Case No: 2414533/2019
2401643/2020
2408851/2020

EMPLOYMENT TRIBUNALS

Claimants		First Respondent
Mr R Raza	v	**OCS Group UK Limited**

Heard: In Leeds **On: 23 to 26 November 2020**

Before

Employment Judge JM Wade

Mrs L Hill

Mrs S Scott

Appearances:

For the Claimant: **In person**

For the Respondent: **Ms Niaz-Dickinson (counsel)**

Note: The reasons provided below were provided orally in extempore Judgments (liability and then costs) delivered on 26 November 2020, the written record of which was sent to the parties on 2 December 2020. A written request for written reasons was received from the claimant on 2 December 2020. The reasons below, corrected for error and elegance of expression, are now provided in accordance with Rule 62 and in particular Rule 62(5) which provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the terms of the Judgment given on 26 November 2020 are repeated below:

JUDGMENT

1. The claimant's Equality Act complaints are dismissed.
2. The claimant's holiday pay complaint is dismissed.
3. The respondent's application for counsel's fees in connection with this hearing is refused.

REASONS

Introduction

1. We have before us three claim forms, all subject to case management in this Tribunal before a number of different Employment Judges over four case management hearings. As a result we had a very comprehensive list of the complaints and issues, which identified both the factual allegations and the "legal labels" for Mr Raza's complaints.
2. The record of the last of those case management discussions and the list of issues is attached as an Annex to these reasons. It sets out the background and history of these claims. References to "Allegation [numeral]" are references to the "Final list of issues" attached to that Annex.
3. In short the claimant is a relief security guard (with job title Area Relief Officer or "ARO") employed by the respondent to be allocated to different courts and Tribunals as the need arises. He brings Equality Act complaints related to race, religion and victimisation and an unlawful deduction from wages complaint. He identifies as a Pakistan born Pakistani, of the Shia Muslim faith.
4. The supervisor at Bolton Crown Court, Mr Mahmood, against whom most of the allegations are directed, is a British born Pakistani, and a Muslim, but described himself as "not very religious".

Evidence

5. We have had a largely comprehensive file of relevant documents in the case. There have been a few "missing" documents because on 1 April of this year a new contractor for security of Ministry of Justice venues took over ("the transfer"), with the result that some notes of an investigation meeting on 9 April 2019 with Mr Hawksett, the claimant's ultimate manager, were not available. Nor were minutes of a disciplinary appeal hearing taking place before the transfer.
6. We have also heard oral evidence from a great number of witnesses on behalf of the respondent. The claimant's claim was principally directed at his former supervisor, Mr Mahmood.
7. We heard oral evidence from the claimant, Mr Raza, and then from Mr Mahmood, Mr Hawksett, Mr Mahmood's manager, Ms Graham, who dismissed the claimant, Miss Hodge who reinstated him on appeal, Mrs Carter who was the supervisor at the Civil Justice Centre in Manchester, against whom a particular victimisation/discrimination allegation was made, then from Mr Mehmood, Mr

Kashif, Mr Jan and Mrs Blears all of whom were fellow security guards when the claimant was at Bolton Crown Court.

8. It is a feature of this case that Mr Jan and Mrs Blears were here subject to witness orders. They had not wanted to give evidence in the case on behalf of Mr Raza, and had indicated to the respondent that they could not remember events. That was their position as relayed by the respondent in case management. Mr Raza sought witness orders for them because, in Mrs Blears' case. he respected her and expected her to tell the truth. He also had that view of the evidence of Miss Hodge, and Mr Hawksett: that was the gist of his comments when questioning them, and he did not challenge Mr Hawksett a great deal.

9. Miss Hodge was also subject to a witness order because, as well as the transfer of security to OCS on 1 April, the previous Ministry of Justice contract was also split: facilities and cleaning went to another contractor. Miss Hodge and others were employed by that other contractor by the time of this hearing.

10. The Tribunal had to use a number of different tools to assess the evidence and make findings of fact, best summarise as follows:

    10.1. Is the account consistent with contemporaneous material, including increasingly, social media, smart phone and meta data based evidence?
    10.2. Is the account consistent with subsequent investigations or witness statements given?
    10.3. What evidence is there from others about the witnesses' conduct and demeanour at the time**,** both before and after any allegations?
    10.4. What other evidence is there about the way the witnesses behaved on other occasions, perhaps not in dispute?
    10.5. What was the Tribunal's impression of the witnesses when questioned: was the impression that they were telling the truth?
    10.6. What was the Tribunal's assessment of the witnesses' reliability on relevant matters: were they generally consistent with other material and good historians or were they mistaken in their recollections or beliefs?
    10.7. What does the totality of the chronology or circumstances tell the Tribunal about the inherent likelihood of the accounts?
    10.8. An initial impression or assessment of a witness has to be checked against all the other factors;
    10.9. Placing too much significance on demeanour can be unsafe: a confident witness is not necessarily a truthful witness and a nervous one is not necessarily lying;
    10.10. A genuinely held belief which is wrong, or one untruth told, does not necessarily render other evidence from that witness unreliable;
    10.11. It is human nature that people often deny unlawful acts;
    10.12. Generally good historians still tell untruths;
    10.13. People do, on occasions, behave in unexpected ways, whatever the overarching likelihood;
    10.14. Skilled cross examination can demolish an otherwise likely and compelling case;
    10.15. The Tribunal has a duty to put the parties on an equal footing during a hearing as part of the overriding objective;
    10.16. The formal rules of evidence do not apply to the Tribunal;
    10.17. Justice requires witnesses to have the opportunity to comment on disputed matters in, what is still, an adversarial process.

11. In this case, the first tool above, consideration of what was written at various points in the chronology, was often the best guide to what was going on in the witnesses' minds at the time, whether that was in emails, messages, or reports. It tended to be more reliable than what was subsequently said, not necessarily because people were being deliberately untruthful to the Tribunal, but because memory is a reconstructive process: when people tell themselves a story or narrative of what they wish or believe has happened, in their minds it can become for a true recollection over time, albeit divorced from reality.

12. Unusually there were a number of occasions where the demeanour of witnesses giving their evidence, and their reactions to questions asked of them, has led to the Tribunal making findings for which there is little other corroborative evidence. We have assessed those matters and made those findings using all our combined industrial experience.

General Findings of Material Facts

13. The Tribunal found the relevant chain of events as follows.

13.1. The claimant commenced his employment with G4S, the previous security/facilities contractor, in 2012. The claimant became an area relief officer in 2013 as Mr Kashif had done. This meant he had no fixed place of work but would be deployed as required to different venues. Mr Mahmood had started in court security with Mitie, another contractor, in 2008. By 2019 he had a great deal of experience, including the change or transfer from Mitie to G4S and then from G4S to the respondent.

13.2. From 2016 Mr Mahmood was encountering the claimant in the north west courts; by then Mr Mahmood was a supervisor allocated to specific courts. He knew very well from his work with the claimant that the claimant was divorced, had family difficulties, and had been unable to see his four children for some years. Significantly, the claimant was due at a court hearing in the family case on 28 March 2019.

13.3. Prior to that hearing the claimant had told G4S that he would be best served by a permanent position because it would very much help him to secure timetabled access with his children.

13.4. The majority of court security staff in the north west are from ethnic backgrounds: that was spontaneous oral evidence from Miss Hodge. We accepted it unequivocally. It is entirely likely. It is important background in this case. It was also entirely consistent with the picture of eight or so security guards at Bolton Crown Court about which we heard in more detail.

13.5. A further general point is that expenses are paid to area relief officers, if they have to travel in excess of 20 miles from their home to attend the court or tribunal venue to which they are deployed.

13.6. In 2017 the claimant had had a "run in" or dispute, with Mrs Carter, who was the security supervisor at the Manchester Civil Justice Centre, ("the CJC" as it has been called in this case). She had challenged him about not appearing to be working; the character and demeanour of his response to her had led her to take him to see her manager, Mr Barkworth. The claimant had not accepted her criticism or her authority,

and she had been considerably shaken by that behaviour, which, we accepted from her evidence, included shouting.

