Rahman's appeal hearing. The primary purpose of the meeting was to discuss the outcome of the process with the Claimant. We have no doubt that the Claimant was very disappointed to hear that Habibur Rahman had been reinstated. The failure to grapple with some of the documentary evidence must have been particularly galling. The conversation turned to the Claimant's second CHAD. Mark Keeble told the Claimant that Somen Banerjee had been appointed to hear his grievance. The Claimant objected to this proposal.

160. On 12 December 2016 a senior member of the HR Team, Gianmarco Ciavarro wrote to the Claimant's Trade Union representative Kathy McTansey and proposed that Mark Baignet the Interim Head of Strategy Regeneration be appointed to hear the CHAD. He proposed dates for a meeting. Kathy McTansey responded on the same day. Her response is negative and unconstructive. She categorises the CHADs as serious health and safety issues. She suggests that as Mark Baignet is a newly appointed consultant he would be incapable of dealing with the matter. In fact, he was a senior and experienced manager with no prior involvement in the matter. We find that any objection to Mark Baignet dealing with the matter was baseless. She stated that the response was 'out of time'. She was correct to say that the proposal to appoint Mark Baignet to hear the grievances was months later than the timescales laid down in the relevant procedure. Her proposal was that the matter be dealt with by the appointment of an external investigator. Her e-mail ends saying: *'if this cannot be possible than we need to move on [sic]'*. There is no explanation what 'moving on' might entail. Given that the Respondent was even, if late in the day, making sensible proposals to appoint a senior manager to consider the grievances this approach was far from constructive.

161. Gianmarco Ciavarro sent an e-mail to Kathy McTansey on 14 December 2016. He pointed out that Mark Baigent was a Head of Service with great experience in Local Government. He urged her to accept the appointment. His approaches were rebuffed. Kathy McTansey responded on 15 December 2016. She repeated her stance that there was no trust in the Respondent and repeated her position that only an external appointee 'of our choice' would be acceptable. Mark Keeble then sent an e-mail on 16 December 2016 in which he proposed a round table meeting to see whether matters could be progressed. That invitation was accepted and a meeting took place on 30 January 2017.

162. Before we deal with that meeting we need to move backwards in the chronology and set out the intervening events.

The 'Clear Up Project' is established

163. In September 2016 a decision was taken to establish a 'Clear Up Project'. The purpose was clearly to be able to draw a line over past failures. A Clear Up Board was established and included the Chief Executive, the Monitoring Officer and the Corporate Director in other words the most senior employees. The project was led by the Mayor John Biggs. A commitment was made at an early stage to publish the findings of any final report. An invitation was made to bring all outstanding matters of concern to the attention of the Clear Up Project. A window of 3 months was given. During this period some 66 complaints or allegations were made.

164. The Claimant was not responsible for any of the work carried out by the Clear Up Project. That project was Council wide whereas the Claimant's work focussed on the Youth Service. That said the Claimant was asked to, and did, provide information about his investigations into the Youth Service.

The Claimant's disclosures

165. On 17 November 2016 the Claimant met with Max Caller one of the Commissioners appointed by Central Government and James Richardson. During that meeting he reported his concerns about the tender evaluation exercise for the Youth Service Summer Project. He gave the commissioners copies of the spreadsheets and e-mails that had followed on from the evaluation exercise. We are satisfied that he did so because he believed that the scores had been improperly manipulated to avoid the necessity of repeating the exercise.

166. The Claimant's allegations/concerns were then passed to the Clear Up Project. On 21 April 2017 the Claimant was contacted by Anne Miller who was the Investigations Manager for the Clear Up Project. She informed him that she was investigating the allegations in relation to the 2016 Summer Youth Services programme and asked him to meet with her.

167. The Claimant met with Anne Miller on 23 February 2017. He repeated his concerns and again provided the spreadsheets and e-mails within which Ronke Martins-Taylor explained that she had changed the scores given by the Claimant.

The announcement of the Youth Service restructure

168. On 5 January 2017 a decision was announced to restructure the Youth Service. A meeting was fixed for 23 January 2017 at which the proposals were to be

announced. Letters were sent out to all affected employees but not at that stage to the Claimant.

169. At this point the correspondence between Mark Keeble and Kathy McTansey continued. Kathy McTansey repeated her position that the Respondent had failed to comply with the time scaled in the Countering Harassment and Discrimination Policy. Mark Keeble continued to express a willingness to address the substance of any grievance.

170. In preparation for the proposed restructure Ronke Martins-Taylor had sought legal advice about the restructure. One of the issues that she had raised was the question of whether the Claimant should be considered within the scope of the restructure. On 5 January 2017 a Senior Lawyer in the Respondent's legal department sent Ronke Martins-Taylor a letter which was also copied to Claire Belgard. That letter was heavily redacted. Mr Hoare accepted Ms Palmer's assertion that the redacted portions of that document had no relevance to any issue we had to decide. The part that dealt with the Claimant read as follows:

> *'Rights of Project Manager in CLC*
>
> *There is one project manager funded by the Youth Service. My instructions are that this post has never been created permanently. However, the individual commenced on a series of fixed term contracts from 2010 to 2014. The individual was not provided with a further contract but has continued to work in the same role so has over six years' continuous service.*
>
> *As you have correctly identified, once a fixed term contract (or series of contracts) of over four years expires and is renewed (or the employee is re-engaged), the contract will be deemed to be permanent unless the renewal can be objectively justified.*
>
> *My instructions are the post was previously part of CLC. I am not clear on where it currently lies. However, the work is time-limited and there is no equivalent permanent post in the new structure of the Youth Service.*
>
> *This will fall under the statutory definition of redundancy "the requirements of that business for employees to carry out work of a particular kind… Have ceased or diminished, or are expected to cease or diminish".*
>
> *My advice is to include this member of staff within the scope of the Youth Service restructure.'*

171. On 11 January 2017 Claire Belgard sent email to the Claimant informing him about the restructure of the Youth Service. She told him that she had sought legal advice about his position and that the advice that had been received was that his post should be treated as "in Scope". She then sent him a copy of the letter announcing the date of the consultation meeting that had previously been sent to all other employees.

172. Later that day Kathy McTansey wrote to Claire Belgard asking what the legal advice had been. Claire Belgard responded on the same day and set out a summary of the advice given. Her email purports to quote from the legal advice. The quotation differs somewhat from the passage we have quoted above. Contains the passage *'….The post itself has never been created permanently within the Council and the employee currently has no contract, they've previously had a series of fixed term*

contracts between 2010 and 2014 which under employment law would be considered to have been, by implication, extended to the current date as the continuous period of fixed term contracts exceeds four years it is effectively a permanent contract. The work of this employee is time-limited is no equivalent permanent post in the new structure'. The difference between the two yesterday that the advice that was given was that the Claimant's contract should be considered permanent but that the work that he was doing was 'time-limited'.

173. Kathy McTansey responded to Claire Belgard in a somewhat argumentative and email. She appears to have misunderstood the advice that Claire Belgard had quoted. She makes a demand for written statements signed by the Claimant for the period where no contract was in place when plainly it had been accepted that no written contract had ever been put in place. On 12 January 2017 Mark Keeble then sought to explain the position. He said that the meeting on 30 January 2017 could be used to discuss whether the Claimant was classed as a permanent employee. He went on to explain whether or not the status was fixed term or permanent he would be included in the scope of the redundancy exercise and therefore would not suffer any detriment. To understand that assertion it is necessary to explain the effect of being 'within scope'.

<u>The Respondent's policies relating to reorganisations.</u>

174. The Respondent, like many other local authorities, follows an agreed process in the event of any restructure. In our bundle we had a policy produced by Respondents human resources team entitled Handling Organisational Change which was a document agreed with the recognised trade unions. In addition, we were shown a further document which is "Organisational Change - Guide for managers". Finally, we were provided with the response policy entitled Redeployment Guidance. From those documents and the evidence before us we have reached the following conclusions as to the ordinary policies that are followed. The first step is to draw up the proposed new structure. At that stage the managers carry out an 'assimilation exercise'. That involves a comparison with the existing roles and the proposed new roles. The first stage in appointing anybody to a new role is to see whether there was any employee whose existing job was substantially the same as the new role. If there was, and there were sufficient jobs for all such employees, then they would automatically be given the job. If there were more employees than jobs a competitive selection process would take place although ring fenced to those employees. This was usually referred to as 'direct assimilation'.

175. Where there were substantial differences between new jobs and all jobs the assimilation process was used to identify those people, whose jobs were closest to any new role. They would then be 'assimilated' to that new role (or more than one). The competition for any such new role would be limited to those people assimilated. As a rule, a person would not expect to be assimilated unless there was a marked overlap between what they did in their old role and the new role.

176. The assimilation process confers an advantage on those people whose old jobs are closest to the new jobs in the structure. A person assimilated has got the advantage of a ring fenced competitive pool.

177. Once the assimilation process is complete the employees within the scope of the restructure are placed on the 'redeployment register'. During the period an employee is on the redeployment register the Respondent's "People Resourcing

Team" provide assistance with trying to find another suitable job. People on the redeployment register are interviewed in preference to other applicants.

178. Finally, it is worth noting that there is nothing stopping any employee at any time applying for another position within the Respondent's organisation. All vacancies are publicly available.

The assimilation process as applied to the Claimant

179. On 12 January 2017 Mark Keeble included in his email to Kathy McTansey a question about which job description should be used for the process of the assimilation exercise. He said that he had two job descriptions and needed to know which one the Claimant agreed was accurate. The first job description was of course the one the Claimant had prepared himself whereas the second one was the one that had been amended by Claire Belgard but had never been agreed. Mark Keeble offered to use whichever job description the Claimant was satisfied most accurately described his job.

180. On 13 January 2017 Ronke Martins-Taylor carry out an assimilation exercise comparing the Claimant's existing role with two roles in the new structure. The first role was a 'Hub Operations Manager'. The broad description of that role can be taken from the first line in the job description set out in the assimilation documentation. The post holder was expected to*: 'provide operational advice to the head of service all matters relating to the delivery of youth activity programs youth centre hubs as it relates to the provision of year-round, centre-based, universal and targeted youth activities and programs that support the formal and informal learning, personal and social development of young people aged 12 to 19….'*. It was clear to us that post holder might be expected to have considerable operational youth service experience. The assimilation exercise carried out using pro forma documents inviting the assessor to indicate whether each point on the new roles job description is a full or partial match to an existing responsibility. The assessment that was completed by Ronke Martins-Taylor showed that only in 6 areas was there a partial overlap between the two jobs. A score of 13% was given. Ronke Martins-Taylor carry out a further exercise scoring the Claimant existing role against the role of Head of Youth service (the role that Claire Belgard was going on an interim basis). It is sufficient to say that this was a very different role to the Claimant role and again the job description would indicate that a great deal of Youth Service experience would be expected of the post holder. Again, Ronke Martins Taylor found that there were only 7 areas where there was a partial overlap and a score of 13% was given. Whilst the percentage score was the same the means of getting there were slightly different the second exercise being scored against 28 requirements of the job as opposed to 24 requirements of the Hub Operations role.

181. We consider that the results of the assimilation scoring exercise were not at all surprising. The Claimant's existing job was very specific. He had little managerial responsibility and worked in a small team. The two roles that were scored both demanded operational and managerial experience within a Youth Service. The Claimant had an impressive CV but had little experience directly relevant to running a Youth Service (or part of it). The Claimant accepted in his evidence that these two roles had little in common with his job. His main complaint was not so much the scores that were given but that it was ever thought he should have been placed within the Youth Service at all.

182. The Claimant says in his witness statement, and we accept, that in January 2017 he suggested to Claire Belgard that he should not be treated as part of the Youth Service and his role should not be included in any assimilation exercise. Her response was to say that if the Claimant wished she would not include him but that the consequence would be that he would be given 12 weeks' notice and be placed in the redeployment pool. The Claimant considered that accepting this would mean accepting that his employment was not 'permanent' and he declined that offer.

183. Nobody was 'directly assimilated' to the Hub Operations Manager role nor the Head of Youth Service. Despite the marked difference between the Claimant's role and these roles he was treated as being 'assimilated' to the 'Hub Operations Manager role and offered a ring-fenced interview along with 3 others in a similar position. Whilst we are surprised that anybody thought it appropriate to ring fence the Claimant to this job given the scores in the assimilation exercise this did not act to the Claimant's disadvantage. He got a guaranteed interview in a competition that was ringfenced.

184. On 23 January 2017 the management proposals for the restructure of the Youth Service were first presented to employees within the Youth Service. The Claimant attended this meeting as he had been invited to do so. He tells us and we accept that when he arrived, some employees and one in particular shouted something along the lines of 'what is he doing here' coupled with a suggestion that the Claimant did not belong within the Youth Service. We accept that this was awkward and embarrassing for the Claimant not least because he was continuing to investigate some of the employees present. He left the meeting as soon as it was over.

185. On 30 January 2017 the Claimant met with Mark Keeble, Gianmarco Ciavarro and was accompanied by Kathy McTansey. Mark Keeble wrote the Claimant a long letter summarising the discussions and laying out the Respondent's position on 7 February 2017. The following matters were discussed:

185.1. It was acknowledged that there had been delays in dealing with the Claimant's CHADs and an apology offered. An agreement was reached that the Claimant would let Mark Keeble know if he wanted his grievances to be investigated.

185.2. The issue of the Claimant's status was considered. In his letter Mark Keeble suggests that the Claimant would not necessarily be treated as a permanent employee. He suggests that keeping the Claimant on a fixed term contract would be objectively justified. It is clear that Mark Keeble acknowledged that there had been a failure to document the Claimant's status. He said that this was not the first instance of such a failure.

185.3. Mark Keeble set out the Respondent's position that as the Claimant had been working for more than a year in the Youth Service he was 'entitled' to be included in the scope of the review of the service. In his letter Mark Keeble said that if the Claimant was not interested in applying for roles in the Youth Service he could be placed upon the Redeployment Register if he wished.

185.4. The failure to finalise the risk assessment was discussed. The Claimant was then invited by Mark Keeble to let him know what he said was outstanding.

185.5. The Claimant suggested that he had evidence of fraud and corruption. He expressed a lack of confidence that the Respondent would investigate these matters. Mark Keeble set out in his letter that if the Claimant held such information he could provide it to the Commissioners, to the National Audit Office or report it internally. He pointed out that such matters would be considered protected disclosures.

186. We find that by this stage the Claimant had little confidence in the Respondent. We find that that was partially the strain of his role and partially the failure of the Respondent to follow its own procedures. Much of Lorraine Walsh's witness statement is given over to explaining how the Claimant's mental wellbeing was declining during this period. Mark Keeble ends his letter of 2 February 2017 by commenting upon this. He recognised the lack of trust that the Claimant had in the organisation and therefore offered the Claimant the opportunity of visiting a private counselling service at St Bart's Hospital as an alternative to the Respondent's own HR provider. Both in his letter and in his evidence before us we find that Mark Keeble was prepared to acknowledge the Respondent's failures, was trying to move matters on and was trying to support the Claimant.

187. The Claimant never accepted the offer to let Mark Baigent deal with his CHADs and the matter proceeded no further through that formal process.

Events leading (directly) to the first claim

188. The relationship between the Claimant and Claire Belgard was by March 2017 very poor indeed. The Claimant was so suspicious of the actions of the Respondent that he viewed any management of him as hostile. Whilst we find that was his genuine view and that he had some cause for complaint we find that his failure to interact with Claire Belgard in a normal manner meant that from her point of view he became unmanageable. To take one example on 8 March 2017 Claire Belgard wrote to the Claimant asking him to attend a formal 1:1 meeting and sending him a standard template. She gave her reasons as 'see[ing] if there is anything outstanding that I can do for you'. The Claimant was not prepared to attend that meeting without his trade union representative present.

189. A decision was taken by Ronke Martins-Taylor that as the Claimant was treated as being a member of the Youth Service for the purposes of the restructure he ought to be treated as such for other purposes. The Youth Service had a regular 'Senior Management Team' meeting.

190. On 9 March 2017 the Claimant attended an SMT meeting with the other senior managers. During this meeting it seems that some if not most of the discussion centred around the restructure. The effect of that restructure and the assimilation process was that most of the attendees were, in effect, competing for the new roles that were available. At that meeting there was further hostility towards the decision to include the Claimant in the Youth Service restructure. The Claimant says, and we accept that language such as 'what is he doing here' was used. A later e-mail sent on 4 April 2017 by Hasan Faruq, a Quality Assurance Manager who attended that meeting suggest that the Claimant asked during that meeting whether individuals subject to investigations would be treated the same as others during any interview process. We are satisfied that something like that was said. That was very likely in our view to increase the hostility towards the Claimant.

191. In the run up to the April SMT meeting Claire Belgard sent an e-mail on 4 April 2017 to the SMT team circulating an agenda and asking for any additional items that should be included. This prompted Hassan Faruq to send an e-mail to Claire Belgard in which she asked the question of the Claimant's inclusion in the Youth Service to be an agenda item. He also sent an email to his trade union representative asking whether steps should be taken to prevent the Claimant attending the meeting. He wrote:

> *'Please kindly confirm if this will be appropriate that until the reorganisation is agreed Mark cannot attend youth service SMT and we have not been given a proper explanation on how he has been transferred from CLC to youth service, how is this possible and under which recruitment rules?*
>
> *I was hoping you could send CV and email on our behalf to say that members have raised this as a concern and until this is resolved Mark cannot attend youth service SMT'*

192. The Trade Union representative responded with a much longer draft proposed email. Hassan Faruq adopted the suggestions made and forwarded he suggested text to Claire Belgard with only minor revisions. We shall set out his email in full. He said:

> *'Further to my earlier emails, we are concerned about the inclusion of Mark Edmonds in the Youth Service SMT meetings. Mark has only been included in SMT meetings after consultation on the future structure of the service and the purpose of his inclusion appears to be expressly to bolster a possible assimilation claim.*
>
> *Whilst we can understand that people who are not part of the SMT, or even the service, maybe invited to attend SMT meetings to discuss appropriate issues Mark's participation appears to be designed to create the impression that he is part of the current Youth Service SMT, when he is not.*
>
> *You have told us that Mark has a project role with the Youth Service Project Group for approximately July 2016 this group includes officers from Children's Services, Human Resources, Internal Audit, Finance, Legal Services and Communications. None of these have been invited to SMT and in fact SMT have been told that the work the Project Group is confidential and cannot be reported on in detail.*
>
> *You have suggested elsewhere that Mark should be included within the Youth Service assimilation purposes because he is regarded as a permanent employee-as no doubt most the participants in the Project Group. Participation in that group in no way implies a role in the Youth Service SMT structure nor an assimilation claim within the Youth Service.*
>
> *Mark is not part of the operational, strategic or other management of the Youth Service. Mark holds no post in the Youth Service structure. If this is not correct can you provide details of the post within the Youth Service that Mark holds, the Job Description for it, and the process by which the post was created and appointed to.*
>
> *You are well aware of the concern that the inclusion of a white male officer with no previous role in the Youth Service in the SMT at this juncture is intended to enable them to place into a senior role in the new structure at the expense of*

long-standing BME and female staff, and that staff believe this is a discriminatory act.'

193. When Hasan Faruq sent that e-mail he copied it to all other members of the SMT team except for the Claimant. He also included his representative from the GMB and the representative from Unite the Union. The representative from Unite the Union responded to the email chain the following day on 5 April 2017. Unsurprisingly in our view he questioned the propriety of copying in the trade unions in emails which appear to be concerned with operational matters about who should be invited to a meeting. He pointed out that the question of who should be included in the youth service was a matter that should be discussed under the Handling Organisational Change Procedure and should be the subject of trade union negotiation. Claire Belgard responded to him and Hasan Faruq. She agreed that this was an operational matter and said that while she was happy to debate the inclusion of the Claimant within the Youth Service restructure with the Trade Unions in the appropriate forum she was not prepared to exclude the Claimant from the SMT meeting or engage in any debate over email.

194. Later the same day the Youth Service Manager sent Claire Belgard and the other recipients of the email chain a further email in which he expressed his support for the views set out in Hasan Faruq's email.

195. The Claimant was sent a copy of Hasan Faruq's e-mail by a colleague on 5 April 2017. When the Claimant presented his first claim on 8 June 2017 he did so with the assistance of Kathy McTansey. He indicated he was only bringing a claim of race discrimination. The first incident he referred to was this matter although it should be noted that the description given in the narrative section of the form, before it was amended, paraphrased Hasan Faruq's e-mail very inaccurately.

<u>The withdrawal of the commissioners</u>

196. On 16 March 2017 the Secretary of State for Communities and Local Government informed the Respondent that he was going to withdraw the Commissioners and to place responsibility for running the Council in the hands of the Mayor and Council. Unsurprisingly John Biggs saw this as an endorsement of his policies and issued a press release to that effect. We consider the fact that the Commissioners were satisfied with the progress that had been made is something that we should consider in evaluating the Claimant's suggestion that there was no appetite for carrying out further investigations as it would further ruffle the feathers of the Bangladeshi community. We note that the Commissioners had oversight of the progress of the Clear Up Project and of the Youth Services Project Group. We infer that they were satisfied that reasonable steps had been taken to address the issues brought to light in 2014.

