



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Laing

**Respondent:** Bury and Bolton Citizens Advice Bureau

**Heard at:** Manchester

**On:** 17- 20 February 2020  
with remote  
deliberations by BT  
Meet me on 4 May  
and writing up on 6  
May 2020

**Before:** Employment Judge Grundy  
Mr T D Wilson  
Ms E Cadbury

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Mr J Searle Counsel

# JUDGMENT

1. The unanimous judgment of the Tribunal is that the claimant's claim of victimisation under section 27 Equality Act 2010 fails and is dismissed.
2. The witness Order made and subsequently suspended against Mr I Varacchia is hereby discharged.

# REASONS

1. This judgment is to be read in conjunction with the three previous judgments made in these proceedings arising from the claimant's claims. Following the previous rulings the outstanding issue to be determined relates to the claimant's remaining substantive claim in respect of alleged victimisation under s27 Equality Act 2010. The claimant, who is a qualified non- practising solicitor was employed by the respondent, for a period (on any view) of less than 2 weeks as an Immigration adviser. The respondent is a Citizens advice Bureau in the north west of England offering free advice and as such has charitable status and recruits volunteers and paid staff alike.

## **ISSUES**

2. On 2 January 2020 Employment Judge Franey in the Annex to his Case Management Order identified the issues as follows:-

- (1) Can the claimant establish that he did a "protected act" by making an allegation (whether or not express) that any person had contravened the Equality Act 2010 (by acting in a way which amounted to harassment related to sex contrary to section 26 and/or to direct sex and/or race discrimination contrary to section 13 ) on either of the following occasions:
  - a) In a verbal discussion with his Line Manager Gail Lyle on 3 June 2019,or
  - b) In an email sent to Ms Lyle at 9.14am on 4 June 2019.
2. If so are the facts such that the Tribunal could conclude that in dismissing the claimant the respondent subjected him to a detriment because of a protected act?
3. If so, can the respondent nevertheless show that there was no contravention of section 27?

## **CONDUCT OF THE HEARING AND EVIDENCE AND WITNESSES**

3. The hearing was conducted as an attended hearing at the Manchester Tribunal over 4 days from 17th - 20th February 2020. Due to the applications made by the claimant and the ex tempore judgments given within the hearing, despite the only outstanding issue remaining to be litigated being the claimant's victimisation claim, the evidence was heard by the Tribunal extending over all of the 4 days. The claimant gave evidence on day 1 and did not complete his evidence until mid morning on day 3. Next the Tribunal heard from Mrs Gail Lyle Immigration Service Manager and on day 4 from Mr Gary Malcolmson, Deputy CEO of the Respondent and from Mr Richard Wilkinson the CEO. All of the live witnesses had filed witness statement evidence, which they each confirmed on oath, and the Tribunal gave some leeway to the claimant to call further evidence in chief to set the scene of his complaint.

4. The Tribunal had available an evidence bundle containing just short of 200 pages. Given the evidence in totality was not completed till after 4.30pm on 20th February, ( Day 4 of the 4 day listing), the Tribunal discussed with the parties whether it would be possible to submit written submissions to avoid more than one further listed hearing date. Despite being a litigant in person although a qualified solicitor (non-practising) the claimant and all parties agreed to submitting written submissions and for the deliberations to take place on the first then available date convenient to the Tribunal Judge and members. Written submissions submitted consecutively by the respondent first and the claimant subsequently have been before the Tribunal for its deliberations.

5. The deliberations have taken place remotely on the date as scheduled at the conclusion of the hearing that being 4 May 2020, by way of the Judge being present at Manchester Tribunal and the Members being in possession of all relevant material and the written submissions contacted by BT Meet me call. This has been necessary, given the deliberations have had to be convened during the lockdown period of a

national emergency due to covid 19. The Tribunal is immensely grateful to the parties for their co-operation in providing written submissions and the staff of the Tribunal for facilitating the deliberations hearing at this time. The Tribunal Judge required 6 May for writing up of the Judgment.