13.7. From that point in 2017 Mrs Carter had refused to work with the claimant, in effect. Mr Barkworth told her she would not have to work with the claimant. He did not document a "ban" as such, on the claimant working at the CJC (Mrs Carter's permanent court) but he made sure that the claimant was not scheduled to work there.

13.8. The claimant alleges (Allegation 4.12) that before January 2019 he had not received travel expenses properly and that this was because of his race. That was an amendment to these claims permitted in June of this year. He accepted in his evidence that from January 2019 when Mr Hawksett dealt with these matters, or even earlier than that, rail tickets had been arranged for him. He had no complaints about reimbursement of his expenses by Mr Hawksett and he did not pursue the expenses issue with any other witness. He had no evidence of claims for reimbursement of expenses made, which were not accepted, nor, as ordered, any evidence of other relief officers who had received such reimbursement, when he had not. There are therefore no facts from which we can find that (a) there was any inequity between ARO colleagues in the handling of expenses, or (b) that if there was, prior to January 2019, such inequity (or less favourable treatment) was in any way influenced by the claimant's race. It is convenient to announce now that complaint 4.12 as an allegation of direct race discrimination has to be dismissed.

13.9. Returning to the chronology, on 5 March 2019 the claimant was suspended by Mr Hawksett because of allegations of shouting and swearing in earshot of the public and other people coming into court, while on morning duty at Bolton Crown Court, thereby bringing G4S into disrepute.

13.10. By chance, that day Mr Hawksett was due at court for a meeting. At around 10am when Mr Hawksett was on his way to Bolton, he received an email from the court manager indicating that they needed to talk to him because of the shouting and swearing of the claimant that morning. The matter had been reported to the court manager by the court police officer, Mr Hassan.

13.11. Shortly after his arrival Mr Hawksett had had spoken to Mr Mahmood, the security supervisor. Mr Mahmood had indicated that he had felt very shaken and intimidated by the claimant's behaviour that day and he also felt that the claimant had not been sufficiently challenged about his behaviour in the past. Mr Hawksett had done a risk assessment of the impact of suspension on the claimant. The risk assessment noted the circumstances of which Mr Hawksett was well aware, namely the claimant's family court proceedings/personal difficulties. Mr Hawksett reported matters to his manager and Human Resources and secured authorisation to suspend the claimant so that he could complete a fair investigation without the claimant being on site. He met the claimant and suspended him. The claimant believed Mr Hawksett was going to talk to him about his request for a permanent location - he was wrong in that belief. Mr Hawksett then asked all those in earshot or sight of events to complete witness statements. Mr Mahmood told his team, in this context, that they must stick together and things would be ok, or words to that effect.

13.12. On 10 March, following his suspension, the claimant presented a detailed letter ("the 10 March letter"). He described points which he wanted to be considered as part of Mr Hawksett's investigation into his behaviour. The claimant's niece has a law degree or similar qualification and he and she had worked on that letter together. It was very well written and it included allegations that Mr Mahmood had called him a

bastard in the Mirpuri language, "about two weeks ago". This was therefore an allegation of treatment in the latter half of February 2019.

13.13. Further, the 10 March letter alleged "that a few weeks ago Mr Mahmood had not allocated nightshifts when they had been available", and that "the day before" the incident, that is on 4 March, Mr Mahmood had changed the claimant's night/late cover shift of 5 March - the claimant had been due to work the night/late cover shift because of the absence of a colleague; whereas Mr Mahmood had given it to Mr Mehmood instead. He also alleged that Mr Mahmood had put an obscene photograph on the claimant's WhatsApp profile.

13.14. These were the allegations the claimant raised concerning Mr Mahmood's behaviour towards him, in the 10 March letter. He also included mitigation evidence about his family circumstances and the way he felt about matters generally.

13.15. On 11 March the claimant submitted a second document, which was described as a grievance letter, and he alleged in terms in that letter that Mr Mahmood had been discriminating against him, and bullying him, and harassing him, and failing to give him equality of opportunity. He repeated the February allegation of being called a bastard in Mirpuri. He added a complaint that Mr Mahmood had not given him help in February 2018, when he had experienced chest pains at work; and he added a further point that when Mr Hawksett had first attended Bolton (that was some time in January 2019) that Mr Mahmood had not wanted the claimant to do the "Wand" search of him on entry, but the claimant had done it anyway, found a piece of metal, and for some reason Mr Mahmood was against him in connection with that.

13.16. On 2 April 2019 the claimant was invited to an investigation meeting with Mr Hawksett, which took place on 9 April. The notes of this meeting were not able to be provided by G4S but in correspondence in May, the claimant was told by Mr Hawksett, acting on HR advice that his grievance would be taken as mitigation information. Mr Hawksett asked the claimant if, with the claimant's permission, his grievance could be addressed in the investigation report. For that purpose he sought a statement from the claimant.

13.17. The claimant then prepared a thorough and comprehensive statement running to five pages, well-structured and again, the subject of help from his niece. In that document he mentioned the following allegations against Mr Mahmood – the WhatsApp incident a few weeks before 5 March, the bastard incident, the February 18 chest pain allegation, not being allowed extra shifts, and not being given a permanent post in Bolton when it was available. He alleged that Mr Mahmood favoured Mr Mehmood and Mr Kashif because they were his friends. To that was also added an allegation that Mr Mahmood had said that cakes brought in by a colleague were only to be given to the permanent guards. At that time that was described as a small thing, but that it amounted to bullying, with the other things Mr Mahmood was alleged to have done to the claimant. The claimant also mentioned the wand incident again with Mr Hawksett, and not being put forward for nightshifts.

13.18. Over these three documents, prepared within a short space of time, the claimant's allegations expanded, but were largely replicating each other with one or two additions on each iteration. In the statement of 16 May, there was reference to the way in which the 5 March matter had been handled.

13.19. The investigation report of Mr Hawksett, dated 24 May, did not investigate these grievance allegations. It included the statements of seven or so witnesses to the 5

March incident and other materials. Mr Hawksett completed his investigation report on 24 April, containing his investigation and evidence appendices relating to the disciplinary allegations. The only change to the report thereafter was to add the claimant's grievance statement as a further appendix.

13.20. Between receiving the investigation report with an invitation to a disciplinary hearing on 2 July, and that hearing taking place, the claimant had emailed the respondent to say that he wanted an outcome to his grievance. He was without a reply to that email when he attended the disciplinary hearing on 2 July, and there had been no investigation into his allegations against Mr Mahmood.

13.21. The claimant was represented by his PCS union representative at the disciplinary and grievance hearing with Miss Graham (and also at an appeal hearing that was to take place). At the start of the hearing Miss Graham discussed with the claimant all of the grievance material and allegations. Having taken some time in an adjournment to speak to Mr Mahmood, she determined the outcome of the grievance, recorded in a subsequent letter. She found that the reason for "lock up" or late/nightshifts being given to others, rather than the claimant, was "CTC" (counter terrorism and security clearance). This was a process that has been in place for full time permanent officers since 2016 and for some relief officers. It required presentation of passport documents and so on, with verification. Mr Mahmood had to be guided by that in selecting people for lock up shifts - if officers with clearance were available, then that was the rule. The claimant did not have that clearance.

13.22. She also found that the claimant's personal circumstances could have been supported by other means if he had accessed those means (G4S' helplines and so on that were in place). She decided that the allegations about the WhatsApp message or profile had been resolved on the day, because during the hearing the claimant told her that he had challenged Mr Mahmood on the day about this incident. Mr Mahmood had admitted placing the rude photo on the claimant's phone after being asked to swear on the Qur'an and said it was a joke. The photo had been removed by Mr Mehmood who had greater technology skills than the claimant. Having been resolved on the day, Miss Graham decided this was not a matter to be taken any further. She also recorded, when she spoke Mr Mahmood, that he had not remembered the chest pain incident, but she did consider that a report should have been completed on that occasion, and more support given, and she said she had raised that with Mr Mahmood, effectively, as a learning point. She concluded that the Bolton permanent position had been advertised, and the claimant should have applied for it through the respondent's intranet.

13.23. Miss Graham then heard the disciplinary charges. She determined the disciplinary allegations about the claimant's conduct on 5 March against him: she decided that those allegations were upheld - the claimant had engaged in gross misconduct on that morning.