<u>The risk assessment revisited</u>

197. On 13 June 2017 the Claimant met with Claire Belgard for the purposes of reviewing the risk assessment produced by Steve Crawley. We note that Steve Crawley had recommended that the risk be assessed at least one a month. There was no evidence that this was done. The incidents that gave rise to the first risk assessment were discussed. We find that the Claimant expressed his strong views that the risks identified in Steve Crawley's risk assessment remained the same. Claire Belgard's entries in the risk assessment suggest that she is somewhat sceptical that the risks were as high as suggested. That is something which she confirmed in her

witness statement where she says in terms that she did not feel the risk levels and mitigating actions were warranted.

198. Claire Belgard reviewed whether the mitigating steps suggested in the first risk assessment had been put in place. She recorded the following in respect of the provision of a car parking permit:

> *'It was discussed that although ME has been accessing the car park this is due to his belief that he was entitled to given the previous risk assessment and despite the fact that a parking permit had not been issued. There has been some confusion on this point with the parking department claiming an original permit was issued for three months but not collected and that a review permit request was not approved by the Corporate Director for Children's. However it has been established that ME was able to access the car park and therefore this mitigating factor was in place. The Corporate Director for Children's has now approved a new permit which is being processed as at 14/6/17'.*

The parking permit was finally delivered to the Claimant following Claire Belgard's intervention.

199. A discussion took place about personal safety training. It is clear from the risk assessment itself that a proposal was made to source external training from the Suzy Lamplugh Trust if internal training could not be arranged. Claire Belgard told us and we accept that the Claimant was resistant to this as he wanted safety training to be undertaken by the Police. This lead to an impasse and no safety training was every put in place.

200. Claire Belgard noted that the Claimant had not been provided with a personal alarm. She recorded in her risk assessment that that was to be rectified by 30 June 2017.

201. The only recommendation that was abandoned was the suggestion that the incidents that gave rise to the 2016 risk assessment should be reported to the police. Claire Belgard records her reasons for that in the risk assessment and we accept that contemporaneous account is genuine. In short, she considered that given the lapse of time any such report was unlikely to be acted upon and was futile.

202. Given that Clair Belgard was frank about her own view of the risk to the Claimant was not as great as he feared we find at this stage, that despite this, she does a thorough job of tying up a number of outstanding actions. That would not tend to suggest that at that stage she was choosing to expose the Claimant to risk of retaliation.

<u>The work of the Youth Service Project Group</u>

203. Under this heading we deal with the work of the Youth Service Project Group which as we have set out above was established in July 2016. Meetings of that group continued into August 2017. To deal with these matters thematically we have departed from the chronology to which we shall return below. The findings of fact that we make relate to the Claimant's suggestion that his work was hampered by being excluded from meetings, being overruled in respect of DBS referrals, that his suggestions in relation to disciplinary action were not acted upon and that he was 'starved of work'. There is also an important issue as to whether as the Respondent says the work the

Claimant was doing was running out or was expected to run out or whether there was a decision made to shut down the investigation for politically expedient reasons.

204. As we have set out above the Youth Service Project Group was ostensibly established with the purpose of completing the investigation into the Youth Service. The history we have set out above shows that the investigation processes up to that point had been conducted on an ad-hoc footing. The investigation work was shared between the Claimant and Lorraine Walsh both of whom reported to Andy Bamber who in turn reported to Steve Halsley who was at the pinnacle of the organisational chart. Once the Youth Service Project Group was established the work of the Claimant was overseen by that Group. As such he says he was moved further down the organisational chart and, in his eyes, he was effectively demoted. We find that the Claimant is right that the reporting line between him and by this time Will Tuckley the Chief Executive Officer who in effect replaced Steve Halsley was longer. That said the Claimant retained his title and his grade.

205. One significant difference in the way the investigations were approached by the YSPG was that previously the Claimant had recommended that an individual should or should not be invited to a disciplinary meeting. Other than a discussion with Andy Bamber the decision was very much in the Claimant's hands. Ronke Martins-Taylor's evidence was that after the YSPG was established the role of the investigator was separated from the decision whether to bring disciplinary action. That latter decision was taken by the panel chaired by her. There is evidence of such discussions within the YSPG minutes. This resulted in the Claimant having less autonomy and was not welcomed by him. We had evidence that he disagreed with some of the decisions taken.

206. We find that the YSPG and Ronke Martins-Taylor and Claire Belgard wished to clear up all outstanding investigations in a timely manner. Ronke Martins-Taylor said in her witness statement, and we accept, that the work of the project was reviewed every three months to ensure its timely completion. The 'mission statement' we have quoted above makes it clear that it was intended to deal with matters with 'pace and grit'. An additional investigator Linda Baker was recruited to undertake work alongside the Claimant. The minutes of the various YSPG meetings show that Ronke Martins-Taylor is regularly reporting progress to the Commissioners. We find that there had been some inordinate delays in completing the investigations. There were some good reasons for this such as a hope that some cases would be taken on by the Police. We find that there was a genuine desire to work through the backlog of cases in a timely manner. The impact of this was that unless new avenues of enquiry came to light the work of the YSPG would inevitably run out. That is implicit in its title – it was a 'project'.

207. We have been provided with several sets of minutes from the meetings of the Youth Services Project Group. Those minutes have been of considerable assistance to us in making the findings set out below. We are satisfied that the minutes reflect what was discussed. The minutes were taken by a note taker as opposed to a manager and they were circulated to all participants before being discussed at the outset of meetings. There is at least one reference to the Claimant proposing a correction which was made.

208. The Claimant says that a recurrent theme of each meeting was the issue of whether people who had been investigated and left the Respondent's employment should be 'reported' to the Disclosure and Barring Service ('DBS'). The Claimant says that his efforts to report individuals was frustrated. His frustration that this was not

being done led him to include a recommendation in his investigation reports which, if they recommended disciplinary action, would be shown to the employee and presented to the disciplinary panel. He says and we accept that he was asked not to do that. That suggestion was made by Fashima Begum an HR Business Partner who in an e-mail of 9 December 2015 said; *'It's not the role of the [Investigating Officer] to suggest or recommend what happens as a result of the investigation'*. We find that this has been misunderstood by the Claimant. We do not find that there was any suggestion that referrals to the DBS service should not ever be made but that inclusion of a recommendation in an investigation report was inappropriate. What we understand from that instruction/advice is that it would be inappropriate for the investigating officer to be placing a recommendation, predicated on a finding or wrongdoing, before a disciplinary panel. We consider that to be entirely reasonable. It is the role of the panel to determine whether the disciplinary charges are made out. An investigator making a recommendation based on an assumption of guilt would suggest that the investigation was not impartial.

209. In December 2015 the Claimant corresponded with David Hough, the Safeguarding Lead and others many of whom supported his view that failing to make referrals to the DBS was a breach of a legal duty. The Claimant prepared a briefing paper in May 2016 in which he set out his views as to how the issue of making DBS reports should be handled. Much of that paper is uncontroversial but in the conclusions, there is a suggestion that there is a duty to make a referral whenever the Respondent withdrew permission for a person to engage in a regulated activity he said, *'via dismissal, redeployment, retirement or redundancy or resignation'*. On one reading the Claimant appears to be suggesting that a referral needs to be made whenever anybody resigns whatever the reason. That would be incorrect and it is clear from the Claimant's own paper that absent certain disqualifying offences there must be an assessment made as to whether a child or vulnerable adult has been harmed or placed at risk of harm by an employee or whether there are facts showing that there is a future risk of harm.

210. The most enlightening evidence about the rival approaches to referrals to the DBS comes from the minutes of a meeting of the Youth Services Project Group that took place on 1 September 2016. Those minutes contain the following passages:

> ***'DBS Advice***
>
> *[Claire Belgard] summarised that there are conflicting pieces of advice from HR and the LADO about informing the DBS that a member of staff is dismissed. [The Claimant's] report suggests that we should refer to the DBS in all cases on dismissal and provide all relevant information to the DBS as a decision about how the information should be used should be theirs. David Hough, Safeguarding Lead, supports this view.*
>
> *[Claire Belgard] suggested that one way forward would be for the decision on referral to the DBS to be made by the Director of Children's Services or the LADO.*
>
> *HR and Legal Services, however, take the view that referrals the DBS should be done on a case-by-case basis and is only required where there is actual or potential harm to a child or vulnerable adult. Discussions took place and all parties explain their reasoning. Ronke Martins-Taylor referred to paragraph 192*

of the statutory guidance and reiterated HR and Legal's view that a referral the DBS to harm or possible harm to a child or vulnerable adult…….

… It was agreed that a summary of each case that has led to dismissal is presented back to the Project Group. It was also agreed that some historical issues whereby Youth Services officers have been allowed to resign should be reviewed to determine if a retrospective DBS referral is required'

211. We find that there were clearly diverging views as to whether each case should be referred to the DBS or whether there should be some consideration of actual or potential harm to a child or vulnerable adult. It is clear that the ultimate decision was taken by Ronke Martins-Taylor who favoured the latter position. She did so by reference to statutory guidance and her view was one supported by both HR and Legal Services. Given that the purposes of the DBS scheme are to prevent harm to children and vulnerable adults in our view limiting referrals to circumstances where there was actual or potential harm is entirely rational. That is not to say that the alternative view expressed by the Claimant was not one he could reasonably hold. He was supported by the Safeguarding Lead. We find that these were matters of reasonable disagreement which were discussed openly before a decision was taken. We note that the suggestion made by the Claimant in his briefing paper was that the referral process was overseen by HR and Legal Services and was not a matter he thought should be done by himself. In the event the role of completing DBS referrals was undertaken by Claire Belgard and they were then submitted by HR.

212. The Claimant accepts that there were a number of referrals ultimately made to the DBS following on from investigations into members of the Youth Service. When he asked to see what had been said he was told by Claire Belgard that as the referrals contained personal information he could not see them. He infers that there was a reluctance to make referrals. We do not agree. We are satisfied that consideration was given to making referrals as had been agreed on a case by case basis. Claire Belgard said in her witness statement and we accept that having been asked by the Claimant to see her referrals she did send him the receipts to show that action had been taken.

213. We find that the Claimant and the Safeguarding Lead did quite properly press for action in respect of DBS referrals in late 2015 and accept his evidence that there were delays or failures in referrals being made. It is surprising that several people suspected on reasonable grounds about involvement in fraudulent activities were permitted to resign without any consideration given to whether a DBS referral should be made. However, once the Youth Service Project Group was established we conclude that a proper response was made and that there was no reluctance to consider even historic matters which the minutes quoted above showed were reviewed. It is to the Claimant's credit that he pressed for this.

214. A particular complaint made by the Claimant is that he was not invited to attend a meeting on 28 September 2016. That meeting was with the police and the subject that was to be discussed was misuse of credit cards. A report of Ronke Martins-Taylor dated 13 October 2016 which we refer to below reveals that the meeting was held because the police had determined that they would not being any prosecutions. The reason apparently being the absence of clear policies relating to the use of these cards. The Claimant had done a lot of work on this and we find he quite reasonably expected to attend. He points out that his job description had described him as the 'single point of contact' with the police. On 26 September 2016 he sent an e-mail in which he protested that he had been told that his attendance was not required. He

says that he was told that it was a 'strategic meeting'. He questioned whether that was true. After the meeting on 28 September 2016 Claire Belgard updated the Claimant on what had been discussed. That led the Claimant to send a further e-mail on 28 September 2016 in which he said that given what was discussed he should have been invited. He alleged that he had been 'intentionally excluded'. Ronke Martins-Taylor told us and we accept that she had not been responsible for arranging attendance at that meeting. The Claimant was left off the invitation list but she had no part in that. Whilst we accept the Claimant's evidence that he could reasonably have been invited to that meeting there is no evidence that there was a conscious decision to exclude him. The Claimant's suggestion that this was a deliberate attempt to undermine him is not supported by the evidence. Once the Claimant made his dissatisfaction known Claire Belgard took steps to keep him in the loop.

215. When Andy Bamber gave evidence, he complained bitterly about the inaction of the Police. His sentiments were shared by the Claimant. What is clear is that the consideration of prosecutions in relation to credit card use and some other matters delayed the internal procedures which only added to the urgency of the work of the YSPG.

216. The Claimant says that he was 'belittled and ridiculed' in YSPG meetings. We do not find that that was the case. It is clear that there were disagreements about a number of matters. We consider that normal in a committee. We find that none of the disagreements amounted to belittling the Claimant or ridiculing him. It is correct that the establishment of the YSPG had the effect that the Claimant's work of which he was justly proud was being sped up and overseen by more individuals than had previously been the case. We find that the Claimant was not happy about that. The investigations had been very much 'his baby' and now his involvement was diluted. Whether he perceived the conduct of others as belittling or ridiculing him or not we find that objectively that was not the case.

217. A specific complaint made by the Claimant was that during this period he was no longer tasked with responding or contributing to 'Freedom of Information' (FOI) requests. He deals with this in his witness statement. The documents that he had relied upon do not establish that the Claimant was excluded from the process of responding to FOI requests. In fact, the Claimant was told that an FOI request had been made and it was suggested that he was 'sighted on the response'. He then was told who was dealing with the request and was sent a copy. He says that he then received a response by e-mail that he describes as 'strange'. It is contained in an e-mail from Kate Bingham who is responding to the Claimant's request to see any response to the FOI request. On 9 June 2016 she said:

> *'There are a number of FOI's on the system that request information regarding the youth service, as well as CLC more generally. It is in all our interests that the* responses are shared prior to publication and would appreciate a reciprocal *undertaking.'*

218. We do not consider that response odd. It is a little territorial but it is certainly not a refusal to send the Claimant a copy of the FOI response. What she says is firstly that sharing responses to FOI requests was a good idea. She goes on to ask whether the Claimant will reciprocate. There is no indication that he ever responded.

219. The Claimant then acknowledges in his witness statement that he was asked for input into a FOI request by Claire Belgard on 26 September 2016. He was sent the

Response and provided some information to assist Claire Belgard. He is then sent the final draft which was to be vetted by the Respondent's FOI team. The Claimant suggested one correction which was not adopted. From that he suggests that he was excluded from responding from FOI requests.

220. We do not accept the Claimant's case. Claire Belgard bluntly stated in her evidence that it was not for the Claimant to say who should respond to FOI requests. We agree. There was nothing about his position that made it imperative that he was consulted about every request. The Claimant was asked for information and he supplied it. The Claimant could not reasonably expect to be permitted a veto in respect of any response.

221. The Claimant has suggested that he was 'starved of work' by the YSPG. We do not find that that is the case. Linda Baker was employed and she did work that would otherwise have been done by the Claimant alone. However, we are satisfied that the appointment of Linda Baker was not made to attack the Claimant but was for the clear purpose of addressing a backlog of cases. Having regard to all the evidence we are satisfied that the criteria for allocating work between the Claimant and Linda Baker was that work was given to the person perceived as having the capacity to complete it. We accept Claire Belgard's evidence that on several occasions she asked the Claimant to take on some work and he told her he was busy.

222. The minutes of the YSPG refer to a spreadsheet of investigations. This spreadsheet is updated as decisions were taken whether to progress matters to a disciplinary hearing or close the investigation. We find that the number of 'live' matters decreased as time went on. This was consistent with the intention to address the backlog. There had been a backlog of 59 cases at the outset of the YSPG.

223. In our bundle was a report prepared by Ronke Martins-Taylor dated 13 October 2016. That is a report to the Statutory Officer's Group. It is, in essence, a progress report. Ronke Martins-Taylor states that the YSPG started with 59 matters to investigate. She says that 3 new cases had been identified. We find that the YSPG were prepared to expand the investigation where the existing cases threw up additional matters. The fact that the YSPG were endeavouring to clear this backlog quickly is supported by a section on resources where the recruitment of Linda Baker is reported and a suggestion made that further resources might be necessary. The update on progress revealed that there had been 5 or 6 dismissals and some others who may or may not be subjected to internal audit investigation. There were by then 27 open cases.

224. By March 2017 there were just 9 investigations remaining open. Those were investigations being undertaken by Linda Baker. At a meeting of the YSPG on 2 March 2017 Claire Belgard is recorded as agreeing with the Claimant that two matters that he had investigated should proceed to disciplinary hearings.

225. The Claimant has suggested that there was a resistance to undertaking new investigations. The spreadsheet discussed at the meeting of the YSPG on 2 March 2017 shows that some new matters had arisen and that they were being investigated. To conclude that there was a decision taken to discourage any further investigations we would need some evidence to support that. We do not find that there was any evidence to support a finding that potentially fruitful lines of investigation were shut down. The minutes of the YSPG do not disclose any reluctance to investigate matters that emerged from other investigations.

226. Whilst we skip ahead slightly we accept the evidence of Claire Belgard and Ronke Martins-Taylor that by August 2017 all investigations were complete. There were a small number of disciplinary hearings outstanding.

227. Whilst the YSPG work had all but dried up the Claimant was asked to do at least two other investigations. He was asked by Ann Corbett, who was the Divisional Director Community Safety to carry out an investigation into an individual within her department. We note that that was a recommendation from an individual in HR and suggests that the Claimant was regarded as a safe pair of hands. In addition, the Claimant carried out two investigations into individuals working for Trading Standards and Highways Services. The manager who had commissioned the work complemented the Claimant on the thoroughness of his work. We find that the fact that the Claimant was asked to do this work at all undermines the suggestion that his work was unwelcomed and there was a drive to force him out. The fact that the Claimant had moved on to work outside the Youth Service also evidences the fact that the work undertaken by the YSPG was, as the Respondent said, coming to an end.

Publication of the 'Clear Up report'

228. In around June 2017 the Respondent published the report of the Clear Up Project in full. Within that report there are numerous criticisms. The report included findings about the Claimant's complaints about the summer youth project. We have set those out above and noted that the Claimant's concerns were generally held to be justified. If Ronke Martins-Taylor and Clare Belgard were in any doubt about who had complained about their conduct the findings make it obvious that it was the Claimant. In fairness to them both Ronke Martins-Taylor or Claire Belgard accepted that they realised that it was the Claimant who had reported their conduct.

Letters to Will Tuckley

229. On 29 June and 5 July 2017 Kathy McTansey wrote to the Chief Executive Officer Will Tuckley. The letters have the same content. The purpose of the letter is not very clear but it does refer to legal action and to the possibility of the Claimant amending his existing claim to bring a 'whistleblowing element' if his 'PID status' did not result in any protection.

230. On 29 June 2017 Will Tuckley sent a copy of the e-mail/letter to Karen Davis in HR and asked them to provide him with a note explaining the situation. He expressly requested that the letter be acknowledged and a response prepared. As a matter of fact, no response was ever sent. Again, on 5 July 2017 Will Tuckley forwarded the e-mail to the Divisional Director of HR and another HR officer Stuart Young. Stuart Young promised to update Will Tuckley but there was no evidence he ever did so. Once again, the Claimant can quite reasonably be aggrieved at the way his concerns were responded to.

231. One of the Claims brought by the Claimant was that the failure to answer this correspondence was on the grounds that he had made a protected disclosure. When Will Tuckley signed his witness statement it contained a paragraph where he said he did not know that the Claimant was the person who had raised the complaint about the Youth Service Summer Project tender. When he gave evidence Will Tuckley declined to adopt this passage in his witness statement. He said that it was wrong and accepted that he had been aware. He said that he had overseen the Clear Up Project and had inferred that the Claimant was the person who had provided the information

about the Summer Project tendering process. Whilst overall Mr Tuckley was an impressive witness we consider that he had been careless signing his original statement when it contained a matter that with a proper degree of reflection he would have recognised was untrue.

232. The allegation that the failure to respond to this correspondence was a detriment on the grounds that the Claimant had made a protected disclosure was later abandoned. Had it not been we would not have concluded that Will Tuckley was reluctant to respond because of whistle blowing or at all. Whilst the buck would stop with the Chief Executive Officer this is a matter he could and did quite reasonably delegate. The failure of others not to do what Will Tuckley asked is not to be condoned. This is one of a very large number of failures that this case has thrown up.

Applications for alternative positions prior to the dismissal.

233. As we have said above the fact that the Claimant was assimilated the role of Hub Operations Manager which entitled him to a 'competitive assimilation interview'. This role was two grades below the Claimant's existing role but under the Respondent's policy he would have benefitted from pay protection for 2 years if he had been appointed.

234. The Claimant did not need to agree to an interview for this role but chose to do so. The three other candidates were all experienced Youth Service Managers with hands on operational experience. Whilst the Claimant has a long track record of working in Local Authorities he had no direct experience and for that reason he had a remote prospect of being the successful candidate unless the others dropped out. The Claimant recognises that himself. He refers in his witness statement to the other candidates having 'sizable operational experience'. He speculates that his assimilation to this role was simply designed to antagonise the other candidates (who were Bengali). We find no evidence to support that. We find that the reality was that this position was the closest role to match the Claimant's skills. He could have done the job. Permitting him a ring-fenced interview was to his advantage not his disadvantage. His difficulty was that other candidates were more suitable.

