EMPLOYMENT TRIBUNALS

Claimant: Mr Peter Ryan

First Respondent: Secretary of State for Justice
Second Respondent: Ms Christine Robson
Third respondent: Ms Helen Lau
Fourth respondent: Ms Claire Paton-Baines
Fifth respondent: Mr Kevin Hunt
Sixth respondent: Ms Karen Telfer
Seventh respondent: Mr David Keane

Heard at:	Manchester then remotely by CVP	**On**	2 -10 September 2019 and 12 – 21 August 2020 Deliberation/writing: 1, 3-4 and 11 September and 12 October 2020

Before: Employment Judge Hoey
Ms Atkinson
Mr Haydock

Representation: Claimant: in person
Respondent: Mr Northall, counsel

RESERVED JUDGMENT

1. In respect of the first claim (2500003/2017):

    a. The claims brought in respect of acts occurring before 30 August 2016 did not give rise to conduct extending over a period and were not brought within such period that was just and equitable (in terms of section 123 of the Equality Act 2010) and are accordingly dismissed.
    b. The claimant's claims of direct discrimination by reason of his religion (in terms of section 13 of the Equality Act 2010) are ill-founded and are dismissed
    c. The claimant's claims of direct discrimination by reason of his sex (in terms

of section 13 of the Equality Act 2010) are ill-founded and are dismissed
d. The claimant's claims of victimisation (in terms of section 27 of the Equality Act 2010) are ill-founded and are dismissed
e. The claimant's claims of harassment related to sex (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed
f. The claimant's claims of harassment related to religion (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed

2. In respect of the second claim (2207335/2017):

a. The claims brought in respect of acts occurring before 21 June 2017 did not give rise to conduct extending over a period and were not brought within such period that was just and equitable (in terms of section 123 of the Equality Act 2010) and are accordingly dismissed.
b. The claimant's claims of sexual harassment (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed
c. The claimant's claims of direct discrimination by reason of his sex (in terms of section 13 of the Equality Act 2010) are ill-founded and are dismissed
d. The claimant's claims of victimisation (in terms of section 27 of the Equality Act 2010) are ill-founded and are dismissed

3. In respect of the third claim (2500677/2018):

a. The claims brought in respect of acts occurring before 22 November 2017 did not give rise to conduct extending over a period and were not brought within such period that was just and equitable (in terms of section 123 of the Equality Act 2010) and are accordingly dismissed.
b. The claimant was not unfairly dismissed and the claim of unfair dismissal is not well-founded.
c. The claimant's claims of direct discrimination by reason of his sex (in terms of section 13 of the Equality Act 2010) are ill-founded and are dismissed
d. The claimant's claims of direct discrimination by reason of his religion (in terms of section 13 of the Equality Act 2010) are ill-founded and are dismissed
e. The claimant's claim that he was treated unfavourably because of something arising in consequence of his disability (in terms of section 15 of the Equality Act 2010) are ill-founded and are dismissed
f. The claimant's claim that the respondents failed to make reasonable adjustments (in terms of section 20 of the Equality Act 2010) are ill-founded and are dismissed.
g. The claimant's claims of victimisation (in terms of section 27 of the Equality Act 2010) are ill-founded and are dismissed
h. The claimant's claims of sexual harassment (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed
i. The claimant's claims of harassment related to age (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed
j. The claimant's claims of harassment related to religion (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed
k. The claimant's claims of harassment related to disability (in terms of section 26 of the Equality Act 2010) are ill-founded and are dismissed

Introduction

1. This case has had a lengthy procedural history and begun as 3 separate claims which were combined. The claimant brings a large number of claims against a number of different individuals. At the final case management preliminary hearing heard on 10 July 2019 the issues to be determined as against each of the above respondents was agreed.

2. The parties also agreed that a 10 day hearing would be fixed even although it was agreed that the evidence would, in all probability, require further days to be fixed. The case therefore called for a final hearing (to determine liability only) on 2 September 2019. It was set down for 10 days. The case did not conclude and on day eight due to the claimant's absence the case was adjourned. Following this, a further 8 hearing days were fixed which were conducted remotely via CVP with the parties' consent. The hearing was conducted successfully with the claimant and the respondents' counsel attending the entire hearing, with witnesses attending as necessary, all being able to be seen and heard, as well as being able themselves to see and hear. There were a number of breaks taken during the evidence. The Tribunal was satisfied that the hearing had been conducted in a fair and appropriate manner such that a decision could be made on the basis of the evidence led.

3. The Tribunal was presented with an agreed bundle of 2449 documents in respect of the first claim and a bundle of 1494 documents in respect of the second and third claims. Additional documents were added by agreement to the bundle in the course of the hearing. The Tribunal, the parties and witnesses each had paper copies of the bundle.

4. The Tribunal heard evidence from 9 witnesses (including the claimant) each of whom had prepared a written witness statement and who were cross examined in relation to their evidence. Mr Harbertson was certified ill and unfit to give evidence. He had provided a written witness statement. It was agreed by both parties that the Tribunal would apply as much weight as appropriate to his witness statement, taking account of the documentary evidence and relevant other witness statements. The Tribunal did so.

5. With regard to reasonable adjustments in respect of the claimant, it was agreed that there would be regular breaks. We also allowed the claimant the chance to provide an amended witness statement after the case had been adjourned. We had emphasised during the first period that it was essential the claimant make it clear how the acts he was relying upon linked in some way to the protected characteristic or to the alleged protected acts.

6. The claimant produced a revised statement in July 2020. While the respondent objected to this, essentially because of the time that had passed and the proximity of the reconvened Hearing, we considered it fair to ensure the claimant set out his case fully and given he was not legally represented. We did our best to ensure the claimant was able to present each of the points he wished to raise, which he

confirmed he had done. He was given time after each witness to ensure he had done so.

7. At the outset of the hearing we discussed the overriding objective and the need to ensure that the parties were on an equal footing. We also ensured that the allocated time was used fairly and proportionately to ensure that a fair hearing took place. The parties worked with each other to achieve the overriding objective.

8. The claims before the Tribunal were the combination of 3 separate claim forms that had been presented. There had been a number of case management discussions, including on 27 September 2018, 8 March 2019 culminating in 10 July 2019 at which the issues being progressed were discussed and agreed in detail.

9. At the commencement of the final Hearing the parties confirmed that these were the agreed issued to be determined in respect of the claims before the Tribunal. The issues were lengthy and covered a large amount of both material and time. We discussed these issues regularly and reminded both the claimant and respondent that it was important to ensure each of the relevant points was properly dealt with in terms of evidence to ensure that the Tribunal could determine the issues before it. We emphasised the need for evidence and that the Tribunal makes it decision only from the evidence before it. The fact that the claimant was permitted to lodge a further witness statement in the intervening period gave the claimant a further opportunity to ensure the relevant evidence was placed before the Tribunal having had a considerable amount of time to consider matters in detail and to prepare his cross examination.

10. At various points during the hearing the claimant was reminded of the legal tests, for example, in relation to burden of proof and of the need to ensure that he brought forth sufficient evidence from which the Tribunal could make a decision with regard to each of the issues. He was also reminded of the need to ensure he put his case to each witness together with any parts of their witness statement with which he disagreed in any material sense. He was given time after cross examination of each witness to ensure he had checked that he had asked the relevant questions in relation to each of the points arising. The claimant understood this and was appreciative of the time he was given to prepare his case and ensure all the relevant evidence was laid before the Tribunal.

Observations on the evidence and witnesses

11. The Tribunal first heard from the claimant who had provided 2 witness statements (running to 78 and 54 pages) and then a further witness statement (which ran from page 54 to page 165). We considered this evidence carefully. The claimant was also cross examined carefully in relation to each of the issues below, which resulted in him giving evidence for a lengthy period of time. The claimant is clearly an articulate and intelligent person. On a number of occasions the claimant sought to provide answers to questions he thought would assist his case, rather than answering the question presented, which created challenges. He would

often focus on the literal meaning of words and phrases rather than considering how matters are interpreted in practice and sometimes to avoid providing answers that he perceived unhelpful to his case. An example of this was in relation to the claimant's use of the word "prick" which he had used to describe a security officer. On cross examination he had referred to dictionary definitions but omitted one meaning, which was, in our view, clearly what was intended by the phrase. In cross examination he would often focus on particular words used by a witness rather than the context in which they were used or how the words, taken together, could reasonably be interpreted. He would also focus on precise formalities of process and procedures rather than the substance of an issue as evidenced below (such as his view as to the fact-find in relation to the disciplinary process and other procedural steps).

12. On a number of occasions as evidenced from the facts and issues when faced with challenges to his behaviour or conduct, the claimant would seek to challenge the person making the allegation or challenge, rather than accept the comments, often arguing such conduct was unlawful. He would also seek to raise a large amount of detail in response to issues arising, rather than focussing upon the issue and providing a succinct response. That is evidenced by virtue of the number of issues with which we need to deal and the way in which the claimant presented his evidence. The claimant believed that the challenges made of him and comments and actions taken by his managers and others were somehow unlawful or unjustified and he sought to challenge them. While he firmly believed that he is right, regrettably that belief left no room for acceptance that the other view may in fact be right, particularly when viewed from that person's perspective. We took great care in assessing the evidence of the claimant given in writing and orally and from the documents generated at the time.

13. In a number of key respects we had to choose whether to accept the claimant's evidence or that of others, including his former colleague, Ms Lau, and former manager Mr Harbertson. For reasons that we set out in our reasons we found Ms Lau's evidence to be preferable on the balance of probabilities and in some respects we found the evidence in colleagues, such as Mr Harbertson, to be preferable to that of the claimant's evidence.

14. The Tribunal had a detailed and lengthy witness statement from Mr Harbertson (running to 67 pages) which was signed by him on 30 January 2018 which was helpful given the proximity to the issues. Mr Harbertson was the claimant's line manager until April 2017. While he was unable to give oral evidence, a significant amount of his evidence was commented upon by Ms Paton-Baines, who was able to corroborate a large amount of his evidence, either because she was present at the time or she had taken contemporaneous notes of the position. Ms Paton-Baines was not challenged to any significant extent by the claimant in this regard. We were also able to test Mr Harbertson's evidence against the documents which were produced at the time. This allowed us to ensure we fairly assessed his evidence, which we found largely credible and reliable.

15. The Tribunal had 2 witness statements from Ms Paton-Baines. She was also subject to cross examination by the claimant. She was Mr Harbertson's (and then

Ms L Robson's) line manager. She was clear in his evidence and her evidence was consistent with written communications issued at the time.

16. Ms Banks had also provided a witness statement and was cross examined. Ms Banks was the investigation manager in the process that led to the issuing of the final written warning. We found her to be clear and consistent. Her evidence was consistent with written communications issued at the time.

17. Ms C Robson provided 2 witness statements and was cross examined. She was the disciplinary decision maker in the first disciplinary process that led to the issuing of the final written warning. She was clear and candid in her evidence which was consistent with the documents issued at the time.

18. We also heard evidence from Mr Harris who had provided a witness statement and was cross examined. Mr Harris was the security officer who had made the initial complaint that gave rise to the final written warning. He was employed by a third party. Given the passage of time there were inconsistencies in his oral evidence which we were able to resolve by examining the written communications that were issued at the time and the assessments made by the respondents.

19. Ms Lau provided a witness statement and was cross examined by the claimant. She was a colleague of the claimant. She raised a complaint about the claimant's alleged behaviour which led to his dismissal. The claimant challenged her evidence and credibility. We took great care to assess her evidence which we did by considering her witness statement, her answers to the questions from the claimant, the respondents' agent and the Tribunal and from the information issued at the time. Where there were conflicts with the claimant, in light of our assessment, we considered that her evidence was to be preferred. We set out below our detailed reasons for so finding.

20. Mr Hunt provided a witness statement. He was the investigation officer in respect of the allegations that led to the claimant's dismissal. He was subject to cross examination by the claimant. The passage of time had affected his evidence. He did his best to recall matters and assist the Tribunal. We assessed his evidence carefully by examining his witness statement, his responses at the Hearing and the information that was in existence at the time. We took into account his answers in cross examination and assessed those as against the documents that had been issued at the time. This allowed us to reach conclusions on material facts and resolve any issues arising from his oral evidence.

21. Ms Telfer provided a witness statement. She was the dismissing officer. She was cross examined by the claimant. Her evidence was clear and consistent with the documents that were issued at the time.

22. Mr Keane provided a witness statement. He was the appeal officer. He was cross examined by the claimant. He was clear, detailed and articulate in his response to the questions and gave detailed answers to the points arising. His evidence was consistent with his detailed and thorough outcome letter.

Issues

23. At the commencement of the hearing we spent time and took great care to ensure the issues that required to be determined were clearly understood given the volume of issues. The respondents conceded that the claimant was a disabled person as at 30 June 2017 and so that was no longer a live issue. The issues to be determined were agreed to be as follows:

FIRST CLAIM (2500003/2017)

Direct discrimination (religion) (s.13 Equality Act 2010)

1. Was the claimant treated less favourably than an actual or hypothetical comparator in the following alleged respects:

    1.1. Ms Paton-Baines ("CPB") failing to follow the disciplinary policy by obtaining a witness statement from Mr Harris on 27 May 2016;
    1.2. CPB's refusal to tell the claimant on 2 June 2016 who had made three allegations against him;
    1.3. CPB's consideration of suspending the claimant in June 2016 without getting his 'side of the story';
    1.4. The failure on 6 July 2016 to expand the scope of the investigation to include allegations of religious harassment by the claimant against Mr Harris;
    1.5. The investigation officer failing to acknowledge on 24, 25 and 26 August 2016 evidence casting doubt on the evidence of Mr Harris;
    1.6. The content of the investigation report (the criticisms of which are more particularly set out in the claimant's further particulars of claim);
    1.7. CPB informing the claimant on 2 September 2016 that he would face a disciplinary hearing for 'threats of violence' when the investigation report did not conclude that the claimant had threatened anyone with violence;
    1.8. Ms C Robson ignoring the claimant's evidence at the disciplinary hearing on 20 January 2017 that he had been the victim of religious harassment and a hate crime;
    1.9. Mr Harbertson ("MH") objecting to the Claimant's use of the phrase "with the Lord's help" in an email of 11 January 2016;
    1.10. Being issued with a final written warning on 20 January 2017?