### **FINDINGS OF FACT**

6. The Tribunal has not found it necessary to determine all allegations of fact that were litigated before it, however the Tribunal has made findings on those matters about which it considers it is necessary to determine in order to give a full and reasoned judgment on the issues in the case.
7. The claimant commenced employment with the respondent on 20th May 2019. He was dismissed on 4th June 2019. He had in fact applied for 3 different roles - consultant, development manager and Immigration adviser. He secured an interview for the IA role, which was in the EUSS ( EU Settlement scheme) team where staff, were particularly required at the time.
8. Prior to interview the claimant had offered to bring his solicitor certification but was told this was not required. The respondent was interested in his IAAS immigration accreditation. The claimant was interviewed by Mr Wilkinson, and Ms Lyle, although appointed to the adviser post after interview, prophetically from the respondent's point of view, Mr Wilkinson had expressed a slight concern that the claimant had directed all answers to him even when asked by Ms Lyles and he thought he may be being sexist. Notwithstanding his observation Ms Lyles was to be his Line Manager and thought he was qualified for the post and she thought she could manage him. His appointment letter and job profile are at pages 84- 85 and 88 of the bundle.
9. The claimant, whilst polite and co-operative at some moments, largely presented to the respondent and to this Tribunal as difficult, highly challenging and lacking in empathy. He did not accept criticism from his new employer at the time, interrupting, speaking over and undermining Ms Lyles as evidenced in the advice sessions she conducted which he had been asked to observe, (or if the Tribunal attempted to keep order, ( for example when he was asked not to point his pen at Ms Lyle whilst she gave her evidence, he accused the Judge of lying)). He was often demonstrably arrogant and sometimes obnoxious within his presentation to the Tribunal. He was undoubtedly a very difficult individual to manage who did not wish to take direction from others.
10. He perceives himself to be superior to others and of higher status, in part this may be due to his qualification as a solicitor since he showed his certificates to fellow employees without request. His skewed and uninformed perception would cause grave concern that he lacks the skills to perform the role to which he had been recruited as such a role would require understanding, sensitivity and good social skills. The respondent was rightly able to reach this conclusion about the claimant's social skills and interactions. Further the claimant's presentation as egotistical and with the air of superiority caused difficulties in his working relationships over a very short period of time.
11. The claimant commenced employment on Monday 20th May 2019, in a conversation with Ms Lyles on that very first day he was rude to her when she

simply asked if he smoked. On 21st May he shadowed Ms Lyles and although he was asked to observe, he intervened and purported to give advice thereby directly undermining her. He also shadowed Ms Charlie Smythe who is a qualified solicitor on immigration matters that afternoon and was critical of her telling Ms Lyles he knew more about the issues than she did and behaving in a way that she reported to Ms Lyles was "quite domineering." After the claimant's dismissal Miss Smythe, at page 113 on 7 June 2019 provided in an email, a resumé of the claimant's interactions with her. She describes observing him to be "disrespectful", that she found his allegations against Rebecca Potts-Jacobs, "baffling" and that she was "nervous" about "signing a statement" because "he seems the type of character that would cause problems.."

12. The claimant was in the office on Wednesday 22nd May 2019 and on Thursday 23rd May he attended an Immigration training course, which other staff also attended at a different venue to the CAB. The claimant chose not to sit with his new work colleagues and did not speak to them except to Ismail Verrachia who is a male solicitor. Emma Davies a senior immigration case worker reported to Ms Lyles that she had found the claimant to be "aggressive" and "confrontational" and "rude" to "Ismail" when he found out he was a solicitor as he said he was "surprised". Emma Davies statements/ and as amended was given to Ms Lyles and appear at 117A and 120. Emma also opines that, "From his behaviour on the Thursday and what I had witnessed of the conversation on the Tuesday and had been told was said after I left, the impression I had begun to form of Ian was that he did not think highly of women or that he thought less of them than men." She also says "I did not think Ian was a "team player" or willing to integrate himself into the team" at page 120. Ms Lyles deals with what she knew at the time and what she found out later by means of appendices to her statement containing the evidence she received from Ms Davies, Miss Potts Jacobs and Miss Smythe. The evolving situation after a very short space of time does not paint a happy picture of the working relationships between colleagues attributable to the attitude of the claimant.
13. The claimant was at work on Friday 24th May but Monday 27th May was a Bank holiday so the claimant was not at work on that date contrary to the assertion in his written submissions. By then he had 5 days in work 4 of which were at the respondent's own premises. On Tuesday 28th May he completed on line tasks and on Wednesday 29th May the induction checklists for new employees were signed at page 93 - 94g. On Thursday 30th May 2019 he applied for a half- day holiday the next day, but may have been absent for the whole day. On any view by this time he had attended the premises for no more than 7 or 8 days and there was one training day. He attended on 3rd June, which was the day of the meeting with Ms Lyles to which he was invited as evidenced on page 95 the meeting was titled "catch up." The claimant was therefore employed in this job for a maximum of 10 days and the respondent asserts in fact less, if one was a full training day.
14. Prior to scheduling the meeting Ms Lyles had noticed, "some tension developing" between the claimant and Mrs Potts Jacobs. As Mrs Potts Jacobs had been leaving the office on a day in the second week of the claimant's employment she had asked if he was getting the train and had been ignored by him, then given a stern stare and then he had replied saying "are you talking