235. The Claimant attended an interview for this post but was told on 21 October 2017 that he had been unsuccessful.

236. The Claimant had applied for the Head of Service role. None of the existing Managers had been assimilated to that role. In accordance with the Respondent's policy that role was first made available to all the staff included in scope of the restructure. This was a more senior role at grade 'PO9'. The Claimant was interviewed for this role on 17 November 2017 by a panel including Ronke Martins-Taylor. He was unsuccessful. We were provided with the Job Description for this role. It is clearly a senior position that demanded hands on operational experience. Whilst some of the Claimant's skills and experience was relevant his lack of direct youth service experience made his appointment only an outside chance. In fact, no internal candidate was considered suitable for that role. We are satisfied that the reason that the Claimant was not appointed to that role was that he lacked the relevant experience.

The Claimant's dismissal and his appeal

237. Under the Respondent's policy if a person is not directly assimilated or fails to obtain any post in a competitive assimilation interview then the policy provides that

they will be dismissed upon 12 weeks' notice and placed into the redeployment pool where they will be assisted to look for a position. In accordance with that policy the Claimant was served notice by a letter dated 14 December 2017. The letter explained the redeployment process. The Claimant was encouraged to consider any redeployment opportunities. The letter provided a redundancy payment calculation. Finally, the letter drew attention to a right of appeal against the dismissal.

238. The Claimant appealed against his dismissal by a letter sent on 15 January 2018. He sets out his position that he should never have been included in the Youth Service at all. He says that he has the right to be treated as a permanent employee. From that he argued that he should never have been dismissed.

239. The Claimant's appeal hearing took place on 1 February 2018. Claire Belgard has been asked to present 'the management case' and the Claimant was represented by Kathy McTansey. Claire Belgard set out in an undated document a point by point response to the Claimant's appeal letter. She acknowledged that both the Claimant, the Youth Services Managers and the Unions had all questioned why he had been included in the Youth Service restructure. She said that the reason the Claimant had been included in the restructure was a consequence of having legal advice to do this. She agrees with the Claimant that his failure to obtain a post in the new structure is a consequence of his lack of relevant skills and experience. The final point that she makes is that if the Claimant had not been included in the restructure he would have been redundant when the YSPG work finished in the late summer of 2017.

240. The Claimant was informed on 6 February 2018 that his appeal was not upheld. The outcome letter is brief and simply states that the Appeal panel were satisfied that the Respondent's Handling Organisational Change Policy had been correctly followed.

Looking for alternative employment – redeployment period

241. The Claimant was asked to and did complete an 'employee profile' which he sent to Natalie Sylvain in HR. Shortly after that the responsibility for assisting the Claimant with the redeployment process was delegated to Debra Southgate. The first role that was identified as potentially suitable for the Claimant was a Head of Business Applications post. Having considered the Claimant's employee profile Adrian Gorst who was the relevant recruiting manager decided that the Claimant did not have sufficient relevant experience. That decision was communicated to the Claimant on 16 January 2018. The Claimant asked to see the Job Description and feedback. The Claimant then provided an updated employee profile and that was sent to Adrian Gorst for his consideration. Adrian Gorst convened a short meeting with other managers to reconsider whether the Claimant should be offered an interview. In the end he decided that even with the additional information the Claimant had provided he had only met 8 out of 17 essential criteria. The Claimant was given detailed feedback explaining the decision and informing him who was responsible.

242. On 26 January 2018 Debra Southgate identified a post of 'Neighbourhood and Community Safety Manager' as being potentially suitable. That role was temporary and at this time it was anticipated that it would last for 6 months. The post holder was to report to Alun Goode. He had been recruited on a temporary contract on 6 November 2017as an Anti-Social Behaviour Support Manager. He is an ex Police Officer.

243. When Alun Goode saw the Claimant's profile he thought that he was a suitable candidate for the job. He sent the Claimant a copy of the Job Description and on 31 January 2018 he offered the Claimant the opportunity of an interview on 8 February 2018. On the same day the Claimant responded saying that he was '*seeking clarification regarding my contractual position'*. During this period Alun Goode went to speak with the Claimant about the position. Alun Goode tells us and we accept that the job description for the post was a generic document sourced from the internet that had been amended. The job description identified the grade as 'PO7'. Alun Goode said that this was an error and that when the job description was finalised (after the Claimant had withdrawn his interest) the grade was amended to LPO7.

244. When Mala Jones gave evidence, she was asked to explain the grades within the organisation. She told us that the grades ran from PO1 to PO6 and then were described as LPO7 to LPO9. She explained that redeployment was only usually considered for a range of plus or minus 2 grades from the existing grade. Pay protection applied where alternative employment was up to two bands lower. This meant that the Claimant's pay would be protected if he obtained a post on grade PO6 or LPO7. He could apply for a lowed graded post but pay protection would not apply.

245. In early February the Claimant had asked for details of all posts that had been filled in the previous 2 years. He was supplied with that information by Debra Southgate on 2 February 2018. At the same time, she wished him luck with his appeal and asked him to say whether he would attend the interview for the Neighbourhood and Community Safety Manager role. She suggested that he did that regardless of his appeal. On 6 February 2018 she followed that up by going to speak to the Claimant accompanied by Natalie Sylvain. It was not disputed that during that meeting Debra Southgate tried to persuade the Claimant to attend the interview. On the same day the Claimant sent Debra Southgate an e-mail where he said he would not attend the interview as he had an outstanding appeal. Sometime later that day the Claimant was sent the letter confirming his appeal was unsuccessful.

246. Upon learning of the Claimant's decision not to attend the interview Alun Goode again decided to go and see him. We find that he intended to try and persuade the Claimant to consider the job. Whilst it had been thought that the post would be for 6 months Alun Goode told the Claimant that it was now possible that the period would be up to 2 years. The conversation ended with Alun Goode asking the Claimant to reconsider and let him know if he had any change of heart. Alun Goode told us, and we accept, that the issue of the grade or pay protection was never raised by the Claimant. The Claimant did not accept the offer of an interview.

247. In preparing for his appeal the Claimant had sent an e-mail to Mala Jones asking for a number of documents. The last of these requests was a list of posts currently filled with temporary workers. Mala Jones did not provide that in advance of the appeal hearing rightly in our view taking issue with its relevance to the appeal (as opposed to its relevance to redeployment opportunities which she acknowledged). She promised to provide a list once it had been prepared and checked. On 14 February 2018 Kathy McTansey wrote to Zena Cooke in HR and asked that the Claimant was supplied with details of all posts covered by temporary workers. On 1 March 2018 Heather Daley sent the information requested to both his union representative and the Claimant by e-mail. She asked the Claimant to identify any role that he was interested in.

248. The Claimant responded by e-mail on the same day. He questioned why he had to ask for the information rather than roles filled by temporary workers not showing up as vacancies on the redeployment lists he was sent. He asked for all the roles to be uploaded together with all the job descriptions. Mala Jones responded on 7 March 2018 by saying that once a role was filled it did not show up as a 'live vacancy'. She suggested that the Claimant identify any job he is interested and said that he would then be sent the job description. We consider that a sensible suggestion as many of those roles were plainly unsuitable. For example, there were several which required specific professional qualifications. The Claimant had been asked to use up his annual leave during his notice period and by 7 March 2018 he was in Canada. Efforts were made to draw this e-mail to his attention but he did not see it before his employment ended on 25 March 2018.

249. After the termination of his employment the Claimant brought his second claim against the Respondent. He claimed that his dismissal was unfair and that there had been further acts of discrimination.

The law to be applied

The burden and standard of proof

250. The standard of proof that we must apply is the civil standard that is the balance of probabilities. In other words, we must decide whether it is more likely than not that any fact is established. As a general rule the party making an assertion of any fact to support their claim or defence bears the burden of establishing that fact.

Burden of proof – claims under the Equality Act 2010

251. The burden of proof in claims brought under the Equality Act 2010 is governed by section 136 of that act the material parts of which are:

> *136 Burden of proof*
>
> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

252. Accordingly, where a claimant establishes facts from which discrimination could be inferred (a prima facie case), then the burden of proving that the treatment was in no sense whatsoever unlawful passes to the respondent. The proper approach to the shifting burden of proof has been explained in ***Igen v Wong*** **[2005] ICR 9311** which approved, with some modification, the earlier decision of the EAT in ***Barton v Investec Henderson Crosthwaite Securities Ltd*** **[2003] IRLR 332**. Most recently in ***Base Childrenswear Limited v Otshudi*** **[2019] EWCA Civ 1648** Lord Justice Underhill reviewed the case law and said:

17. Section 136 implements EU Directives 2000/78 (article 10) and 2006/54 (article 19), which themselves derive from the so-called Burden of Proof Directive (1997/80). Its proper application, and that of the equivalent provisions in the pre-2010 discrimination legislation, has given rise to a great deal of difficulty and has generated considerable case-law. That is not perhaps surprising, given the problems of imposing a two-stage structure on what is naturally an undifferentiated process of fact-finding. The continuing problems, including in particular the application of the principles identified in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] ICR 93, led to this Court in Madarassy v Nomura International plc [2007] EWCA Civ 33, [2007] ICR 867, attempting to authoritatively re-state the correct approach. The only substantial judgment is that of Mummery LJ: it was subsequently approved by the Supreme Court in Hewage v Grampian Health Board [2012] UKSC 37, [2012] ICR 1054. In Efobi v Royal Mail Group Ltd [2017] UKEAT 0203/16, [2018] ICR 359, the EAT held that differences in the language of section 136 as compared with its predecessors required a different approach from that set out in Madarassy; but that decision was overturned by this Court in Ayodele v Citylink Ltd [2017] EWCA Civ 1913, [2018] ICR 748, and Madarassy remains authoritative.

18. It is unnecessary that I reproduce here the entirety of the guidance given by Mummery LJ in Madarassy. He explained the two stages of the process required by the statute as follows:

(1) At the first stage the claimant must prove "a prima facie case". That does not, as he says at para. 56 of his judgment (p. 878H), mean simply proving "facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination". As he continued (pp. 878-9):

> *"56. … The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.*
>
> *57. 'Could conclude' in section 63A(2) [of the Sex Discrimination Act 1975] must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. …"*

(2) If the claimant proves a prima facie case the burden shifts to the respondent to prove that he has not committed an act of unlawful discrimination – para. 58 (p. 879D). As Mummery LJ continues:

> *"He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."*

He goes on to explain that it is legitimate to take into account at the first stage all evidence which is potentially relevant to the complaint of discrimination, save only the absence of an adequate explanation.

253. Inferences can only be drawn from established facts and cannot be drawn speculatively or on the basis of a gut reaction or 'mere intuitive hunch' see ***Chapman v Simon*** **[1994] IRLR 124** see per Balcombe LJ at para. 33 or from 'thin air' see ***Chief Constable of the Royal Ulster Constabulary*** **[2003] ICR 337**.

254. Discrimination cannot be inferred only from unfair or unreasonable conduct **Glasgow *City Council v Zafar*** **[1998] ICR 120**. That may not be the case if the

conduct is unexplained ***Anya v University of Oxford*** **[2001] IRLR 377, CA.** Whilst inferences of discrimination cannot be drawn merely from the fact that the Claimant establishes a difference in status and a difference treatment see ***Madarassy v Nomura International plc*** **[2007] ICR 867** 'without more', the something more *"need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred"* see ***Deman v Commission for Equality and Human Rights*** **[2010] EWCA Civ 1279** per Sedley LJ at para 19.

255. Where there are a number of allegations each single allegation of discrimination should not be viewed in isolation, but the history of dealings between the parties should be taken into account in order to determine whether it is appropriate to draw an inference of racial motive in respect of each allegation ***Anya v University of Oxford***.

256. The burden of proof provisions need not be applied in a mechanistic manner ***Khan and*** another ***v Home Office*** **[2008] EWCA Civ 578**. In ***Laing v Manchester City Council*** **2006 ICR 1519** Mr Justice Elias (as he then was) said

> *"the focus of the Tribunal's analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that even if it has, the Employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race""*

257. Such an approach must assume that the burden of proof falls squarely on the Respondent to prove the reason for any treatment. It is an approach that should be used with caution and is appropriate only where we are in a position to make clear positive findings of fact as to the reason for any treatment or any other element of the claim. We shall indicate below where we consider that it is open to us to follow this approach.

Equality Act 2010 - Statutory Code of Practice

258. The power of the Equality and Human Rights Commission to issue a code of practice to ensure or facilitate compliance with the Equality Act 2010 is afforded by Section 14 of the Equality Act 2006. Such a code must be laid before Parliament and is subject to a negative resolution procedure. The current code ('the code of practice') was laid before parliament and came into force on 6 April 2011. Section 15 of the Equality Act 2006 sets out the effect of breaching the code of practice. Paragraph 1.13 of the code explains that:

> *The Code does not impose legal obligations. Nor is it an authoritative statement of the law; only the tribunals and the courts can provide such authority. However, the Code can be used in evidence in legal proceedings brought under the Act. Tribunals and courts must take into account any part of the Code that appears to them relevant to any questions arising in proceedings.*

Direct discrimination

259. Section 13 of the Equality Act 2010 contains the statutory definition of direct discrimination. The material part of that section read as follows:

> "(1) 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.
>
> (2) If the protected characteristic is age then A does not discriminate against B if A can show that A's treatment of B is a proportionate means of achieving a legitimate aim."

260. The circumstances where it is unlawful to directly discriminate within the field of work are set out in Section 39 of the Equality Act 2010. The material parts of that section read as follows:

> *39 Employees and applicants*
>
> *(1) …*
>
> *(2) An employer (A) must not discriminate against an employee of A's (B)—*
>
> *(a) as to B's terms of employment;*
>
> *(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
>
> *(c) by dismissing B;*
>
> *(d) by subjecting B to any other detriment.*
>
> *(3)….(8)*

261. The phrase 'subjecting B to any other detriment' has a wide meaning. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** **2003 ICR 337, HL,** the suggestion that the employee need show a physical or economic impact was rejected in favour of an interpretation that equated the word 'detriment' with 'disadvantaged'. Consideration of whether an employee is disadvantaged needs to be seen from the point of view of the victim although the test is an objective one. See ***De Souza v Automobile Association*** **1986 ICR 514, CA**. It follows that an unjustified sense of grievance will not amount to a detriment.

262. In order to establish less favourable treatment it is usually necessary to show that the claimant has been treated less favourably than a comparator not sharing his protected characteristic. Paragraphs 3.4 and 3.5 of the code of practice say:

> *3.4 To decide whether an employer has treated a worker 'less favourably', a comparison must be made with how they have treated other workers or would have treated them in similar circumstances. If the employer's treatment of the worker puts the worker at a clear disadvantage compared with other workers, then it is more likely that the treatment will be less favourable: for example, where a job applicant is refused a job. Less favourable treatment could also involve being deprived of a choice or excluded from an opportunity.*

3.5 The worker does not have to experience actual disadvantage (economic or otherwise) for the treatment to be less favourable. It is enough that the worker can reasonably say that they would have preferred not to be treated differently from the way the employer treated – or would have treated – another person.

263. Section 23 of the Equality Act 2010 provides that any comparator must be in the same, or not materially different, circumstances. What is meant by 'circumstances' for the purpose of identifying a comparator it is those matters, other than the protected characteristic of the claimant, which the employer took into account when deciding on the act or omission complained of see - ***MacDonald v Advocate-General for Scotland; Pearce v Governing Body of Mayfield Secondary School*** **[2003] IRLR 512, HL**. Where no actual comparator can be identified the tribunal must consider the treatment of a hypothetical comparator in the same circumstances. Paragraphs 3.22 – 3.27 of the code of practice say (with some parts omitted):

3.22 In most circumstances direct discrimination requires that the employer's treatment of the worker is less favourable than the way the employer treats, has treated or would treat another worker to whom the protected characteristic does not apply. This other person is referred to as a 'comparator'.

Who will be an appropriate comparator?

3.23 The Act says that, in comparing people for the purpose of direct discrimination, there must be no material difference between the circumstances relating to each case. However, it is not necessary for the circumstances of the two people (that is, the worker and the comparator) to be identical in every way; what matters is that the circumstances which are relevant to the treatment of the worker are the same or nearly the same for the worker and the comparator.

Hypothetical comparators

3.24 In practice it is not always possible to identify an actual person whose relevant circumstances are the same or not materially different, so the comparison will need to be made with a hypothetical comparator.

3.25 In some cases a person identified as an actual comparator turns out to have circumstances that are not materially the same. Nevertheless their treatment may help to construct a hypothetical comparator.

3.26 Constructing a hypothetical comparator may involve considering elements of the treatment of several people whose circumstances are similar to those of the claimant, but not the same. Looking at these elements together, an Employment Tribunal may conclude that the claimant was less favourably treated than a hypothetical comparator would have been treated.

3.27 Who could be a hypothetical comparator may also depend on the reason why the employer treated the claimant as they did. In many cases it may be more straightforward for the Employment Tribunal to establish the reason for the claimant's treatment first. This could include considering the employer's treatment of a person whose circumstances are not the same as the claimant's to shed light on the reason why that person was treated in the way they were. If the reason for the treatment is found to be because of a protected characteristic, a comparison with the treatment of hypothetical comparator(s) can then be made.

264. The purpose of identifying a comparator is that doing so can provide a tool for identifying the reason for any treatment. The reason for the treatment is the primary question – see ***Shamoon*** and I tribunal, in appropriate cases, may address that question first.

265. The proper approach to deciding whether the treatment was afforded 'because of' the protected characteristic is to ask what the reason was for the treatment. If the protected characteristic had a significant influence on the outcome then discrimination will be made out see - ***Nagarajan v London Regional Transport*** **[1999] UKHL 36; [1999] IRLR 572.**

Harassment

266. A claim for harassment under the Equality Act 2010 is made under section 26 and 39. The material parts of Section 26 reads as follows:

> *26 Harassment*
>
> *(1) A person (A) harasses another (B) if—*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
>
> *(b) the conduct has the purpose or effect of—*
>
> *(i) violating B's dignity, or*
>
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
>
> *(2) ……(3)*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account —*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect.*
>
> *(5) The relevant protected characteristics are— age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.*

267. Section 40 of the Equality Act 2010 makes it unlawful for an employer to harass an employee or applicant for employment.

268. Paragraph 7.2 of the code of practice draws attention to the fact that no comparator is required for a claim under Section 26 of the Equality Act 2010:

> '*Unlike direct discrimination, harassment does not require a comparative approach; it is not necessary for the worker to show that another person was, or would have been, treated more favourably.'*

269. Paragraphs 7.7 and 7.8 of the code of practice explain what unwanted conduct entails:

> *'7.7 Unwanted conduct covers a wide range of behaviour, including spoken or written words* or *abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.*
>
> *7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment.'*

270. Guidance as to the proper approach to claims of harassment was given in ***Richmond Pharmacology v Dhaliwal*** **[2009] IRLR 336**. At paragraph 10 the EAT identifies the 3 elements that must be established to make out a claim of harassment. These are (1) whether the alleged conduct took place (2) whether it had the proscribed purpose or effect and (3) whether it related to the protected characteristic. There is also a reminder of the need to take a realistic view of conduct said to be harassment. At paragraph 22 it is said:

> *'Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.*

271. The question of whether unwanted treatment 'relates to' a protected characteristic is to be tested applying the statutory language without any gloss ***Timothy James Consulting Ltd v Wilton*** **UKEAT/0082/14/DXA**. The phrase 'related to' is broader than the words 'because of' used in Section 13 of the Equality Act 2010 but is likely to include any conduct that is 'because of' a protected characteristic see ***Bakkali v Greater Manchester Buses (South) Ltd t/a Stage Coach Manchester*** **2018 ICR 1481, EAT**. In ***Hartley v Foreign and Commonwealth Office Services*** **2016 ICR D17, EAT** HHJ Richardson said:

> *'The question posed by section 26(1) is whether A's conduct related to the protected characteristic. This is a broad test, requiring an evaluation by the Employment Tribunal of the evidence in the round — recognising, of course, that witnesses will not readily volunteer that a remark was related to a protected characteristic. In some cases the burden of proof provisions may be important, though they have not played any part in submissions on this appeal. The Equality Code says (paragraph 7.9):*
>
> > *"7.9. Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. …"*
>
> *24. A's knowledge or perception of B's characteristic is relevant to the question whether A's conduct relates to a protected characteristic but there is no warrant in the legislation for treating it as being in any way conclusive. A may, for*

example, engage in conduct relating to the protected characteristic without knowing that B has that characteristic. A may not even know that B exists. Likewise, A's own perception of whether conduct relates to a protected characteristic cannot be conclusive of that question. A's understanding of the protected characteristic may be incomplete or incorrect, whether from the best of motives or from prejudice or the acceptance of myth.

Time limits for the claims brought under the Equality Act 2010.

272. Section 123 of the Equality Act 2010 imposes a time limit for the presentation of claims to an employment tribunal. The material parts say:

'123 Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

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

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

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

(3) For the purposes of this section—

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

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

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

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

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

273. The leading case on the meaning of the expression 'act extending over a period' used in sub section 123(3) of the Equality Act 2010 is ***Commissioner of Police of the Metropolis v Hendricks*** **2003 ICR 530, CA** as confirmed in ***Lyfar v Brighton and Sussex University Hospitals Trust*** **2006 EWCA Civ 1548, CA.** The test is not whether the employer operated a policy practice or regime but to focus on the substance of the complaint and ask whether there was an ongoing situation or continuing state of affairs amounting to an 'act extending over a period as distinct from a succession of isolated or specific acts. Even where there is an act extending over a

period it is necessary to show that that continued to a point where a complaint relying upon a single act would have been in time

274. If any claim has been presented after the ordinary time limit imposed by sub-section 123(1)(a) of the Equality Act 2010 (a period within 3 months extended by the provisions governing extensions of time for early conciliation) then the tribunal cannot entertain the complaint unless it is just and equitable to do so. The following propositions have emerged from the case law:

274.1. ***Robertson v Bexley Community Centre t/a Leisure Link*** **[2003] IRLR 434, CA** reminds a tribunal that whilst the discretion to extend time is wide the burden is on the Claimant to show why time should be extended and as such an extension is the exception and not the rule.