13.24. The reasons for her findings included statements from: a crown prosecution officer who had been there on the day; a police officer there on the day; four or five fellow officers/guards and Mr Mahmood who all described similar conduct; and she had also known about the email report from the court manager to Mr Hawksett.

13.25. The CPS officer's account had been emailed on 7 March 2019, describing shouting and swearing by the claimant in earshot of the public and others attending court first thing in the morning. Taking into account Miss Graham's evidence on oat, and our consideration that she was a witness of truth, taking into account the

challenges to that evidence that were made to her many times by the claimant, that her sole reason for dismissing the claimant was that she believed that the disciplinary charges were proven. She believed that because of the evidence in front of her, which was very compelling.

13.26. She decided to terminate the claimant's employment, which was confirmed by letter the next day, on 3 July. The claimant was paid for any outstanding holiday pay due.

13.27. The claimant presented an appeal against both the disciplinary and grievance decisions of Miss Graham. An area manager met the claimant and his representative about the grievance appeal on 25 July. In the grievance outcome the area manager decided that Mr Mahmood's alleged behaviour in some respects needed to be the subject of a separate investigation. She also recommended that any dismissal appeal hearing, and decision should take account of the outcome of that grievance investigation, in determining the reliability of Mr Mahmood's statement about events on 5 March. She rejected the allegations about not being given a permanent post and lack of support, given the respondent's processes for application

13.28. On 23 September she recorded in a letter to the claimant that they had agreed that because he would be away in Pakistan there would be a delay in the outcome of the investigation. That day the claimant commenced ACAS early conciliation against the respondent and he received a certificate concluding the conciliation period on 14 October 2019.

13.29. Meanwhile an appeal hearing against the dismissal took place before Miss Hodge. She decided to reinstate the claimant from 14 October 2019. Miss Hodge concluded that the gross misconduct charges were proven as regards the claimant's conduct, but she reduced the penalty to a final written warning because of the mitigating and difficult personal circumstances that the claimant had presented as affecting him at the time of his behaviour. That had also been a recommendation on his grievance appeal determination, and was the basis for Miss Hodge's decision.

13.30. In Miss Hodge's letter to the claimant, upholding his disciplinary appeal, she confirmed she had agreed with him in that meeting that he would be paid for his holiday entitlement for the full year, because he would be unlikely to be able to take holiday in the very busy period between the mid-October of his reinstatement and the end of December. He had been to Pakistan for four weeks during the suspension period. The payment of 11 days' holiday which was the calendar year's full balance assuming he had been employed throughout, was then paid to him in his back pay on the next available payment date. There was some delay to that because the claimant changed his bank account. Nevertheless, the claimant's evidence (relayed also in his questioning of Miss Hodge), was that he accepted Miss Hodge's word that he had received his full holiday entitlement for 2019. I pause again at this stage to record that the claimant's unlawful deduction from wages complaint (Allegation 11.5) must also be dismissed.

13.31. Returning to the chronology, later in October, the HMCTS (Her Majesty's Courts and Tribunal Service) manager for Bolton and Manchester Minshull Street courts learned that the claimant had been reinstated as an area relief officer to the North West court cluster. It happened that she managed both Bolton and Minshull Street. She communicated by email to G4S in very clear terms that he was not to be deployed at her courts, as she put it. She was not prepared to take the risk of recurrence of the March 5th behaviour in Bolton. That was the reason she communicated at the time and

it is absolutely plain from the tone and context of the email, that was her reason. Her instruction was not communicated to the claimant at the time. G4S simply deployed him during that very busy time in the court calendar to other court and tribunal venues in the area, including at the Manchester Employment Tribunal.

13.32. On 14 November 2019 the claimant presented his first claim in these proceedings, indicating claims (by ticking the boxes) of race discrimination and holiday pay (on this date the claimant had not received his back pay - it had been paid to the wrong bank account). The narrative also suggested that there was unfairness in his dismissal. The claimant also alleged that Mr Mahmood and the Bolton court police officer had called him, "a Paki mango" and had discriminated against him with their friends. Clearly, that was a very serious allegation to have made.

13.33. Also in November a grievance investigation meeting invitation was sent to Mr Mahmood containing the claimant's three outstanding allegations (the WhatsApp incident a few weeks before 5 March 2019, the late February 2019 bastard incident, the February 18 chest pain allegation). These were the matters from the claimant's original complaint documents in March, and in his statement in May, which the area manager had directed would be the subject of a separate investigation.

13.34. That invitation letter to Mr Mahmood contained an unfortunate typo or mistake: the chest pains allegation was dated as February **2019**, rather than, as the claimant had described it, February **2018**. Statements were then taken as part of that grievance investigation from other colleagues concerning the allegations and Mr Mahmood attended a meeting with his GMB union representative. He denied the "WhatsApp" and "bastard" allegations. As to the chest pain allegation, he now said he remembered an incident where the claimant complained of chest pains around lunch time; that he offered to call an ambulance; that the claimant had not wanted him to do so; nor had he wanted management to be informed. Mr Mahmood's recollection was he had remained at work and left later. Mr Mahmood had not been there when he left, he said he had not completed an incident report, because it was not required. He also relayed or alleged that the claimant had said to him "log me out at 6, but I'll leave now" [at lunch time] and Mr Mahmood had refused to do that.

13.35. After that interview with Mr Mahmood G4S presented its response to the first claim. The claimant then presented a second complaint to the Tribunal on 29 February 2020 when he learned that he was not permitted to work at Minshull Street. That complaint was later identified as a complaint of victimisation or direct discrimination.

13.36. Also early in 2020, Mrs Carter, the G4S security supervisor, who had believed the claimant was not permitted to work at the CJC, expressed to Mr Hawksett her unhappiness about the claimant being allocated to work at the CJC on a few occasions in early 2020. Mr Hawksett told her at the time that she would have to put up with it, or words to that effect, for the time being. That had caused her a great deal of upset. Mr Barkworth, who had dealt with matters in 2017, had not documented anything which Mr Hawksett would act upon.

13.37. At the end of April 2020 Mrs Carter had complained to her area manager about the effect of working with the claimant on her; her manager told her that the claimant **was** banned from the CJC. These findings rely on Mrs Carter's evidence, which we accepted, using the tools above but including her demeanour in dealing with questions about matters which had clearly distressed her, and the inherent likelihood of her account. We accepted her oral evidence and considered her a witness of truth. There

was no documentation before us about these events, but we accept that she was told there was a ban in place.

13.38. A case management hearing of the first two claims took place on 30 April and the complaints were discussed at some length and clarified, given the summary of the Employment Judge. On 6 May the claimant indicated he wished to make an amendment application. He made allegations of new comments said to have been made by Mr Mahmood, Mr Kashif and Mr Mehmood. Those comments were said to be Mr Mahmood's friends allegedly belittling him as a Shia Muslim. The claimant said in evidence that these alleged comments had been forgotten about by him until 6 May of 2020, and that he had forgotten them throughout the internal process which had commenced in March of 2019, the great number of meetings that he had attended, and in all the documents he had produced both with and without the assistance of his niece.

13.39. Those new allegations were permitted as an amendment to the claim at a case management hearing on 30 June, and that was when there was also a permitted the amendment to raise the allegation about travel expenses.

13.40. On 7 July Mrs Carter rang the Manchester Employment Tribunal to ask how many guards were there as she needed some assistance at the CJC. Her call was received and put on speaker phone. The claimant was present with other colleagues; when Mrs Carter was told which four members of staff were working at the Manchester Employment Tribunal, she said it could be any of those that came across to the CJC to help, apart from the claimant, because he was banned. Clearly this incident was embarrassing and caused the claimant distress.

13.41. The claimant then presented a third complaint to the Tribunal on 8 July about that, later clarified as a complaint of victimisation or race discrimination by Mrs Carter.

13.42. The final relevant matter we need to address in these initial findings is that we have concluded, unsurprisingly, that a document within our bundle, an incident report form dated February **2019,** signed by Mr Mahmood, and which he told the Tribunal was contemporaneous, is neither reliable, nor contemporaneous. Explaining why he had not remembered it, (either when asked by Miss Graham in July 2019, or when saying he had not completed a report when interviewed about the three allegations in November 2019, with his GMB rep) he said it was forgotten about. Sometime between November 2019 and November 2020, this Tribunal, he had found it in a file in the office at Bolton court.