to me?" To which Ms Lyle had attempted to diffuse saying " Happy team members remember".

15. If the words used as alleged by the claimant were " are you coming?" which is not as described by Ms Lyles but is a common turn of phrase, then the claimant's reaction to a perfectly plain and simple question, (the interaction of the individuals being observed by his manager) was quite frankly bizarre and perplexing as the claimant invites some sort of innuendo and criticism of Mrs Potts Jacobs for posing this question to him. This was a simple question about travel arrangements as two employees potentially had some overlap of the same train journey to make. As Ms Lyles observed there was an issue of a difficulty in communication, which was developing.
16. On 3 June 2019, Mrs Potts Jacobs complained to Ms Lyles that the claimant had ignored her and they were not getting on. Ms Lyles scheduled a meeting with each separately. Her notes of the meeting with Mrs Potts Jacobs are at 95A documenting, "slight issues with IL"- "unprofessional". The note of the meeting with the claimant is at 96. "RPT.... unprofessional". On page 102 in an email sent to Gary Malcolmson at 19.16 on 4 June 2019 she sets out a full resume of the concerns, including a reference to the claimant's response to a common courtesy of asking how a weekend had gone- " IL snapped at her saying along the lines of " I don't need to tell you how my weekend went as this is personal and we are work colleagues and didn't wish to discuss with a work colleague."
17. The email detailing the meeting with the claimant sent to Mr Malcolmson at 20.37 on 4 June 2019 details the claimant saying, "he doesn't feel he is being tested, and that as a solicitor he likes dealing with appeal work". He details his view that Rebecca Potts Jacobs is unprofessional because of asking whether "he is coming?" in reference to getting on the train at the end of the work day. When Ms Lyles broached the subject about asking about the weekend the claimant replied, " maybe its a cultural thing" ( which he accepts saying ) and Rebecca Potts Jacobs being a black female and him being a black male and that being white Ms Lyles wouldn't probably understand" (which the Tribunal explicitly finds was said by the claimant).
18. He also told Ms Lyles he thought she ( Rebecca Potts Jacobs) would make a false complaint against him and that she had told him to look in the mirror when he suggested she was " unprofessional", which he objected to particularly because he was a solicitor. The claimant did not allege sexual harassment against Rebecca Potts Jacobs. Ms Lyle's view was that the claimant may not have wanted a friendly conversation with women but whatever was the case she had found the comments he fixed on were odd. He mentioned in the note of Ms Lyle at page 105 that she had asked him, " If he had a problem with her as he was ignoring her? and that his response was no". Ms Lyles characterised the interactions as "altercations that need dealing with" page 105. They were not of the character or import of sexual harassment. They were the Tribunal finds odd.
19. The claimant also raised concerns about the work he was doing, he characterised this as " the lack of work" even though he was only 2 weeks into the job, he said he was considering leaving the job.