2. Was the treatment because of the claimant's religion of Christianity?

Direct discrimination (sex) (s.13 Equality Act 2010)

3. Was the claimant treated less favourably than an actual or hypothetical comparator in the following alleged respects:

    3.1. CPB failing to follow the disciplinary policy by obtaining a witness statement from Mr Harris on 27 May 2016;

3.2. CPB's alleged plagiarism on 10 October 2015 of a "Terms of Reference" document written by the claimant;
3.3. CPB excluding the claimant from the Reward and Recognition process in October 2015;
3.4. CPB excluding the claimant from Reward and Recognition meetings in November 2015;
3.5. MH criticising the claimant on 14 March 2016 for taking most of a day to complete his PMR;
3.6. MH preparing a note on 17 March 2016 that the claimant had not been utilised as a Business Skills Coach because of concerns over his conduct;
3.7. CPB failing to respond in July 2016 to the claimant's email setting out why she should adopt the 12-month engagement cycle;
3.8. CPB excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016;
3.9. CPB insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown;
3.10. MH refusing to allow the claimant to discuss CPB's criticism at the OLM meeting for September 2016;

4. Was the treatment because of the claimant's sex?

Victimisation (s.27 Equality Act 2010)

5. Was the claimant subjected to a detriment in the following alleged respects:

5.1. MH asking the claimant to "give up his pedestal" on 15 May 2015;
5.2. MH accusing the claimant of "loitering" with John Southern on 15 May 2015 and having conversations unrelated to work;
5.3. MH accusing the claimant of "talking to a Rep in reception" on 15 May 2015;
5.4. An exchange of emails on 20 May 2015 between Mr Harbertson and the claimant concerning the claimant's use of flexi-credit;
5.5. MH's refusal to sign the claimant's flexi-sheets in the period April 2015 to October 2015;
5.6. MH accusing the claimant on 21 July 2015 of taking an excessive amount of time to finish his working day;
5.7. MH suggesting in July 2015 that the claimant should take a course in active listening;
5.8. MH refusing to confirm what value for conditioned hours the claimant should input into the claim form for travel time;
5.9. MH accusing the claimant on 22 September 2015 that he had advised a court-user to complain;
5.10. MH taunting the claimant in September 2015 that the court-user had complained and the claimant had advised him to do so;
5.11. MH accusing the claimant on 29 September 2015 of not communicating with the Receptionist, Mr Hope;
5.12. MH criticising the claimant on 5 October 2015 for leaving a snooker cue in clerk's room;

5.13. An email exchange between Mr Harbertson and the claimant of 6 October 2015 concerning the claimant's bi-monthly performance review;
5.14. MH's conduct of the performance review of 6 October 2015 in which the claimant alleges he was "rude, unpleasant and hostile";
5.15. CPB's alleged plagiarism on 10 October 2015 of a "Terms of Reference" document written by the claimant;
5.16. MH disparaging on 12 October 2015 a continuous improvement paper written by the claimant;
5.17. MH failing to set tasks for the claimant for his Skills for Justice Level 3 Certificate Courts and Tribunals Clerking on 16 and 20 November 2015;
5.18. MH failing to discuss the claimant's work towards the Level 3 qualification in the period 15 to 19 February 2016;
5.19. MH refusing to pay the claimant for travel time in the period 17 February to 11 April 2016;
5.20. MH accusing the claimant on 9 March 2016 of being derogatory;
5.21. MH refusing on 9 March 2016 to release the claimant for training;
5.22. MH criticising the claimant on 14 March 2016 for taking most of a day to complete his PMR;
5.23. CPB refusing on 14 March 2016 to discuss MH's behaviour with the claimant;
5.24. CPB failing to commission another manager to carry out a formal investigation into MH's behaviour;
5.25. MH preparing a note on 17 March 2016 that the claimant had not been utilised as a Business Skills Coach because of concerns over his conduct;
5.26. CPB failing to respond on 29 March 2016 to the claimant's question of whether Mr Harbertson disputed anything about the claimant's account set out in his email of 23 March 2016;
5.27. MH writing an email on 15 April 2016 stating that the claimant had been excluded from the Business Skills Coach role because of his behaviour;
5.28. MH misrepresenting the claimant's performance in an email to CPB of 15 April 2016;
5.29. MH making unfounded criticisms of the claimant's performance at a meeting of 27 May 2016;
5.30. CPB failing to follow the disciplinary policy by obtaining a witness statement from Mr Harris on 27 May 2016;
5.31. CPB's refusal to tell the claimant on 2 June 2016 who had made three allegations against him;
5.32. CPB's consideration of suspending the claimant in June 2016 without getting his 'side of the story';
5.33. MH introducing performance objectives on 14 June 2016;
5.34. MH failing to meet the claimant to discuss his performance objectives in the period 14 June to 9 September 2016;
5.35. MH "shutting down the conversation" concerning why the claimant had been unwilling to sign the OLM for June 2016;
5.36. CPB failing to respond in July 2016 to the claimant's email setting out why she should adopt the 12-month engagement cycle;
5.37. The failure on 6 July 2016 to expand the scope of the disciplinary investigation to include allegations of religious harassment by the claimant against Scott Harris;
5.38. MH's breach of the Conduct Policy on 2 August 2016 by speaking about the disciplinary investigation with Mr Southern;

5.39. MH in a witness statement on 2 August 2016, referring to the claimant threatening someone with violence and writing "…that behaviour, regardless of when it took place, it was obvious to me, had taken place and it is not acceptable given the Civil Service Code of Conduct…"
5.40. CPB excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016;
5.41. CPB insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown;
5.42. The disciplinary investigation officer allowing Mr Southern to give contradictory evidence without challenge on 18 August 2016;
5.43. The investigation officer failing to acknowledge on 24, 25 and 26 August 2016 evidence casting doubt on the evidence of Mr Harris;
5.44. The content of the investigation report (the criticisms of which are more particularly set out in page 4 of the claimant's further particulars of claim);
5.45. CPB informing the claimant on 2 September 2016 that he would face a disciplinary hearing for 'threats of violence' when the investigation report did not conclude that the claimant had threatened anyone with violence;
5.46. MH refusing to allow the claimant to discuss CPB's criticism at the OLM meeting for September 2016;
5.47. MH stating on the afternoon of 9 September 2016 that the claimant's performance objectives would remain indefinitely;
5.48. MH signing off a mid-year performance review on 13 October 2016 with a rating of 'must improve';
5.49. On 20 January 2017 issuing the claimant with a Final Written Warning;
5.50. MH instigating a Personal Assistance Plan on 24 March 2017;
5.51. MH stating on 24 March 2017 that the reason he did not use the claimant as a Business Skills Coach was because he did not want to expose visitors from other offices to the claimant's behaviour;
5.52. Ms C Robson ignoring the claimant's evidence at the disciplinary hearing on 20 January 2017 that he had been the victim of religious harassment and a hate crime;
5.53. CPB insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown;
5.54. MH refusing to allow the claimant to discuss CPB's criticism at the OLM meeting for September 2016;
5.55. MH stating on the afternoon of 9 September 2016 that the claimant's performance objectives would remain indefinitely;
5.56. MH signing off a mid-year performance review on 13 October 2016 with a rating of 'must improve';
5.57. MH instigating a Personal Assistance Plan on 24 March 2017;
5.58. MH stating on 24 March 2017 that the reason he did not use the claimant as a Business Skills Coach was because he did not want to expose visitors from other offices to the claimant's behaviour?

6. Were the alleged detriments at 5.1 – 5.17 above done because of the following act of the claimant:

6.1. His claim to an employment tribunal in or around May 2012?

7. Were the alleged detriments at 5.18 – 5.58 done because of one or more of the following acts of the claimant:

   7.1. Accusing MH of religious discrimination following MH's objection to the claimant's use of the phrase "with the Lord's help" in an email of 11 January 2016;

   7.2. Informing CPB on 12 January 2016 that MH was guilty of religious discrimination?

8. Was each such act a protected act within the meaning of s.27(2) Equality Act 2010?

Harassment related to sex (s.26 Equality Act 2010)

9. Did MH and CPB engage in unwanted conduct in the following respects alleged by the claimant:

   9.1. CPB's alleged plagiarism on 10 October 2015 of a "Terms of Reference" document written by the claimant;
   9.2. CPB excluding the claimant from the Reward and Recognition process in October 2015;
   9.3. MH preparing a note on 17 March 2016 that the claimant had not been utilised as a Business Skills Coach because of concerns over his conduct;
   9.4. MH writing an email on 15 April 2016 stating that the claimant had been excluded from the Business Skills Coach role because of his behaviour;
   9.5. MH "shutting down the conversation" concerning why the claimant had been unwilling to sign the OLM for June 2016;
   9.6. CPB failing to respond in July 2016 to the claimant's email setting out why she should adopt the 12-month engagement cycle;
   9.7. CPB excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016;
   9.8. CPB insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown;
   9.9. MH refusing to allow the claimant to discuss CPB's criticism at the OLM meeting for September 2016;
   9.10. MH stating on 24 March 2017 that the reason he did not use the claimant as a Business Skills Coach was because he did not want to expose visitors from other offices to the claimant's behaviour?

10. Was the conduct related to the Claimant's sex?

11. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010?

Harassment related to religion (s.26 Equality Act 2010)

12. Did MH and CPB engage in unwanted conduct in the following respects alleged by the claimant:

    12.1. MH objecting to the claimant's use of the phrase "with the Lord's help" in an email of 11 January 2016;
    12.2. MH "shutting down the conversation" concerning why the claimant had been unwilling to sign the OLM for June 2016;
    12.3. CPB failing to respond in July 2016 to the claimant's email setting out why she should adopt the 12-month engagement cycle;
    12.4. CPB excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016;

13. In relation to the disciplinary process culminating in the claimant being issued with a written warning in January 2017, was the claimant subjected to unwanted conduct in the following alleged respects:

    13.1. MH failing to follow the disciplinary policy by going on a 'fishing expedition' on 16 or 17 May 2016;
    13.2. CPB failing to follow the disciplinary policy by obtaining a witness statement from Mr Harris on 27 May 2016;
    13.3. CPB's refusal to tell the claimant on 2 June 2016 who had made three allegations against him;
    13.4. CPB's consideration of suspending the claimant in June 2016 without getting his 'side of the story';
    13.5. The failure on 6 July 2016 to expand the scope of the investigation to include allegations of religious harassment by the claimant against Mr Harris;
    13.6. MH's breach of the Conduct Policy on 2 August 2016 by speaking about the investigation with Mr Southern;
    13.7. The investigation officer allowing Mr Southern to give contradictory evidence without challenge on 18 August 2016;
    13.8. The investigation officer failing to acknowledge on 24, 25 and 26 August 2016 evidence casting doubt on the evidence of Mr Harris;
    13.9. The content of the investigation report (the criticisms of which are more particularly set out in the claimant's further particulars of claim);
    13.10. CPB informing the claimant on 2 September 2016 that he would face a disciplinary hearing for 'threats of violence' when the investigation report did not conclude that the claimant had threatened anyone with violence;
    13.11. Ms C Robson ignoring the claimant's evidence at the disciplinary hearing on 20 January 2017 that he had been the victim of religious harassment and a hate crime?

14. Was the conduct related to the claimant's religion of Christianity?

15. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010?

Time limits

16. Did any relevant act or omission occur more than three months before the presentation of the ET1 on 3 January 2017, or such further extension taking into account any early conciliation entered into by the parties?

17. Did such acts or omissions form part of conduct extending over a period within the meaning of s.123(3)(a) Equality Act 2010?

18. If all or part of any claim is out of time, would it be just and equitable to extend time to consider the complaint?

SECOND CLAIM (2207335/2017)

Sexual Harassment (S.26 Equality Act 2010)

19. Was the claimant subjected to unwanted conduct in the following alleged respects:
    19.1. Ms Lau (HL) saying, around April 2017, "You are not too old to have more children if you want to?
    19.2. HL saying, in June 2017, "Do you want to be dominated?";
    19.3. HL saying on 22 June 2017 "I don't have dirty dreams" and "I know that men have those kinds of dreams, isn't it?"
    19.4. HL saying "You men all want younger women" and two similar comments the following week.

20. Was the conduct related to the claimant's sex or of a sexual nature?

21. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010?

Direct sex discrimination (s.13 Equality Act 2010)

22. Did Ms C Robson treat the claimant less favourably than an actual or hypothetical comparator in the following alleged respects:

    22.1. Instigating a disciplinary investigation against the claimant on 7 July 2017 concerning comments made to HL, thereby disregarding the claimant's allegation that he had been bullied and sexually harassed by her;
    22.2. Failing to carry out a fair initial fact finding in accordance with the disciplinary policy;
    22.3. Seeking to temporarily relocate the claimant pending the investigation;
    22.4. Seeking to persuade Ms Cook to relocate the claimant pending the resolution of the claimant's claim to the employment tribunal (the first Claim);
    22.5. Suggesting in her email of 10 April 2017 that the claimant be put on garden leave?

23. Was any less favourable treatment because of the claimant's sex?

Victimisation (s.27 Equality Act 2010)

24. Did Ms C Robson subject the claimant to a detriment by reason of the matters set out at paragraphs 22.1-22.5 inclusive above?

25. Was it done because of the claimant's claim to the Employment Tribunal (the first Claim) or because of the claimant's complaint of maladministration of a disciplinary investigation in which he received a written warning?

26. Did the latter complaint amount to a protected act within the meaning of s.27(2) Equality Act 2010?

THIRD CLAIM (2500677/2018)

Unfair dismissal

27. Was the claimant dismissed for the potentially fair reason of conduct?

28. Did the first respondent act reasonably in treating the claimant's conduct as sufficient for dismissal? Without limitation to the Tribunal's general enquiry into fairness pursuant to section 98(4) Employment Rights Act 1996, the claimant wished the tribunal to have particular regard to:

    28.1. Whether the final written warning issued in January 2017 was manifestly inappropriate; and
    28.2. His Convention rights under Article 10 ECHR (the right to freedom of expression and information).

29. In the event the dismissal is found to be unfair:

    29.1. Did the claimant's own blameworthy conduct contribute towards his dismissal and, if so, to what extent?

    29.2. Would the claimant have been dismissed in any event had the first respondent acted reasonably, thereby entitling the claimant to a nil or reduced compensatory award?

Direct sex discrimination

30. Was the claimant treated less favourably than an actual or hypothetical comparator in the following alleged respects:

    30.1. The Secretary of State (SoS) causing or permitting the investigation into the Claimant's misconduct to be carried out 'in bad faith';
    30.2. CPB, Ms C Robson and MH ignoring the claimant's email of July 2017 informing them that he was the victim of sexual harassment by HL;

30.3. The SoS failing to respond to the claimant's complaints in December 2017 that the disciplinary investigation commenced in July 2017 was carried out in bad faith;
30.4. The SoS failing to respond to the claimant's complaint of maladministration in the disciplinary process that ended on 20 January 2017;
30.5. The manner of Mr Hunt's investigation and conclusions, the criticisms of which are more particularly set out at pp.11-15 of the grounds of complaint attached to the Third Claim;
30.6. The SoS dismissing the claimant;
30.7. Ms Telfer dismissing the claimant;
30.8. Mr Keane (DK) rejecting the claimant's appeal against dismissal?