13.43. It is clear from hospital records produced by the claimant that the claimant's account of an attendance at hospital on or around lunchtime on 8 February **2018,** after which he was admitted for investigation, together with his own dating of the allegation as February 2018 in his complaints in March 2019, are far more reliable in dating the incident than Mr Mahmood's report.

<u>The Law</u>

14. The law comprises the provisions of the Act and principles established by cases over the years. Both are set out below and they comprise a summary of the law the Tribunal applied before starting to make its findings of fact.

14.1. Section 13 relevantly provides:

(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.

14.2. Section 26 relevantly provides:-

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

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

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

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

14.3. Section 27 relevantly provides:

(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;

14.4. Section 136 (Burden of proof) relevantly provides:

(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.

14.5. Direct evidence of discrimination is rare and frequently tribunals have to infer discrimination from all the material facts: Elias J (President) in Ladell: "Where the applicant has proven facts from which inferences could be drawn that the employer treated the applicant less favourably [on the prohibited ground], then the burden moves to the employer" … then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on a prohibited ground. If he fails to establish that, the tribunal must find that there is discrimination".

14.6. In drawing inferences, that is making further findings of fact from the conduct of a party, the Tribunal has to exercise the same care that it exercises in making any finding of fact. Where matters or omissions appear troubling and raise questions, but an explanation is given and accepted by the Tribunal as the most likely, conduct

(whether of the proceedings or during employment) is unlikely to have any bearing on the reason for alleged discriminatory conduct. (For similar, see Lord Justice Underhill, paragraph 38 C DeSilva v NAFTHE UK EAT/0384/07/LA).

14.7. In examining primary facts, poor treatment is not enough to establish discrimination. See in particular Madarassy v Numora International Plc [2007] IRLR 246 para 56, per Mummery LJ: "The bear 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".

14.8. If the tribunal is satisfied that the prohibited characteristic was one of the reasons for the treatment in question, this is sufficient to establish direct discrimination. It need not be the sole or even the main reason for that treatment; it is sufficient that it had a significant influence on the outcome: Lord Nichols in Nagarajan v London Regional Transport [2000] 1AC501 House of Lords at 512H to 513B. Significant in this context means not trivial.

14.9. Section 23 relevantly provides:- .."(1) On a comparison of cases for the purposes of section 13….[] there must be no material difference between the circumstances relating to each case".

14.10. Underhill J in the Martin v Devonshire Solicitors [2011] ICR 352, para 37 said: "Tribunals will generally not go far wrong if they ask the question suggested by Lord Nichols in Nagarajan, namely whether the prescribed ground or protected act had a significant influence on the outcome". In Igen Limited v Wong [2005] IRLR 258CA the guidance issued in Barton in respect of sex discrimination cases and was said to apply and approved in relation to race and disability discrimination:

14.11. "…the first stage involves the claimant establishing such facts from which the Tribunal could conclude that the respondent had committed an act of discrimination in the absence of an adequate explanation from the respondent ("such facts"). If the claimant does not prove such facts he or she will fail...

14.12. It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves, in some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in...

14.13. In deciding whether the claimant has proved such facts it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences [for inferences, read, further facts] it is proper to draw from the primary facts found by the tribunal... "

14.14. The guidance goes on to say that in considering the conclusions that can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation. At the final stage, the respondent must establish that the treatment is in no sense whatsoever on the grounds of the protected characteristic.

14.15. Mr Justice Underhill (then President) in IPC Media Limited v Millar UKEAT/0395/12/SM is a reminder that our starting point is to identify the putative discriminator, and to examine their thought processes, conscious or unconscious.

<u>Submissions</u>

15. We had a comprehensive skeleton from Ms Niaz-Dickinson, developed orally, and the claimant referred us to a number of cases and made a number of points. To the extent that it was necessary to draw on either sides' representations, it will be apparent in our findings and conclusions. We mean no discourtesy in including neither in these reasons.

Further findings and conclusions

16. The common thread in the law above is that Tribunal's focus must be on the minds or mental processes, conscious and subconscious of the people that have been alleged to have engaged in behaviour contravening the Act. We have been helped in this case because the claimant has been very clear, and case management has further clarified, whose minds we must examine: Miss Graham, Mr Hawksett, Mrs Carter, Mr Mahmood and others. We have focussed on what the facts tell us about their reasons for doing things or saying things.

17. It is convenient when completing our findings and conclusions to take the allegations, save for those already dismissed, in order.

Allegation 1**:** Zhahed Mahmood (the claimant's supervisor) not helping the claimant when he had an angina attack in 2018.

17.1. Our findings in relation to allegation 1, on which we found Mrs Blears to be a witness of truth, are these. Around lunch time on or around 8 February 2018 the claimant complained in earshot of Mr Mahmood and Mrs Blears of chest pains. Mr Mahmood offered an ambulance to be called; Mrs Blears heard that and made towards the security desk telephone to dial for an ambulance. The claimant did not want that to happen and told her so. He subsequently left the building and attended the hospital under his own steam both walking and using public transport. He may or may not have returned to work that afternoon.

17.2. These circumstances are not a failing by Mr Mahmood to help him. That entirely wrongly characterises the circumstances. There is nothing to be further concluded about these events. The complaint is dismissed. This conduct does not give rise to any inference that Mr Mahmood was against the claimant in any way at all in February 2018. It is an immaterial piece of background. Its only assistance to the Tribunal is what we make of the reliability of Mr Mahmood's evidence on other matters, given our finding that his report on the matter was neither contemporaneous nor reliable.

Allegations 2.1 and 2.2:

Mr Mahmood calling the claimant "Pakistani mango" and "Pakistani policeman who takes bribes" whenever the claimant worked at Bolton Court from 2013 onwards; and

Police Constable David Hassan calling the claimant the same things for about 2 or 3 years prior to March 2019, whenever the claimant worked at Bolton Court.

17.3. These remarks were denied by Mr Mahmood. We did not hear from PC Hassan, an officer with the Greater Manchester Police. A witness order for him was refused. Part of our consideration of these allegations is the claimant's evidence about why these remarks were made: namely that because of place of birth the claimant was regarded by PC Hassan and Mr Mahmood as inferior to them. He was a Pakistan born Pakistani rather than a British born Pakistani. He had been a policeman in Pakistan prior to coming to Britain – that was known to his security colleagues. Unfortunately for the claimant's case, a number of the claimant's security colleagues including Mr Mehmood were also Pakistan born, and so were members of their families. The basis

on which the claimant would have been singled out for such comments therefore appears to us highly unlikely.

17.4. We also take into account the lateness of these allegations – November 2019, eight months after the claimant was last at Bolton, albeit the allegation is that they were repeated over many years. The Tribunal further takes into account the number of opportunities that the claimant had to raise them with his employer directly in the four documents he presented between March and May 2019, in the context of other similar allegations against Mr Mahmood. The claimant also knew that PC Hassan had given evidence about his conduct on 5 March. It would have been natural to suggest some motive for PC Hassan to exaggerate or make up the nature of his conduct on the 5th. Further the remarks are, if made, inflammatory and concerning from a supervisor or police officer.

17.5. As to whether the claimant's evidence is to be relied upon or not, he insightfully said to us "what can I do? I am one person, I can swear on the Koran and I have done, but I can not bring corroborative evidence and that's all I can do".

17.6. That is not, however, a true reflection of the situation in this case. The claimant has done many things over the months after 5 March 2019 to raise issues with his employer directly, as he properly should have done. These comments were not included in any of that. Had they been, that might have been corroborative or supportive of the remarks having been made. On balance, for all these reasons we cannot find these comments were made and complaints 2.1 and 2.2 are dismissed.

Allegation 3: In about February 2019, Mr Mahmood putting a photo on the claimant's phone of a man with no clothes on.

Allegation 4: In about January or February 2019, on two occasions Mr Mahmood swearing at the claimant in Mirpuri (calling him "bastard").