20. As a result late on Monday 3 June, Ms Lyle went to see Mr Malcolmson for advice and to suggest she did not feel she could continue to work with the claimant. She expressed issues regarding his ability to communicate with colleagues and dealing with the fallout when colleagues were upset. She had already been fielding the issue of the claimant and Rebecca Potts Jacobs being on the same team but proposing working at different physical sites, which was not a solution going forward as they had to communicate within the team.
21. Mr Malcolmson had been on leave on the week of 27th - 31st May and on returning on 3rd June saw Ms Lyle after 5pm about the problems with the claimant and apparent frictions between the claimant and Rebecca Potts Jacobs and the claimant having made " a bad impression so quickly on so many people". He decided he would speak with the CEO Richard Wilkinson to ask him to endorse the claimant's dismissal. Mr Malcolmson was recommending dismissal on the grounds "that there was a personality clash of some kind between the claimant and RPJ, different colleagues reported he had been rude in the way they interacted with them and he had interrupted advisors when shadowing and he repeatedly had to be reminded of the scope of his role and the fact he was not employed as a solicitor."
22. Mr Wilkinson confirmed in the morning of 4 June 2019 before the claimant's email page 98, was seen by him that he had decided to dismiss the claimant and he made that communication to the head of HR. Mr Malcolmson made him aware of the email before the dismissal was articulated to the claimant but it did not change or influence his previously held view that the claimant should be dismissed. The decision taken by Mr Wilkinson was therefore determined on before the email had been placed before him and could not have influenced the decision to dismiss him.
23. Mr Malcolmson effected the dismissal and explained to the claimant it related to his interaction with colleagues and going beyond the remit of his role and not being happy in the role as a solicitor wanting to do appeal work. The claimant threatened Tribunal proceedings. The dismissal letter is at page 107-108 of the bundle.
24. The email relied upon at page 98 is couched in the terminology of the Protection from Harassment Act 1997 and the failure to provide a safe workplace. In inverted commas it refers to being caused, " harassment, alarm and distress" and invokes a very different statutory code to that of the Equality Act 2010. Whilst it refers to events on 27th May in the email it cites those as whilst being on a train after work. It does not have the flavour in any way of a sexual harassment allegation. The terminology suggested by the claimant may be a perverse way to try to make it such.
25. Feedback about the claimant within a very short time frame suggested he was rude and arrogant. Mr Wilkinson was worried about his interaction and undermining in an advice drop in session with Gail Lyle. He was appraised of the fact that RPJ and the claimant were not sitting in the same work area due to the personality clash and it was not feasible to allow them to not sit together going forward. Mr Wilkinson formed the view "the claimant had a difficult personality and made people feel inferior to him. He had not formed positive relationships with colleagues and had indeed upset a number of people. He had

only been with ( the R) around 2 weeks and he had made an incredibly negative impression. "

26. The claimant was attempting to put forward some sort of "pre-emptive strike" by writing the email on 4 June 2019 and alleging that a false allegation may be made against him. He wrote in these terms, " After further comments on 03 June 2019 ( these were explained to you) her actions and comments causing me " distress", it has become " intolerable" for me to work alongside rebecca. I strongly feel that rebecca seeks to undermine me in my employment, and will continue to subject me to harassment and distress. As explained in our meeting, I also strongly feel this will culminate in a wholly false and malicious complaint being made against me by rebecca which jeopardise my continued employment."
27. After the dismissal the respondent obtained other evidential statements from employees asking their experience of the claimant. Received by email such as that of Connor Harper- Jones Immigration services administrator dated 6 June 2019 13.38, he stated, " My interactions were minimum, I think I only spoke to him and got a response twice, one was when we had a client call who said he spoke to Ian regarding his wife and wanted further information before he was paid, to which Ian denied all involvement with speaking with the client "....and....."Ian came across as very self-important and when I did speak to him would feel like I was below him which never really bothered me."
28. After termination of employment the Claimant brought his Tribunal claim on 10 June 2019, page1-20 which relied on the email of 4 June as the containing specifics of a protected act, with amended grounds on 27 September 2019 pages 28-32 seeking to rely on the conversation at the meeting of 3 June 2019 as a protected act, the amendment to rely on the events of 3 June was granted by EJ Franey as set out in paragraph 41 of the CMO on 2 January 2020.
29. At the Tribunal hearing to the Judge and the members, the claimant presented as extremely egotistical and emphasized at every turn his qualification as a solicitor and a perceived superiority. He believed he was being interrupted during his evidence when the reality was he was being encouraged not to repeat and re- visit matters the Tribunal already had cognisance of. Towards the end of his cross examination by Mr Searle he was threatening saying, " If you interrupt me again, when I'm giving an answer..... I'm giving you notice....." It was very much a situation of him trying to dominate and wishing to have his own way all of the time. At one stage his riposte was "Let me finish, do you think I'm someone from the street?" He sought to paint himself as a private person, whilst grandstanding and challenging at times and not wishing to conform to authority for most of the hearing. He seemed to have a fixation about others failing to be " professional". He was difficult to engage for much of the hearing and the applications and judgments meant that the hearing was very stop/ start. At the conclusion of the proceedings on day 4 he thanked the Tribunal for dealing with his case in what was at point a very polite manner.