31. Was the treatment because of the claimant's sex?

Direct religious discrimination (s.13 Equality Act 2010)

32. Was the claimant treated less favourably than an actual or hypothetical comparator in the following alleged respects:

32.1. Mr Hunt (KH) asking the claimant in an interview of 8 December 2017 about his reference to 'God' in an email;

33. Was the treatment because of the claimant's religion of Christianity?

Discrimination arising from disability (s.15 Equality Act 2010)

34. Was the claimant treated unfavourably in the following alleged respects:

34.1. Ms Telfer and/or Mr Keane taking account of an email written by the claimant on 30 December 2017 addressed to HL in which he referred to CPB as 'the enemy'?

35. Was the claimant's reference to "the enemy" because of something arising in consequence of his disability?

36. Was the claimant's dismissal a proportionate means of achieving a legitimate aim, namely the need for employees to abide by consistent standards of behaviour?

37. Did any relevant respondent know that the claimant was a disabled person at any time material to his claims?

Failure to make reasonable adjustments (s.20 Equality Act 2010)

38. Did the first respondent apply the following PCPs to the claimant:

38.1. A requirement to attend a disciplinary hearing on 28 December 2017 (the first PCP);

38.2. A requirement to attend a disciplinary hearing at Middlesbrough (the second PCP);

38.3. A requirement to comply with the first respondent's standards of behaviour (the third PCP)?

39. Did each of the PCPs place the claimant at a substantial disadvantage in comparison with a person who was not disabled?

40. Did the first respondent and/or Ms Telfer and/or Mr Keane fail to make a reasonable adjustment through:

In relation to the first PCP

40.1. failing to adjourn the disciplinary hearing to a later date?

In relation to the second PCP

40.2. Failing to convene the disciplinary hearing at a more convenient location?

In relation to the third PCP

40.3. Not dismissing the Claimant; or
40.4. Upholding the appeal?

41. Did any relevant respondent know that the claimant was a disabled person at any time material to his claims?

42. Did any relevant respondent know that the claimant was substantially disadvantaged in a manner alleged by the claimant by reason of his disability at any time material to his claims?

<u>Victimisation (s.27 Equality Act 2010)</u>

43. Was the claimant subjected to a detriment in the following alleged respects:

43.1. Ms C Robson (CR) sending an email on 10 April 2017 in which she described the claimant as 'the problem';
43.2. CR refusing to allow a grievance process which the claimant instigated in 2016 to proceed to the appeal stage;
43.3. HL sending a threatening email to the claimant on 22 June 2017;
43.4. CR instigating a disciplinary process against the claimant;
43.5. CR failing to speak to the claimant before instigating the disciplinary process, in breach of the Civil Service code;

43.6. CR failing to exclude herself from the investigation of the claimant's misconduct;
43.7. CR arranging to have the claimant relocated pending disciplinary investigation, in breach of the disciplinary policy;
43.8. CR covertly communicating additional allegations against the claimant to the investigating officer beyond those of which the claimant had been informed;
43.9. CR sending the claimant home in a "stage managed" exit on 7 July 2017;
43.10. CPB refusing to arrange a face to face PMR with the claimant for the reporting year 2016/17;
43.11. CPB failing to respond to the claimant's email of July 2017 complaining that he had been the victim of sexual harassment by HL;
43.12. The SoS failing to respond to the claimant's complaints in December 2017 that the disciplinary investigation commenced in July 2017 was carried out in bad faith;
43.13. The SoS failing to respond to the claimant's complaint of maladministration in the disciplinary process that ended on 20 January 2017;
43.14. The manner of Mr Hunt's investigation and conclusions, the criticisms of which are more particularly set out at pp.11-15 of the grounds of complaint attached to the Third Claim;
43.15. Ms Telfer (KT) dismissing the claimant by letter of 4 January 2018 including her supporting reasoning as set out in that letter;
43.16. Mr Keane (DK) rejecting the claimant's appeal against dismissal?

44. Were the detriments because the claimant had done a protected act, specifically bringing a claim to the Employment Tribunal (the first Claim) or complaining of maladministration in the disciplinary process that ended on 20 January 2017?

<u>Sexual harassment (s.26(3) Equality Act 2010)</u>

45. Was the claimant subjected to sexual harassment by HL as set out in paragraph 19?

46. If so, did HL send a threatening email to the claimant on 22 June 2017?

47. Was the conduct at paragraph 46 because of the claimant's rejection of or submission to the conduct?

48. Was this less favourable treatment than if the claimant had not rejected or submitted to HL's conduct?

<u>Harassment related to age (s.26 Equality Act 2010)</u>

49. Was the claimant subjected to unwanted conduct in the following alleged respects:

49.1. HL's remarks made to the claimant on an undated occasion in June 2017, including "You men all want younger women" and "Do you want to be dominated";

49.2. HL repeating the "You men all want younger women" comment several weeks later;

50. Was the conduct related to the claimant's age?

51. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010?

Harassment related to religion (s.26 Equality Act 2010)

52. Was the claimant subjected to unwanted conduct in the following alleged respects:

52.1. KH asking the claimant in an interview of 8 December 2017 about his reference to 'God' in an email?

53. Was the conduct related to the claimant's religion of Christianity?

54. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010?

Harassment related to disability (s.26 Equality Act 2010)

55. Was the claimant subjected to unwanted conduct in the following alleged respects:
55.1. By Mr Keane saying to the claimant that he had never shown any outward signs that he was suffering "this problem" (which appears to be a reference to sexual harassment by HL); and
55.2. By Mr Keane saying that his understanding of panic attacks suggest that the claimant could not have continued a conversation with HL during the attack.

56. Was the conduct related to the claimant's disability?

57. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 6(1)(b) Equality Act 2010?

Time limits

58. Did any relevant act or omission occur more than three months before the presentation of the ET1 on 3 January 2017, or such further extension taking into account any early conciliation entered into by the parties?

59. Did such acts or omissions form part of conduct extending over a period within the meaning of s.123(3)(a) Equality Act 2010?

60. If all or part of any claim is out of time, would it be just and equitable to extend time to consider the complaint?

REMEDY

61. In all cases the respondents will contend that, where the treatment of the claimant is found to be unlawful, his employment would have terminated in any event by reason of his conduct, thereby eliminating or reducing the claimant's compensation.

Issues withdrawn

24. In the course of the hearing the claimant confirmed that he was withdrawing the claims underlying following issues: issues 3.1, 5.18, 5.27, 5.41, 5.53 to 5.58, 9.1 to 9.6, 9.9 and 9.10, 22.4 and 22.5, (inclusive).

Facts

25. The Tribunal considered the following facts to be established from the evidence that was presented to the Tribunal. We make findings only in respect of facts that are necessary to determine the issues. We are conscious there was a huge number of documents and a large amount of oral evidence. We seek to set out below the main facts to allow us to determine the issues.

Background

26. The first respondent is the Secretary of State for Justice, which is responsible for the Courts and Tribunals in England and Wales. The claimant was employed from 11 February 2001 as Tribunal Clerk with his employment ending on 4 January 2018.

27. As a Tribunal clerk the claimant was subject to a contract of employment and as a civil servant, he was subject to the Civil Service Code and other policy documents

Contract and policy documents

28. There are a number of policy and guidance documents that applied to the claimant which are relevant to this case.

29. The **Conduct Policy** sets out standards of behaviour and conduct expected of civil servants while at work. While it does not form part of the individual's contract of employment, it does bind employees who are required to follow it. The policy sets out principles on which the standards are built. Standards of behaviour are set out at paragraph 2.3 which states that employees will carry out duties following the civil service values of honesty, integrity, objectivity and impartiality.

Employees must treat people decently and with respect and take responsibility for their actions. Employees must not discriminate against any person for any unfair reason nor harass victimise or bully others through actions, language or behaviour (whether done deliberately or not).

30. There is a policy of zero tolerance which states that allegations of unacceptable behaviour will always be treated seriously and be investigated. Unacceptable behaviour includes harassment (unwanted behaviour which affects a person's dignity which can be one off or continuous, if the actions or comments are seen by the person receiving them as demeaning and unacceptable), bullying (which can include offensive, intimidating, malicious or insulting behaviour) and victimisation (which is where a person is treated in a negative way because they make a complaint).

31. Unacceptable behaviour is stated to include unwanted conduct such as verbal abuse, ridiculing or demeaning someone or inappropriately commenting on a person's appearance, personal life or lifestyle.

32. If standards of behaviour fall short, managers can use the disciplinary procedure if they feel this is necessary. If the policy is breached in a serious way a warning or dismissal may ensue.

33. The **Discipline Policy** and guidance refers to the required standards of conduct as set out in the Conduct Policy. Minor instances of misconduct will generally be addressed informally through normal day to day management action. The formal process is to be used for more serious misconduct or where there is repeat minor misconduct.

34. The policy does not form part of the contract of employment but employees are bound to follow it.

35. Misconduct is defined as a failure to adhere to the standards set out in the Conduct Policy. Minor misconduct examples include minor violations. Serious misconduct includes smoking, failure to follow reasonable instructions, offensive abusive or repeated unwanted behaviour, repeated failure to follow policies. Gross misconduct examples include theft, physical violence or threatening behaviour, serious insubordination.

36. Under roles and responsibilities managers conducting the process are to manage the process in a fair and transparent way and ensure a prompt resolution is achieved while giving employees a reasonable time to prepare for hearings. Managers must also justify and document decisions.

37. Investigation officers should identify and consider all the evidence, produce an investigation report which fairly and objectively accounts for all relevant evidence and justifies its recommendations. Employees should attend meetings when required and raise any special information they wish included and appeal within 15 working days.

38. The policy states that a disciplinary process will normally follow these steps: the manager will write to the employee advising of the allegations, the basis of them and then a hearing will be convened if they are found to have a case to answer, an investigation will be conducted and a hearing will be convened when the employee can respond to the allegations and an appeal will be permitted.

39. Suspension can be used where the employee's actions might amount to gross misconduct and alternative arrangements would not be appropriate, the health and safety of an employee could be at risk or the working relationship may have broken down.

40. The manager will make reasonable efforts to arrange the hearing around the availability of the employee and their companion. The hearing may be re-arranged for a maximum of 5 working days if a companion cannot attend.

41. The policy states that: "The employee will take all reasonable steps to attend the hearing. If they do not attend and there are unforeseeable and justifiable reasons for not attending the manager will rearrange the hearing once". Then if the employee fails to attend the rearranged hearing the manager may proceed without the employee's input and make decisions on the basis of information that is available.

42. If the process finds that the employee's actions amounted to misconduct, the manager will decide whether the misconduct was minor, serious or gross. After considering all the relevant circumstances the manager will decide upon the sanction, it is for the manager to decide upon the sanction in the circumstances which can include warnings, final written warnings (which remain on file for 12 months and further formal findings of misconduct of any form during the period would generally result in dismissal) and dismissal (which is generally only considered for gross misconduct unless there is a live warning for serious misconduct on file). In extremely unusual situations the manager can impose a final written warning that remains on file for 36 months as an alternative dismissal but this should only be considered where there are significant mitigating circumstances that directly contributed to or explained the misconduct and the manager considers dismissal to be unjust.

43. The policy notes that managers should generally comply with its terms. It is recognised, however, that in some circumstances the policy can be departed from.

44. The guidance section provides information to assist managers. This guidance notes that it may be necessary to hold a fact-finding meeting to establish the facts of a case and that the employee should be told personally and in writing an outline of the allegation and why the conduct is unacceptable.

45. The aim of an investigation is to make a justifiable recommendation on whether misconduct is likely to have occurred and sufficient enquiries are needed to make that recommendation. Witness statements should be obtained.

46. The investigator should issue a report which makes a justifiable recommendation about whether or not the behaviour amounts to a breach of the conduct policy. The report should also give enough information so the employee understands the findings of the investigation. The report should include those involved in the investigation, details of alleged misconduct, evidence and witness statements considered (as attachments), rationale for not considering any evidence, conclusions drawn from evidence and witness statements, objective assessments about the relative strength of inconsistent evidence and a recommendation on whether a breach has occurred and why.

47. The recommendation on whether a breach has occurred is to be made on the balance of probability which means on the balance of the available evidence. That is said to mean whether or not it is more probable than not that the person has breached the policy.

48. It is noted that the investigation report will inform decisions and could ultimately be presented to a Tribunal and so the report should be comprehensive and accurate and based on an objective and fair assessment of the available evidence.

49. If there is a case to answer a hearing should be convened. The guidance states that after sending the letter advising that there is a case to answer, the manager should liaise with the employee and any companion to organise a hearing date. A letter should then be issued setting out details of the hearing.

50. The guidance notes that occasionally the meeting may need to be rearranged due to unforeseeable circumstances. Generally, this would be within 5 working days of the time originally proposed. It should be organised after liaison with the employee. If the employee simply does not turn up the hearing should be rearranged once and if the employee fails to attend the hearing should be conducted in their absence.

51. The hearing should be held in a private location and, if possible, somewhere that is not part of the person's normal work environment.

52. It is possible to adjourn to consider matters and confirm the outcome normally within 5 working days.

53. All information that has been provided should be considered including any mitigating circumstances. The level of misconduct should be determined and the appropriate sanction.

54. In determining the level of misconduct consideration should be given as to how much the employment relationship has been affected by the employee's actions. Ultimately the sanction must be reasonable in all the circumstances. An employee also has the right to appeal.

55. Under the section entitled "employee guidance" it is noted that an appeal is a review of the decision and the basis for those decisions, not a re-investigation.

The appeal manager will consider any new evidence and decide whether the original finding was reasonable and whether the sanction was reasonable.

56. Under the "manager's guidance" section it states that: "Occasionally you may need to rearrange a meeting due to unforeseeable circumstances. Generally, this will be within 5 working days. It will be organised after liaison with the team member and any companion. If the employee simply does not turn up you will rearrange the hearing once. If they fail to attend the rearranged hearing you should conduct the hearing in their absence based on the information available at the time."

57. The **Performance Management Policy** and procedure is underpinned by principles which state that performance will be managed proactively with a focus on continuous improvement and individual development with poor performance being managed. Performance is managed in a fair and transparent way. The policy provides a framework for managing performance throughout the year, laying the foundations of expected standards of performance and facilitating employee engagement. Objectives should be set at the beginning of the performance management year and reviewed at regular performance discussions. At the end of the year the position is reviewed.

58. The policy contains a structured process involving start of year discussion and objective setting, regular performance discussions and under performance management, employee self-assessment, mid-year reviews and end of year review and rating.