17.7. The lack of corroboration is a factor in determining these complaints but to a lesser extent because the claimant did make these allegations after the 5 March events. The corroborative evidence for a photo saved as a whatsapp profile might have been some complaint in February 2019, or a picture of it, or some kind of communication to somebody else about this at the time, or on someone else's device. Most proximately (July 2019) the claimant said it was resolved as a joke at the time (which suggests a backing away from the original allegation). There was no corroborative evidence and it was an allegation which was denied by Mr Mahmood both before the Tribunal and at the time and was not recalled by Mr Mehmood (who the claimant alleged has removed the image for him).

17.8. Assessing whether matters are likely or unlikely we also weigh in the mix the practicalities of Mr Mahmood being able to access the claimant's phone using a pass code, which the claimant said he did. We are not a Tribunal with access to CCTV. We cannot say with certainty whether an allegation happened or it did not happen. We make findings on the balance of probabilities. We weigh that Mr Mahmood has made a report more than a year after an event occurred (the heart pain incident), and that we have rejected the claimant's evidence about the "mango/policeman" allegations. Doing the best with witnesses who may be reliable on one matter but not on another, but also taking into account that Mr Mahmood had in the past helped the claimant with his family issues, we do our best with the material that we have. Weighing all matters in the mix we cannot find that it was more likely than not that allegations 3 and 4 occurred. These complaints are dismissed.

Allegation 5: In about January or February 2019, Mr Mahmood pretending that the Court Manager had said that a cake that had been brought in was not for relief officers, but only for permanent guards.

17.9. Our consideration of this allegation illustrates our use of the inherent likelihood approach. We have concluded that that did happen for a number of reasons. Firstly, it is inherently likely that a colleague (Mrs Blears confirmed this in her oral evidence) would bring in cakes for those in the security office and indeed other colleagues: it is a fairly regular occurrence in court buildings and other work places.

17.10. That oral evidence was quite different to that in her written statement. Ms Blears attended the Tribunal subject to a witness order and her statement was therefore taken in haste. Our assessment of her is that she was a witness of truth in her oral evidence; the same is true of Mr Jan. Ms Blears confirmed what we considered entirely likely anyway - cakes are generally brought in these circumstances.

17.11. The claimant described this as a relatively small thing, but nevertheless one about which he was adamant and remembered acutely – that was the impression of his evidence (which was not our assessment of his evidence about allegations 3 and 4). In fact the HMCTS member of staff was a health and safety manager, all recalled, who was leaving this location. The claimant sought to have witnesses here to talk about this incident; witnesses he believed he could trust in. Against that we have a lack of recall from Mr Mahmood and others; but in those others their demeanour was such when communicating a lack of recall we considered they were deeply conflicted and uncomfortable. In our judgment we can safely find that this allegation more likely occurred than not.

17.12. We then have to decide whether in making this comment to the claimant and those assembled Mr Mahmood was influenced at all by the claimant's race. It is plain to us that he was not. At one stage, and through the internal process the height of the claimant's position was that Mr Mahmood did not like him. Race only became an issue in the claim to the Tribunal. Albeit Mr Mahmood did not recall the remark, the context is such, given all the evidence we have heard, that we can make a finding of the likely reason why he said this at the time. The context of the remark does reveal something of the reason for it. Our industrial experience tells us that Mr Mahmood felt loyal to his permanent security officers at Bolton. We accepted his evidence (and that of others) that there was disgruntlement with the claimant because of his perceived work ethic. The cake comment was an unkind gesture but Mr Mahmood's parents are from Pakistan, his wife was born in Pakistan and he is a British born Pakistani. We consider that in all the circumstances of this case race played absolutely no part in that comment at that time. The complaint is dismissed.

Allegation 6: Mr Mahmood not giving the claimant a second cover shift on about 5 March 2019 and on previous occasions in January and February 2019. Mr Mahmood gave those shifts to Noman Mehmood. (Mr Mehmood is also of Pakistani ethnic origin, but Mr Raza does not think he was born in Pakistan.)

17.13. As a matter of general practice there is and was clearly a dialogue or conversation between court security supervisors such as Mr Mahmood and "schedulers", those in the G4S (or respondent) office, who are responsible for communicating shifts and venues to relief guards. The obvious example is Miss Carter ringing the Employment Tribunal to find guards when the CJC was short. When needs must, the supervisors make calls. Having said that, the schedulers in the office have the authority to direct where and when staff attend. On the morning of 5 March the

claimant discovered that while he had expected to be allocated the lock up shift all week, as he had on Monday 4th, he was not allocated it on the 5th. He was angry because of the impact on pay which was important to him. He first called the schedulers to complain. He then remonstrated with Mr Mahmood laying the blame at his door, and given that anger was vented in public through shouting and swearing, it gave rise to the suspension and disciplinary investigation. The shift had been allocated to Mr Mehmood instead because of his CTC clearance and not because of his birth place. Mr Mehmood is Pakistan born. Unsatisfactory as it may be, we accepted the respondent's evidence that where there was no officer available with CTC clearance, or possibly through error, lock up shifts were given to those without it including the claimant; but as soon as that becomes correctable it is corrected. The reason for the claimant losing the lock up shift on 5 March and on earlier occasions, which we accept happened, is plainly nothing to do with the claimant's race. This complaint is dismissed. No doubt if CTC clearance is given to the claimant, then shift allocation will be unaffected by that deficit.

Allegation 7: Mr Mahmood making a false allegation on 5 March 2019 that the claimant had sworn and behaved in an intimidating manner. Mr Mahmood made the allegation to David Hassan, who reported it to the Court Manager.

Allegation 8: Being suspended by Tom Hawksett (the claimant's line manager) on 5 March 2019.

Allegation 9: Being dismissed by Samantha Graham at a disciplinary hearing on 3 July 2019.

17.14. It will be apparent from our findings of fact in relation to the dismissal decision of Miss Graham that the allegations against the claimant were not simply Mr Mahmood's allegations, they were from the CPS officer attending that day, from the court manager, from PC Hassan who had escalated it to the court manager, and others who had heard and witnessed events. These allegations were not false. The claimant's evidence was, in fact, that "they were making a big thing out of a small thing". It is beyond any doubt that there was unacceptable conduct on the morning of 5 March in a court building public area which caused embarrassment and difficulties for the then G4S' reputation and the reputation of its staff within the court building. That was the reason for others raising it.

17.15. For Mr Mahmood, who we have found said his team needed to stick together, or words to that effect, his reasons included the personal impact on him, and his feeling of intimidation at the time when the claimant lost control of his behaviour. "Totally out of order" is a fair description of those events on that morning, having seen all the material before the Tribunal, The claimant's lens of hindsight and wishful thinking wishes to characterise it differently. The allegations were not false; the making of them had nothing to do with the claimant's race and everything to do with his anger about the shift change and consequent loss of control. Undesirable as it appears for Mr Mahmood to say what he said to his colleagues about sticking together, they have not made up accounts. Their accounts were different and true to the best of their knowledge, corroborated by independent sources. That unfortunate remark was no doubt made because of a sense that nothing would be done unless all were clear that the conduct was unacceptable.

17.16. On the facts and conclusions we have reached all these complaints are dismissed.

Allegation 10: Samantha Graham not upholding the claimant's grievance on 3 July 2019.

17.17. The claimant discussed the grievance matters with Miss Graham and she listened and then talked also to Mr Mahmood, albeit she did not take a witness statement from him, his comments appeared in later correspondence. She was very clear and compelling on the detail of why she rejected the various aspects of the grievance at the time. and we have no doubt, taking into account the ethnic diversity in the staff of guards as a whole that race had no bearing on the decisions of Miss Graham, whether in relation to dismissal or grievance. Her decisions were based on the material in front of her, without fear or favour towards any individual. This complaint is dismissed.

Allegation 11: Being banned from Minshull Street Crown Court on about 7 February 2020 by a Court Manager or someone unknown from G4S.

17.18. The reason for the Minshull street ban was a third party request. It is clear as mud in the emails from the court manager. It had nothing to do with the claimant's race and everything to do with the incident on 5 March. The court manager in question happened to manage two venues or sites and that of course is very usual within the HMCTS structure.