## **THE LAW**

30. The Tribunal had regard to section 27 of the Equality Act 2010 which reads as follows:-

SECTION 27 (1)A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

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

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

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

(d)making an allegation (whether or not express) that A or another person has contravened this Act.

(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

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

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

31. The claimant also refers the Tribunal to section 26 which reads as follows:-

(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)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.



(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.

32. A claim for victimisation is actionable as a statutory tort. A realistic approach must be taken to any situation in which it is said a protected act occurred. The burden of proof is on the claimant to prove that he did a "protected act" as identified in the issues above relating to the verbal discussion with Gail Lyle on 3 June or in the email sent to her on 4 June. The standard of proof is the balance of probabilities.

33. The burden if such a protected act is established is also on the claimant to establish that the respondent subjected him to a detriment because of the protected act. The causation aspect requires knowledge of the protected act and a causal connection between the protected act and the detriment. There is no comparator aspect to a victimisation claim, nor is there any reverse or shifting burden in considering the burden of proof per **Oyarce v Cheshire County Council [2008] EWCA Civ 434**

34. The primary object of a victimisation provision is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so.

35. Section 27(3) above refers to the "giving of false evidence or information or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith." The allegation asserted by the respondent of bad faith would require the respondent to prove bad faith on the claimant's behalf. (This matter first arose in written submissions on behalf of the respondent and was not a matter identified in the issues although the claimant fully addresses it in his submissions in reply to the respondent, as the Tribunal ordered the respondent to file submissions first.)

## **SUBMISSIONS**

36. Both parties made written submissions, which are incorporated by reference essentially the respondent whose submissions were ordered and filed first in time as set out above, address the issues as follows:- the protected act being relied upon, the detriment suffered, the reason for the detriment, any defence and the burden of proof. There was no reply filed to the claimant's written submissions.
37. The respondent seeks a specific finding that the claimant is dishonest and has fabricated his account of the meeting on 3 June to seek to allege sexual harassment. It is asserted (and it is correct) that the conversation is not referred to at all in the ET1. It is asserted (and it is correct) that only upon hearing what EJ Holmes had to say at the preliminary hearing on 13 September 2019 did C say that he had made a verbal complaint of sexual harassment on 3 June 2019. The respondent invites the tribunal to expressly find that the C: invented his version of telling GL about sexual harassment in an attempt to bolster his claim and lied in his evidence on this point.
38. Further the respondent asserts the email of 4 June does not satisfy the requirements of section 27, the first reference to any protected characteristic is in the amended grounds of claim at 29 (2.5).
39. The respondent accepts dismissal could amount to a detriment. As to causation the respondent refers to a number of authorities within the written submissions and asks the Tribunal to consider the reason why the dismissal occurred. "In examining the reason for that treatment, the issue of R's state of mind is likely to be critical." "The key issue in such situations will be the tribunal's understanding of the motivation (conscious or unconscious) behind the act by the employer which is said to amount to victimisation."
40. The respondent asserts a complete defence to the claim if the Tribunal were to accept bad faith on the part of the claimant. The respondent relies on the **Gillingham Football club** case as set out in submissions.
41. The respondent submits , "C has not discharged the burden. He has failed to establish a prima facie case. Even taking R's explanation into account C has not made out his claim of detriment. Alternatively, R has shown that the dismissal was in 'no way whatsoever' because of a protected act, if there is one. The protected act was not 'the effective cause' of the dismissal. The reasons set out at [107] are the true reasons for the dismissal of C."
42. In concluding- specific findings are invited to be made by the Tribunal- " an express finding that the C has lied in his evidence and has been responsible for causing 4 female employees (GL, RPJ, ED and CS) to feel uncomfortable because they are female and to expressly record that C acted in a manner consistent with him holding a sexist view of women. R contends that C has demonstrated that he has a warped and jaundiced of women. This was evident even in the face of the tribunal. R refers specifically to the C's application for recusal of the Employment Judge on the grounds of her gender."