59. The **Grievance Policy** and guidance create a framework for employees to raise concerns, problems or complaints and for these to be dealt with effectively. The policy states that employees and their managers will conduct workplace relationships in a cordial, respectful and professional and flexible manner in accordance with the conduct policy. The policy does not form part of the contract of employment but employees are bound by its provisions

60. The policy refers to the zero-tolerance policy concerning bullying, harassment and other discriminatory behaviour, which are all examples of misconduct. All such allegations are treated seriously and investigated. Proportionate action is to be taken. Employees must raise any problems or issues in a timely fashion. Where a grievance is lodged, a manager is appointed to investigate and a meeting is arranged with a decision issued with the right to an appeal.

61. The **Civil Service Code** sets out the standards of behaviour expected of all civil servants. These are based on the core values of integrity, honesty, objectivity and impartiality.

62. Standards of behaviour are set out. Thus with regard to integrity employees must fulfil their duties responsibly and act in a way that is professional and deserves and retains the confidence of all those with whom the employee has dealings.

63. The **civil service competency framework** was introduced in 2012 and is a new competency framework to support the reform plan and new performance management system. It sets out how civil servants are to work and puts the values of honesty, integrity, impartiality and objectivity art the heart of everything that is done. The framework is used for performance management and progression. The focus is on competencies identified with a manager that apply to the role. 2007

Performance management issues

64. On 1 April 2015 the claimant transferred from the case progression team to the clerking team. His manager (until 11 April 2017) was Mr Harbertson (who had been clerking manager since 2013). Mr Harbertson reported to Ms Paton-Baines (delivery manager).

65. Prior to moving to the case progression team, the claimant had been a clerk and upon re-joining the clerking team on 1 April 2015 and becoming a direct report of Mr Harbertson, the claimant was asked if he required any retraining. He explained that he was very experienced and just needed some observation time with the different jurisdictions.

66. The claimant was an accredited business skills coach. There was one other accredited business skills coach in the team. Both individuals delivered training to the clerking team which was favourably received in August 2015.

Claimant being asked to "give up his pedestal" on 15 May 2015

67. In April 2015 the claimant moved from case progression team to clerking team. The claimant had a "pedestal" cabinet with 2 drawers for storage. Mr Harbertson asked the claimant to move his personal items to a locker on the same floor he was to work. This was because Mr Harbertson wanted to ensure the claimant's belongings were safe and stored at a nearby location. That was an entirely legitimate request.

Claimant is asked not to have non-work discussions with security guards

68. On 15 May 2015 the claimant was asked by Mr Harbertson not to stand at the front desk and talk to security guards for non-work related reasons. This was because Mr Harbertson was concerned about the perception this would create and of the need for clerks to be seen to be independent.

Claimant is asked not to talk to representatives in public areas

69. On the same day, 15 May 2015, Mr Harbertson asked the claimant not to speak with representatives in reception as he was concerned about how this would look given the need for impartiality.

Emails regarding the claimant's use of flexi-credit

70. In an exchange of emails on 20 May 2015 between the claimant and Mr Harbertson, a discussion took place as to use of flexi-credits, which is about the core hours of the flexi system. The core hours are 10 to 1130am and 2 until 3pm.

71. The claimant asked to go to the dentist and Mr Harbertson stated that appointments should be outside core hours unless there were exceptional circumstances which was in accordance with the relevant policy.

72. Mr Harbertson referred to the policy and that the claimant should be at work by 10am but the claimant failed to confirm that. If there was a risk that the claimant would not return to work during core hours he would require to speak with Mr Harbertson.

Flexi-sheets in the period April 2015 to October 2015;

73. On 16 October 2015 Mr Harbertson asked the claimant to provide him with all his annual leave and flexi sheets for authorisation and signature. It is each employee's responsibility to complete the information and to pass to management for authorisation. A further reminder was sent by Mr Harbertson to all his staff, including the claimant, for this information on 19 October 2015. The claimant was treated in the same was as his colleagues in this regard.

Claimant told to progress work quickly

74. On 24 June 2015 the claimant was sent an email by Mr Harbertson reminding him that he should process paperwork quickly and if he had any problems, he should raise them.

75. Mr Harbertson did not accuse the claimant of taking an excessive amount of time to finish his working day on 21 July 2015.

Claimant asked to consider a course in active listening

76. In or around July or August 2015 Mr Harbertson suggested to the claimant that he take a module in active listening as part of his duties as the claimant's manager and to equip the claimant with greater skills. The claimant was asked for his view as to whether he would like to do so. The claimant was happy to undertake this course.

Claimant reminded about his knowledge of travel time data

77. On or around August 2015 the claimant and Mr Harbertson had a discussion about travel time. On 3 August 2015 the claimant asked Mr Harbertson what the conditional hours value was to be inserted into the spreadsheet. Mr Harbertson replied referring to the conversation he had with the claimant the previous week stating: “you knew what it was, as you told me yourself, to clarify whether it as the same as when you used to clerk?”. Mr Harbertson noted that the claimant was already aware of the value. He did not refuse to provide it.

78. On 7 August 2015 Mr Harbertson and the claimant had a performance management review meeting with a record of the discussion being completed. Mr Harbertson reminded the claimant that he required to add e-learning course in active listening to his plan if he was happy to undertake it.

Discussion with court user about complaint

79. In September 2015 a hearing had been adjourned for further medical evidence. The adjournment was a judicial decision. The appellant was unhappy about the adjournment. The claimant made the appellant aware of the internal complaints procedure which was posted on the wall. The claimant noted the appellant could apply for an out of centre hearing. Mr Harbertson spoke to the claimant about the discussion the claimant had with the appellant. Mr Harbertson told the claimant that judges can adjourn hearings and that by itself gives no cause for complaint and cautioned the claimant against such discussions with appellants since it could be misconstrued as giving advice (which was prohibited).

80. Within a week or so of 22 September 2015 Mr Harbertson advised the claimant that the court user had complained. The way in which he did so was not inappropriate. He was alerting the claimant to a risk of providing users with information.

Claimant told to finish discussions with colleague before walking away

81. On or around 29 September 2015 Mr Harbertson advised the claimant to allow Mr Hope time to finish what he says when speaking to the claimant before the claimant walked away. This was Mr Harbertson acting as the claimant’s manager making an observation about his performance and inviting him to reflect.

82. On 29 September 2015 the claimant also sent Mr Harbertson an email with a document setting out wording of an email he was considering sending to Ms Paton-Baines and Mr Nixon regarding his role in Employee Engagement. Mr Harbertson stated that any steer on employee engagement required to be considered by the delivery manager, at that time Mr Nixon.

Claimant to secure a snooker cue

83. In October 2015 the claimant had placed a colleague's two-piece snooker cue in the clerk's room.

84. On 5 October 2015 Mr Harbertson had said to the claimant that he assumed the cue would not be taking up permanent residence in that location and that the claimant should find another location for it. In response the claimant removed the cue and left it with security. It was then safely stored behind a locked door.

85. Mr Harbertson had been concerned that something which could be used as a weapon should not be left lying in an unsecure location which was why he asked for it to be relocated (for health and safety reasons).

Email exchange concerning the claimant's bi-monthly performance review

86. On 6 October 2015 the claimant emailed Mr Harbertson asking him to bring down a signed copy of the OLM document (which relates to performance management) that had been emailed in August. Mr Harbertson replied saying that in future the claimant should retain his own copy. Other team members had also not had their documents signed. The signature of the parties did not make any difference to the objectives and development points in the document. There was no reason why the claimant could not have asked for the document when it was completed in August 2015. There was nothing inappropriate with regard to the email exchange.

Conduct of performance review on 6 October 2015

87. The claimant attended his performance review meeting on 6 October 2015 with Mr Harbertson. Mr Hope was in attendance as part of his development needs, as an observer. The claimant did not object to him being there nor express any concerns. The claimant did not express any concerns at the time as to the way in which Mr Harbertson conducted the meeting. Mr Harbertson conducted the meeting in a professional way. He was not rude, unpleasant or hostile as subsequently alleged by the claimant.

88. On 7 October 2015 Mr Harbertson conducted a one to one discussion with the claimant with the outcome being typed up by the claimant and signed off by both Mr Harbertson and the claimant.

Use of a "Terms of Reference" document originally written by the claimant

89. In the early part of 2016 Mr Nixon and Ms Paton-Baines had one to ones with staff to encourage staff engagement and identify areas where the organisation could improve. One of the issues that was raised was that the reward and recognition scheme had fallen into disuse. The reward and recognition scheme allowed a staff panel to consider nominations for good service which, if approved, would give staff rewards.

90. An action plan had been in existence since 2013 which was revisited and re-issued in 2015. Staff were asked if they wished to volunteer to help deliver the outcomes within the plan. The claimant did not volunteer.

91. Ms Thornton and Ms Cook put their names forward and volunteered and Ms Paton-Baines sent an email to these individuals, copying the claimant on 15 October 2015 (beginning the email with "Hello Ladies" (as both main recipients were ladies)). She congratulated the individuals for agreeing to assist in the process. She indicated that she was thinking of ideas to relaunch and suggested they meet when they were available. She noted that the claimant had agreed to send the terms of reference he had previously done for the reward and recognition meetings which would be a good place to start.

92. The claimant was an employee engagement champion but he did not put his name forward to volunteer. Employee engagement champions are those who volunteer their time to encourage colleagues to feel involved and engaged in the work of their department. They are expected to help spread good practice within and beyond their work areas, play a key role in encouraging participation in the annual staff engagement survey, facilitate local results into action, ensure managers and colleagues use local results to agree how to tackle improvement and be enthusiastic and committed change advocates.

93. The claimant knew that a meeting was to take place to discuss the terms of reference and that his previous document would form the basis of the discussion and review. This was a document that he had prepared in the course of his employment and by providing it to Ms Paton-Baines he understood that it would form the basis of the new approach.

94. While the claimant believed he should be part of the meeting, as he had not expressly volunteered and put his name down to assist in the process, he was not involved in the meeting. He knew that those who had volunteered were meeting to progress matters.

95. The claimant's involvement in this process was limited to the sending of the terms of reference document that he had prepared before.

96. The individuals met and updated the document, building upon the document the claimant had initially provided. The revised document noted that it was updated on 19 October 2015 by "John Nixon, Claire Paton, Lisa Thornton, Elizabeth Cook".

97. The claimant did not ask for his name to be included and it was not until around 6 months later (at a meeting with Ms Paton-Baines on 15 April 2016) that he complained and alleged the revision of his document amounted to plagiarism.

98. The claimant did not volunteer to join the reward and recognition panel.

99. On 10 December 2015 Ms Paton-Baines asked Mr Harbertson if any of his team would like to join the reward and recognition team and he stated that the claimant

could do so. The claimant was unable to attend the panel meeting as he was in Tribunal that day.

100. On 15 December 2015 Ms Paton-Baines issued an email with voting buttons asking for volunteers to join the panel group. The claimant did not respond.

101. The claimant was one of the recipients of an email of 29 January 2016 from Ms Paton Baines to 4 other staff thanking the recipients for volunteering to be involved in the panel. She asked the individuals to consider the terms of reference. The next meeting was cancelled due to lack of nominations.

102. On 17 March 2016 Ms Cook issued an email (which bears to be from "Elizabeth and Lisa") to various people, including the claimant, noting the relaunch of the reward and recognition and arranging for a meeting on 13 April to identify ideas and increase momentum. The claimant was not excluded from the strategy to progress this initiative.

Comment on claimant's continuous improvement paper on 12 October 2015

103. On 9 October 2015 the claimant sent an email to Mr Harbertson copying it to Mr Nixon and Mr Hope. He included a document entitled "The scope of disbanding" and referred to comment on his performance management review that the claimant had qualified as a business skills coach which skills should be used. He wrote the attachment as part of his continuous improvement. Disbanding is a quality control check on files as they are disbanded.

104. The paper aimed to streamline the quality check to ensure less time is spent and to increase efficiency. The decision was for Mr Nixon as the relevant manager, which is what Mr Harbertson told the claimant.

105. Mr Harbertson was not disparaging about the paper the claimant produced.

106. On 12 October 2015 the claimant had sent an email to the Training Manager asking to meet to discuss concerns about "conduct, attitudes and behaviour" of Mr Harbertson. It referred to the claimant asking Mr Harbertson to sign off his August OLM (Performance management document) before the meeting for the start of the next cycle. He alleged that Mr Harbertson dismissed the request and asked Mr Hope to attend as a "witness" without explanation. He believed that he was being singled out unfairly. The claimant alleged that he had been subject to a number of interactions with Mr Harbertson resulting in irrational criticisms of his work.

107. Mr Harbertson had sent an email to Ms Paton-Baines and Mr Nixon suggesting mediation for the performance management review meeting with the claimant as Mr Harbertson was concerned the working relationship with the claimant was breaking down. Mr Harbertson believed that the claimant

challenged his communication and did not want to work constructively with him as his manager.

108. On 13 October 2015 the claimant attended a meeting with Ms Paton-Baines, Mr Nixon and Mr Harbertson. At the meeting, action points were agreed, including that Mr Harbertson had the right to give the claimant constructive feedback and that any disagreements would be raised with Ms Paton-Baines. It was agreed that the performance management discussion would proceed on 16 October and all staff would be respectful of each other and raise issues constructively.

109. The claimant emailed Mr Harbertson on 13 October 2015 following the meeting attaching a record of the discussion that took place on 6 October with comments under the heading "matters not agreed". The claimant stated that he was offended by the comment that he was "loitering" when waiting to meet and greet the appellant and he took issue with comments about speaking to colleagues. There had been no comments on this section of the form during the discussion.

110. Mr Harbertson conducted a mid-year performance management review with the claimant on 16 October 2015. On 23 October 2015 Mr Harbertson emailed the claimant his mid-year PMR for the reporting year 1 April 2015 to 31 March 2016. He stated that the claimant had made good progress in consolidating his knowledge following the return to the clerking team and had involved himself in wider activities. There were some noted areas for improvement. The claimant had become preoccupied with specific words or phrases used by Mr Harbertson which he took to be inappropriate or critical even when told they were not. Mr Harbertson found giving the claimant constructive feedback difficult as he would often take offence and not listen. The claimant rarely spoke up at the time and often raised the issue later.

Setting tasks for claimant's qualification on 16 and 20 November 2015

111. The claimant had applied to undertake the Skills for Justice Qualification Credit Framework Level 3 Diploma on Courts and Tribunals Clerking course. This was an Operational Delivery Professional Qualification Course. His application was successful and on 7 September 2015 Mr Harbertson emailed the claimant to congratulate the claimant and to confirm that it would be discussed at the next performance management discussion. Mr Harbertson was happy to be the claimant's assessor having undergone assessor training.