274.2. In deciding whether or not to extend time a tribunal might usually have regard to the statutory factors set out in the Section 33 of the Limitation Act 1980 see ***British Coal Corporation v Keeble and ors*** **[1997] IRLR 336, EAT**.

274.3. Whether there is a good reason for the delay or indeed any reason is not determinative but is a material factor ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** **2018 ICR 1194, CA**.

274.4. It will be an error of law for the Tribunal not to consider the relative prejudice to each party ***Pathan v South London Islamic Centre*** **EAT 0312/13**

Protected disclosure claims

275. The protection for workers who draw attention to failings by their employers or others, often referred to as 'whistle-blowers', was introduced by the Public Interest Disclosure Act 1994 which introduced a new Part IVA to the Employment Rights Act 1996. Section 43A of the Employment Rights Act 1996 provides that a disclosure will be protected if it satisfies the definition of a 'qualifying disclosure' and is made in any of the circumstances set out in Sections 43C-H. The statutory definition of what amounts to a qualifying disclosure is found in Section 43B of the Employment Rights Act 1996 which says:

43B Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*
>
> *(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*
>
> *(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*
>
> *(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.*
>
> *(5) In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).*

276. To amount to a 'disclosure of information', it is necessary that the worker conveys some facts to her or his employer. In ***Kilraine v London Borough of Wandsworth*** **2018 ICR 1850, CA** the meaning of that phrase was explained by Sales LJ as follows (with emphasis added):

> *"35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)…….*
>
> *36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it*

is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."

277. As a general rule each communication by the employee must be assessed separately in deciding whether it amounts to a qualifying disclosure however, where some previous communication is referred to or otherwise embedded in a subsequent disclosure, then a tribunal should look at the totality of the communication see ***Norbrook Laboratories (GB) Ltd v Shaw*** **2014 ICR 540, EAT** and ***Simpson v Cantor Fitzgerald Europe*** **EAT 0016/18** (where the employee had failed to make it clear which communications needed to be read together).

278. The effect of Section 43B Employment Rights Act 1996 is that to amount to a qualifying disclosure, at the point when the disclosure was made, the worker must hold a belief that (1) the information tends to show one of the failings in subsection 43B(1) (a) – (e) and (2) that the disclosure is in the public interest. If that test is satisfied the Tribunal need to consider whether those beliefs were objectively reasonable. The proper approach was set out in ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)*** **2018 ICR 731, CA** where Underhill LJ said:

26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B (1).

27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for

why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

279. When going on to consider what was required to establish that something was in the public interest Underhill LJ said at paragraph 37:

"….. *in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."*

280. The 4 relevant factors identified by Underhill LJ were (at paragraph 34):

"(a) the numbers in the group whose interests the disclosure served – see above;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously

should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far."

281. Section 43C provides that a qualifying disclosure will be a protected disclosure if it is made to the employer.

282. Section 47B provides (as far as is material):

47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

283. The meaning of the phrase *'on the grounds that'* in sub-section 47(1) has been explained in ***Fecitt v NHS Manchester (Public Concern at Work intervening)*** **[2012] ICR 372** where Elias LJ said:

'the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.'

284. The meaning of the word 'detriment' in Section 47B is the same as in a claim of direct discrimination under the Equality Act 2010 and is explained above.

285. Section 48(1) of the Employment Rights Act 1996 provides for a right of enforcement in the employment tribunal. Sub section 48(2) provides that:

'(2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.'

286. The effect of Sub section 48(2) of the Employment Rights Act 1996 is that once the employee proves that there was a protected disclosure and a detriment the Respondent bears the burden of showing that was not on the grounds that the employee had made a protected disclosure. The fact that the employer leads no evidence or that the explanation it does give is rejected does not lead automatically to the claim being made out. It is for the tribunal looking at all the evidence to reach a conclusion as to the reason for the treatment. See ***Ibekwe v Sussex Partnership NHS Foundation Trust EAT*** **0072/14** and ***Kuzel v Roche Products Ltd*** **2008 ICR 799, CA**. Where there is no evidence or the employer's explanation is rejected it will

be legitimate for the tribunal to draw an inference from the failure to establish the grounds for any treatment.

287. Where, as in the present case, there are several alleged protected disclosures and a number of alleged detriments it is necessary to take a structured approach. Guidance was given in ***Blackbay Ventures Ltd T/A Chemistree v Gahir*** **UKEAT/0449/12/JOJ** where it was said a tribunal should take the following approach:

> *a. Each disclosure should be separately identified by reference to date and content.*
>
> *b. Each alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered as the case may be should be separately identified.*
>
> *c. The basis upon which each disclosure is said to be protected and qualifying should be addressed.*
>
> *d. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the Employment Tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the Employment Tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the Employment Tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an Employment Tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.*
>
> *e. The Employment Tribunal should then determine whether or not the Claimant had the reasonable belief referred to in S43 B1 of ERA 1996 under the 'old law' whether each disclosure was made in good faith; and under the 'new' law introduced by S17 Enterprise and Regulatory Reform Act 2013 (ERRA), whether it was made in the public interest.*
>
> *f. Where it is alleged that the Claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the Respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.*
>
> *g. The Employment Tribunal under the 'old law' should then determine whether or not the Claimant acted in good faith and under the 'new' law whether the disclosure was made in the public interest.*

Time limits – protected disclosure

288. The statutory time limits for bringing a complaint that an employee has been subjected to a detriment are set out in sub sections 48(3) - (4A) of the Employment Rights Act 1996. Those sub-sections say:

> *(3) An employment tribunal shall not consider a complaint under this section unless it is presented—*
>
> > *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
> >
> > *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*
>
> *(4) For the purposes of subsection (3)—*
>
> > *(a) where an act extends over a period, the "date of the act" means the last day of that period, and*
> >
> > *(b) a deliberate failure to act shall be treated as done when it was decided on;*
>
> *and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.*
>
> *(4A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (3)(a).*

289. These sub-sections provide two routes whereby events that have taken place longer than three months prior to the presentation of the claim are to be regarded as having taken place within that period. The first found in sub section 48(3)(b) is where an earlier act is part of a series of acts. It is necessary to show that the acts are of a similar kind and that at least one unlawful act occurred within the time limit see ***Arthur v London Eastern Railway Ltd*** **[2007] IRLR 58, CA**

290. The second route to joining earlier events derives from sub-section 48(4)(a) where the events are to be regarded as part of one act extending over a period. That phrase is also found in the Equality Act 2010 and should be interpreted in the same manner and consistently with the guidance in ***Commissioner of Police of the Metropolis v Hendricks*** **2003 ICR 530, CA** in which it was said that the question should be whether there had been an act over an extended period of time, rather than specific, isolated incidents for which time began to run from the date each act had been committed.

291. Time may only be extended where it is established that it is not reasonably practicable to present the claim within the ordinary time limit (within three months but

subject to any extension because of early conciliation). Where a claim is presented outside the period of 3 months it is necessary to ask firstly whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated. There is no general discretion to extend time and the burden of proof rests squarely on the Claimant to establish that both limbs of the test are satisfied.

292. The expression "reasonably practicable" does not mean that the employee can simply say that his/her actions were reasonable and escape the time limit. On the other hand, an employee does not have to do everything possible to bring the claim. In ***Palmer and Saunders v Southend-On-Sea Borough Council*** **[1984] IRLR 119** it was said that reasonably practical should be treated as meaning "reasonably feasible". ***Schultz v Esso Petroleum*** **Ltd [1999] IRLR 488** is authority for the proposition that whenever a question arises as to whether a particular step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved.

Unfair dismissal

293. The right not to be unfairly dismissed is conferred by Section 94 of the Employment Rights Act 1996. It is a right available only to those who have been continuously employed for at least two years or those dismissed for what are generally referred to as automatically unfair reasons. Where, as here, there is no dispute that an employee with more than two years continuous service was dismissed, the question of whether any such dismissal was unfair turns upon the application of the test in Section 98 of the Employment Rights Act 1996. The material parts of that section are as follows:

> *"98 General.*
>
> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it –*
>
> *(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
>
> *(b) relates to the conduct of the employee*
>
> *(c) is that the employee was redundant, or*
>
> *(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of*

his employer) of a duty or restriction imposed by or under an enactment.

(3) ...

(4) Where the employer has fulfilled the requirements of subsection (1), 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 it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

294. The first part of the test focuses on reason for the dismissal. The burden of proof is upon the Respondent to show that the dismissal was for a potentially fair reason. Where there is more than one reason for dismissal it is necessary for the Respondent to show that the principle reason was potentially fair.

295. In this case the Respondent says that the principal reason for the dismissal was 'redundancy'. A dismissal will not be by reason of redundancy unless the statutory definition of redundancy is met. Redundancy is defined in section 139 of the Employment Rights 1996. The material parts of that section read as follows:

139 Redundancy.

(1) For the purposes of this 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—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out 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.

(2) - (5)….

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

(7) …

296. Sub-section 139(1)(b) of the Employment Rights Act 1996 refers to the 'requirements' of the employer. Where the employer has taken the decision to reduce the numbers of employees for a genuine business reason it is not open to a tribunal to investigate whether that decision was sensible see- ***James W Cook & Co (Wivenhoe) Ltd v Tipper*** **[1990] IRLR 386**. That does not preclude a tribunal from investigating whether the employer held a genuine belief in the facts relied upon to conclude that employees needed to be made redundant. In forming that belief, it was said by Slynn J in ***Orr v Vaughan*** **[1981] IRLR 63,** that the employer must act on reasonable information reasonably acquired.

297. In ***Safeway Stores plc v Burrell*** **[1997] IRLR 200**it was suggested that there are three questions: First, has the employee been dismissed? Secondly, if so, has the requirement of the employer's business for employees to carry out work of a particular kind ceased or diminished? And thirdly, if so, was the dismissal of the employee caused wholly or mainly by that state of affairs?

298. The existence of facts that might support a genuine need to make redundancies does not by itself demonstrate that an employee dismissed in those circumstances was dismissed for the reason, or principle reason, of redundancy. Whether that is the case is a question of fact and causation for the tribunal see ***Manchester College of Arts and Technology (MANCAT) v Mr G Smith*** **[2007] UKEAT 0460/06**

299. If the Employer is unable to show that a dismissal was for a potentially fair reason then the dismissal will always be unfair. If that burden is discharged then the Employment Tribunal must go on and apply the test of fairness set out in sub-section 98(4) of the Employment Rights Act 1996 set out above.

300. The correct test is whether the employer acted reasonably, not whether the tribunal would have come to the same decision itself. In many cases there will be a 'range of reasonable responses', so that, provided that the employer acted as a reasonable employer could have acted, the dismissal will be fair: ***Iceland Frozen Foods Ltd v Jones*** **[1982] IRLR 439**. That test recognises that two employers faced with the same circumstances may arrive at different decisions but both of those decisions might be reasonable.

301. The Employment Appeal Tribunal in ***Williams v Compair Maxam Ltd*** **[1982] IRLR 83** gave general guidance to the factors that need to be considered when assessing the fairness of a dismissal by reason of redundancy. It was said:

> *'In law therefore the question we have to decide is whether a reasonable Tribunal could have reached the conclusion that the dismissal of the applicants in this case lay within the range of conduct which a reasonable employer could have adopted. It is accordingly necessary to try to set down in very general terms what a properly instructed Industrial Tribunal would know to be the principles which, in current industrial practice, a reasonable employer would be expected to adopt. This is not a matter on which the chairman of this Appeal Tribunal feels that he can contribute much, since it depends on what industrial practices are currently accepted as being normal and proper. The two lay members of this Appeal Tribunal hold the view that it would be impossible to lay down detailed procedures which all reasonable employers would follow in all circumstances: the fair conduct of dismissals for redundancy must depend on the circumstances of each case. But in their*

experience, there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:

(1) *The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.*

(2) *The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.*

(3) *Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.*

(4) *The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.*

(5) *The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.*

The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim.'

302. When choosing who should be made redundant and who should be retained an employer may need to identify a pool of employees from which the redundancies will be made. There is no requirement that the pool be limited to employees doing the same work see ***Taymech v Ryan*** **[1994] EAT/663/94**. The question will be whether the employer has genuinely applied its' mind to the question and whether its conclusions fell within a band of reasonable options see ***Capita Hartshead Ltd v Byard*** **[2012] IRLR 814**.

303. Whilst the focus of the EAT in ***Williams v Compair Maxam*** was towards collective consultation the importance of consultation in general but also with individual employees was emphasised in ***Mugford v Midland Bank plc*** **1997 ICR 399**, EAT where HHJ Clarke giving the judgment of the tribunal said:

'(1) Where no consultation about redundancy has taken place with either the trade

union or the employee the dismissal will normally be unfair, unless the industrial tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.

(2) Consultation with the trade union over selection criteria does not of itself release the employer from considering with the employee individually his being identified for redundancy.

(3) It will be a question of fact and degree for the industrial tribunal to consider whether consultation with the individual and/or his union was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy.'

304. An employer should take such steps as are reasonable to secure alternative employment for an employee displaced because of redundancy. As a general rule it would be reasonable to provide the employee with such information about the terms and conditions applicable including the financial prospects see ***Fisher v Hoopoe Finance Ltd*** **EAT0043/05.**

Discussion and Conclusions

305. It is necessary for us to address each of the issues that the parties have asked us to decide. As set out above the parties had prepared a list of issues. This was revised at certain points as the Claimant revised his case. Within this section we use headings to identify the issue we are deciding. Those headings include references to paragraph numbers which are the numbered paragraphs in the list of issues.

306. Whilst we have addressed each issue individually in these reasons when making individual decisions we have reminded ourselves of the need to step back and to have regard to all the evidence. We shall not set out that reminder when addressing the individual claims but make it clear that this was our approach.

The direct discrimination claims

The e-mail from Hasan Faruq sent on 4 April 2017 (paragraph1)

307. This claim is the principle claim that was contained in the Claimant's first claim form before it was amended. Ms Palmer in her written submissions made the point that if the list of issues was taken literally the complaint is about the 'provision' of the e-mail i.e. the act of forwarding the e-mail to the Claimant 'FYI'. She disparaged any suggestion that the person who forwarded the e-mail was discriminating on the grounds of race or sex. We did not understand that to reflect the Claimant's case. We understood him to be saying that it was the author of the e-mail who had discriminated against him. Ms Palmer also dealt with that point and there is no prejudice to us dealing with the case as actually presented to us rather than a slavish adherence to the list of issues.

308. There was no dispute that Hasan Faruq sent the e-mail. Ms Palmer sensibly conceded in her written submissions that if the e-mail was discriminatory then the Respondent was liable for Hasan Faruq's conduct pursuant to Section 109 of the Equality Act 2010.

309. The text of Hasan Faruq's e-mail which was drafted by his trade union representative makes an assertion that the Claimant had no relevant experience that would justify his inclusion in the Youth Service Senior Management Team. The Claimant did not disagree with that. He accepts that his 'assimilation' into that team was very surprising. His evidence and the case put on his behalf was that it was completely inappropriate to bring his role within the Youth Service because it created a conflict of interest when he was investigating that department. Indeed, it is his case that his inclusion was a device to remove him from the organisation. We set out below our reasons for rejecting the suggestion that the inclusion of the Claimant in the Youth Service structure was for any improper motives. However, we find that his inclusion in the restructure and his assimilation into roles where he had limited relevant experience was surprising.

310. Hasan Faruq goes on to query whether the Claimant's inclusion in the Youth Service is designed to favour a white male over 'longstanding BME and female staff'. He then says that he believes that this is discriminatory.

311. In the Claimant's ET1 and in the list of issues it is asserted that Hasan Faruq's e-mail said that the Claimant's role ought to have been given to a Bangladeshi man or woman. It does not say that at all. We have set out the full text above.

312. Our starting point was to ask whether the Claimant has established that the contents of the e-mail amounted to a detriment. The test set out in ***Shamoon*** is whether a reasonable employee in the Claimant's position would reasonably conclude that they had been disadvantaged. The e-mail includes the suggestion that the Claimant is being given preferential treatment over BME and female staff. We consider the question of whether this could reasonably cause offence to the Claimant to be fact specific. The Claimant did not want to be included in the Youth Service. He was at risk of redundancy as a consequence. At the same time, he learns that other employees believe that he has been given a leg up because of his race and/or gender. We find that such a suggestion is reasonably capable of causing offence. As such we find that the Claimant has established a detriment.

313. We then considered whether the Claimant has shown that his treatment was 'less favourable'. That requires us to have regard to how a hypothetical comparator would have been treated. We consider that the 'same material circumstances' would be that the comparator has no established role in the Youth Service, that they have the same (lack of) relevant experience and that they had been charged with investigation wrongdoing in that service. That comparator would need to be a race other than the Claimant's (for his race claim) and a female (for his sex discrimination claim).

314. We find that the insertion of this hypothetical comparator into the SMT of the Youth Service would have prompted a similar but not identical reaction. There were good reasons for Hassan Faruq to question the decision that were independent of race and/or gender. First amongst these was the absence of appropriate experience. We think it more likely than not that the investigations that had been carried out also stoked the antagonism. We have concluded that in those circumstances the hypothetical comparator's inclusion in the SMT would not have been readily accepted. That said we accept that resistance to our hypothetical comparator would not have included a reference to her being a 'white male'. We are therefore satisfied that there would have been a difference in the treatment between the Claimant and a hypothetical comparator.

315. Having reached agreement on these points the Tribunal could not agree on the more difficult question of whether that treatment was 'because of' race or sex. We found the point difficult. Ms Palmer in her written submissions argued that the key to understanding why there was no discrimination was that the trigger for the comment was not race or gender but because of the Claimant's lack of qualifications/experience. She went on to say:

> *'If this is discrimination than anyone who raises a grievance and complains that X, a white man, is discriminating against then (say) as a black woman is themselves guilty of discriminating against X on the grounds of sex and race.'*

316. Mr Hoar in his written submissions says:

> *'It is undisputed that the e-mail was sent and received by the Claimant and that Mr McLaughlin was an employee of the Respondent. The Claimant's evidence about the effect on him of this e-mail …has not been challenged. The e-mail would not have been sent but for the Claimant's race.'*

317. Whilst it was said in ***James v Eastleigh Borough Council*** **1990 ICR 554, HL** that the reason for any treatment can usually be discerned by asking whether the treatment would have been meted out 'but for' the protected characteristic later cases of the House of Lords and Supreme Court have suggested that this is simply one way of getting to the proper factual enquiry. In ***R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors*** **2010 IRLR 136, SC** the majority suggested that the proper approach was to ask what were the factual criteria that were determinative for the decision maker. We agreed that on the facts of the case before us that was the proper enquiry.

318. The approach Mr Hoar invites us to adopt is a 'but for' approach. He may be correct to say that but for the Claimant's race and gender the allegation of discrimination benefiting the Claimant would not have been made in the terms that it was. We accept that it is possible that a person might make hurtful allegations of discriminatory treatment because of a person's race or sex. We would also accept that it is possible to make hurtful allegations of discriminatory treatment because that person believes themselves to be the victim of discrimination. We accept that the first situation would be an instance of direct discrimination whereas the second situation is not.

319. We accept Ms Palmer's submission which we have set out above but only up to a point. It is not inherently discriminatory to accuse somebody of discrimination or being the beneficiary of discrimination. We all agreed that a distinction can be drawn between making an allegation of discriminatory conduct because of race or sex (in a sense weaponizing an allegation of discrimination) and one that is made because of wish to draw attention to discrimination, or what is perceived as discrimination. They are two distinct motivations (although a person might be motivated in part by both).

320. Having agreed on the proper test we then disagreed about the outcome of applying that test to the facts of this case. I shall first set out the findings of the majority before setting out the conclusions of Mr O'Callagan who was in the minority.

321. The majority considered that the following matters of fact were of importance:

321.1. the Claimant's role had been established in an ad hoc manner responding to circumstances and Hassan Faruq could quite

reasonably have believed that the Claimant should not have been included in the restructure and thus allowed to compete for jobs which would otherwise have been ringfenced; and

321.2. Hassan Faruq was correct to say that the Claimant had little experience that would justify his inclusion in the restructure. The Claimant did not say otherwise and his assimilation scores of 13% would not normally suggest that he was entitled to a ring-fenced interview process.

321.3. In short, the inclusion of the Claimant in the Youth Service SMT was very surprising. The Claimant shared the same view at the time and part of his case is that he should not have been included in the Youth Service SMT.