43. The claimant's submissions were lengthy running to 39 pages. He refutes the assertion of dishonesty and sets out the required tests for the Tribunal to consider in Royal Brunei Airlines v Tan [1995] 2 AC 378 and Barlow Clowes International Ltd v Eurotrust International Ltd [2005] UKPC 37. The Tribunal is reminded by the claimant, of his status as a non-practising solicitor.
44. He alleges that it is the respondent who makes false allegations against him. He refutes the veracity of date and time stamped emails. He says he is upset by the allegations of misogyny and the like. He repeats many of his complaints the subject of separate judgments of this Tribunal already promulgated.
45. At one part of the submissions he appears to allege on page 26 that the Judge having allowed cross examination about the "statements" of Rebecca Potts Jacobs, Miss Smythe and Miss Davies, "On at least one occasion in the proceedings, when the claimant strongly objected to answer questions put by Counsel pertaining to these statements, the EJ repeatedly threatened the claimant that if he did not answer questions of Counsel pertaining to these statements purportedly prepared by CS, ED, RPJ and the Judge would record that the claimant refused to answer the questions of Counsel. This approach by the EJ was intended to and did pressure the claimant into acknowledging and accepting the veracity of the statements. (This is not the recollection of the Tribunal and appears to be a mistake as the Tribunal's understanding of the claimant's case throughout is that at no time did the claimant accept their veracity.)
46. It is not until page 30 of 39 of his written submissions that he then specifically addresses the victimisation claim itself. He contends he asserted sexual harassment by Rebecca Potts Jacobs at the meeting with Gail Lyle on 3 June. He refers to the conversation with Gail Lyle and criticises the cross examination to which he was subjected about his attitude to Rebecca Potts Jacobs.
47. He seeks to argue that the email was a complaint in good faith. He says RPJ "had taken an interest in him which he rebuffed". He suggests the email was seen before the dismissal was communicated to him.
48. In effect and in short he asserts that the Tribunal should reject the evidence as to the reason why he was dismissed "as the reasons in the ET 3 are fabricated". page 24 para 6.

## **CONCLUSIONS**

49. The Tribunal applied the law to its findings of fact after consideration of all of the evidence, re-reading the notes of oral evidence and witness statements and the submissions made in writing. The Tribunal reached the following conclusions. The claimant did not establish that the respondent had done a protected act taking account of the findings at pages 3, 4 and 5 above. The verbal discussion with Gail Lyle on 3 June 2019 was not as the claimant seeks to argue that he was making an allegation another person had contravened the provisions of the Equality Act. It was him complaining about Rebecca Potts Jacobs being "unprofessional" in his personal view because she did not conform to his prescriptions about how people should react and behave.