112. The qualification is achieved by completing 5 mandatory units and 3 optional units. Learning outcomes require to be met to achieve the qualification. Those undertaking the qualification must be committed to completing the units within 12 months and in sharing their experience.

113. Mr Harbertson had been the claimant's assessor until April 2016. On 15 September 2015 Mr Harbertson emailed the claimant stating that he would have preferred the claimant to have had a discussion with him before sending

instructions to his colleagues about a South Shields venue. The claimant agreed in future he would do so.

114. At the early stages of the qualification the claimant and Mr Harbertson met to establish an identify an assessment plan. Units of qualification to be addressed first were agreed. Mr Harbertson gave the claimant a month after discussing the review criteria to complete units 1 and 2 to then show he intended to demonstrate satisfaction of the criteria.

115. On 11 November 2015 Mr Harbertson sent the claimant a communication noting that it was agreed that work would be submitted by 12 January 2016 and that the claimant should identify areas of work for completion. It was for the claimant to set tasks.

116. Mr Harbertson conducted the first assessment meeting for the qualification with the claimant on 16 November 2015. The learning outcomes were discussed and the claimant was asked to consider how he would achieve these and he was to inform Mr Harbertson so they could be discussed and agreed as tasks.

117. On 17 November 2015 Mr Harbertson emailed the claimant informing him that the first module had been set up with the discussion notes of the first meeting added. A number of template documents were added. Mr Harbertson also sent the claimant a number of templates he had received from the HR Learning and Development Capability Partner in connection with the process.

118. On 20 November 2015 the claimant signed off the induction sheet and agreed the action plan for the qualification. Mr Harbertson set a deadline of 16 December 2015 for the claimant to let Mr Harbertson know how he intended to meet the learning outcomes. The intention had been to review progress and update the plan.

119. On 23 November 2015 Mr Harbertson emailed the claimant with examples of written evidence as a reminder of the length and content of written evidence with model answers to assist the claimant.

120. Mr Harbertson had set out what expected the claimant to do, before 16 December 2015, with regard to his proposal as to how he would meet the criteria through existing work via a table. The claimant did not populate the table. The claimant did not engage with Mr Harbertson in this regard.

121. Mr Harbertson was awaiting the claimant to forward his proposal as to how he would meet the criteria from his existing work. Mr Harbertson explained why he had not set the tasks since he was waiting for the claimant to take the first step of identifying how to meet the criteria through his own work.

Attendance at diffusing hostility training

122. Following a discussion Mr Harbertson decided, as part of his duties as the claimant's manager, that the claimant would benefit from attending diffusing

hostility training. Mr Harbertson thought that sending the claimant on a course would help him meet a criterion required as part of qualification. The claimant went on the training without protest and completed it in March 2016.

Further discussions

123. On 4 December 2015 the claimant sent Mr Harbertson a first draft submission despite not having agreed the learning outcomes with Mr Harbertson. Mr Harbertson uploaded 3 messages on 7 December 2015 giving the claimant feedback.

124. On 9 December 2015 the claimant and Mr Harbertson had a performance and development conversation which was recorded in writing. Mr Harbertson noted that the claimant should check the electronic record for messages and communications which provides feedback and he was given until 29 January 2016 to resubmit his assignment and redraft it using the appropriate templates.

Claimant sent email on 11 January 2016 referring to the Lord

125. On 4 January 2016 Mr Harbertson had a discussion with the claimant when he said that he was considering withdrawing from the course. He was asked to give the matter further thought and revert by 8 January 2016.

126. The HR Learning and Capability Manager had sent an email to the claimant which was copied to Mr Harbertson on 7 January 2016 responding to an email the claimant had sent to the manager (but not Mr Harbertson) on 17 December 2016. The claimant said that he did not have any confidence in Mr Harbertson and made reference to a “serious clash that led to management intervention” (which was referring to the October discussion).

127. Mr Harbertson emailed the manager to note that no concerns had been raised or discussed with him. It was agreed that the claimant be asked to resubmit his work.

128. On 8 January 2016 the claimant sent an email to Mr Harbertson stating "After much consideration I have with the Lord's Guidance decided to continue with the course”.

129. Mr Harbertson did not think it appropriate to refer to religion in work emails to him and spoke to the claimant on 11 January 2016 (after a Team Information Board meeting outwith the earshot of other staff). He was advised not to use religious connotations in his emails to Mr Harbertson as he did not consider it appropriate in workplace communications.

130. The claimant did not take the instruction well and reacted loudly stating “I’ve had this before and I won’t stand for it” saying he would take the matter up with the delivery manager. The claimant said “you can’t ask me that. I won’t let

you get away with that". Mr Harbertson explained that he considered the request reasonable and that he could escalate the matter if he wished.

131. We considered the evidence carefully on whether the claimant told Mr Harbertson that he believed he was subject to religious discrimination. We do not find that the claimant said that Mr Harbertson was discriminating against him at that meeting. We considered the claimant's evidence (when he was cross examined about this) and a note he said he prepared at the time and Mr Harbertson's witness statement. We considered what Mr Harbertson said in his witness statement to be more likely than not to be true. We consider that the claimant subsequently believed that he had been subject to religious discrimination and included it in the note after the discussion but that it was not expressly referred to during the discussion. The claimant's emails at the time support our view given the absence of any suggestion of religious discrimination in terms. The claimant was unhappy about the matter having been raised and told Ms Paton-Baines on 12 January 2016 (when he accepted his response could have been better) that he felt he was being treated "unfairly". There was no suggestion of religious discrimination.

132. During the conversation between Mr Harbertson and the claimant on 11 January 2016, it was agreed that respect and tolerance works both ways albeit the claimant indicated he may pursue matters formally. He did not subsequently do so.

133. On the same day, 11 January 2016, the claimant emailed Mr Harbertson stating: "I have been reflecting on today's exchange in the TIB. Why was it necessary to mention it? What religious connotation does it have? What is offensive about the email? You have no reasonable grounds for finding offence in the contents of the email..."

134. Mr Harbertson had a discussion with his line manager, Ms Paton-Baines on 11 January 2016 indicating that he had advised the claimant not to use religious connotations in work communications to Mr Harbertson. She advised Mr Harbertson not to reply to the claimant's email as she would speak to both with a view to resolving matters.

135. The claimant was unhappy with the feedback he had received and Mr Harbertson had sought clarification from the assessor whose view was the same as Mr Harbertson's.

Did the claimant tell Ms Paton-Baines that his manager had discriminated against him by reason of religion?

136. Ms Paton-Baines discussed matters with the claimant on 12 January 2016 and the claimant stated that with the benefit of reflection he could have handled the discussion better. The claimant said that he felt he was treated unfairly but did not mention that he believed he had been discriminated against. The claimant accepted that Mr Harbertson did not need to explain his belief and the both needed to work together.

137. It was agreed that the claimant and Mr Harbertson would work together and treat each other with respect.

138. On 12 January 2016 Ms Paton-Baines sent an email to both the claimant and Mr Harbertson noting that they have been able to resolve the issue, working together despite the difference of opinion and that the claimant will continue with his qualification.

139. On 13 January 2016 the claimant emailed Ms Paton-Baines and stated that "I think we had a well-balanced and sensible chat about tolerance and diversity". There was no suggestion in this email that the claimant believed he had been the subject of unlawful discrimination.

140. Mr Harbertson advised the claimant that a review of his progress on the course would be postponed until 5 February due to absence.

141. On 2 February 2016 Mr Harbertson emailed the team to advise that a new requirement had been introduced whereby there would be bi monthly one to one conversations with regard to performance management. The previous position was to have a mid-year and end year discussion.

142. On 8 February 2016 the claimant sent Mr Harbertson a partially completed one to one form. Mr Harbertson replied on 9 February 2016 giving him information to consider.

143. During the course of February 2016 further discussion took place with a view to finalising the claimant's submission.

144. The claimant had not been communicating with Mr Harbertson about the qualification at this time and Mr Harbertson was concerned that the claimant did not taken on board the feedback he had received. For example, the claimant had opted to undertake the whole module rather than the units that were to be completed.

Issue with payment of travel expenses

145. This relates to an alleged one-off failure to pay the claimant for travel time covering 17 February to 11 April 2016 which was one request

146. The document the claimant submitted included a claim for travelling time outside office hours on 11 January 2016. The form had been returned with travel time credit removed. The claimant was told to ensure that the normal home to office journey was not included in the claim. The claimant thought he had already dealt with that.

147. Mr Hope had considered the request and stated that as the claimant had returned to the office, the time should be adjusted.

148. The claimant first raised this issue in an email to Ms Paton-Baines dated 30 March 2016 when he stated that his travel time had not been authorised and further details were to be provided to Ms Paton-Baines.

149. Ms Paton-Baines asked Mr Harbertson to confirm the position and by email of 11 April 2016 Mr Harbertson stated that as the claimant came back to Newcastle rather than going straight home the claim was to the office only. He had said he returned to drop off work and he was told to add that explanation to the claim. The claim had not been resubmitted.

150. On 11 April 20116 Ms Paton-Baines asked the claimant to resubmit the form as this was why the payment had not been made.

151. On 19 April 2016 the claimant emailed Mr Harbertson, copying to Ms Paton Baines, attaching the claim that was originally submitted and asking how it should be amended before being resubmitted.

152. The following day Mr Harbertson told the claimant to annotate the claim with the reasons for his return to the office.

153. The claimant did so and he was paid and his flexi was approved

Issues on 9 March 2016

154. Prior to the claimant's departure for holiday, on 19 February 2016 the claimant gave Mr Harbertson work he intended to submit to show competencies. On 9 March 2016 Mr Harbertson, as assessor, gave the claimant feedback.

155. Mr Harbertson wrote notes of what he said. In his view there was insufficient evidence to demonstrate the individual criteria in each unit. The training manager had confirmed that assessment. The claimant argued that this was wrong and he was right. The claimant was advised that it was not appropriate or helpful to challenge everything that he disagreed with. Mr Harbertson said that he found the claimant's comments to be derogatory in tone and manner. It was explained that the claimant appeared reluctant to accept feedback

156. On 9 March 2016 Mr Harbertson sent an email to Ms Paton-Baines which was confidential. The claimant only saw this following a subject access request. Mr Harbertson noted that having given the claimant feedback on his assessment the claimant disagreed and continued to disagree even after the matter was clarified with the training manager. Mr Harbertson told Ms Paton-Baines that the claimant was "quite derogatory about my understanding and method of explaining and communicating with him on this point".

157. During a conversation between the claimant and Mr Harbertson, Ms Warren came into the room to show the claimant how to complete a decision notice. This was via new IT tool following an email that had been issued with links and a video.

158. Mr Harbertson asked her to come back later as he was in the midst of a conversation with the claimant. Someone else showed the claimant how to use the tool following the end of the conversation. Mr Harbertson did not refuse to release the claimant for training.

Working relationship and performance issues

159. On 14 March 2016 Mr Harbertson spoke to the claimant as he had decided to spend the day working on his performance management report without seeking his approval as his line manager. In passing we note that the claimant compares himself in this regard with Ms Warren. We do not consider that to be a valid comparison because Ms Warren had secured the consent of her line manager in this regard, which is the issue Mr Harbertson had with the claimant who had not sought authorisation.

160. Mr Harbertson explained that communication was important. The claimant alleged this was a personal attack and he was not getting constructive feedback. Following a further exchange, the claimant called Mr Harbertson "vain, narcissistic and arrogant". Mr Harbertson asked the claimant not to speak to him in a derogatory manner.

161. Mr Harbertson spoke with Ms Paton-Baines about the discussion and she undertook to speak with the claimant given his inappropriate words. A note of the discussion Mr Harbertson had and his views was sent to Ms Paton-Baines by email on 15 March 2016.

162. On 14 March 2016 Ms Paton-Baines spoke with the claimant who admitted to calling Mr Harbertson “vain, narcissistic and arrogant”. The claimant believed that he had been personally attacked and did not consider the feedback he received to have been constructive. The claimant was asked to reflect on his behaviour.

163. The claimant accepted that he had used those words but did not feel there was anything wrong with the words in the context as he felt Mr Harbertson had been attacking him. The claimant sought to raise issues as to Mr Harbertson’s management style which Ms Paton-Baines said was not appropriate to discuss at that stage. She had to collect her daughter from school.

164. Ms Paton-Baines did not refuse to discuss the matters and instead stated that such issues should be raised formally and properly.

165. The claimant was asked to apologise to Mr Harbertson but did not do so.

166. On 15 March 2016 Ms Paton-Baines spoke with Mr Harbertson and noted that the claimant had not apologised for his behaviour. Ms Paton-Baines also directed Mr Harbertson to consider whether or not formal measures were needed to manage the claimant’s performance.

167. Mr Harbertson was considering the claimant's performance and behaviour and on 15 March 2016 sent an email to the training manager to ask how disciplinary action which may result in a Performance Improvement Plan would affect the qualification. Mr Harbertson was considering a performance improvement plan. He was advised that the qualification could be put on hold or the individual withdrawn from the course. The claimant only learned of these emails when he made a subject access request around June 2016. The emails represented Mr Harbertson's view of the claimant at that time.

168. Mr Harbertson contacted Ms Paton-Baines by email on 16 March 2016 stating that he believed the claimant's behavioural issues impacted upon his ability to perform to the required level. The claimant was 4 months into the course and had still not completed the first module. It was agreed that they would await the formal assessment of the claimant's work by the training manager.

169. On 16 March 2016 Ms Paton-Baines met with the claimant. She stated that the claimant's behaviour was unacceptable and that an informal note would be placed on his file. The note states that the claimant had accepted on 14 March 2016 that his behaviour had been unacceptable. The claimant was reminded of the Conduct Policy which included standards of behaviour, such as taking responsibility for actions, treating people decently and with respect and being polite and reasonable and fair in dealing with people. She made it clear that if there were further acts of misconduct they could be dealt with formally as serious misconduct under the discipline policy.

170. She emphasised that the claimant required to have a professional relationship with his manager and that he should accept the constructive feedback. The performance management review discussions were also about the claimant's performance not that of his manager and that the issues should be raised at the time and not some time later.

171. The performance review meeting of the claimant took place on 17 March 2016 with the claimant. A note was made of the discussion. That note included examples of the claimant's performance. Concerns were noted in relation to listening, communication, attitude and behaviour and that his conduct would be monitored until mid-year.

172. On that day, 17 March 2016, Mr Harbertson sent the claimant an email to consider the public perception of his exchanges with Judges, panel members and staff in the public waiting area as it was important for clerks to be seen as independent. The claimant did not raise any objection.