322. We consider that Hassan Faruq's e-mail on its face makes a complaint about the possibility of discrimination. Simply because it refers to the race and gender of the Claimant does not mean that it is inherently because of race or sex. We have asked ourselves whether the Claimant has established facts from which we could, in the absence of any explanation from the Respondent, infer that an operative reason for making the complaint was race or sex.

323. The majority did not consider the late adoption of the discrimination allegation coupled with the other circumstances are sufficient that the Tribunal could infer that the allegation was added for discriminatory reasons. We would accept that it was a possibility but it was made clear in ***Madarassy*** a mere possibility is not sufficient to shift the burden of proof.

324. The majority has gone on to consider whether if the burden has shifted to the Respondent it has been discharged by showing that the reason for the treatment was in no sense whatsoever the Claimant's race or sex. Hasan Faruq's e-mail sets out a powerful ostensible reason for his concerns. Those were that the Claimant was being parachuted in to the Youth Service SMT in surprising circumstances given his lack of substantive post and his experience. Even if Hassan Faruq had not, up to the point the suggestion was made, thought that the decision to treat the Claimant as a member of the Youth Service was potentially discriminatory, that does not mean that it follows that that belief was not honestly held when the suggestion was adopted. The allegation of discrimination may have been somewhat paranoid but that does not necessarily mean that it was made for discriminatory reasons.

325. We are conscious that we did not hear from Hassan Faruq but are satisfied that the ostensible reason provided in his e-mail for his dismay at the Claimant's inclusion in the SMT and his suggestion that it might be discriminatory was, to the exclusion of other reasons, his actual reason. If the Claimant was unable to understand why he was included in the SMT then we accept that Hassan Faruq would have been similarly perplexed. We conclude that Hasan Faruq reasons for raising the spectre of discrimination was that he adopted the suggestion of his trade union representative that this was a possible explanation for the surprising conduct. That is a non-discriminatory reason. Accordingly, this complaint is dismissed.

Minority decision on this point

326. Mr O'Callaghan considered the same matters as the majority but he did not accept that the circumstances whereby the Claimant came to be placed within the

Youth Service restructure gave any reasonable basis for raising an allegation of discrimination.

327. Mr O'Callaghan considered that the e-mail was carefully written and that it contained two distinct allegations. The first, that the Claimant was no previous role/experience in the youth service. The second that he was a white male. He considered the reference to the Claimant's race and gender to be opportunistic. He placed weight on the fact that Hassan Faruq had not raised the suggestion but adopted it.

328. In short Mr O'Callaghan considered that Hassan Faruq could not have believed that there had been any discrimination. From this he is prepared to infer that Hassan Faruq acted in bad faith. He considers that in these circumstances, absent any explanation, the burden passed to the Respondent to show that the Claimant's race or gender was in no sense whatsoever the reason for the treatment. Having not heard from Hassan Faruq he would have concluded that the Respondent had not discharged that burden.

A failure by Claire Belgard to provide supervision and PDR to the Claimant (paragraph 3)

329. In our findings above we have accepted that Claire Belgard did not hold regular 1:1 meetings with the Claimant to discuss his work and that she did not complete a 'PDR'. The Claimant says that the reason for this is his race. He relies upon 3 Bangladeshi males managed by Claire Belgard as comparators. We accept that those comparators were managed in a more conventional way than Claire Belgard managed the Claimant.

330. The issue that we need to decide is whether the reason for any difference in treatment was race. Our understanding of the Claimant's case is that he does not say that Claire Belgard had any conscious or subconscious bias against white people. He suggests that her acts, and here omissions, were designed to discourage the Claimant (by forcing him to resign or otherwise) from pursuing his investigations into the predominantly Bangladeshi staffed Youth Service. He says her motivation was to appease that community and that that is 'because of race'. Below when considering other issues, we find that there was no such motivation. Our reasons for doing so need to be read with this paragraph.

331. This is an issue which we find it unnecessary to follow the 2-stage approach to the burden of proof. It is the Respondent's case and it was Claire Belgard's evidence that she was willing to supervise the Claimant and conduct PDRs but he resisted that.

332. We have made findings above that the Claimant was offered meetings with Claire Belgard that he refused or agreed to only on terms that he was accompanied by his Trade Union. We would accept that meetings about his CHADs and his employment status might need to be conducted formally. However, there are instances where electronic invitations to 1:1 meetings and a PDR are not responded to.

333. We have found that the relationship between Claire Belgard and the Claimant was very poor. He viewed her every action with a degree of suspicion. He resented her appointment and he did not welcome her taking on his line management. We have quoted above from an e-mail where he questions Claire Belgard's authority to manage him.

334. We find that we can identify the reasons for the treatment complained of. The first is that the Claimant was, as Clare Belgard says, very reluctant to engage with her. If there is any question why she did not press for meetings then we find that any reluctance was prompted by her view that the Claimant did not want her supervision because of the relationship between them. We find that neither of those reasons had anything to do with the Claimant's race or any desire to inhibit the Claimant's investigations.

Was the Claimant threatened by employees of the Respondent? (Paragraph 4)

335. There are three instances that the Claimant says are direct discrimination because of race. They are also relied upon as instances of harassment. The Claimant relies upon the following three instances:

335.1. On 17 July 2014 threatening behaviour by Dinar Hossain; and

335.2. By an anonymous telephone call on 30 October 2015; and

335.3. On 6 June 2016 by Habibur Rahman following him in a car.

336. It is convenient to deal with the last two instances first. We have accepted that the Claimant received a telephone call on or around 30 October 2015. We have declined to draw an inference that the call was made directly or indirectly by any person for whom the Respondent has liability under Section 109 of the Equality Act 2020. Liability under that section is limited to the acts or omissions of employees and agents. We accept that that is a possibility that an employee was behind the telephone call but we cannot make a finding of unlawful conduct because of a mere possibility. We should say that had we found that this act was one for which the Respondent might be liable There was no evidence of how a comparator would have been treated. The comparator would have to be a person who was engaged in investigating fraud and corruption. We had no basis to infer that that hypothetical person would have been spared the telephone call. The mere fact that the Claimant is white and received the phone call is not sufficient that the burden would pass to the Respondent to explain the reasons for it.

337. We have set out above our findings in respect of what happened on 6 June 2016. Whilst we accept that the Claimant came to believe that the driver of a car that tried to overtake him and followed him towards the workplace was driven by Habibur Rahman we are not satisfied on the balance of probabilities that he was the driver. We placed weight on the early reports of the incident which described the vehicle as 'unidentified'. We had evidence from Habibur Rahman and. On this point, accept his account that he did not own a white Mercedes and that he was not involved in this incident.

338. One matter that was not the subject of submissions is the fact that on the Claimant's case Habibur Rahman was not in the Respondent's employment at the time of the incident. We cannot see how it is said that he carried out this action 'in the course of his employment' for the purposes of Section 109 of the Equality Act 2010. We do not think that his subsequent re-instatement revives the contract for that purpose.

339. In respect of the earliest incident, on the evidence before us, we have found that the incident happened as alleged. We have therefore accepted that Dinar Hossain pinched his skin and asked, 'is it because of this'. We also accept, on the evidence

before us, that the Claimant was pressed for information and that a suggestion was made that Dinar Hossain had the ear of the Mayor. We would not agree that those matters amounted to a threat to the Claimant's safety.

340. We would refer the reader to our analysis of Hasan Faruq's e-mail where he alleges that there is discrimination behind the decision to place the Claimant in the Youth Service SMT. We held that not every allegation or complaint of discrimination is an act of discrimination. It is necessary that the reason for treatment is influenced by race.

341. We are very conscious that the events took place 2 years and 11 months before the Claimant presented his claim. Whilst we are jumping ahead we have not upheld any of the Claimant's allegations under the Equality Act 2010. This means that it is not open to the Claimant to say that this action amounted to part of an act extending over a period. Accordingly, the Tribunal will only have jurisdiction to entertain this case if it is just and equitable to do so. We have set out above the law and the proper approach to the question of whether it is just and equitable to extend time.

342. We accept that we have heard evidence and made some findings of fact based upon that evidence. We have stated and repeat here that that finding is made without hearing from Dinar Hossain. The issue we have not resolved is whether the reason for any treatment was unlawful. That involves a finding as to the conscious or subconscious reasons of Dinar Hossain who we have not heard from. We asked ourselves whether it would be just and equitable to proceed to make those findings. We decided that it would not be just and equitable to do so.

343. We have had regard to the following matters:

343.1. The Claimant did not provide a reason why he could not have brought his claim any earlier. We note that he first raised the possibility of bringing an employment claim in 2016 but did not do so at that stage. We accept that this is not determinative but it is relevant see ***Abertawe Bro Morgannwg University Local Health Board v Morgan***

343.2. The Claimant is asking for an extension of time of over 2 ½ years.

343.3. We accept that if we refuse to extend time for the purposes of this claim the Claimant will lose the opportunity of arguing that the reason for the treatment was race and will suffer the prejudice of having this claim dismissed.

343.4. The prejudice to the Respondent is that it is having to deal with historic claims where findings on matters as subtle as conscious or subconscious bias must be decided.

343.5. We accept that it would not have been impossible for the Respondent to trace Dinar Hossain and ask him or obtain an order compelling him to give evidence. Dinar Hossain left the Respondent's employment some years ago. He was not dismissed but the circumstances of his departure were not amicable. We fully understand the reluctance to call such a witness.

343.6. The Respondent took the point in its ET3 that this part of the claim

was presented so late that the Tribunal should not entertain it.

344. Balancing all the factors above we are not satisfied that it would be just and equitable (fair) to extend time by a period of over 2 ½ years. The balance of any prejudice favours the Respondent who was entitled to believe that the failure of the Claimant to bring a claim earlier meant that it could consider the matter closed.

Did the Respondent directly discriminate against the Claimant because of race and/or sex by failing to take steps to protect him? (Paragraph 5).

345. The Claimant complains of 4 matters set out at sub paragraphs (5)(b)(i to iv) of the agreed list of issues as being acts of direct discrimination on the grounds of race and/or sex. These are:

345.1. The delay in providing the Claimant with a car parking permit; and

345.2. The failure to complete risk assessments; and

345.3. Re-instating Habibur Rahman on 14 November 2016; and

345.4. Failing to investigate the threats made against the Claimant. That refers to the matters set out above (the allegations under Paragraph 4 of the List of issues).

The delay in providing the Claimant with a car parking permit

346. Our findings above are that the need for the Claimant to be allowed to park at work was first identified during the risk assessment that was completed after the Claimant reported a telephone call to his home in October 2015. Whilst he could park at the Respondent's offices he was not actually given a parking permit until Claire Belgard revisited the risk assessment process in June 2017. Accordingly, we accept the Claimant's case that there was about a 22-month delay in providing him with a permit.

347. We have found above that Stephen Halsey's response to learning of threats to the Claimant was to concur with Andy Bamber that a risk assessment was undertaken. On 4 January 2016 Andy Bamber agreed to provide a secure parking permit. Authority was provided by Steve Halsey in March 2016. But the Claimant had been permitted to use the car park. We see no reluctance at this stage to protect the Claimant from any reprisals for the work that he was doing. The Claimant expressly withdrew all claims against Andy Bamber declining to assert that any of his acts or omissions were because of race.

348. In May 2016 after Councillor Saunders read Clare Belgard's briefing note at a council meeting a further risk assessment was undertaken. We accept the Claimant's case that Rachael Sagegh who prepared a draft risk assessment lacked experience. By 5 August 2016 a more comprehensive risk assessment was undertaken which made several recommendations including installing an alarm system at the Claimant's home which was carried out. The risk assessment did say that the Claimant should be given secure parking. The Claimant rightly points out that Lorraine Walsh was soon given a parking permit when he was not. That state of affairs continued until Claire Belgard undertook a review of the risk assessment. We accept her evidence that she was told that a parking permit had been issued but had not been collected. It seems that a subsequent request for a new permit was refused by the Head of Children's

Services. There is no information about whether she knew about the risk assessment.

349. We would accept that the Claimant has demonstrated a difference in the treatment between himself and Lorraine Walsh.

350. We can resolve this part of the claim by making a finding as to the reason for the treatment. Here as in many other instances we find that the administration of the Respondent is poor. It is clear that all of the recommendations of the second risk assessment were agreed but some were not actioned. Some costly actions were taken. That substantially undermines the Claimant's case that there was an indifference to his safety. Additionally, it was known that the Claimant was using the car park. Given that there is no basis to infer that the failure to provide a parking permit was intended to expose the Claimant to a risk.

351. We are entirely satisfied that the reason that the Claimant was not provided with a parking permit was the administrative incompetence of the Respondent. There had been a clear intention to issue the permit and an understanding that the Claimant should be allowed to use the secure parking but that it was not actioned. We find that that reason had nothing whatsoever to do with the race and/or sex of the Claimant.

<u>The failure to complete risk assessments</u>

352. This concerns much the same territory as set out above. The Claimant is correct to say that some of the recommendations made in the risk assessments were not actioned or were only partially actioned. In 2017 Claire Belgard noted that the outstanding actions included a failure to report matters to the police, a failure to provide a personal alarm, the failure to provide a car parking permit and a failure to provide personal safety training. She made the perfectly reasonable decision that reporting matters to the police at that stage would be futile. She arranged for the alarm and car park permit. She and the Claimant disagreed on a safety training provider. The Claimant wanted to be trained by the Police. We accept that Claire Belgard honestly believed that the Police would not offer any training. We find that her reasons for not agreeing with the Claimant were perfectly rational.

353. Again, it is appropriate to deal with the suggestion that these omissions were acts of discrimination by the Respondent's employees. We are entirely satisfied that they were not. As we have set out above the steps were agreed at senior management level but then partially implemented. We find that reason that the steps were not implemented was administrative oversight. In the case of the matters left 'uncompleted' by Claire Belgard were because she considered it futile to report matters to the police at that stage and whilst she was willing to fund personal safety training the Claimant would not agree who should do this. None of these reasons have anything to do with the race of sex of the Claimant.

<u>Re-instating Habibur Rahman on 14 November 2016</u>

354. Habibur Rahman was reinstated following an appeal to a Panel of Councillors under the Respondent's appeal procedure. The reasons given for their decision included the fact that Habibur Rahman had put forward the names of witnesses who the Claimant had failed to speak to. As a matter of fact, that is correct. The Claimant's evidence was that he had enough evidence to show guilt and that people put forward as witnesses were suspects. We consider that the appeal panel could quite rationally have decided that there was a failure to carry out a reasonable investigation. It is trite law that it is the duty of an investigator in disciplinary proceedings to investigate

impartially. That will include speaking to witnesses who might have relevant information and looking at lines of enquiry that point to innocence as well as guilt. The Appeal Panel could have looked at any evidence for themselves but did not do so. The secondary reasons relating to overclaiming wages included the fact that they found that the forms were misleading. It might be thought that Habib Rahman was fortunate but the reasons put forward for his reinstatement were rational.

355. There is no evidence whatsoever that would allow us to conclude that if the Claimant was not a white male the treatment of Habibur Rahman would have been any different. The Respondent was obliged to offer an appeal and was obliged to reinstate Habibur Rahman when the appeal was upheld. There is not a shred of evidence that would support the contention that this was for discriminatory reasons. We do not have to rely upon the burden of proof provisions. It is clear to us that the reasons for reinstating Habibur Rahman were those given in the outcome letter of the disciplinary panel. The suggestion that this was done because of any conscious or subconscious discriminatory motivation is fanciful.

Failing to investigate the threats made against the Claimant

356. The 'threats' refers to the three allegations set out at paragraph 4 of the list of issues. In respect of the incident on 17 July 2014 when Dinar Hossain spoke to the Claimant about his investigations. The Claimant did report the matter to the Respondent although and to the police. The Claimant did not ask for anything to be done about this and nothing was. At the time the person responsible was Andy Bamber. The Claimant expressly withdrew his allegations that Andy Bamber acted from discriminatory reasons. Andy Bamber gave evidence before us that he suspected that Dinar Hossain had been responsible for removing files from his office. That did not result in disciplinary proceedings either.

357. The Claimant reported the anonymous telephone call. That prompted the risk assessment process. It would have been quite impossible to have investigated that matter any further.

358. Whilst the Claimant reported being followed to work by a car he did not allege that it was Habibur Rahman driving until very much later.

359. In the absence of any grievance or request that a disciplinary investigation is commenced we consider it entirely unsurprising that the matters were not taken any further than they were.

360. Having regard to these facts, and all the other facts we have found, we find that the Claimant has not proven facts from which we could infer that the reason for these omissions was the Claimant's race or sex.

Did the Respondent's Managers fail to acknowledge or investigate the Claimant's CHAD complaints? (Paragraph 6)

361. The Claimant submitted his first CHAD twice once in April 2016 and then again on 6 June 2016. The Claimant says that there was a failure to act on these complaints and that this amounted to direct race discrimination. The Claimant submitted his second Chad in September 2016. He says that there was a failure to deal with it and that that is direct discrimination because of sex and/or race.

362. It is strictly speaking incorrect to suggest that the Claimant's first CHAD was not

acknowledged. The Claimant's first CHAD was sent to Andy Bamber. We have set out above our findings that Andy Bamber sought to dissuade the Claimant from pursuing his complaint. Attempts were made to reach an informal resolution but were incomplete at the point when Andy Bamber took sick leave never to return to the Respondent.

363. The Claimant expressly withdrew all allegations that Andy Bamber discriminated against him. The formal policy for dealing with a CHAD does say that an option for the manager receiving any CHAD complaint is to conciliate where both parties agree it is acceptable. Whether he was aware of the policy or not that was what Andy Bamber tried to do.

364. What is clearly unacceptable was that the matter was simply left when Andy Bamber fell ill. The Claimant asked Karen Davis on 28 June 2016 what had happened to his complaint. What he received was a holding response and a promise that that would be picked up by a senior manager. In fact, the matter was never progressed.

365. The Claimant's second CHAD complaint was made on 30 September 2016. That was his complaint against Andy Bamber and Karen Davis. We must say it is very difficult to see how the Claimant's complaints could properly be regarded as 'harassment' or 'discrimination'. His principle complaint was that he had been told that his contract was for a fixed duration. That might have prompted a grievance but it was somewhat short of harassment in ordinary parlance. It is again not correct to say that the CHAD was not acknowledged. Mala Jones did write to the Claimant setting out her understanding of the contractual position. However, the formal policy was not followed in a number of material respects. The policy suggests that an investigator will be appointed within 5 days. That was not done. In December Claire Belgard offered to deal with any grievances but the Claimant declined. On 5 December 2019 an offer to appoint Somen Bannerjee is made but the Claimant objected. Mark Baignet was then appointed some 8 weeks after the complaint was first made. We would accept that the Claimant's irritation was genuine and reasonable and that such a delay is very poor practice particularly when it came to light that the first CHAD process had never been completed.

366. Having criticised the Respondent we turn to what happened thereafter. From December onwards Mark Keeble, who was to assist Mark Baignet, met with the Claimant and his trade union representative and corresponded on every occasion making it clear that whether it was late in the day the Respondent was prepared to investigate the Claimant's CHAD complaints. It seems that the Claimant's Trade Union advisor took the standpoint that the respondent was as she said, 'out of time' for dealing with the complaints. In our view this was counterproductive. The fact that the Respondent had delayed did not mean that a resolution could not have been found. We find this approach unnecessarily aggressive and in the end, it resulted in the Claimant's CHAD complaints never being formally addressed.

367. We would accept that there was unacceptable delay in dealing with the two complaints from the time they were made up to early December 2016 when there was an offer to deal with them on a formal basis. The issue for us is whether that amounted to less favourable treatment because of race.

368. The Claimant has referred to Bangladeshi comparators who he says also brought CHAD complaints and whose complaints were investigated. We did not hear much evidence about them but we are prepared to assume that on some occasions

the Respondent has followed its own policies although the evidence before us is that the Respondent commonly failed to adhere to timescales. We do not know anything about the subject matter of those complaints.

369. The Claimant suggests that the failure to deal with his initial CHAD (submitted twice) was because of race. He says that the failure to deal with his second CHAD was because of sex and/or race.

370. We deal with the matter firstly by asking whether the Claimant has, absent any explanation from the Respondent proved facts from which we could infer discrimination. We do not consider that we could infer that the reason for the Claimant's treatment was race in respect of the first CHAD or sex and/or race in respect of the second. We do not consider that there is any basis to do so.

371. If we are wrong about that then we consider we can make positive findings as to the reasons for the treatment.

372. In respect of the first CHAD the initial period of delay was because Andy Bamber was trying to sort it out informally. Thereafter there was delay when he fell ill. We are satisfied that the reason that the matter was not then picked up was that nobody was asked by HR to deal with the matter. Whilst this is highly unsatisfactory it is a reason that has nothing to do with race or sex.

373. There were efforts to deal with the Claimant's second CHAD but the formal policy was not followed for over 2 months. The initial efforts were focussed on the Respondent attempting to explain why the Claimant had been told he was on a fixed term contract. It would be unfair to suggest that the Claimant's CHADs were ignored. Late in the day the Respondent was willing to deal with all matters formally but by then the Claimant would not participate. We find that the reason for the delay was that the Respondent's HR team were trying to convince the Claimant by correspondence that their position was correct. It was clearly hoped that giving the Claimant an explanation would put the issue to rest. That was probably misguided. It did not follow the relevant policy but it is a reason wholly unrelated to race or sex.