Allegation 13: Vanessa Carter (Security Supervisor at the Manchester Civil Justice Centre) calling Delroy (Security Officer) and stating that the claimant could not work at the Manchester Civil Justice Centre.

17.19. The comments of Miss Carter in the CJC telephone call to the Employment Tribunal in July 2020 were because of her experience with the claimant in 2017, her subsequent raising of matters with Mr Hawksett, and beyond that to a different manager. She believed the claimant was banned. She might have been wrong in that belief (in the sense that the relevant HMCTS manager had not issued such an instruction), but that does not affect the genuineness of her belief.

17.20. That she might know Miss Graham or that she knew of the claimant's reinstatement is nothing to the point. It is very clear that she had great unhappiness at working with him arising out of his behaviour with her in 2017, and she had been asked to live with it by Mr Hawksett. She had also been told she would not have to work with him – that was her understanding. Again taking into account the diversity in the respondent's workforce as a whole at that time, race played no part in her mental processes.

17.21. We have made clear, positive findings about the reason why the claimant was banned from Minshull Street and why Mrs Carter said what she said about him being banned, or unable to work at the CJC. These reasons are entirely unrelated to the bringing of Tribunal proceedings, which was the claimant's case. The victimisation complaints are also dismissed.

17.22. It will be apparent from the Tribunal's decisions above that there are not facts, taking them in the round or separately, from which the Tribunal could conclude that there has been less favourable treatment of the claimant as alleged because of his race as a Pakistan born Pakistani, or victimisation of him.

Factual complaints alleged by the claimant relating to the claimant's religion (see 30/6/20 CMO)

Allegation 14: did Mr Mahmood, Numan and Babar Kashif say to the claimant between January to March 2020 that:

"Shia are not good Muslims because they beat themselves";

the claimant was "not a good worker"; and/or

that it was "best you left and find another job"?

17.23. There no corroboration for these allegations. They were first made after a case management hearing with an Employment Judge at which the other allegations were discussed. They were not raised at all in the internal processes.

17.24. We heard compelling oral evidence from Mr Mahmood and from Mr Mehmood (referred to as Numan above) and from Mr Kashif. We accept the evidence that Mr Mahmood did not have a great understanding of the different types of Islamic faith, was not very religious, and implicitly that he did not identify as "Sunni", and that religion and politics are avoided as topics for discussion in this workplace. The latter is entirely likely evidence and it was supported by the other witnesses. Mr Mehmood and Mr Kashif struck us as witnesses of truth.

17.25. It is simply highly unlikely that the first comment was made and we find that it was not made. We repeat our comments above about the basis on which we make findings. We also find the second two comments were not made, but even if they were, in all the circumstances of this case such comments related to the perceptions of the claimant's conduct and approach to work. They do not relate to the faith of Shia Muslims or criticism of it. For these reasons allegation 14 is dismissed.

18. We have already addressed and dismissed the complaints about annual leave and expenses.

19. It will be apparent in the findings of fact and conclusions above that we have not addressed our minds to limitation before finding facts. The claimant's case was that discriminatory conduct had extended over a period, and the last allegations in the first claim (the 3 July Miss Graham allegations) were presented within the relevant time limit in the Equality Act, subject to ACAS conciliation.

20. Having found no discriminatory conduct whatsoever, it is not necessary for us to express any views about the limitation issues; the complaints fail on our findings of fact. Had we reached different or other conclusions in relation to the allegations against Mr Mahmood and other colleagues prior to suspension, then we would have had to consider the claimant's limitation case, and it may well be that the facts would not support conduct extending over a period (during suspension). We would have then considered whether a different time limit was just and equitable. In the event, such consideration was unnecessary.

Reasons for Costs Judgment

21. We have just announced an extempore Judgment in the claimant's claims and Ms Niaz-Dickinson has made an oral costs application on the basis that the claims had no or little reasonable prospect of success, and as a result Mr Raza acted unreasonably in bringing and continuing with the proceedings. She seeks counsel's fees of attendance at this hearing.

22. This is a case in which there has been comprehensive case management. The Tribunal has indicated the number of times that these allegations have come before Employment Judges and on no occasion during those case management hearings

have deposit orders made, or indications given, about the lack of reasonable prospects of success in these claims.

23. The allegations of victimisation in relation to court bans in the second and third claims were always arguable. It is on the basis of oral, but significantly documentary evidence that we have been able to reach the findings on those matters that we have. That documentary evidence became available very late in the hearing preparation because of the need for third party disclosure. It is clear that it could not be said before a hearing that those allegations had little reasonable prospects of success, let alone none. Mr Raza was not unreasonable in pursuing them.

24. In so far as the other complaints are concerned, those which principally arise out of or arose subsequent to the 5 March incident, the Tribunal may now consider that these claims had little prospects of success at the time of inception, knowing what we know, but as with all Equality Act complaints, we bear in mind that the Equality Act is there with the purpose of ensuring there is no discrimination whatsoever in work places. The claimant did not know all of what we now know. It was clearly arguable that colleagues of the same apparent ethnicity can discriminate, victimise or harass each other at times, or in different ways, thereby contravening the Act.

25. Those allegations cannot be said to have no reasonable prospects of success. Even if they had little reasonable prospects, was Mr Raza unreasonable in continuing with them? He did not have indicators either directly from Employment Judges who have had a number of hearings with him, or from the respondent writing a costs warning letter setting out its factual case and why there were little reasonable prospects, and that he might be acting unreasonably in pursuing these proceedings. It is perhaps not surprising that no letter was written in circumstances where the claimant remains employed and doing his duties for the respondent, and there is always a risk of a victimisation allegation in so doing. Nevertheless the claimant was not told he had little reasonable prospects.

26. We also consider his expressions of belief very strongly on a number of occasions in the matters that he has alleged. We have not made a finding that he has been vexatious in that belief, or that he has been telling deliberate untruths to the Tribunal. We have made findings that indicate his evidence is unreliable for a number of reasons, including a lens of hindsight and wishful thinking – a lack of insight.

27. We repeat we do not have a recording of these events. When giving our findings of fact we are applying the tools above and the civil test. We have determined a number of matters against the respondent in its factual case including the cake incident, an act of unnecessary unkindness, and a lack of reliability in the heart pain incident report.

28. In all these circumstances we do not consider that Mr Raza can be said to have been unreasonable in continuing because there were little reasonable prospects of success or that there were no reasonable prospects of success.

29. Even if we had reached that conclusion, having heard about his personal circumstances, and in all the circumstances we would have asked ourselves whether it was in the interests of justice generally to make a costs order. We would have declined to do so on this occasion.

Case No: 2414533/2019
2401643/2020
2408851/2020

Employment Judge Wade

Date 6 January 2021

REASONS SENT TO THE PARTIES ON

Date 14 January 2021

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EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr R Raza	v	**OCS Group UK Ltd**

TELEPHONE PRELIMINARY HEARING

Heard at: Leeds (by telephone) **On: 17 November 2020**
Before: Employment Judge Deeley
Appearances:
For the Claimant: **In person**
For the Respondent **Mrs Niaz-Dickinson (Counsel)**

CASE MANAGEMENT SUMMARY

Final hearing arrangements

4. These claims remain listed for a four day hearing on **Monday 23rd, Tuesday 24th, Wednesday 25th and Thursday 26th November 2020 at the Leeds Employment Tribunal**. The parties must arrive at the Tribunal's offices by **9.45am** on each day of the hearing.

5. I discussed the hearing arrangements with the parties. The parties agreed that this hearing is not suitable for a wholly remote hearing. The claimant and the respondent's representative must attend the hearing in person. We envisage that the timetable for the first two days of the hearing will be as follows:

5.1. Monday morning – discussions with the parties, followed by reading time for the panel;

5.2. Monday afternoon and Tuesday morning – claimant's witness evidence (cross-examination by the respondent and Tribunal panel's questions);

5.3. Tuesday afternoon – the first three of the respondent's witnesses, depending on the remaining time.

6. The remainder of the respondent's witnesses do not need to attend the hearing until the morning of Wednesday 25th November 2020. The Tribunal will arrange for a CVP videolinks to be circulated to the parties, in order to enable any witnesses (and any other observers) to observe the hearing remotely (e.g. using their own computer equipment from home).