173. On 22 March 2016 Mr Harbertson finalised the claimant's performance review document which he submitted to Ms Paton-Baines for consideration before issue. This noted concerns about the claimant's listening and communication skills. It was stated that his conduct and behaviour and general performance would be monitored. His attitude and behaviour gave rise to concerns.

Comments about not using the claimant's skills as business skills coach on 17 March 2016

174. On 15 March 2016 Mr Harbertson emailed Ms Paton-Baines and noted that having conducted a colleague's performance management review, the claimant had asked that employee why he was not being utilised as a business skills coach. The employee was told that the matter would be discussed with the claimant at his review meeting. Mr Harbertson stated in that email that at present he had no confidence in the claimant's ability to deliver training successfully due to his listening/communication skills and general behavioural issues.

175. The email Mr Harbertson sent on 15 March 2016 was his view of the claimant's ability at that time. It was not referring to historic use of the claimant as a business skills coach

176. There was no legitimate reason for Ms Paton-Baines to commission an investigation into the behaviour of Mr Harbertson who was carrying out his duties as required of him.

Ms Paton-Baines' response on 29 March 2016 to question from claimant in email of 23 March 2016

177. On 22 March 2016 the claimant sent an email to Ms Paton-Baines entitled "Relationship with my line manager" which ran to 8 pages and contained detailed notes about interactions and the claimant's views and concerns about Mr Harbertson over a period of time. The claimant informed Ms Paton-Baines of his intention to raise a grievance against Mr Harbertson but this did not happen.

178. On 22 March 2016 Ms Paton-Baines advised the claimant that if he felt he had been bullied, harassed and/or discriminated against he should raise the matter formally so it would be the subject of a formal investigation.

179. On 23 March 2016 the claimant emailed Mr Harbertson attaching his performance management review document. In the employee comments section the claimant stated that he had a fractious relationship with his manager whom he considered had not been empathetic or supportive and that he did not accept the appraisal.

180. Mr Harbertson completed the claimant's performance management report for the period April 2015 to March 2016 giving the claimant a "good" rating.

181. On 29 March 2016 Ms Paton-Baines sent the claimant a response to his email of 22 March suggesting a meeting to discuss his concerns to agree a way forward. The meeting would not discuss matters from the previous reporting year as that year had passed and there needed to be closure. She suggested that a joint meeting with Mr Harbertson would be helpful to ensure a good professional working relationship is established. She did not ignore the email. She read and responded to it and suggested a meeting on 15 April 2016.

182. The claimant replied the same evening stating that he was hoping she would have advised him what was disputed within his original email. The claimant had wanted Ms Paton-Baines to check with Ms Warren about the recollection of the meeting but he did not state this in the email.

183. On 29 March 2016 at 6.01pm the claimant sent an email to Ms Paton-Baines referring to bullying and harassment.

184. On 11 April 2016 Ms Paton-Baines sent the claimant an email following her return from leave indicating that the issues arising in his email would be investigated. She noted that the claimant had disagreed with the content of notes Ms Paton-Baines had sent following the 16 March meeting. She noted that the claimant had raised concerns of "bullying, harassment and discrimination" but had stated (only) that he had been treated "differently" at the meeting. She said that the email of 22 March 2016 had not referred to bullying, harassment and discrimination and these would need to be reviewed given the zero-tolerance policy. These issues would require to be investigated by an independent person.

185. Ms Paton-Baines noted that an independent manager may be needed to investigate matters which would depend upon what the claimant raised. If the claimant wished to proceed, she would commission an independent investigation. She recognised that it may not be possible for her to investigate as it would need to be an independent person.

186. She asked the claimant to confirm whether he wished to raise a formal complaint before the meeting which was scheduled for Friday 15 April 2016. The claimant had not responded by 13 April 2016 when there was a discussion with Ms Paton-Baines where she confirmed matters had not been progressed as she was waiting for the claimant's response. At that meeting the claimant said he would take formal action in form of a grievance. Ms Paton-Baines stated that she would progress matters formally upon receipt of the grievance. That is why Ms Paton-Baines did not commission her own investigation.

187. On or around 13 April 2016 the claimant told Mr Williamson, HR capability partner, about his unhappiness with Mr Harbertson being his assessor and that he wanted a replacement. That request was granted.

188. On 13 April 2016 Mr Harbertson was advised via the Training Manager that the claimant did not want him as his assessor and a successor was being sought. Further feedback had been given and the claimant was advised to consider this.

189. On 15 April 2016 Ms Paton-Baines emailed the claimant and Mr Harbertson to state that the claimant had agreed his qualification be put on hold pending appointment of another assessor.

190. On 15 April 2016 Ms Paton-Baines met with the claimant. She had advised him that matters had not progressed as she had been on annual leave and as the claimant was considering raising a grievance matters would then be investigated formally.

191. A detailed discussion took place around concerns the claimant had as to his employment and the management thereof. This was the first occasion where the claimant raised his lack of inclusion in the reward and recognition as something which caused him an issue (which was something that had occurred some months previously). The meeting was lengthy and covered a number of the claimant's concerns. Ms Paton-Baines took notes of the meeting.

192. On 15 April 2016, after the meeting, Ms Paton-Baines sent the claimant a link to the grievance policy and form to complete. She made it clear that the claimant needs to be specific as to what his concerns are so they can be properly investigated. She stated that she would type up her notes of the meeting and send them to the claimant which she did.

193. On 21 April 2016, 6 days after the meeting, the claimant sent an email to Ms Paton-Baines saying that he had thought about and further reflected on the discussion. He said he understood why she could not conduct the fact-find. He was unhappy that his complaints had not been put promptly to Mr Harbertson.

194. Ms Paton-Baines replied on 22 April 2016 and explained that his original email of 22 March had various concerns set out which she had intended to progress but as the nature of the complaints appeared to change and she was going on annual leave she explained it was not appropriate simply to forward the concerns to Mr Harbertson. The concerns had been submitted as confidential and at that time they had not been raised as bullying and harassment.

195. She pointed out that if the concern with Ms Warren was a pressing matter this could have been specifically stated. She also set out that if the matter was to progress via a grievance it would not be appropriate for her to investigate.

196. No grievance was lodged by the claimant about this.

197. On 25 April 2016 Ms Paton-Baines met with Mr Harbertson at which the relationship issues with the claimant were discussed.

198. On 25 April 2016 Ms Paton Baines sent an email to Ms C Robson stating that she had a one to one meeting with Mr Harbertson regarding the points the claimant had raised in his emails. She did not feel that there was anything that needs to be followed up and a discussion with Ms Warren would not assist. She noted that Mr Harbertson was suffering badly with anxiety and that the threat of the claimant's grievance was a concern to him.

Mr Harbertson's view on claimant's performance - 15 April 2016

199. On 15 April 2016 Mr Harbertson had sent an email to Ms Paton-Baines providing further feedback in relation to the claimant. He stated that there were further delays in some matters carried out by the claimant and "although not a major concern, given circumstances, advice on when feedback should be given is appreciated."

200. In April 2016 a survey of presenting officers who attended social security and child support tribunals had been carried out providing presenting officers the chance to provide feedback in relation to the service. The findings were collated and digested.

201. Mr Harbertson's email of 15 April 2016 provided Ms Paton-Baines with further specific feedback he had received. The detail within his email had come from the survey.

202. Mr Harbertson did not misrepresent the facts in his email to Ms Paton-Baines since it contained a summary of the survey response.

203. Mr Harbertson sought advice as to how to approach the claimant given his concern in light of the deterioration of the working relationship with the claimant.

Mr Harbertson's comments on the claimant's performance at a meeting of 27 May 2016

204. In an email dated 27 May 2016 from Mr Harbertson to the claimant, reference was made to the claimant having been given feedback to ensure he has open dialogue with Mr Harbertson as his manager. This was raised because a team member had been asked to bring work to Mr Harbertson and the claimant had refused because he said he was not speaking to Mr Harbertson. The email recorded that the claimant indicated that this was probably said as a joke and misinterpreted.

205. The claimant accepted that he did state that to the team member. Mr Harbertson reiterated that despite disagreements, it is not professional or acceptable to opt out of speaking with him. Mr Harbertson did not make any unfounded criticisms of the claimant at that meeting.

206. The feedback Mr Harbertson gave to the claimant at this meeting stemmed from feedback he had received form Ms Smith and Ms Grieveson. The comments had been their observations of the claimant and Mr Harbertson was raising it was the claimant as part of his line management duties.

Incident between claimant and Mr Harris – May 2016

207. Mid May 2016, Mr Harris, a security guard who worked in the Tribunal building with the claimant but who was employed by a separate entity approached Mr Hope (Mr Harbertson's deputy in Mr Harbertson's absence) to raise concerns about alleged comments the claimant had made. He said the claimant had (1) said to him that all Muslims are terrorists, (2) called him a "prick" and (3) said to him that he need to watch out or he would take him outside. Mr Harris asked Mr Hope what the procedure was about threats at work and he relayed to Mr Hope

what was said to him. Mr Hope explained the procedure and told Mr Harris to speak to Mr Harbertson upon his return from leave.

208. Ms Paton-Baines was advised by Mr Harbertson on 26 May 2016 about the incident and she asked Mr Harbertson to find out more information due to the concerning nature of the allegations. Mr Harbertson then spoke to the security officer and on 27 May 2016 Ms Paton-Baines spoke to the security officer to check the position as part of her fact-find.

Fact-find

209. Following Mr Harbertson advising Ms Paton-Baines about the alleged comments made by the claimant to Mr Harris, she carried out a fact find and set out the summary of the position in writing.

210. She explained that Mr Hope had been told of the allegations by Mr Harris and Mr Hope updated Mr Harbertson upon his return to the office. She had asked Mr Harbertson to obtain more information which he did by speaking to the security officer. She then spoke to the security officer herself and another security officer who was a potential witness, Mr Southern. He indicated that he had witnessed the event and the cleaner had been in the vicinity.

211. Ms Paton-Baines explained that she had spoken to the cleaner (Ms Brady) who said she had to calm the claimant down but she wanted to stay out of the incident as she was friends with the claimant. Advice had been taken and although the actions could amount to gross misconduct, it was decided not to suspend the claimant.

212. Ms Paton-Baines had conducted the initial fact find and prepared a 5 page document setting out the position. This was relied upon by Ms Banks as the investigator.

Formal investigation to proceed

213. The claimant was advised on 2 June 2016 that a formal investigation would be progressed in relation to alleged inappropriate name calling, alleged comments relating to religion which caused offence and alleged actions or comments which suggest violence.

214. He was advised that a formal investigation would be conducted at which stage he would be given the details but at this stage it was not appropriate to provide details as to the persons involved as it was possible that the matter might not be pursued and the facts were confidential.

215. Following advice, it was decided that as most of the facts had already been established it was agreed that the fact find had been concluded and another manager would be appointed to deal with the investigation. The individual who was initially to carry out the fact find was stood down.

216. On 2 June 2016 the claimant had asked for the identity of the person who had raised the allegations but he was told this would not be disclosed until it was clear the allegations were proceeding, since otherwise working relationships would be needlessly adversely affected.

217. On 17 June 2016 Ms Paton-Baines prepared a letter advising the claimant that the matter was proceeding to an investigation and she met the claimant personally to deliver the letter. She confirmed that she had conducted the fact-find as she had the information and the statement from the security officer which would be disclosed to the claimant during the investigation. The 3 allegations were read to him. The claimant stated that the conduct of the officer was inappropriate but he had not raised it with his manager.

218. Ms Banks was appointed to investigate matters.

219. The claimant had previously been reminded of the behaviours expected within the conduct policy at a meeting with Ms Paton-Baines on 14 March 2016 and he had been advised that any repetition of that behaviour could lead to disciplinary action.

220. It was legitimate for Ms Paton-Baines to obtain information from Mr Harris to ascertain the position and allow her to decide how to take matters forward.

221. The reason why the claimant was not told as to the identity of those who made the allegations at the initial stage was because she wished to protect confidentiality and matters may not have progressed formally which could affect working relationships.

222. The claimant was not suspended nor told that such an act was considered. Ms Paton-Baines took advice and decided that the claimant would not be suspended. The claimant learned of the advice following a subject access request after June 2016. Ms Paton-Baines did not consider suspension to be appropriate because the event had happened some weeks ago and the security officer had said that the claimant had not spoken to him since. It was HR who suggested Ms Paton-Baines consider suspending the claimant but Ms Paton-Baines did not consider that to be an appropriate course to take.

223. By letter dated 17 June 2016 Ms Paton-Baines advised the claimant that allegations of alleged name calling which had been perceived as inappropriate, making comments relating to religion which caused offence and further actions/comments which could suggest violence were being independently investigated by Ms Banks. The claimant was advised to seek clarification if there were any parts of the process that he required clarifying. The claimant did not seek any clarification. The letter indicated that a formal investigation was to be conducted by Ms Banks.

224. The claimant was given the letter on 17 June 2016 at a meeting with Ms Paton-Baines. He was told that it would not have been appropriate to have

informed him of the source of allegations as they needed to be explored and that after taking HR advice she had conducted the fact find and did not want another manager involved unnecessarily. The claimant was told the full details during the investigation process.

225. At the meeting the claimant was also told about the process and the details would be given to him in the course of the investigation.

226. The claimant explained that he believed the actions of the security guards were inappropriate but he accepted he had not raised this with his manager.

227. On 28 June 2016 Ms Banks emailed the claimant inviting him to a disciplinary investigation meeting. The allegations that were being considered where two conversations with Mr Harris where it is alleged that the claimant made inappropriate comments in connection with Muslims, by referring to Mr Harris inappropriately and by suggesting violence. The claimant was advised that the purpose of the meeting was to establish facts to inform any further disciplinary proceedings.

Statements obtained

228. On 5 July 2016 Ms Banks conducted an investigation meeting with Mr Harris and then with Ms Paton-Baines.

229. On 5 July 2016 the claimant was told about the source and nature of the allegations and in an email of 5 July 2016 the claimant asked about the person to whom he could complain about Mr Harris's alleged religious harassment of him.

230. On 6 July 2016 the investigation meeting took place between Ms Banks and the claimant. The claimant produced a 19 page document entitled "statement responding to allegations made against me". The statement was shown to the investigator at the meeting and emailed to her thereafter. The claimant denied saying that all Muslims were terrorists. With regard to calling Mr Harris a "prick" the claimant said he was upset and "basically referred to someone as a prick… In an ideal world I would not have said that. It is not a flattering word.". Subsequently the claimant accepted that it referred to Mr Harris. The claimant denied making any remarks about violence.