- 50.** The email also does not establish that he made an allegation that the respondent ie Rebecca Potts Jacobs or another person has contravened the Act. The allegations by the claimant regarding asking about getting a train and the station events were bizarre in the manner in which such complaints were couched by him. When heard by Ms Lyle she did not understand any of the complaints to be an allegation of harassment on the grounds of sex. The claimant may have tried to give a particular emphasis to attempt to fit the statutory criteria of the victimisation provisions latterly but the Tribunal does not accept what the claimant did was a protected act in relation to events on 3 June or 4 June email.
- 51.** Having reached the conclusion the claimant has not established any protected act the claimant's case fails on this basis however if the Tribunal has reached a wrong conclusion on the evidence as to the question of either events at 3 June meeting or 4 June email amounting to a protected act the causative aspect relating to the claimant's dismissal would be live. The Tribunal considers that the cause of claimant's dismissal wholly related to his own reprehensible conduct by his difficult behaviour across the Board with colleagues and management, in a matter of less than 2 weeks in new employment with a charitable organisation.
- 52.** The respondent was not in breach of its probation policy in dismissing the claimant nor in the circumstances did it breach its bullying policy and the Tribunal doubts the relevance of these matters to its ultimate decision regarding alleged victimisation but deals with them as the claimant raised them.
- 53.** The overbearing manner of the claimant was writ large to this Tribunal as it fell to assess him over 4 days and as it was to the respondent over less than 10 days in employment. It follows that any individual displaying his characteristics would be difficult to work alongside and impossible to manage. It is patently obvious at times he cannot rein himself in nor take direction and often responds alleging he is affronted whilst not seeing or understanding the offence he could be causing to someone else. An example was accusing the respondent's witness Mr Wilkinson of smirking and the when the Judge intervened to deal with the claimant's assertion he subsequently submitted it was insufficient to refer to "his perception", when in fact the point was the Employment Judge had asked everyone to act with decorum to diffuse the situation and in fact Mr Wilkinson, who seemed perturbed, sensibly moved to sit out of the claimant's eye line. However the claimant returned to complaining about it later in the hearing, despite Mr Wilkinson moving.
- 54.** The extent of the claimant's hostile animus to anything, which did not accord with his view for the majority of the time, was the Tribunal would observe and conclude very wearing and quite wearying. The Tribunal considers this must have been the experience of those working along side him and trying to manage the claimant, both male and female, black or white.
- 55.** The respondent asks the Tribunal to find that the claimant put together a pre-emptive strike in suggesting a false allegation may be made against him. The Tribunal considers that the claimant did make a pre-emptive strike not motivated by malice or in bad faith, but because of the claimant's own warped perceptions of his working environment. This was based on and a development

of his odd and bizarre suggestion that Rebecca Potts Jacobs had been "unprofessional".

- 56.** The respondent seeks a finding of bad faith. Considering the high test to be satisfied given how the case was originally pleaded and the identified issues the Tribunal does not consider the high test of bad faith is satisfied and notes that this has only latterly been developed, by the respondent, in closing submissions hearing the evidence as it proceeded and the claimant's applications during the hearing.
- 57.** The Tribunal concludes the ultimate decision to dismiss was taken by Richard Wilkinson in context of an employee who was not "gelling" or fitting in with colleagues to an acceptable degree. In fact far from it, he was exhibiting basic difficulties in having normal social relationships and interaction, which was having a detrimental effect and impact on the rest of the team. The feedback on his short period of employment was extremely critical. Those immediately around him were women but another who was male as reported, found him to express a superior attitude. There was a fundamental inability to accept direction as witnessed by the Tribunal it so happened this was from a female Employment judge in the case of this listing. He was challenging to Mr Searle in retorts in cross-examination.
- 58.** The respondent dismissed the claimant because his reactions to other staff and relationships to staff, and his Manager and the attitude to his work were not appropriate for someone only the second week in to a role. Page 107 made clear he would not have passed his probationary period and the respondent generously after 2 weeks, paid 3 and a half weeks notice pay. There is no inconsistency taken in the round, in the reasons the respondent says it dismissed the claimant from the purport of the evidence and the written documentation considered overall.
- 59.** The Tribunal declines to make the specific findings sought by the respondent. The Tribunal accepts that one view of the evidence may be that the claimant has a warped view of women. The Tribunal draws the conclusion that the claimant had, as Mr Searle had put it to Employment Judge Franey on 2 January 2020, at the case management hearing "some bizarre and fantastic interpretations of innocent actions". Given his interpretations he may or may not hold misogynistic views the Tribunal cannot explicitly reach that conclusion even in the face of the recusal application made by the claimant in the first instance to seek a male Employment judge. There is certainly in the claimant's responses at times a strange heightened sensitivity to plain and straightforward matters. The simplest example of this is in the objection to questions about dress size to which the claimant took offence during him being cross-examined. In the Tribunal's view this gives weight to the conclusion this claimant was extremely difficult to deal with, had some bizarre reactions to innocent actions and that was the reason for his dismissal at its nub.
- 60.** The Tribunal not having acceded to the claimant's request to adjourn and hear directly from Rebecca Potts Jacobs and Charlie Smythe and Emma Davies for the reasons given in the previous judgment taking a proportionate view throughout is not in a position to make the explicit findings now sought by the respondent in submissions and declines so to do.

**61.** The claim of victimisation fails and is dismissed.

Employment Judge Grundy  
Date: 18 MAY 2020

JUDGMENT SENT TO THE PARTIES ON  
16 July 2020

FOR THE TRIBUNAL OFFICE