374. We note that in the list of issues the Claimant suggests that there was a desire by the Respondent's HR team to protect Karen Davis. That is only a little different to our own conclusion that the desire of Mala Jones was to smooth the feathers that Karen Davis had ruffled. The difficulty for the Claimant is that that is not a discriminatory reason for the treatment afforded to him.

375. We do not condone the delays by the Respondent. As they have discovered in this litigation such delays fuel resentment and suspicion. They ought to have recognised that there had been poor communication with the Claimant and reacted far more swiftly. The Claimant has a reasonable basis for feeling disappointed in his employers.

<u>Attempting to force the Claimant out of the organisation (paragraph 7)</u>

376. The final version of the agreed list of issues sets out allegations of acts said to have been calculated to force the Claimant to leave his employment. There are sub paragraphs (a) to (f) with sub-sub paragraphs (b)(i) to (viii). Some matters are said to be sex discrimination alone and others sex and/or race discrimination. In some instances, the allegations repeat the same facts relied upon in other claims. To avoid duplication, we simply cross refer to our conclusions on those matters where it is

appropriate to do so.

Claire Belgard 'downgrading' the Claimant's job description in July 2016. (paragraph 7(a)

377. This allegation suggests that when Claire Belgard reviewed the Claimant's job description in 2016 she proposed amendments which the Claimant says, 'downgraded his role'. We think it useful to summarise the events running up to that.

378. The Claimant started his new role in mid-2014. When he did so he ought to have been given a statement updating the terms and conditions that applied to him. That would have included a statement of his role and details about the term of the contract of the length of any notice period. This was not done. The responsibility for that must be shared between Andy Bamber and the Respondent's HR Department. It is clear that the arrangements that were reached were ad-hoc. There was clearly an intention to put the matter on a formal basis and that was the reason that Andy Bamber asked the Claimant to prepare a job description. With his usual thoroughness, after some short delay, that is what the Claimant did. He had little or no feedback in respect of that job description.

379. What ought to have happened was that that job description ought to have been subjected to a job evaluation process. From that the correct pay grade would have been assigned. This was not completed. For nearly 2 years the team working on the investigation of the Youth Service was limited to the Claimant and Lorraine Walsh who both reported to Andy Bamber and up to Steve Halsley. The transfer of the Youth Service into Children's services brought change. Ronke Martins-Taylor was brought in to oversee that organisational change and at much the same time Claire Belgard was brought in as interim head of the Youth Service to replace Dinar Hossain.

380. It was envisaged that both Ronke Martins-Taylor and Claire Belgard would have a role in the investigations into the Youth Service and the Youth Service Project Group was established at much the same time as Claire Belgard reviewed the Claimant's job description.

381. Whilst Andy Bamber gave evidence that he accepted that the Job Description drafted by the Claimant broadly reflected his role he was commenting upon the role as it had been when he fell ill. The job description amended by Claire Belgard includes the fact that the Claimant is reporting to her and it refers to the 'youth service investigations panel' which became the YSPG.

382. We find that the Claimant had been very much at the vanguard of the investigations into the Youth Service. He had the ear of the Metropolitan Police and of the Commissioners when necessary. He had worked closely with external auditors. He had formed a view, not unreasonably, that the Youth Service had been appallingly mismanaged and was rife with fraud. He may sometimes have been overzealous but it is understandable why that was the case. In short, the project of investigating the Youth Service was very much his baby.

383. The transfer of his line management into the youth service was something he regarded as inappropriate. Mr Hoar cross examined a number of witnesses putting to each the suggestion that the Claimant could not have carried out an 'independent' investigation of the Youth Service if he reported to managers in that service. Indeed, we accept that some witnesses agreed with that proposition. However, we did not find that they gave any satisfactory reasons for doing so. We simply do not understand

why that would be the case. Unless the Claimant was investigating the managers, he reported to there is no reason why he could not carry out a fair and proper investigation of the other staff of the Youth Service. The Claimant was seeing difficulties where none existed.

384. The establishment of the YSPG was expressly designed to provide oversight into the investigations and to plough through the backlog. There was a high degree of transparency. Ronke Martins-Taylor headed the group but there were representatives from the legal department and internal audit. The minutes show that she reported all progress to the Commissioners. The minutes were transparent and circulated to all.

385. The Claimant did not welcome this change. He felt, with some justification, that others were not as robust as he was prepared to be. His work was to be shared with others.

386. We find that the job description drafted by Clare Belgard was intended as being an accurate description of the work that the Claimant was expected to do going forward. It may not have been as wide as his historic role but we consider that Claire Belgard made an honest attempt to describe the Claimant's current duties as she saw them. We have set out above the fact that when she completed the job description she suggested that some thought was given to how it could be presented in the best possible light for the purposes of evaluation.

387. We would accept that the revisions to the job description could be seen as downgrading the Claimant's role from the role he undertook prior to April 2016. We accept that the Claimant thought his role was being diluted and in a sense, it was. We will proceed on the basis that that amounted to a detriment.

388. We are invited to find that this was a step taken with the intention of forcing the Claimant to leave. It is said that this treatment was because of race. We do not need to grapple with the burden of proof provisions. We assume that the Respondent bears the burden of showing that the reason for this treatment was nothing to do with race. The Respondent has satisfied us that that was the case. We accept Claire Belgard's evidence that her redrafting of the Claimant's job description was her honest attempt to describe the Claimant's role in the service going forward. A considerable number of changes had been made or were envisaged. The job description reflects that. There is no evidence that she was influenced by the Claimant's race. A number of the complaints below cover the same ground and our reasons here should be considered with our reasons in respect of those allegations.

<u>Preventing the Claimant from carrying out his role Paragraph 7(b)</u>

389. The Claimant relies upon 8 matters each of which he says is an act of sex discrimination. We will set out our conclusions on each point under sub-headings. These allegations all relate to the work of the Claimant within the Youth Service Project Group.

390. In his written submissions Mr Hoar did not make any reference to the allegations under these sub-paragraphs being treatment because of sex. In Ms Palmer's written submissions, she asserts that there was a failure to put any case of sex discrimination in these respects to Claire Belgard or Ronke Martins-Taylor. We do not need to deal with that suggestion. What we note is that at paragraph 103 of his written submissions Mr Hoar says:

> *'It was put to Ms Belgard and Ms Martins Taylor that the obstruction and deprivation of work was designed to create the impression that there was no organisational reason for the Claimant's work when in fact there was a great need for it; and that there was a political reason to show (falsely) that the Council had resolved the problems of the last administration.'*

The question of whether the Claimant's role was discarded as politically expedient is a live issue for the unfair dismissal claim (although below we do not accept that). However, the submission loses sight of the claim that had been advanced which is that their acts and omissions were individual acts of sex discrimination. If political expediency was the only reason for the acts and omissions that may be unfair and may certainly be morally questionable but it would not be sex discrimination. We set out our reasons in respect of the individual allegations below.

Giving or reassigning tasks on which he had led to female managers i.e. DBS referrals (Sub Paragraph 7(b)(i))

391. The Claimant had by 2015 formed the view that the Respondent was not paying sufficient attention to making DBS referrals when individuals were dismissed or resigned. We find that his concerns were genuine and shared by others. There was an apparent willingness to accept applications for voluntary severance from people under investigation. Dinar Hossain would be one example (we stress that we have no idea whether any investigation into him had any foundation). The Claimant was undoubtedly correct when he says that consideration ought to have been given to making a DBS referral in such situations.

392. We have set out above that the Claimant had prepared a paper giving guidance on the situations that would have merited a DBS referral. One of the Claimant's complaints was that he was not credited with this work. We have quoted extensively from the minutes of the YSPG meeting where the proper approach was discussed. We find that there was reasoned disagreement. The minutes expressly acknowledge the competing voices. A decision is taken that each case would be considered on its merits. That was delegated to Claire Belgard in association with HR. That conflicted with the Claimant's views that a referral should be made in all cases where a person left (by whatever means) after an investigation. We believe that the Claimant was probably being overzealous and that the approach adopted was probably correct. We do not have to decide the point. What we must decide is whether the reason was to force the Claimant out because of sex.

393. Again, we do not have to rely on the burden of proof provisions. The reason that the issue of referrals to the DBS was delegated to Claire Belgard was firstly that the YSPB had been established to complete and give oversight to the investigations. We have noted above that that meant that some matters within the Claimant's responsibility were now shared. It was the YSPG that debated and decided on the process going forward. We find that it settled on the idea of case by case reviews taking place for sound reasons or at least reasons which reflected beliefs honestly held. Once that decision was taken it was appropriate to delegate that task to Clare Belgard. We entirely reject the suggestion that the Claimant's sex had any part in the decision-making process.

Excluding him from important meetings (Sub Paragraph 7(b)(ii))

394. The Claimant has given two examples of meetings he says he was excluded

from. The first was the first meeting of the YSPG and the second the meeting that took place on 28 September 2016.

395. As we set out above it is clear from the minutes of the YSPG that it was always intended that the Claimant would attend the YSPG meetings and contribute to the work done. As such there would have been little purpose excluding him from the first meeting as a way of 'forcing him out'. The Respondent's explanation is that the first meeting was essentially used to set up the group rather than to deal with the operational matters involved in the investigations. In our view that provides a complete explanation of why the Claimant was not asked to attend the first meeting but then was asked to contribute to all subsequent meetings.

396. The Claimant was not asked to attend the meeting with the police on 28 September 2018. His original job description suggested that he was to be the sole point of contact. He was therefore very disappointed when he did not attend that meeting. Ronke Martins Taylor says that the Claimant was left of the invitation list by the person organising the meeting. In short, she is saying that little thought was given to that. The Claimant says, and we accept, that he asked why he had not been invited and was told that the meeting was 'strategic'. We have found above that Claire Belgard took the time to relay what had been discussed to the Claimant. We find that the reason that the Claimant was not invited to that meeting was essentially inadvertent as suggested by the Respondent. However, this was a consequence of the fact that following the establishment of the YSPG the Claimant was no longer the only 'go to person' he was one of many sharing the same work and he was not as senior as others.

397. We have made findings of fact about the reason the Claimant was not invited to these two meetings. Whilst we reject the pejorative expression 'excluded' we would accept that the Claimant would be disappointed as each act or omission reflected that his responsibility had been diluted. He could reasonably hold that view and that means that he has established he was subjected to a detriment.

398. We do not need to grapple with the issue of comparators or ask whether the burden of proof has transferred to the Respondent. We shall assume that it has. We reject entirely the suggestion that the Claimant was not asked to attend these meetings 'to force him out'. We have set out above the reasons why the Claimant was treated as he was. They are nothing whatsoever to do with sex.

<u>Reporting his work as work done by others (Sub Paragraph 7(b)(iii))</u>

399. The Claimant had undertaken a number of pieces of work and produced briefing papers and reports. There is at least one occasion where the minutes of the YSPG show the claimant asking for a correction to be made showing him as the author of a report. The correction was made. In the same theme the Claimant says that his work would be presented by others to more senior managers.

400. We rely on our conclusions above that the YSPG operated in a very different way to the previous arrangements. Whilst the Claimant may not have liked it he was no as central a figure as he had been. We accept that not having one's work acknowledged could reasonably be perceived as a detriment.

401. We can deal with the reason for that treatment. We find that any failure to acknowledge the Claimant as the author of his own work was inadvertent. We note that one mistake was swiftly corrected. We find that the fact that the Claimant's work

was presented by others was simply a consequence of the Claimant's role within the YSPG being less prominent than had previously been the case. We completely reject the suggestion that these actions were taken to drive the Claimant out of the organisation. There is no evidence to support that. We do not need to deal with the burden of proof and assume that the Respondent bears that burden. The reasons that we have identified above have nothing whatsoever to do with the Claimant's sex.

Being 'starved of work' (Sub Paragraph 7(b)(iv))

402. In support of this allegation the Claimant points to the fact that at the meeting of the YSPG that took place on 2 March 2017 the remaining 9 investigations were allocated to Linda Baker.

403. The Claimant criticises the appointment of Linda Baker. He has said that the Respondent could have continued to use Lorraine Walsh who had experience of investigations. Lorraine Walsh had a substantive post in the Community Safety Partnership. Her management had not transferred to the Youth Service and she had duties outside the investigation work. There is no suggestion made by the Claimant that Linda Baker was incompetent. His point is that he was more experienced. We accept that.

404. We note that in the minutes of the meeting of 2 March 2017 the Claimant is not recorded as complaining about the allocation of work. Claire Belgard tells us, and we accept, that allocation of work by the YSPG was done with regard to capacity. She says in her witness statement, and we accept that she asked the Claimant about his capacity and was told that he was busy. That is consistent with the volume of work that the Claimant actually produced.

405. We are satisfied that the Claimant was not ''starved of work'. Indeed, he was asked to do additional tasks throughout 2017. We do not find that the Claimant has established anything he could reasonably perceive as a detriment. If we are wrong about that we accept Claire Belgard's evidence that the reason for the Claimant being assigned the number of cases he worked on was because it was honestly believed that he was working to his full capacity whereas Linda Baker was not. We do not have to deal with the burden of proof and assume that fell on the Respondent. We are satisfied that capacity or a belief in capacity' was the only factor in the allocation of work to the Claimant and that has nothing whatsoever to do with sex.

Failing to implement safety measures (Sub Paragraph 7(b)(v))

406. This allegation completely overlaps with the allegations dealt with above under paragraph 5 of the list of issues. We repeat the findings we have made above including our findings as to the reasons why some mitigating steps were not taken or delayed.

407. The only difference in the way that the allegations are put is that here there is a suggestion that the omissions were made to force the Claimant out. We find no evidence whatsoever to support that. It is correct that there were some delays in implementing mitigating measures but these were always approved at senior management level. Claire Belgard approved some measures despite her scepticism of the necessity. We have found that the delays were errors of administration as such they were not personal to the Claimant his race or his sex.

408. For the reasons set out when discussing these matters above we find that the

reasons for any failures were nothing to do with sex.

Belittling and ridiculing the Claimant in meetings (Sub Paragraph 7(b)(vi))

409. We have set out our findings above in respect of this. We have not accepted that the Claimant has shown that it is more likely than not that there was any act of belittlement or that he was ridiculed. We accept that there were occasions when the YSPG did not agree with him. We see from the minutes that there are some occasions where a conclusion is reached that there is insufficient evidence to bring disciplinary action against Youth Service members. We have dealt with other matters where the members of the YSPG disagreed. There is insufficient evidence for us to conclude that those matters were anything other than reasonable disagreement.

410. Having rejected the Claimant's factual case we find that he has not suffered any detriment. This claim fails at that stage.

Preventing him from contributing to FOI requests (Sub Paragraph 7(b)(vii))

411. We have set out our findings above in respect of this issue. We have not accepted that the Claimant was excluded or side-lined as he has suggested. Without criticising the Claimant, we find that this complaint evidences the fact that the Claimant resented the involvement of others in territory where he had done so much good work.

412. At this stage we find it unremarkable that FOI requests are not dealt with exclusively by the Claimant or that not every suggestion he made was adopted. We do not find that he had any reasonable grounds for complaint. We do not find that there is any evidence to suggest that his input into FOI requests was not welcomed to paint a misleading picture.

413. Having rejected the Claimant's factual case, it is unnecessary for us to consider whether any treatment was because of race or sex. For completeness we would have said that there is nothing in the evidence on this point or on the evidence as a whole (excluding any explanation from the Respondent) that would have enabled us to conclude that we could infer discrimination. So even if we had found that the Claimant was being side-lined, which we have not, his claim would have failed in any event.

Failing to schedule disciplinary hearings in respect of reports filed by the Claimant (Sub Paragraph 7(b)(viii))

414. In his witness statement and the documents referred to the Claimant has identified two matters where he completed investigatory reports but where no disciplinary hearing took place before his dismissal took effect. The Claimant had prepared 2 draft reports and sent them to the relevant manager on 8 June 2017. He was thanked for his hard work. The relevant manager indicated that the recommendations in the report had been accepted and that disciplinary meetings would be organised. It then seems that the Claimant was informed of a delay and told that the reason for this was that HR were revising the disciplinary policy with retrospective effect. It is not clear from the evidence whether those matters were pursued or if not why not. We shall assume that they were not.

415. The only evidence from the Respondent comes from Clare Belgard who states that it was a matter for the YSPG which cases to take forward.

416. We are prepared to assume that the Claimant was disappointed that his work in

respect of these two cases has not been progressed. We consider that could reasonably be regarded as a detriment. The issue is then whether the reason for the treatment was because of sex. The appropriate hypothetical comparator would be a female investigator. We considered whether in the absence of an explanation from the Respondent the Claimant had established facts from which we could infer that he had been treated differently because of sex. We had regard to all the evidence and we conclude that there is nothing that would give rise to an inference of sex discrimination. The burden therefore does not pass to the Respondent to explain the reason for this.

417. Whilst we do not need to make any findings why these matters had not been progressed we had no reason to disbelieve the reasons given to the Claimant that there was a revision to the Disciplinary Policy. We have commented elsewhere that some (but not all) of the actions within the HR Department were extremely sluggish.

Reinstating Habibur Rahman (sub-paragraph 7(c))

418. We have dealt with the reinstatement of Habibur Rahman when considering the same allegation under paragraph 5 of the list of issues. There is a complete overlap between these two claims (they are the same). We dismiss this claim for the reasons given above.

Placing the Claimant within the Youth Service (sub-paragraph 7(d))

419. There was no dispute that the Claimant was included in the Youth Service for the purposes of the restructure. The Claimant says that this is an act of sex or race discrimination. We deal with this decision when looking at the unfair dismissal claim and our reasons below should be read into this section.

420. Mr Hoar argues that it was fundamentally inappropriate to include the Claimant as a member of the Youth Service as it compromised his independence. We have set out above that we do not agree. Whilst we would accept that it might be inappropriate for a person to have to investigate their own superiors this was not what the Claimant was doing. We have noted that Mr Hoar's cross examination elicited agreement for this stance but we do not think any good reasons were given. It is common for allegations of wrongdoing to be investigated by say a line manager. That does not automatically give rise to a conflict of interest.

421. The Respondent's case is that the Claimant was included in the youth service restructure following legal advice to that effect. We have accepted that that was the reason why Ronke Martins-Taylor included the Claimant in the restructure and assimilation exercise.

422. As we set out below. At the time the restructure was proposed the YSPG had been running for 6 months. The vast majority of what the Claimant was required to do concerned the work of the YSPG. A decision had been made to deal with all outstanding investigations. The YSPG was always intended to be short term. It was formed as its name suggests as 'a project'. By the time the restructure was proposed the work was expected to be complete in the foreseeable future. The Claimant was given a 3-month extension to his contract. There was no intention to have a permanent position of investigator within the new structure. We have found below that there was a genuine redundancy situation. When the legal advice was given to Ronke Martins-Taylor that included the same analysis as we have made.

423. The Respondent says that including the Claimant in the restructure was benevolent. We find that whether that decision actually benefitted the Claimant the intention was that it should. Or at least it would be a prudent step to avoid any complaints. As a matter of fact, it postponed his dismissal for nearly 12 months.

424. Once a decision had been taken that the role of investigator to the YSPG was coming to an end the Claimant would either have been given notice or included in the Youth Service for the purposes of the restructure. As we have found above the Claimant was given the option of being dismissed rather then be included in the restructure but he declined.

425. As it transpired the Claimant's inclusion in the Youth Service restructure provoked hostility and he did not benefit from the assimilation exercise other than that gave him about a year's grace. We would accept that the hostility that the Claimant faced was reasonably foreseeable. We would therefore accept that the Claimant suffered a detriment in this respect.

426. An argument made by Mr Hoar is that it was also foreseeable that the Claimant would not benefit from the assimilation process. He placed weight on the fact that the overlap between the Claimant's role and the nearest positions in the Youth Service was just 13%. He argued that nobody would honestly believe that the Claimant had the remotest possibility of obtaining a position in the Youth Service. We agree that the Claimant's chances of obtaining a post via the assimilation route were very slim. We do not think that the Claimant believed he could not do the Hub Operations Manager role. Nor do we. His difficulty was, as he recognised, that others were better qualified and unless they dropped out his chances were slim. That said the Claimant did not have to apply for this position and did not suffer from any particular disadvantage by doing so. We would not have found that applying for a post and attending an interview amounted to a detriment.

427. Having found there is a detriment we must deal with the reasons for the treatment. We do not need to rely on the burden of proof provisions and assume that the Respondent needs to satisfy us that the decision was in no sense whatsoever because of race or sex.

428. We find that the reasons for the decision are those set out in the legal advice. These were that it was believed that the Claimant's work was done for the Youth Service and was time limited. It followed that his role was redundant. It was in those circumstances that he was included in the restructure. We find that those reasons have nothing whatsoever to do with the Claimant's race or sex. Looking for a role for the Claimant within the Youth Service turned out to be futile but the advice was that to avoid any complaint he should be given the opportunity of trying. We find that that decision was motivated by a concern that the Claimant would complain if he was not included in the restructure. Given that he had been reporting to managers in the Youth Service for some time and that he was working on a project for the Youth Service it is easy to see why that decision was arrived at.

429. For the reasons above we do not find that the decision to include the Claimant in the Youth Service was influenced in any way by the Claimant's race or sex.