7. The orders regarding the documents to be provided by each party at the hearing are set out under the heading 'Orders' below.

8. The claimant and the respondent must inform the Tribunal as soon as possible if the claimant, the respondent or any witnesses wishes to request that the Tribunal considers any adjustments to the hearing. I note that the possibility of an interpreter was discussed with the claimant during previous preliminary hearings, but the claimant confirmed that he did not need the assistance of an interpreter.

Previous preliminary hearings

9. These claims have been the subject of three previous telephone preliminary hearings on 30 April, 30 June and 6 November 2020.

10. The final hearing of this claim was listed at the second preliminary hearing on 30 June 2020. Two witness orders were made on 6 November 2020 and it appears unlikely that four days will be sufficient for the Tribunal to hear witness evidence from ten witnesses (including the claimant) and the parties' submissions, reach a decision and deal with remedy. However, as both parties have incurred significant time and costs in preparing for the hearing next week, I have concluded that the hearing should proceed.

The issues

11. The list of issues which the Tribunal will consider at the final hearing is attached at the Annex to this document. The claimant submitted three separate claim forms which have been consolidated and will be heard next week:

11.1. **First claim form: 2414533/2019**, submitted on 14 November 2019;

11.2. **Second claim form: 2401643/2020**, submitted on 29 February 2020; and

11.3. **Third claim form: 2408851/2020**, submitted on 8 July 2020.

12. The issues relating to this claim were identified as follows:

12.1. the issues arising from the first two claims were originally identified by Employment Judge Davies (at the preliminary hearing on 30 April 2020).

12.2. Employment Judge Maidment (at the preliminary hearing on 30 June 2020) heard the claimant's application to amend the list of issues (see paragraphs 6-9 at page 2 of the Case Management Summary) and permitted the additional two issues set out at Order 1 (see page 3 of the Case Management Summary) to be included.

12.3. the respondent confirmed that it agreed to include a further issue, relating to an incident on 7 July 2020, which was set out in the claimant's third claim form.

13. We discussed two complaints that were not clearly particularised in the claim forms:

13.1. the claimant's claim that he should have been reimbursed travel expenses (which he has brought as a direct race discrimination complaint); and

13.2. the claimant's claim that he did not receive his correct annual leave entitlement during 2019, due to the period between his suspension and reinstatement (following dismissal). This claim has been brought as a holiday pay (unauthorised deductions from wages) claim.

14. The claimant has not set out the amount of any travel expenses or holiday pay that he believes he is due in his statement or in his schedule of loss. At this stage in the proceedings, I concluded that the most efficient approach would be to order that:

14.1. by 4pm on 19 November 2020, the claimant shall provide details of any other AROs whom he believes were reimbursed travel expenses; and

14.2. by 4pm on 19 November 2020, the respondent shall serve a supplemental statement relating to:

14.2.1. the claimant's travel expenses; and

14.2.2. the claimant's annual leave and pay for any holiday years which include the period from 5 March 2019 to 21 October 2019.

Claimant's amendment application

15. The claimant stated that he wished to make a further application to amend his claim during the hearing today, relating to:

15.1. incidents which took place during 2014 and 2015, which were referred to at page 7 of his second claim form;

15.2. an incident on 2 October 2020, which post-dated all three claim forms and which the claimant referred to at the end of an email sent to the Tribunal on 10 October 2020.

16. I heard submissions from the claimant and the respondent's representative regarding the claimant's application to amend his claim. I have also considered the overriding objective set out in the Tribunal Rules.

17. On balance, I rejected the claimant's amendment application for the following key reasons:

17.1. the claimant could have raised the 2014/2015 incident at the preliminary hearing on 30 June 2020 (when his previous application to amend was heard) and was unable to explain why he did not do so at that time;

17.2. it is likely that the claimant may be outside of the time limits for raising the 2014/2015 incident, although I did not reach a conclusion on this point. The claimant would be within the time limits to submit a further claim relating to the 2 October 2020 incident. However, the email that he sent on 10 October 2020 did not state clearly that he wished to make an

application to amend and the respondent was not aware of any such application until the hearing today;

17.3. the parties have prepared a joint hearing file and exchanged witness statements on the basis of the issues set out by Judge Davies and Judge Maidment at the previous preliminary hearings. Both parties would need to provide supplemental evidence if the claimant was permitted to amend his claim at this late stage;

17.4. this hearing took place less than a week before the final hearing of this claim, the dates for which were arranged on 30 June 2020. There is a significant risk that the final hearing would have to be postponed, if the claimant's amendment application was granted. Both parties have already incurred significant time and costs in preparing for this hearing;

18. Ultimately, a fair hearing of the claims requires the parties to prepare their case on the basis of the issues that have been identified. This is not possible if either party seeks to amend their case at this late stage in the proceedings.

Witness orders

19. Both parties made applications for witness orders as set out below. Before I considered these applications, I had the benefit of reviewing the witness statements which the parties had previously exchanged, including statements which the respondent had obtained from all three of the witnesses in respect of whom it sought witness orders.

19.1. **Claimant**:

19.1.1. Caremlina Garofalo – relating to an incident with Ms Carter;

19.1.2. Chilufya (surname unknown) – relating to the claimant's working relationship with Ms Carter in February/March 2020;

19.1.3. Gerry Tumetry – relating to an incident on 2 October 2020; and

19.1.4. Delroy Patrek – relating to the call with Ms Carter on 7 July 2020.

19.2. **Respondent**:

19.2.1. Tom Hawksett – claimant's line manager and

19.2.2. Samantha Graham – disciplinary manager; and

19.2.3. Georgia Hodge – disciplinary appeal manager.

Claimant's applications

20. My decisions in relation to the claimant's applications are set out below:

20.1. **Carmelina Garofalo** – I refused this application because the respondent has spoken with Ms Garofalo and she was unable to recall the date or details of the incident alleged, as set out in the respondent's email of 10 November 2020. The claimant did not raise any issues regarding the respondent's email;

20.2. **Chilufya (ARO, Manchester area)** - I refused this application because it is not clear what relevance his evidence may have to this claim. Ms Carter's witness statement does not refer to any incident in February/March 2020. In addition, the claimant confirmed that he had a telephone number for Chilufya but had not contacted him to ask him

whether he would be prepared to provide witness evidence at the final hearing;

20.3. **Gerry Tumetry** – Mr Tumetry's evidence relates only to the incident on 2 October 2020. I have not permitted the claimant to amend his claim to include the incident on 2 October 2020 and therefore Mr Tumetry's evidence is not relevant to the list of issues to be considered at the final hearing;

20.4. **Delroy Patrek** – Mr Patrek's evidence would relate to the contents of the telephone call that he had with Vanessa Carter on 7 July 2020. Having reviewed Ms Carter's statement with the claimant during the hearing today, the claimant did not dispute Ms Carter's version of the call (which the claimant himself overheard).

Respondent's applications

21. The witnesses that are the subject of the respondent's applications have given witness statements which contain evidence that is relevant to these claims. The respondent sought witness orders on the basis that the three witnesses were employed by a third party and may not be permitted to attend the hearing.

22. I questioned whether the respondent had any evidence of such refusal. The respondent's representative stated that Ms Graham and Mr Hawksett had in fact attended a discussion with the respondent's representative on 16 November 2020 regarding the claims. However, the respondent's representative stated that Ms Hodge had not attended that discussion and was not responding to contact from the respondent.

23. On that basis, I have granted a witness order for Ms Hodge only. I have given the respondent leave to renew its application for witness orders for Ms Graham and Mr Hawksett if they provide evidence that either or both of those witnesses are not prepared to attend the final hearing.

24. The respondent's representative asked me to note that they did not seek to renew their application for a witness order relating to David Hassan (a former police constable) at this stage.

Respondent's application for a third party disclosure order

25. The respondent applied for a third party disclosure order in relation to documents that the respondent believes are held by G4S Facilities Management (UK) Ltd ("**G4S**"), who previously employed the claimant before his employment transferred under the TUPE Regulations to the respondent with effect from 1 April 2020.