231. On 7 July 2016 statements were obtained from Mr Harbertson and Mr Hope.

232. On 13 July 2016 the claimant submitted a 6 page "further statement responding to allegations made by Mr Harris".

233. On 2 August 2016 Ms Banks had an investigation meeting with Mr Harbertson. At the end of his interview he stated: "I thought it necessary to report this [the allegations against the claimant] to the delivery manager as that

behaviour, regardless of when it took place, it was obvious to me, had taken place and is not acceptable given the civil service code and particularly in a public facing role in a public part of the building"

234. Ms Banks did not place any weight on this statement which was Mr Harbertson's view from his discussion with the witnesses.

235. On 18 August 2016 Ms Banks met with Mr Southern and took a statement.

236. On 24 August 2016 the claimant emailed Ms Banks with a Supplementary Statement following the notes of the 6 July 2016 meeting. On 25 August 2016 the claimant sent a further email with some additional points regarding the investigation and on 26 August 2016 the claimant sent a further 9 page email to Ms Banks with more comments.

Investigation report

237. Following her consideration of all the statements and evidence she had been given, Ms Banks completed an 11 page Investigation Report on 31 August 2016 concluding that there was a case to answer.

238. She concluded matters should proceed to a disciplinary hearing, namely, calling Mr Harris a "prick" and making comments which suggest violence. The report included the statements and referred to Ms Banks' consideration and examination of the evidence.

239. In addition to recommending disciplinary action be progressed, Ms Banks recommended a meeting take place with management of the security provider given non-work related discussions appeared to be taking place during work hours (which was followed up on 2 September 2016).

240. Ms C Robson was the decision maker. She was not the investigator and had no power to dictate the terms of the investigation.

241. The report included the witness statements. Ms Banks analysed the evidence in detail and concluded that there was no evidence to substantiate the allegation that the claimant said all Muslims are terrorists and so decided on the balance of probabilities there was no case to answer in that regard.

242. She found that the claimant admitted using the word "prick" to refer to Mr Harris and finds a case to answer on the balance of probabilities.

243. Similarly she found that the evidence supported there being a case to answer in respect of the allegation that the claimant made comments which suggest violence by telling Mr Harris to "watch himself or he would have to take him outside" on the balance of probabilities in light of what others had said.

244. The claimant had raised a concern about the timing of the incidents in light of the witness's recollections. This was a matter that Ms Banks considered. She reached a reasonable conclusion in light of the information before her.

245. Ms Banks considered the statements and information the claimant had provided to her. She took into account the claimant's admission that he used the word "prick" to describe Mr Harris. Ms Banks stated that she did not speak to Mr Hope as his statement set out clearly what he was told at the time.

Claimant asks about grievance regarding the security officers

246. Mr Harris was employed by an independent security company and the claimant's employer had no power to discipline Mr Harris. The claimant had asked how he could complain about Mr Harris and was told by Ms Paton-Baines (in an email from her dated 6 July 2016), after she had taken advice, that an official grievance form should be lodged as this would hold greater weight when speaking with the company than a letter. Ms Paton-Baines did not ignore the claimant's concern about the alleged treatment by the security officer and advised the claimant how to progress his complaint. The claimant was told that the security company would deal with matters in accordance with their procedures.

247. On 5 September 2016 the claimant emailed Ms Paton-Baines saying "See the advice below that you gave me in July this year. My decision after receiving your advice from you was to wait until a fuller disclosure of statements etc. Last Friday I received from you disclosure of documents relating to the disciplinary investigation I have been facing. I want to make a formal complaint about the conduct of 2 security officers. I prefer to make them through you rather than Mr Harbertson. Please confirm that I should follow the same process as you advised in July. If so I will issue both grievances this week."

248. On 5 September 2016 Ms Paton-Baines replied to the claimant stating that the process was as mentioned previously and she can action at the meeting scheduled with the contract manager the following week.

Claimant's extra leave authorised

249. On 5 September 2016 the claimant requested large blocks of annual leave over a period of 6 weeks. The claimant knew some of the periods were already oversubscribed which was why he referred to this as a special request.

250. Mr Harbertson approached Ms Paton-Baines to discuss this and it was authorised. Ms Paton-Baines did this via an email to the claimant and Mr Harbertson in which she noted that if any further reasonable adjustments were needed, this should be raised.

Claimant raises grievance regarding the security officers

251. On 9 September 2016 the claimant raised a grievance in relation to the 2 security officers, Mr Harris and Mr Southern. He argued that he had been subject to religious harassment. This was done by enclosing the forms with an email to Ms Paton-Baines on 9 September. He alleged that Mr Harris and Mr Southern signed (untrue) statements that the claimant threatened Mr Harris. He also argued that he had been subject to religious harassment by Mr Harris. The claimant understood that the matter would be referred to the security company to progress.

252. Ms Paton-Baines met the contract manager of the security company and she made a note of the discussion. It was agreed that the company would investigate and deal with the claimant's grievance. Ms Paton-Baines sent an email to the claimant on 14 September 2016 confirming that this was to happen. She asked for the claimant's availability so she could pass that to the company to arrange to meet with him. He did not reply.

First disciplinary hearing

253. On 9 September 2016 the claimant was sent a letter from Ms C Robson inviting him to a disciplinary hearing to be heard on 28 September 2016. The letter stated that following conclusions of the investigations, Ms C Robson was satisfied that there was sufficient evidence to justify holding a disciplinary hearing to consider charges of serious and gross misconduct in respect of 2 of the 3 allegations, namely name calling which could be perceived as inappropriate and making comments which could suggest violence.

Claimant on sick leave and first disciplinary hearing postponed

254. On 19 September 2016 the claimant became sick and remained absent until 3 March 2017 due to "stress".

255. On 22 September 2016 Ms C Robson telephoned the claimant to seek his consent for an occupational health referral which the claimant declined. The claimant advised that he was not well enough to attend the disciplinary hearing. He sent an email on 23 September 2016 formally seeking a postponement of the hearing scheduled for 28 September due to "certified stress illness". That application was granted and the claimant was asked to confirm when he would be fit.

Sick leave delays grievance resolution

256. As the claimant was on sick leave from 19 September 2016 until 3 March 2017 this delayed a resolution. On 11 January 2017 Ms Paton-Baines sent the claimant a letter stating "I contacted you in September following the submission of your grievance relating to the security company. As you have been absent from work and did not respond to my email, the company has been unable

to speak to you regarding the concerns you have raised. Following your occupational health referral in December 2016 I want to contact you again to give you a second opportunity to provide you availability to meet with the company. Please contact me with your availability." She said that if he felt he no longer had a grievance, he could withdraw it.

257. Discussion took place to identify a suitable date for all concerned and a meeting took place. On 3 March 2017 the security company wrote to the claimant (care of the respondent) setting out their decision in relation to the grievance which they had rejected. Ms Paton-Baines wrote to the claimant on 11 April 2017 inviting the claimant to a meeting on 20 April 2017 to discuss the matters the claimant had raised. The outcome letter from the security company was discussed.

Performance management review completed

258. On 14 June 2016 there had been a performance and development conversation between the claimant and Mr Harbertson and on 18 August 2016 the claimant had a performance management review meeting with Mr Harbertson which discussed ongoing performance issues.

259. On 13 October 2016 Mr Harbertson completed the claimant's mid-year performance management review document for the period 1 April 2016 – 30 September 2016. This contains specific performance management objectives which Mr Harbertson introduced as a result of his assessment of the claimant's performance.

260. The objectives were not part of a formal performance management process and were in fact recorded as being introduced "to avoid PIP being required". A PIP is a performance improvement plan.

December 2016 Occupational Health Report

261. On 7 December 2016 an occupational health report was issued. The report stated that the claimant had been absent from work since September due to stress and perceived bullying at work. He had low mood. The occupational health adviser did not think the claimant's impairment would amount to a disability since it had not lasted for 12 months and was unlikely to do so.

262. He remained unfit for work due to his symptoms but he was recorded as being fit to attend a disciplinary hearing, and able to participate in and understand the process. The report stated that "I would suggest that meetings be delayed for at least another 2-3 weeks to allow for the further effect of treatment but I would advise against undue delay beyond that as resolving this issue is likely to be beneficial to reducing some stress."

First Tribunal claim

263. On 3 January 2017 the ET1 for the first claim was received by the Tribunal. This raised claims underlying the issues numbering 1 to 18 as set out above.

Reconvened first disciplinary hearing

264. On 3 January 2017 Ms C Robson wrote to the claimant to reconvene the hearing for 20 January 2017.

Claimant's grievance against colleagues

265. Given the claimant's absence, the first respondent was unable to progress the claimant's grievance against the security company but on 11 January 2017 the claimant was asked for his availability to meet which was progressed with the claimant.

Claimant lodges statement for disciplinary hearing

266. On 19 January 2017 the claimant emailed Ms C Robson a 17 page document entitled "statement for disciplinary meeting on 20 January". Ms Robson took this into account when considering the issues.

First disciplinary hearing

267. On 20 January 2017 the first disciplinary hearing took place involving the claimant. Ms C Robson was the disciplinary manager. Ms Robson took the claimant through the allegations and the evidence that was obtained. She stated that at the investigation the claimant stated he was upset and admitted to referring to "someone as a prick". He was asked to confirm if that person was Mr Harris. He said: "I referred to him as a prick. I didn't actually call him one". He then said: "I had a conversation afterwards and reflected on what had actually happened he was basically committing a hate crime."

268. Ms Robson asked the claimant whether there was anything he wanted her to take into account with regard to the allegation that he called Mr Harris a prick and he said that it was a hate crime that he had been subject to. Ms Robson considered and rejected that assertion.

269. His position at the investigation was that he had made the remark to Mr Southern but at the hearing he accepted he had made the remark to Ms Brady, the cleaner. He was asked if he told Mr Harris to "watch himself" or he would be taken outside. He denied saying those words.

270. At the hearing a significant amount of time was spent discussing discrepancies in the evidence which Ms Robson noted together with the claimant's response.

271. Following an adjournment after hearing the claimant and having considered matters, the meeting was reconvened and the claimant was advised that 2 allegations had been upheld and that serious misconduct had been established. He was given a final written warning.

272. Upon hearing of the sanction, the claimant stated: "So because it's serious I am getting a final? Thank you. It's not the worst outcome; I need to think about where to go next. I have learnt a lesson from it all."

Final written warning issued to claimant

273. The outcome of the first disciplinary hearing was confirmed in writing on 24 January 2017 by Ms C Robson. Ms Robson stated that she had concluded the claimant's actions constituted serious misconduct. The letter stated that the first allegation was not proven given the lack of evidence to substantiate the allegation. Allegations 2 and 3 were, however, established.

274. In relation to the second allegation, the claimant had admitted to using the word "prick" to describe Mr Harris, albeit it was not aimed directly at him. Ms Robson concluded that Mr Harris was within earshot and was likely to have heard and been offended by it.

275. In relation to the third allegation the claimant's behaviour was found unprofessional by telling Mr Harris to "watch himself or the claimant would take him outside".

276. She concluded that the proven misconduct amounted to serious misconduct.

277. The final written warning was to remain in force for 12 months and was effective from 20 January 2017. The letter advised the claimant that he had 15 working days from the date he received the letter to appeal. He did not exercise this right.

Performance objectives at 14 June 2016 discussion

278. On 27 May 2016 the claimant sent an email to Mr Harbertson saying "in order to benefit from feedback I need to be clear about what behaviour you are referring to". He asks who was observing, to whom he was talking, what was the nature of the discussion and why was this information not given at the time. This email related to something the claimant had been told on 17 March 2016, over 2 months before.

279. Mr Harbertson replied on 27 May 2016 stating that he had explained that feedback should be given in a timely fashion and that specific examples were verbally given at the time of the feedback that was delivered and it was not now possible to recollect those examples given the passage of time. The claimant

was told he should have sought this shortly following the giving of the information to him. He was told that asking more questions will only raise more issues and deflects from the point being made.

280. Mr Harbertson told the claimant that feedback is not intended to be a criticism but should be taken as an opportunity to look to improve.

281. On 31 May 2016 the claimant sent another email to Mr Harbertson again asking for specific examples. This was a 4 page email with concerns with the claimant saying "when you make the chat a matter of record in an email I feel I must respond so my perspective is on record".

282. The claimant sent a further email on 31 May 2016 to Mr Harbertson stating that he had forgotten another point and added another example.

283. Those emails were sent contrary to the instruction Mr Harbertson had given about speaking to him and on 3 June 2016 Mr Harbertson sent the claimant an email saying "In light of the previous email I will simply respond to noted comments. As stated above please do not respond further to this email, unless you have anything new to add which I request we discuss 121 please. Please feel free to take up any matter you still feel unresolved with my manager who is copied into this email." He copied the email to Ms Paton-Baines. He provided comments to the points the claimant had made.

284. The claimant had a performance and development conversation with Mr Harbertson on 14 June 2016. A written record was made of that conversation and under heading "brief review of objectives (progress made so far and/or changes to original objectives)" it states:

"- look to resolve workplace issues with 121 discussion not excessively long emails.
accept feedback and reasonable requests from line manager no need to challenge what is intended to improve performance, behaviours etc – no communications has attached any personal criticism, sanction or suggestion of need for PIP
concerns should not be reactive, they should be raised at the time or escalated through the proper channels at the time."

285. Mr Harbertson took the decision in Autumn 2016 to introduce a performance improvement plan which was introduced following the claimant's absence in March 2017.

286. The claimant had been sending a number of long emails raising matters with his line manager that had occurred some time before. There was a proper foundation for the objectives Mr Harbertson introduced at the meeting.

287. The objectives Mr Harbertson set were based on his perception of the claimant's response to feedback and were done as part of his role as the claimant's line manager. The objectives were recorded as being to avoid a

performance improvement plan being required. The claimant understood following the meeting on 14 June 2016 what was required of him.

Discussion as to meetings with regard to performance objectives in the period 14 June to 9 September 2016

288. The objectives in relation to the claimant's performance were set at the performance and development conversation between the claimant and Mr Harbertson on 14 June 2016.

289. On 15 June 2016 Mr Harbertson met with the claimant as the claimant had refused to sign off the paperwork following the discussion the previous day. He stated that he would not be signing. Although he had prepared notes about the reasons, he said there was nothing new. Mr Harbertson emphasised that the issues themselves were not the issue but it was his behaviour and reaction and that what he was doing was supporting what Mr Harbertson had been saying.

290. The claimant did not tell Mr Harbertson that he believed he had not discussed performance objectives for the financial year. Mr Harbertson had done all he could, as the claimant's manager, to progress matters in the circumstances.

Discussion between claimant and Mr Harbertson as to claimant not signing off performance management plan for June 2016

291. The record of the discussion on 14 June 2016 set out the objectives that were fixed. That included the way the claimant dealt with feedback and that he should raise it in a timely manner and that matters should be dealt with face to face and not in lengthy emails. The claimant declined to sign the record.