<u>Assimilating the Claimant to the Hub Operations Manager post (sub-paragraph 7(e))</u>

430. This allegation raised similar considerations to the allegation above and our reasons and findings set out above should be read into this paragraph.

431. As set out in the Claimant's claim form and witness statement it appeared that the Claimant was complaining or being assimilated to the Hub Operations Manager role rather than the higher graded Head of Youth Service role.

432. It is common ground that the Claimant was assimilated to the Hub Operations Manager post. It would have been obvious to Ronke Martins-Taylor that he not been assimilated to any role then he would have been given notice and placed in the reallocation pool. In his witness statement, the Claimant speculates that the reason for this was to fire up the three other potential candidates for that role (the Claimant mentions that they were Bangladeshi). He goes further and suggests that this was in order to direct ire that towards him.

433. Ronke Martins-Taylor explains why she assimilated the Claimant to the Hub Operations Manager role in her witness statement. She gives cogent reasons for not assimilating the Claimant to the Head of Service role, the Claimant was patently underqualified. We accept that she had a genuine belief that the Claimant was unqualified for that role.

434. Insofar as this allegation is intended as a complaint that the decision not to assimilate the Claimant to the Head of Youth Service role was an act of direct discrimination we reject it. We have some doubt whether formulated this way the Claimant has suffered a detriment. However, assuming that he has, we have no doubt that a person not sharing the Claimant's race or sex but having the same lack of experience in managing a Youth Service would have been treated in exactly the same way. We do not need to rely on the burden of proof. We are satisfied that the reasons given by Ronke Martins-Taylor were her only reasons. They were that the Claimant was patently underqualified for that particular role. Those reasons are nothing whatsoever to do with race or sex.

435. It seems that the allegation is also put a different way. The detriment being only that the Claimant was assimilated to the Hub Operations Manager role. Ronke Martins-Taylor accepts that the assimilation of the Claimant to the Hub Operations Manager role given the 13% match was not an obvious outcome. As she points out the alternative was that he was given notice. We have found above that the resentment caused by assimilating the Claimant to this role (or any role within the Youth Service) was likely to cause resentment. We consider that to have been foreseeable and are satisfied that the Claimant had suffered a disadvantage.

436. The issue is whether that decision was taken because of race or sex. We do not need to rely on the burden of proof provisions. We are satisfied that the Respondent has established that the reasons for the decision was that Ronke Martins-Taylor had tried to find a role as close as possible to the skills and experience of the Claimant to give him an opportunity of finding a position. In that regard she was following the Respondent's policy. We find that she would also be aware that the Claimant might challenge any decision not to assimilate him to any role. We would accept that she must have recognised that the Claimant's prospects were slim but do not find that that is sufficient to find that she could not have acted as she did for the reasons we have found. Those reasons are nothing whatsoever to do with the sex or race of the Claimant. As such this claim must fail.

437. Before we leave this allegation, we should note that whilst Mr Hoar adopted the stance in his submissions that the Claimant never had any chance of obtaining a post in the Youth Service it is less clear that the Claimant recognised that at the time. We

note that the Claimant applied for both the Hub Operations Manager role and the Head of Youth Service role. He did not have to do so. We find that at the time he thought that he had some chance of obtaining those roles. It is with the benefit of hindsight that it has become clear to all that that was a very remote possibility.

Including the Claimant in the Youth Service SMT (sub-paragraph 7(f))

438. It is common ground that the Claimant was invited to the Youth Service SMT meetings. As we have found above the Claimant was met with a great deal of hostility. The language used included the phase 'what is he doing here'. The meeting was followed by the e-mail of which made an allegation that the Claimant was benefitting from discriminatory practices. We wholeheartedly condemn that sort of behaviour at managerial meeting. It was unpleasant and unkind. We accept that the other members of the SMT had legitimate grounds to question the Claimant's inclusion. That could have been done without overt hostility towards the Claimant who was not responsible for the decision.

439. We are entirely satisfied that attending those meetings was a detriment. However, it is not the conduct during the meeting that is said to be discriminatory it is the decision to include the Claimant in the SMT meetings. That decision was taken by Ronke Martins-Taylor. We are prepared to accept that some resentment towards the Claimant was foreseeable but not to the unpleasant level which occurred. We therefore need to look at the reasons for Ronke Martins-Taylor's decision.

440. What Ronke Martins-Taylor says in her witness statement was that the Youth Service SMT meetings were to be the main platform for discussing the restructure. We accept that was the case. That was the main topic at the first meeting the Claimant attended.

441. We do not need to rely on the burden of proof provisions. Ronke Martins-Taylor has satisfied us that the reason for the Claimant being invited to the SMT Meetings was a direct consequence of him being included in the restructure. The meetings were the vehicle to discuss the restructure. We have found above that the reasons for including the Claimant in the restructure were nothing to do with race or sex. We find that the decision to ask him to attend the SMT meetings was in order that he could participate equally with other managers in discussions about that restructure. That is nothing whatsoever to do with race or sex. We entirely reject the suggestion that the Claimant was asked to attend to expose him to hostility.

442. At the first meeting the Claimant's role as an investigator (a role which will often require protected disclosures to be made) was well known to the other managers. The Claimant himself raised the question of whether people under investigation would be treated differently when looking for roles. One matter that the Claimant did not ask us to decide was whether any of the hostility he was subjected to amounted to a detriment on the grounds he had made protected disclosures. We shall not speculate upon what the outcome may have been.

Obstructing the Claimant's investigation because he was a white man investigating a service predominantly staffed by Bangladeshi employees (Paragraph 8).

443. In this allegation the Claimant sweeps up the matters set out above. Put this way we do not understand the Claimant to be saying that the people who he says discriminated against him had any conscious or subconscious bias against him because he was white per se. The way it has been put is that those people wanted to

draw to a premature end the investigation of the Bangladeshi community to appease that community and present the Respondent in a favourable light.

444. The allegations of 'obstructing the Claimant's investigations' include those matters we have dealt with under paragraph 7. We have not found that there was any discrimination in respect of those matters. Mr Hoar's written submissions on this point are only a paragraph long but direct the Tribunal to paragraphs 153 to 173 of the Claimant's witness statement.

445. Paragraph 152 of the Claimant's statement describes how he puts his case. He says:

> *'I firmly believe that my dismissal from the Council was engineered by obstructing my investigations work (due to me being a white male investigating a service largely staffed by Bengali employees involved in corrupt practices) and that I was dismissed so the Council could avoid complaints that it was discriminating against senior Bengali employees even though it knew the complaints I was investigating were substantiated'*

446. We note that a number of the allegations of obstruction set out in those paragraphs of the Claimant's witness statement are levelled against Andy Bamber. The Claimant expressly withdrew any suggestion that Andy Bamber had discriminated on the grounds of race.

447. It is important to note that this allegation is contained in the Claimant's second claim. Paragraph 17 of the ET1 in that claim makes it clear that the action complained about is the dismissal and not anything else. The case was presented as being about dismissal during the preliminary hearing before EJ Prichard who decided that the claim was presented in time on the basis that the ACAS Early Conciliation Certificate concerned a 'new matter' (namely the dismissal).

448. Paragraphs 153 to 173 of the Claimant's witness statement contain a number of allegations where he says that the Respondent failed to follow through with investigations with the rigor he expected, failed to recover monies owed to the Respondent and entered settlement terms with employees who the Claimant says ought to have been subjected to disciplinary action.

449. The Claimant could point to several instances where people were offered settlement agreements when there was at least a disciplinary case to answer and who left the Council without any disciplinary action being taken. Amongst these was Dinar Hossain who was the Head of the Youth Service. Andy Bamber, who agreed to his voluntary severance suggested that he believed that Dinar Hossain was responsible for the removal of files from his (Andy Bamber's office). His explanation for signing of a settlement agreement was that it was expedient to do so. We are not able to judge whether had disciplinary proceedings been followed through a dismissal would have resulted. It may be the case that that was a sensible choice. There are however many examples given by the Claimant. Without making any findings we would say that these matters, assuming them to be correct, tended to show that the relevant decision makers did not pursue serious allegations with the vigour that might have been expected.

450. The Respondent did not call evidence to counter every allegation. Indeed, the length of the hearing may have doubled if it had done so. Instead Ms Palmer suggests that the claim is misconceived. She says that a claim of direct discrimination requires a

comparator and less favourable treatment. She says that nothing the Claimant says in his witness statement casts any light on those questions. She complains that a host of allegations now said to be discriminatory have been 'dumped in the pleadings'. In essence, she says that the Claimant cannot bring a new case in his witness statement. She is plainly correct about that. However, the Claimant's ET1 does refer to the obstruction of his investigation and does refer back to the particulars provided in paragraphs 15 (which incorporates the parts of the first ET1) and paragraph 16 where some but not all of the matters set out in the Claimant's witness statement are mentioned.

451. We do not consider it necessary for us to make findings about every matter that the Claimant relies upon as being 'obstruction'. In fact, that is not an apt term for many of the complaints that he raises. A better term would be a lack of rigor. The real issue, as Ms Palmer rightly says, is whether the Claimant's dismissal was 'because of' race. That requires asking how a comparator would have been treated. It is here that the Claimant's case breaks down.

452. There is no actual comparator and it is necessary to construct a hypothetical comparator. The hypothetical comparator would have to be an investigator carrying out investigations into the Youth Service. The question for us is whether that comparator would have been treated in the same way as the Claimant.

453. Assuming in the Claimant's favour that the Respondent's decision to curtail investigations was motivated by a desire to appease the Bangladeshi community because they objected to being investigated by anybody. A redundancy for those reasons would not be direct discrimination. The hypothetical comparator would also be dismissed in those circumstances. Race plays no part in the reasons for the decision. To take an example, if a decision was taken to stop marketing jam by giving away badges depicting stereotypical black musicians was taken to placate the black community, the dismissal of a white employee engaged to produce the badges would not be direct discrimination. It is taken because the employer does not need the badges any more.

454. The Claimant seeks to counter that point by saying that it was the fact that he was a white male that was a material factor in that decision being taken. If he was right then his claim would succeed. The way he puts it is that the reason the investigations were, as he sees it, shut down was because the Respondent feared allegations of discrimination because the matters were investigated by him, a white male. Implicit in that is a suggestion that the Bangladeshi community would not have complained of discrimination if they had been investigated by a non-white person. We record that the Claimant only makes an allegation of race discrimination despite the reference to his gender in the pleadings.

455. It is a myth that discrimination can only be perpetrated by one race against another. In Section 24 of the Equality Act 2010 it is made clear that the putative discriminator's protected characteristics are irrelevant. That said we accept that it is entirely possible that a person would believe that there would be less complaints if a community was investigated by 'one of its own'. We accept that if as a matter of fact, the Respondent took into account the Claimant's race in that way when deciding to dismiss him that would amount to direct discrimination.

456. Approaching this matter as one where we should apply the burden of proof provisions in full we need to ask whether, absent any explanation from the

Respondent, the Claimant has proved facts from which we could infer that the Respondent was as the Claimant suggests influenced in its decision to dispense with his role by concerns that his race had or was likely to provoke complaints of discrimination.

457. We have recorded above that on the Claimant's account Dinar Hossain asked whether the Claimant was discriminating against Bangladeshi's. In addition, in February 2016 the Claimant's actions in interviewing a witness led to a complaint of discrimination. Habibur Rahman in these proceedings suggested he felt that discrimination was a factor in his disciplinary proceedings. The fact that several employees held or expressed such views may give rise to a possibility that the Respondent acted to avoid complaints.

458. We have heard evidence about 3 investigators, the Claimant, Lorraine Walsh and Linda Baker the investigator brought in to assist the YSPG. None of the investigators recruited were Bangladeshi. The Claimant was, as he says asked to conduct additional investigations during 2017 which involved investigating people of Asian or Bangladeshi heritage.

459. Of importance is the fact that when it was established the YSPG was looking in to 59 cases. A small number were added but between July 2016 and March 2017 the number of active cases steadily reduced. By August 2017 all live investigations had come to an end. We accept the Claimant's evidence that there were some outstanding disciplinary hearings but it is clear that the amount of work was diminished. As such there was a compelling ostensible reason for dispensing with the Claimant's role.

460. Considering these matters and having regard to all our findings we have considered whether the Claimant has proved facts that absent an explanation would lead us to infer that there has been discrimination in the manner he suggests. We do not find that he has. Accordingly, we would not have considered it necessary to require the Respondent to prove that the reason for the treatment complained of was nothing whatsoever to do with race.

461. We do not need to approach the issue using the two-stage approach to the burden of proof. We find we can confidently find that the reason for the dismissal was nothing whatsoever to do with race.

462. We are alive to the fact that the Claimant's case is that the obstruction of his role led to the situation where the YSPG had substantially or completely finished the investigations. Whilst the Claimant does not accept his role was redundant his alternative position appears to be that if the work he did had diminished it did so because of discriminatory decisions. Many of the paragraphs of the Claimant's witness statement said to support the suggestion that there were earlier discriminatory decisions relate to the period prior to June 2016 when he was managed by Andy Bamber. Indeed, he criticises numerous decisions taken by Andy Bamber during that period not least the decision to reach a settlement agreement with Dinar Hossain. During the hearing Mr Hoar expressly abandoned any allegation that Andy Bamber had discriminated against the Claimant. When cross examining Andy Bamber it was not put to him that the reasons why various decisions were made about the investigations was because the Claimant was a white man and might attract complaints about discrimination. Having abandoned those complaints we cannot permit the Claimant to say that the situation that pertained when the YSPG was established was due to historic discriminatory decisions.

463. We have examined at length the Claimant's specific allegations that his work was obstructed during the period he worked for the YSPG. We found none of the acts or omissions complained of had anything to do with race (or sex). That leads us to conclude that the decisions that were taken that led to the YSPG dealing with a finite number of cases were not in themselves influenced by race.

464. We have heard from Ronke Martins-Taylor and from Claire Belgard. Their evidence, which we have accepted, was that the decision to dispense with the Claimant's role was a consequence of the YSPG working through its backlog of cases and nothing else. They did not accept that they were influenced by the possibility of complaints by the Bangladeshi community arising because the Claimant was white. We acknowledge that it is insufficient merely to accept that a witness honestly does not believe they have discriminated. When we have regard to the totality of the evidence we are entirely satisfied that the only reason that the Claimant's role was dispensed with was because Ronke Martins Taylor and from Claire Belgard genuinely considered that the amount of investigation work outstanding provided no justification for maintaining that role going forward. That had nothing whatsoever to do with a fear of discrimination complaints or race.

465. The Claimant attacks the decision to dispense with his role of investigator as cowardly and says that the Respondent is in breach of its duties to the public purse. In a case of direct discrimination, the only question is whether race was a material reason for the treatment complained of. We find that in this case it was not. The only real and effective cause for the treatment was that it was genuinely believed that the work of the YSPG had dwindled to the extent that the continued employment of a dedicated investigator was no longer justified.

<u>Using new processes to reduce the number of white males employed in senior roles (Paragraph 9)</u>

466. Mr Hoar's written submissions make it clear that this allegation is a challenge to the decision to include the Claimant within the Youth Service Restructure. That is the 'new process' complained of. From the reference to 'white males' we understand this to be an allegation of direct discrimination because of race and/or sex.

467. This allegation overlaps perhaps entirely with the allegation made at paragraph 7(d). The only difference is that it is suggested in that allegation that the action was intended to force the Claimant out.

468. We deal with the decision to include the Claimant in the Youth Service restructure most fully below when considering the unfair dismissal claim. Our finding is that the reason for including the Claimant in the restructure was intended, if not perceived, as maximising the Claimant's chances of securing a position in a genuine redundancy situation.

469. The Claimant's work had diminished. The YSPG had completed the bulk of its work. There was no intention to retain the Claimant's post of 'project manager' on a permanent basis. There never was. The possibility of the Claimant being excluded from the restructure if he wished was explored with him but he rejected that. It was the work that he was doing that had diminished and it was perfectly rational not to regard that as the same work as undertaken by the internal audit department. If the Claimant had not have been included in the restructure then he would have been given notice much earlier.

470. The legal advice that was given was to include the Claimant in the restructure. We are satisfied that this was seen as the most favourable option. It is implicit that the motivation was to ward off any complaints. In the event it has had the opposite effect.

471. We do not need to rely on the burden of proof provisions. We are entirely satisfied that the reason why the Claimant was included in the restructure was that it was perceived that this maximised his opportunities of finding a role as it added the assimilation process to the ordinary redeployment process. That reason is nothing whatsoever to do with the race and gender of the Claimant.

Claims of Harassment contrary to Section 26 of the Equality Act 2010

472. The Claimant sets out the same three factual allegations of threats he says were made to him as he relies upon as allegations of direct discrimination these were:

472.1. On 17 July 2014 threatening behaviour by Dinar Hossain; and

472.2. By an anonymous telephone call on 30 October 2015; and

472.3. On 6 June 2016 by Habibur Rahman following him in a car.

473. We have already set out our findings as to whether the Claimant has established that these events occurred as alleged and if they did occur whether he has shown that the Respondent is responsible. We have concluded that the Claimant has not shown that it is more likely than not that the anonymous telephone call, if that is what it was, was made by an employee or agent of the Respondent. We have found that the Claimant has not shown that it is more likely than not that Habibur Rahman was the driver of the car on 6 June 2016. We have accepted the Claimant's account of the encounter with Dinar Hossain on 17 July 2014 but with the reservation that that finding was made only on the evidence before us.

474. For the same reasons set out when considering these claims as allegations of direct discrimination the for the Tribunal to have any jurisdiction to deal with this matter it is necessary to consider whether it is just and equitable to extend time. All the factors that we have identified in respect of the direct discrimination complaint are also present in respect of this complaint. The exception to that is that the direct discrimination complaint requires an examination of motive whereas that is not necessarily the case under Section 26. However, it is still necessary to investigate whether the conduct 'related to' race which involves a discreet factual enquiry. The only express reference to race is said to be the question 'is it because of this?'. It is in no sense inevitable that a tribunal would conclude that the conduct did relate to race. It is a difficult question and we are invited to determine it years after the event with only one account of the event. We do not consider it fair to do so.

475. Accordingly applying similar reasoning to our conclusions in respect of the same allegation put as a claim of direct discrimination we do not consider that it would be just and equitable to extend time to bestow jurisdiction on the tribunal.

476. For these reasons the claims of harassment contrary to Section 26 of the Equality Act 2010 are dismissed.

Protected disclosure claims

477. The Claimant relies on a protected disclosure made on two occasions. The

substance of the disclosure was that Ronke Martins-Taylor had improperly changed the scores awarded in the tender exercise for the Summer Youth Project. He made that disclosure to Max Caller (one of the commissioners) and again to the Clear up Project.

478. The Respondent had not admitted that this was a protected disclosure in its ET3 but, in her written submissions, Ms Palmer conceded that it was. We believe that concession was rightly made. To establish that there was a protected disclosure the Claimant needed to reasonably believe:

478.1. That the information he conveyed tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation; and

478.2. That the disclosure was made in the public interest.

479. The Claimant correctly understood that public sector tendering exercises are regulated. The information he provided demonstrated that the process that had been followed was different to the advertised process in that a new criterion had been adopted and further tended to show that the scores had been manipulated to avoid having to conduct the exercise again. We have no doubt that he reasonably believed that this tended to show a breach of public sector procurement regulations. When investigated it was found that the Claimant was broadly correct which reinforces the finding that his belief was reasonable.

480. Whilst we do consider that the Claimant resented both Ronke Martins-Taylor and Claire Belgard's appointments because in his eyes he became further removed from the top line of managers and his work was then shared with others we do not find that this was the only reason the Claimant reported this matter. The Claimant to his credit does things 'by the book' and he expects the same of others. We have no doubt he was upset when scores he had given were manipulated. We find that when he reported this he did so in the belief that it was in the public interest. For those reasons we agree that there was a protected disclosure when the Claimant reported the matter to the Clear Up Team. Ms Palmer does not deal with the question of whether disclosure to a Commissioner appointed to oversee the Respondent is a disclosure to the Claimant's employer. In the light of our findings below it is not necessary to deal with that matter.

481. The Claimant said that he was subjected to three detriments because of his disclosures. In chronological order these were:

481.1. Ronke Martins-Taylor downgrading the Claimant's role to a PO6 post. It is thought that that this was a reference to the decision to assimilate the Claimant to the Hub Operations Manager Post which was a grade PO6 role. In his written submissions Mr Hoar abandoned this allegation. We note that the date this exercise took place was 13 January 2017.

481.2. Ronke Martins-Taylor including the Claimant in the Youth Services Senior Management Team, SMT.

481.3. Mr William Tuckley failing to respond to the correspondence from the Claimant's Trade Union representative in June 2017. This allegation too was abandoned by the Claimant in the written submissions

prepared by Mr Hoar.

482. In making his oral submissions Mr Hoar acknowledged that his abandonment of the allegation in respect of Mr Tuckley may have ramifications in respect of the time limit for bringing the other claims. It was agreed by the parties that for any act to have been presented within 3 months (adjusted to allow for ACAS Early Conciliation) it had to have taken place on or after 10 February 2017. The Claimant engaged in Early Conciliation by contacting ACAS on 4 April 2017. ACAS issued a certificate on 4 May 2017 and the Claimant presented his claim on 8 June. The most beneficial extension of time is provided by Section 207B(3) of the Employment Rights Act 1996. That discounts the period between 4 April and 4 May 2017 from the ordinary period of 3 months less a day.