26. G4S were previously a party to these proceedings, but were removed as a party after the second preliminary hearing on 30 June 2020. Employment Judge Maidment made disclosure orders relating to all parties (including G4S) at the preliminary hearing on 30 June 2020 for disclosure of documents by the respondent and by G4S by 31 July 2020. The respondent's representative was unable to explain why the respondent was applying for a third party disclosure order at this late stage, given that a joint hearing file has already been prepared and witness statements have been exchanged.

27. I was unable to determine the respondent's application during the hearing today due to time pressure.

28. The respondent emailed two lists of the documents requested (as set out in the Orders below) on 17 and on 18 November 2020. I considered the list and they appear to be relevant to these claims. I have therefore made the third party disclosure order set out below.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

Hearing arrangements

1. The respondent shall provide the following documents to the Tribunal, for use at the final hearing:

    1.1. **By 4pm on 19 November 2020,** one electronic copy and four hard copies of the hearing file and both parties' witness statements;

    1.2. **By 9.30am on 23 November 2020**, a chronology and cast list.

2. In addition:

    2.1. the claimant shall ensure that he brings his own hard copy of the hearing file, his own witness statement and all of the respondents' witness statements to each day of the hearing;

    2.2. the respondent shall ensure that each of its witnesses shall have their own hard copy of the hearing file and both parties' witness statements and that they shall bring those documents to the hearing when giving evidence.

Additional information and supplemental statements

3. **By 4pm on 19 November 2020**, the claimant shall provide details of any other AROs whom he believes were reimbursed travel expenses by email to the respondent, copied to the Tribunal.

4. **By 4pm on 19 November 2020**, the respondent shall serve a supplemental statement on the claimant (copied to the Tribunal) setting out:

    4.1. the respondent's position in relation to reimbursement of travel expenses; and

    4.2. the respondent's position in relation to the claimant's annual leave and pay for any holiday years which include the period from 5 March 2019 to 21 October 2019.

Third party disclosure order relating to G4S

5. A separate third party disclosure order shall be sent to G4S Facilities Management (UK) Ltd.

Witness order

6. A separate witness order has been issued for Georgia Hodge at the address referred to in the respondent's written application.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the

proceedings or the need to give notice or hold a preliminary hearing or a hearing.

3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Deeley

Employment Judge Deeley

Date: 18 November 2020

FINAL LIST OF ISSUES 17.11.20 (DISCUSSED WITH PARTIES DURING PRELIMINARY HEARING ON 17.11.20)

1. The Claimant describes himself as of Pakistani origin and his religion as Shia Muslim.

DISCRIMINATION COMPLAINTS

Time limits (s123 EQA)

2. The first claim form was submitted on 14/11/19 (under claim reference 2414533/19), following ACAS early claim conciliation from 23/9/19-14/10/19. Any complaint about something that happened before 23 June 2020 may not have been brought in time.

3. Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

   3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

   3.2 If not, was there conduct extending over a period?

   3.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

   3.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

      3.4.1 Why were the complaints not made to the Tribunal in time?

      3.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Direct discrimination (s13 EQA) and harassment (s26 EQA)

4. **Factual issues -** did the respondent carry out the acts or omissions alleged by the claimant as set out below:

Factual complaints alleged by the claimant relating to the claimant's race (see 30/4/20 CMO for all complaints, except allegation 12 (see 30/6/20 CMO) and allegation 13 (see claimant's third claim (case reference 2408851/20))

   4.1 **Allegation 1:** Zhahed Mahmood (the claimant's supervisor) not helping the claimant when he had an angina attack in 2018.

   4.2 **Allegation 2:**

4.2.1 Mr Mahmood calling the claimant "Pakistani mango" and "Pakistani policeman who takes bribes" whenever the claimant worked at Bolton Court from 2013 onwards; and

4.2.2 Police Constable David Hassan calling the claimant the same things for about 2 or 3 years prior to March 2019, whenever the claimant worked at Bolton Court.

4.3 **Allegation 3:** In about February 2019, Mr Mahmood putting a photo on the claimant's phone of a man with no clothes on.

4.4 **Allegation 4:** In about January or February 2019, on two occasions Mr Mahmood swearing at the claimant in Mirpuri (calling him "bastard").

4.5 **Allegation 5:** In about January or February 2019, Mr Mahmood pretending that the Court Manager had said that a cake that had been brought in was not for relief officers, but only for permanent guards.

4.6 **Allegation 6:** Mr Mahmood not giving the claimant a second cover shift on about 5 March 2019 and on previous occasions in January and February 2019. Mr Mahmood gave those shifts to Noman Mehmood. (Mr Mehmood is also of Pakistani ethnic origin, but Mr Raza does not think he was born in Pakistan.)

4.7 **Allegation 7:** Mr Mahmood making a false allegation on 5 March 2019 that the claimant had sworn and behaved in an intimidating manner. Mr Mahmood made the allegation to David Hassan, who reported it to the Court Manager.

4.8 **Allegation 8:** Being suspended by Tom Hawksett (the claimant's line manager) on 5 March 2019.

4.9 **Allegation 9:** Being dismissed by Samantha Graham at a disciplinary hearing on 3 July 2019.

4.10 **Allegation 10:** Samantha Graham not upholding the claimant's grievance on 3 July 2019.

4.11 **Allegation 11:** Being banned from Minshull Street Crown Court on about 7 February 2020 by a Court Manager or someone unknown from G4S.

4.12 **Allegation 12:** the respondent failing to reimburse the claimant's travel expenses.

4.13 **Allegation 13:** Vanessa Carter (Security Supervisor at the Manchester Civil Justice Centre) calling Delroy (Security Officer) and stating that the claimant could not work at the Manchester Civil Justice Centre.

Factual complaints alleged by the claimant relating to the claimant's religion (see 30/6/20 CMO)

4.14 **Allegation 14**: did Mr Mahmood, Numan and Babar Kashif say to the claimant between January to March 2020 that:

4.14.1 *"Shia are not good Muslims because they beat themselves"*;

4.14.2 the claimant was "*not a good worker"*; and/or

4.14.3 that it was *"best you left and find another job"*?

5. **Legal issues – direct discrimination**:

5.1 If the respondent did the acts complained of above, was that less favourable treatment? In particular, does the claimant seek to compare himself to any actual or hypothetical comparator (or comparators)?

5.2 If so, was it because of the claimant's race?

5.3 In relation to Allegation 7 only, is the respondent vicariously liable for any actions of David Hassan (who was a police officer at that time and not employed by the respondent or its predecessor)?

6. **Legal issues – harassment**:

6.1 If the respondent did the acts complained of above, was that unwanted conduct?

6.2 If so, did it relate to the claimant's race or religion (as applicable)?

6.3 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.4 If not, did it have that effect? *The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*

Victimisation (see 30/4/20 CMO for allegation 1 and see the claimant's third claim (case reference 2408851/20) for allegation 2) (s27 EQA)

7. The respondent accepts that the claimant made a protected act for the purposes of s27 of the EQA, when the claimant submitted his first Employment Tribunal claim, which was issued on 14 November 2019 under case reference 2414533/2019.

8. The respondent accepts that the claimant:

*8.1 **Allegation 1:** was removed from the Minshull Street Crown Court, but submits that they did so at their client's request; and*

*8.2 **Allegation 2**: was removed from the Manchester Civil Justice Centre, at Vanessa Carter's request.*

9. By doing so, did the respondent subject the claimant to a detriment (or detriments)?

10. If so, was did the respondent subject the claimant to a detriment (or detriments) because either:

10.1 the claimant did a protected act; and/or

10.2 the respondent believed the claimant had done, or might do, a protected act?

Annual leave (s13 Employment Rights Act 1996 and Working Time Regulations 1998)

Time limits

11. Was the unauthorised deductions complaint made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:

11.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?

11.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

11.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

11.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Factual complaint

11.5 The claimant alleges that he was refused annual leave that he was entitled to because the respondent said that he had taken leave when he was suspended.

Legal issues

12. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken following the termination of the claimant's employment on 2 July 2019? *The claimant was later informed that he would be reinstated on 21 October 2019, following the outcome of his appeal*.

13. If so, what award should be made to the claimant under s13 of the Employment Rights Act 1996 (unauthorised deductions from wages)?