483. We have set out below the routes by which an act that took place earlier than that date might be treated as having taken place after that date. The first is where the earlier act is part of a series of similar acts. That is the route under Section 48(3)(a). The second is when the earlier event is part of 'an act extending over a period'. That is the route under Section 48(4)(a). In either case there must be some act that extends into the period 3 months (Plus the ACAS extension) before the claim is presented see ***Arthur v London Eastern Railway Ltd.***

484. Having abandoned the earliest allegation and the Will Tuckley allegation the Claimant needs to show the decision to place the Claimant in the Senior Management Team of the Youth Service was taken after 10 February 2017 OR he needs to show that it was not reasonably practicable to present his claim within the applicable time limit.

485. The difficulty for the Claimant is that the decision to include the Claimant in the Youth Service restructure was taken on 5 January 2017 following legal advice that that was the proper course of action. That decision was communicated to the Claimant on 11 January 2017. The Claimant is aware that he is being 'assimilated' against roles in the SMT in early January 2017.

486. Mr Hoar quite rightly recognised that this presented a problem for the Claimant. It seems to us that the detriment was suffered at the date the decision was made to include the Claimant within the SMT for the purposes of the restructure. That is the detriment spelt out in Mr Hoar's written submissions. That decision was made on 5 January 2017. To have been in time the claim needed to have been presented by 4 June 2017 (taking advantage of Section 207B(4) of the Employment Rights Act 1996. The claim is therefore presented a few days late.

487. We do not consider the fact that the Claimant only learnt of the decision on 11 January 2017 meant that it was not reasonably practicable to have presented the claim by 4 June 2011. The Claimant has nearly 5 months to consider his position. The Claimant was hot suggested that there was any impediment to presenting a claim in time. He had the benefit of advice from a trade union and is himself educated and capable of research. We cannot find that it was not reasonably practicable to have presented the claim in time.

488. Accordingly, as tacitly acknowledged by Mr Hoar, the Tribunal does not have any jurisdiction to determine this claim.

489. Lest we are wrong about the question of time limits we should say that we accepted that the only reason that the Claimant was included in the Youth Service

SMT was that this was the legal advice that had been received. We deal with the same issue elsewhere where the same matter is relied upon as an act of race discrimination. We repeat our findings here. We are entirely satisfied that whilst Ronke Martins-Taylor almost certainly was displeased at her conduct being called into question that was not something that played any part in this decision.

Unfair Dismissal

490. We have set out the law to be applied above. Before we embark on dealing with the list of issues it will be useful if we deal with the dispute that raged about whether the Claimant was entitled to be regarded as a 'permanent employee'.

491. It is common ground that between 25 January 2010 and 25 April 2014 the Claimant worked on a succession of fixed term contracts. After that he started his role as an investigator reporting to Andy Bamber. At that point he was not given any written statement of how long the role might last or any other details of any changes. The right to be told about the basic terms and conditions of employment has been in place in one form or another since the Contracts of Employment Act 1963. The most recent incarnation is found in sections 1- 7 of the Employment Rights Act 1996. Section 4 of the Employment Rights Act 1996 requires any changes to certain basic terms, including terms as to notice, to be given in writing. It is a constant source of frustration for employment tribunals how often these basic rights are infringed. In certain circumstances, which do not apply here, a tribunal can impose a penalty on the employer for failing to provide a statement. Whilst we express our own frustration we are far more concerned about the effect these failures have on employees. The basic terms set out matters such as salary and how long a role may be expected to last. It is the sort of information that allows employees to plan their lives, to take on responsibilities such as mortgages and to be able to gauge the level of expenditure they need for their families. We consider the failure to provide the Claimant with a clear statement of his contractual terms in 2014 was inexcusable.

492. We have set out above that it has been the Claimant's case that he had a right to be treated as a 'permanent' employee. The Respondent's position was never as clear as it could have been. The source of the Claimant's assertion was the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. Regulation 8 of those regulations provides that where the employee has been continuously employed under a fixed term contract or series of fixed term contracts for over 4 years then unless it can be objectively justified the contract shall be treated as 'permanent' (this is intended as a description not a full statement of the law).

493. It seems that at times the Claimant has acted on the assumption that the acquisition of 'permanent' status meant that he could not be dismissed at all. That is not the effect of the regulations. What permanent means is that the contract will not end upon a fixed date but will do so only when one party or the other gives notice in accordance with the contract. As such they would be in the same position as an ordinary employee engaged on an open-ended contract. What protects 'permanent' employees from dismissal is the right to contractual notice (which regulates the timing the dismissal takes effect) and the right not to be unfairly dismissed (subject to qualifying conditions).

494. When the Claimant started working as an investigator no terms were agreed about when the contract might end or what length of notice was appropriate. In those circumstances a court or tribunal would infer that either party could terminate the

contract on reasonable notice (that is always subject to a statutory minimum). It was implicit in the job description that the Claimant wrote that what he was engaged in was 'a project'. All parties would have realised that the work would at some stage come to an end. It may have been open to the Respondent to have agreed a fixed term for this role which may or may not have been objectively justified. We do not have to decide that as no claim has been brought under the regulations.

495. The attempt to impose a fixed term of 6 months by Karen Davis was clumsy and ill thought out. That said we accept that the intention was to put the Claimant on notice that the work he was doing was expected to run out and that unless that was reviewed he would be given notice. At the very least the Respondent should have discussed this matter with the Claimant. We accept that it tried to do this later but by that time the positions became entrenched.

496. We have set out the contractual position because it formed part of the evidence before us and we would wish our disappointment at the way this has been dealt with to be drawn to the attention of the responsible persons in the Respondent. Much heartache could have been avoided by complying with a straightforward obligation to tell an employee at the outset of their employment when that employment might end.

497. The dismissal was not effected by relying on a fixed term contract. It was effected by giving the Claimant lawful notice. As such it is unnecessary for us to consider this matter further other than when having regard to the fairness of the dismissal.

498. As we have set out above once a dismissal is established or admitted the burden of proof falls on the Respondent to show a potentially fair reason for the dismissal. 'Redundancy' is a potentially fair reason. We have set out the statutory definition of redundancy above.

499. The Claimant's case was that his dismissal was not genuinely for the reason of redundancy. In the addendum to his ET1 he puts it as follows:

> *'the Claimant alleges that there was and remains a need for an experienced forensic investigator to undertake the investigations conducted by the Claimant; that his duties to investigate corruption within the Youth Service were obstructed by the Respondent; that the Respondent so acted to avoid effective investigations into employees within the Youth Service and/or criticism for misfeasance and corruption within the Service uncovered by the Claimant; that, in so doing, the Respondent breached its duties to its residents to prevent and punish wrongdoing by its employees; and that his role was not redundant in 2017, early 2018 or at all as there was no genuine business need for his important work to cease.'*

500. Mr Hoar expanded upon that in his written and oral submissions. He referred to ***Smith v Manchester College of Arts and Technology*** **[2007] UKEAT 0460** in support of his contention that, even where a redundancy situation existed, it was still open to the Tribunal to find that that was not the true reason for the dismissal. We agree. It is for the Tribunal to decide for itself whether the reason or principal reason for the dismissal was attributable to the redundancy situation or not.

501. We should stress that the role of the employment tribunal in this respect is somewhat limited. The existence of a redundancy situation is often the product of decisions taken by the employer. Such decisions are often said to be for commercial

reasons. The role of the Tribunal is at this first stage is not to consider whether it would have made the same decisions or whether the decisions were wise. If we were to engage in that we would be required to second guess what may be commercial or strategic dismissals. We are entitled to enquire whether redundancy is genuinely the reason for the dismissal see ***Hollister v National Farmers' Union*** **1979 ICR 542, CA**, and ***James W Cook and Co (Wivenhoe) Ltd v Tipper and ors*** **1990 ICR 716, CA**.

502. We need to ask ourselves whether the requirements of the Respondent to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish. Mr Hoar made submissions to the effect that there was still work that could have been done. He said that the Respondent could not reasonably have believed otherwise. From that he asks us to infer that there was not a redundancy situation. In essence he invites us to ask ourselves whether the Respondent could properly have decided that it did not need a dedicated investigator into the Youth Service.

503. We consider that the issue of whether it was necessary to maintain the role undertaken by the Claimant was essentially a question of judgment. The Claimant felt that his role was still necessary. It was argued on his behalf that the investigations were dealt with improperly. That this showed a desire to draw a veil over systemic corruption for political reasons. It was clear from the applications we heard from the press and some councillors that others share the same view or perhaps consider the question of whether the investigations had been investigated thoroughly enough to be an open question.

504. We have found above that the Claimant's role from mid-2016 was to act as one of the investigators for the YSPG. The title of that group includes the word 'Project' and that give a clear indication that the task was intended to be of finite duration. The Claimant's own job title was that of a 'Project Manager'. From the outset it was clear that there was a task that needed to be completed.

505. The objectives of the YSPG made it clear that it was intended to wrap up the outstanding investigations as expeditiously as possible and additional resources were deployed to meet that objective. Whilst the YSPG took on a few new investigations it gradually disposed of all the cases. We have accepted the Respondent's position that by August 2017 all investigations had been completed. That had been anticipated as early as January 2017 when the Claimant was 'offered' a 3-month extension to his contract (it was not in fact terminated then).

506. There was never any intention at any time to have a dedicated investigator post on an indefinite basis looking at the Youth Service. When the new structure for the Youth Service was announced in January 2017 it did not include any role for an investigator.

507. From the evidence before us it is clear that decisions were taken about whether to bring disciplinary proceedings after investigations; whether to agree to settlement terms to allow employees to 'go quietly' and whether or not to expand the scope of the enquiry. It is not our role to look at each of those decisions to decide what we might have considered reasonable or even politically acceptable. We must leave that task for the Councillors, the press and ultimately the electorate. We do consider that the work of the YSPG was transparent, that it was overseen by the Statutory Officers and that reports were made to the Commissioners until they were withdrawn. As such the decisions as to the manner and scope of the enquiry were not obviously wrong.

508. We do not find that the decision to dispense with the Claimant's role was for such manifestly improper reasons that it could not amount to 'redundancy'. We find that the 'work of a particular kind' mainly undertaken by the Claimant was carrying out investigations into the Youth Service. We find that the Respondent's reasons, (which were, in reality, Ronke Martins-Taylor and Claire Belgard's reasons) for deciding that there would be no 'investigator' role within the Youth Service was that they knew that the work of the YSPG was going to be complete in the near future. They genuinely did not require such a role.

509. We acknowledge that the Claimant does not agree that there was not sufficient work for him to do. That is not the point. We must ask whether the requirements for work of a particular kind had ceased or diminished or was expected to do so. We accept Ronke Martins-Taylor and Claire Belgard's evidence that that was the case. The work that was expected to cease was the work of the YSPG.

510. We conclude that the Respondent has satisfied us that the reason for the dismissal was redundancy. That is a potentially fair reason. We must therefore go on to ask whether the Respondent acted reasonably in treating that reason as a sufficient reason for the dismissal. We need to apply the test set out in Section 98(4) of the Employment Rights Act 1996 which we have set out above.

511. There were a number of consultation meetings and we did not hear any evidence that would suggest that the Claimant was not informed of the restructure and how the process was to operate. His individual position was discussed with him extensively particularly by Mark Keeble in January 2017. We find that the degree and scope of the consultation was sufficient for the Claimant to understand the process and his options. The Respondent's actions in this respect were reasonable.

512. When considering fairness, the first matter we need to address is the decision to include the Claimant in the Youth Service restructure. This decision was as we have found taken because of legal advice. We consider that there was a distinction between this decision and a decision to pool workers doing broadly similar work in a selection pool in order to choose between them. The Respondent's Handling Organisational Change policy provides for workers within the scope of a reorganisation to be given preferential treatment when applying for roles in the proposed new structure.

513. We see nothing irrational or unfair in including the Claimant in the Youth Service for the purposes of the restructure. The Claimant had been reporting to Claire Belgard for 6 months and undertaking work overseen by the YSPG. He was occasionally asked to look at matters outside of the Youth Service but investigating the Youth Service was his main role. We accept that this did not go down well with the existing Youth Service Managers and that unnecessary and unpleasant hostility was the consequence. The reality, which was the option put to the Claimant by Martin Keeble, was that if the Claimant did not want to be considered for a position in the new structure then he would be given lawful notice and placed in the redeployment pool. The Claimant declined that offer.

514. Whilst being included in the restructure gave the Claimant priority in respect of the roles in the new Youth Service structure he was not limited to applying for those roles and was free to seek opportunities elsewhere in the Respondent's organisation.

515. The fact that the nearest 2 roles to the Claimant's role were held to have only a 13% overlap does indicate that the Claimant was always going to struggle to obtain a

role in the Youth Service. That said the Claimant applied when he did not have to (although we accept he may have been concerned that he would not get a redundancy payment if he did not). In particular he applied for the Head of Service role despite not been assimilated to that role.

516. We accept that the decision to include the Claimant within the Youth Service was intended to advantage him. We reject the suggestion that this was to spite him or expose him to the other resentful managers. We find that it gave the Claimant a slim possibility of finding a role within the Youth Service which he would have accepted if successful.

517. As we have said above this is not a case where the Claimant was placed in a selection pool with others doing the same work. There was nobody in the Youth Service doing the same work as the Claimant. A matter considered by the Tribunal was whether the Respondent ought to have considered pooling the Claimant with people doing broadly similar work in the internal audit department. We find that that possibility had never been actively considered. The proper approach is not for us to decide what we might have done but to ask whether the decision not to pool the Claimant with employees elsewhere in the organisation lay within the range of conduct which a reasonable employer might adopt. We can see that if the Respondent had decided to pool the Claimant with members of the internal audit team that might have caused some consternation within that team. It would create a period of uncertainty in a department that was remote from the project that the Claimant had been involved with. It was specifically the requirements for the work done by the Claimant that was expected to cease. We find that it was not outside the band of reasonable responses not to involve a team of employees elsewhere in the Respondent's organisation.

518. We have dealt with the assimilation process above. We find that Ronke Martins-Taylor had good reasons why the Claimant was not assimilated to the Head of Service role. They are the same reasons why he was not appointed. His skill set, which in fairness is extensive, simply did not match the requirements of the role. The decision to assimilate the Claimant to the Operations Hub Manager role was perhaps generous. That said the Claimant agreed that if he had got that job he could have done it. We find that obtaining a ring-fenced interview was an advantage and not a disadvantage. In the end the Claimant was not successful.

519. The Claimant complains that being expected to go through the assimilation process meant that he missed out on vacancies filled during most of 2017. The Claimant could have applied for any vacancies but would not have been given priority. The advantage, if that is the right way of looking at it, of being dismissed and being on the redeployment register is that the employee has the help of HR in securing a post and is given priority over others. If the Claimant had been dismissed in March 2017 he would have had that advantage for 12 weeks.

520. The Claimant was given the option of immediately going in to the redeployment pool by Mark Keeble on 7 February 2017. He declined. As a consequence, he remained employed for almost 10 months longer. We consider that the response of the Respondent in giving the Claimant the choice was entirely reasonable. It is difficult to see what else they could have done.

521. Once the Claimant had been told he had not obtained a role in the new structure he was dismissed and placed in the redeployment pool. Whilst we have been critical of the Respondent's HR Department in a number of respects it is only fair to

acknowledge the efforts of Debra Southgate who we find went the extra mile in trying to secure a position for the Claimant.

522. A discrete matter which the Claimant raises as being unfair concerns the role of ASB Support Manager which would have reported to Alun Goode. This role was correctly identified as a role well matched to the Claimant's skill set. The Claimant was offered an interview and both Debra Southgate and Alun Goode took time to speak to the Claimant to attempt to persuade him to apply. The Claimant declined to do so because he was awaiting the outcome of his appeal. It was made clear to him that applying for the role would not impact on his appeal. Indeed, even without being told that ought to have been obvious. At the time the Claimant did not raise the issue of salary as being a sticking point. We have found that he never raised this with Alun Goode.

523. The job description sent to the Claimant referred to a pay grade PO7 which was not used by the Respondent. The Claimant would only have been entitled to pay protection if the pay grade was within 2 grades of his existing post. Mr Hoar in his written submissions says that the failure to provide information about salary means that the dismissal was unfair. He relies on ***Fisher v Hoopoe Finance Ltd*** **[2005] UKEAT 0043** in support of that proposition. We would accept that good industrial practice requires an employer to provide sufficient information about any potentially suitable alternative employment to enable the employee to make an informed choice about whether to accept it. For reasons we do not understand the Claimant says he believed that if this role was paid at PO7 it must be more than 2 grades below his existing grade of LPO7. We find that Debbie Southgate and Alun Goode were keen to discuss this role with the Claimant but that it was the Claimant who at this stage would not engage. We find that any confusion around whether pay protection would have applied would have been resolved had the Claimant shown any interest in this position.

524. In his ET1 the Claimant suggests that it was unfair that the Respondent recruited a number of people in the Safer Communities directorate. He says, and we shall assume that he is correct, that these were roles that he could have done and that were suitable alternative employment for him. There were 7 roles in total. Debra Southgate told us and we accept that none of those roles was permanently established but were 'project roles'. She said, and we accept, that when an employee was on the redeployment register any request made by a recruiting manager would be intercepted by the 'People Resourcing Team' to ascertain whether the vacancy was suitable for anybody on the register. The posts referred to by the Claimant were filled before the Claimant was issued with his notice of redundancy.

525. The Claimant had argued that his inclusion in the Youth Service restructure meant that for the period between January 2017 and December 2017 he was in limbo and had missed out on these jobs. He says that that was unfair. Ms Palmer, in her written submissions, describes that as the Claimant having his cake and eating it. Essentially, she says that the Claimant is complaining that he was not dismissed earlier.

526. Being within the scope of the Youth Services restructure did not prevent the Claimant from applying for any vacancies. Had he done so when not on the redeployment register he would not have been given priority for any post but would have been considered along with any other applicant. We have set out above the fact that the Claimant was not obliged to take part in the assimilation process. He was

given an option of being placed on the redeployment register in January 2017. We accept that the Claimant would have been faced with a dilemma in that he would have needed to accept that he would be given notice to obtain priority in respect of these roles. That was an option that the Respondent gave him. We consider the impact of this on the fairness of the dismissal below.

527. A further submission made by the Claimant was that a failure to provide him with details of roles covered by agency workers before his employment ended rendered his dismissal unfair. The Claimant had asked for details of all roles being covered by agency staff on 24 January 2018 in the run up to his appeal. Mala Jones needed to compile that information. She sent a list of 39 such posts to Heather Daley who forwarded it to the Claimant and his trade union representative on the same day. The Claimant was asked whether he was interested in any of the roles. We have set out the Claimant's response above. He asked for all the job descriptions to be uploaded. This was not in our view a sensible proposal. The spreadsheet given to the Claimant identified the post title and the directorate within which the role was situated. That gave a reasonable indication of the type of job. Some jobs were clearly inappropriate. They included roles for lawyers, surveyors and public health professionals. The suggestion that the Claimant try to narrow down his interest was in our view entirely sensible.

528. The Claimant was on holiday for the last weeks of his employment. As a consequence, he made no response to the request that he identified any role he was interested in before his employment ended. His trade union representative was aware that the Respondent was asking whether the Claimant was interested in any alternative position. We do not think that being on leave was a bar to expressing interest. We conclude that at this stage the Claimant had become disheartened and had resigned himself to leaving.

529. We have set out above that we are satisfied that the reason for the Claimant's dismissal was that his role was redundant and that no alternative role was identified. We then turn to the question of whether the dismissal was or was not fair applying the test set out in Section 98(4) of the Employment Rights Act 1996. We remind ourselves that we are not to substitute our own view by reference to the steps that we might take. The issue is whether the decision and process followed by the Respondent was reasonable in that it was a response a reasonable employer might have.

530. We conclude that the Respondent, particularly through Debra Southgate, did make a genuine effort to secure employment for the Claimant. Some other things were not done as well as they could have been. For example, it would have been better if it had been made clear to the Claimant that the post reporting to Alun Goode attracted pay protection. That said we find that the Claimant was adamant that he would not attend an interview despite persuasion to the contrary. It would have been better if the Claimant had been sent the list of posts covered by agency staff somewhat earlier.

531. Overall, we are satisfied that the Respondent's actions in attempting to seek alternative employment were reasonable. Taking matters as a whole we are satisfied that the decision to dismiss the Claimant including the process that led to that dismissal was one which fell within a band of reasonable responses. It follows that we must find that the dismissal was fair.

532. We consider it sad that after a number of years where the Claimant used his considerable skills and abilities to expose poor and corrupt practices he ended up

feeling that his work was under appreciated and that he lost his job. We are satisfied that the reason he lost his job was that that there was a genuine belief that the task of the YSPG was completed. Whether that belief should have been held is a matter that is beyond the remit of this tribunal.

533. For the reasons set out above, the Claimant's claims are dismissed

Employment Judge John Crosfill
Date: 17 June 2020