292. When Mr Harbertson approached the claimant to discuss the failure to sign it, the claimant stated that he had notes of his reasons but he confirmed that there were no new points arising. Mr Harbertson said that if there were no new points there was no point discussing the matter again.

293. Mr Harbertson advised the claimant that if he had an issue with his manager that should be raised as a grievance. He did not want to revisit old issues.

294. The purpose of the meeting on 14 June 2016 was to discuss the objectives. Mr Harbertson did not "shut down the conversation" concerning why the claimant had been unwilling to sign the document.

295. A performance improvement plan was not applied to the claimant until 24 March 2017.

296. On 15 June 2016 the claimant emailed Mr Harbertson and stated that "this lunchtime I wanted to briefly go through the reasons why I felt unable to sign

off this OLM. You did not let me so attached are my notes" and he attached the notes.

297. Mr Harbertson replied on 17 June 2016 thanking the claimant for the notes and stated "I must point out that initially you did not think it necessary to have a discussion stating that you would simply email you did not agree with the points made and would not sign the OLM. I requested we had a discussion to clarify what was said and highlight the position. Regards the reasons for not wanting to sign the OLM, there have been previous discussions with you about your reasoning. I therefore if you recall asked if there were any new points within the notes from what had already been discussed on these issues and you stated that there was not."

Ms Paton-Baines' response to claimant's email regarding the 12-month engagement cycle

298. On 26 July 2016 the claimant sent an email to Ms Paton-Baines copying to 4 others headed "Employee Engagement in Moj".14 minutes later the claimant sent another email to Ms Paton-Baines and one other on a related topic, headed "Staff engagement".

299. On 27 July 2016 Ms Paton-Baines forwarded the claimant's second email to 3 people noting that she was confused with what the claimant said.

300. Ms Paton-Baines replied to the claimant's email on 27 July 2016 stating "I am confused with your email to be honest and think we need to have a chat. This and the one that you sent prior to this is not what we discussed at our meeting."

301. Ms Paton-Baines did therefore reply to the claimant's emails. She also met with the claimant and others to discuss her approach. She wished to approach staff engagement by encouraging all staff to get involved rather than through the employee engagement champion route. There was a discussion around the 12 month engagement cycle. Agreement was reached on the staff engagement model that was to be used.

302. The claimant did not raise any issue or suggest that his 12 month cycle proposal had not been discussed at the time.

Staff engagement coffee mornings

303. On 10 August 2016 the claimant was told that Ms Paton-Baines wished Ms Brown to deliver the staff engagement session by herself. He was told that Ms Brown wanted to do the session by herself to boost her confidence. The claimant asked why and was told that at a previous feedback session the claimant had disagreed with Ms Brown in front of a group and Ms Paton-Baines had said that she had expected the same message to be communicated by everyone involved. The claimant did not agree with that feedback. As an employee

engagement champion he believed he had the right to take part in the session. Ms Paton-Baines explained to Ms L Robson in an email that she wished Ms Brown to deal with the session to build her confidence and avoid mixed messages. The feedback from that session was very positive.

304. Ms Paton-Baines had legitimate reasons for asking the claimant not to attend the third session. Mr Harbertson's view was that the claimant's behaviour in this issue was similar to that he had experienced.

Performance issues in September 2016

305. On 5 September 2016 the claimant emailed Mr Harbertson attaching the record of performance and development conversation of 2 September 2016. The claimant added comments under "job holder's comments". That included that he expressed concerns the PMR rating for 2015/16 had not been communicated to him and that he had been prevented from discussing his exclusion from the third employee engagement session. He also said he expressed his concern about being used as a business coach. He concluded by saying the document is not signed for the same reasons as it was not signed in June 2016. The claimant did not accept the premise on which the objectives were founded.

306. On 6 September 2016 Mr Harbertson sent an email to Ms Paton-Baines with the document the claimant sent to him included. He explained that the job holder's comment section ought to focus on performance not the matters the claimant had raised. Mr Harbertson explained that the point about not being given his rating had not been discussed and his objectives had already been discussed. He also explained that he had not been privy to the decision to include him in the third session. Mr Harbertson also explained that the claimant's focus was in relation to the qualification he was undertaking as well as dealing with the ongoing disciplinary matter.

307. On 9 September 2016 Mr Harbertson met with the claimant to discuss the comments.

308. Mr Harbertson explained that he had not been privy to what Ms Paton-Baines decided with regard to the third engagement session. If the claimant was unhappy he was to raise that matter with Ms Paton-Baines or raise the matter as a grievance.

309. The objectives that had been set for the claimant were that if the claimant had any concerns they should be raised in a timely manner.

310. Mr Harbertson inserted additional comments at the end of the document stating "It was explained that better communications are an issue and are outstanding although the email behaviour had shown sign of improvement, conduct issues are outstanding, behavioural objectives therefore remain indefinitely, to be reviewed at mid-year.

311. Mr Harbertson made it clear that the objectives were to be reviewed mid-year.

312. The comments Mr Harbertson made in relation to the claimant were Mr Harbertson's views.

313. The claimant was absent on sick leave from 19 September 2016 until 3 March 2017. It was following the claimant's absence from September 2016 that Mr Harbertson had decided to put a performance improvement plan in place. The document was sent to the claimant following his return to work, on 31 March 2017, containing examples of his behaviour (which pre-dated September 2016).

Attempt to resolve claimant's grievance

314. The security company met with the claimant and issued a grievance outcome letter dated 3 March 2017. The claimant's grievances were not upheld as they were found to be without merit.

Claimant's return to work and comments regarding performance from 24 March 2017 – the performance action plan

315. On 6 March 2017 the claimant returned to work on a phased basis (until 11 July 2017) and on 24 March 2017 the claimant and Mr Harbertson met to discuss his performance.

316. Mr Harbertson had stated in his note following the meeting on 24 March 2017 that one of the reasons why the claimant may have been upset was the decision not to use the claimant as a business skills coach. Mr Harbertson did not say that he did not want to expose visitors to the claimant's behaviour. He said that he wished the claimant's qualification to take priority over business skills coach work and that the claimant should focus on resolving the disciplinary process that was extant in May and June 2016. This was an effort to assist the claimant giving the limited time available.

317. At the meeting on 24 March 2017 there was a lengthy discussion about the claimant's return to work and performance. The claimant said things were going OK and that he was on a phased return to work. There was a discussion around a stress risk assessment for the claimant and it was agreed that there were no other reasonable adjustments needed for the claimant.

318. Mr Harbertson highlighted some good examples of the claimant's work and some positives. He had also reviewed information the claimant had given in a positive way. The claimant's efforts were praised.

319. Mr Harbertson stated that past communications were not criticisms when feedback was given to the claimant which was a reference to the previous review on 2 September 2016. The claimant had been given feedback as to how he reacts to communication.

320. The document set out the timescales, noting there had been a performance discussion on 2 June 2016 when behavioural objectives had been set which was followed up on September when the claimant inserted comments into the record. The record stated that the behaviours had led to a "needs improvement/PAP (performance action plan) rating". This had not been discussed with the claimant as he had been absent on account of sickness.

321. At the 24 March 2017 meeting Mr Harbertson advised the claimant that his behaviour and performance had led to him putting in place a performance action plan (PAP). The claimant asked why he could not challenge that decision and Mr Harbertson explained that it was possible to do so but as had previously been explained, challenging behaviours should include better ways to achieve an outcome. The claimant believed he was wrong and wanted to create a formal record of his views, rather than seeking to discuss matters and accept the comments from his manager. When Mr Harbertson tried to discuss examples, the claimant would argue the position and seek to show that Mr Harbertson's behaviour was inappropriate.

322. At this meeting the claimant said that he wanted to capture his thoughts in writing as he wanted to show that his manager was at fault. The claimant argued that Mr Harbertson's actions were bullying and unlawful.

323. The claimant said he would accept the PAP objectives going forward but would refute them as he believed they were not necessary by raising a grievance. The claimant did not raise a grievance in this regard.

324. On 31 March 2017 Ms Harbertson sent the claimant an email headed "PAP – Official" with the performance action plan attached, setting out the areas needed for improvement. The issues included not escalating issues with line manager or their superior at the time of the event but raising them weeks after, avoiding disproportionate emails (and raising issues countering the original issues) instead of taking up verbal communication with line manager, avoiding reactive and challenging behaviour to line manager undertaken as part of the management role.

325. The content of the plan were Mr Harbertson's expectations of the areas in which the claimant's performance needed to improve. Review periods would be set up. 2 examples were given in the document concerning the claimant's performance. One related to post management feedback and email discussion and the other related to an email from the claimant requesting answers to feedback given 10 weeks previously.

Claimant complains of maladministration in relation to disciplinary process

326. On 3 April 2017 the claimant emailed the HR director of HMCTS complaining of "maladministration". The claimant wrote to the Director of HR as follows:

"I have recently experienced a disciplinary process that was concluded on 20 January 2017. I had a right of appeal but did not because my intention is to make a complaint of maladministration. For me the whole disciplinary process that I was subjected to was so reprehensive from start to finish that it goes beyond a general grievance. In the disciplinary matter from incident to decision I have been subject to discrimination, bullying, harassment and the victim of a hate crime. The issues I would like to complain about involve: incorrect action and failure to follow the disciplinary policy, delay, failure to follow procedures, failure to provide information when asked, inadequate record keeping, failure to investigate counter claims of discrimination, bullying, harassment and a hate crime, failure to reply, failure to investigate and critically evaluate conflicting evidence, inadequate liaison and unreasonable secrecy, inadequate consultation, broken promises and breaching the civil service code. Underlining and italicising text of evidence against me in a witness statement. This matter has been lodged with the Employment Tribunal. I am writing to ask you to nominate someone outside of my cluster sufficiently senior to formally investigate the matter. I regret to write that my experience with the Band D to C managers involved in my case has been that they did not have the capability or integrity to carry out the disciplinary process fairly or competently."

327. On 12 April 2017 the HR director replied noting that the claimant had accepted he had not lodged an appeal against the final written warning. He was urged to progress his concerns via that route to ensure full independent consideration of the issues.

Discussion about managing the claimant in light of complaints

328. On 10 April 2017 Ms C Robson sent an email to Ms Cook which was copied to Ms Paton-Baines headed "Complaint of maladministration". In that email she notes that advice is being sought given the Tribunal claim that had been raised and how matters are managed. She had a discussion with HR around how difficult it is to manage the claimant while the claim was progressing and in light of the maladministration complaint she was not sure where this left the managers. She noted that Mr Harbertson was "not coping well" and support was being offered. She stated that Ms Paton-Baines was "doing all she can to support him and is planning on pulling him out temporarily to work with her on some project work she is involved with however the problem ie Peter will not go away." She also noted that the claimant had sent an email about "staff engagement" without mentioning it to Ms Paton-Baines and the topic he wanted to use was a worry. She stated: "It would be great if I could move him off site or even put him on gardening leave whilst this is going on but I suspect that "wish" can't happen."

329. Ms Robson sent this email for 3 reasons. Firstly, she was concerned about the operational difficulty of moving all of the claimant's team to a different manager. Secondly, she was cognisant of the additional pressures this placed on other staff and finally, she was concerned for Mr Harbertson's mental health which had been suffering as a consequence of the issues that applied at the time.

330. The claimant only saw this email following a subject access request and received it no earlier than October 2017.

331. By this stage, 10 April 2017, the claimant had lodged his claim in the Tribunal with Mr Harbertson the focus of his complaints.

332. The reference to the claimant being the "problem" was made within the context of the operational difficulties Ms C Robson faced and that the claimant was the source of the issues that led to the difficulties Mr Harbertson faced and the consequences thereof. She had identified the claimant as the cause of the issues which was a fair and accurate statement to make at that time.

333. The claimant was not moved off site nor placed on garden leave.

Change of line manager

334. On or around 10 April 2017 following a meeting with Mr Harbertson and considering the impact matters had upon his mental health, Ms Paton-Baines decided that he would no longer be required to line manage the claimant (and the team).

335. On 11 April 2017 Ms Paton-Baines emailed the clerking team to confirm that Ms L Robson would assume management of the clerking team, including the claimant and Ms Lau (in place of Mr Harbertson).

Claimant asked to provide details about complaint against his (former) manager

336. On 20 April 2017 Ms Paton-Baines spoke with the claimant about his grievance in relation to the security company and his complaint of bullying against Mr Harbertson arising from his performance management review. The claimant was asked to provide details of his objections to the process in order that she could conduct a review.

Claimant's appeal against grievance to security company

337. On 5 May 2017 the claimant appealed against the grievance outcome from the security company.

338. On 12 May 2017 Ms C Robson emailed the claimant to advise that there was no appeal against the grievance as it was to a third party. Ms C Robson had checked internally whether or not there was an appeal but was advised that as the grievance was dealt with by the third party over which the first respondent had no control and who would not hear an appeal, it was not possible to offer the claimant an appeal.

Claimant lodges grievance document about performance review process

339. On 22 May 2017 the claimant emailed Ms Paton-Baines a document entitled "PMR grievance" document.

340. On 29 June 2017 Ms Paton-Baines asked the claimant for further information regarding his issues with the review and on 30 June 2017 the claimant sent 3 emails with further information. Ms Paton-Baines advised the claimant that she would look at the matter within the next few weeks.

Claimant and Ms Lau incident on 22 June 2017

341. Having heard evidence from Ms Lau and the claimant we are able to make direct findings of fact in relation to what happened on this day (which in fact is identical to that concluded by the first respondent from the information available to them at the time).

342. On 22 June 2017 the claimant and Ms Lau were alone in the PA room (a room where filing is done). Ms Lau and the claimant entered into a discussion about a dream the claimant had. The claimant asked if she had any dreams and she said she could not remember as she had not been sleeping well due to the heat. She then said: “I don’t have dirty dreams”. We find that this was said by Ms Lau as a throwaway remark, a general passing comment. The claimant did not show that he was offended by the remark and he continued the discussion as if nothing untoward had been said. We find that the claimant was not offended by the remark at the time.

343. The discussion continued and Ms Lau said that sometimes she had the same dream about missing an exam. The claimant suggested that the dream could mean she missed an important deadline or her career ladder. We find that the claimant did say Ms Lau was “stuck at Manorview, bitter and twisted” but then said to Ms Lau that he did not mean to say those latter remarks as he said he was “only joking”. He then used the word “maternity”. Ms Lau was extremely offended by the latter remark and sought to leave the room and did so, along with the claimant. There were no witnesses to this conversation but we were persuaded by the email Ms Lau sent to the Claimant later in the day that she had been offended. The Claimant responded on the 30th June 2017, eight days later. In this he takes issue with Ms Lau’s comments and does not apologise.

344. Within an hour or so following the incident on 22 June 2017, Ms Lau sent an email to the claimant. She stated that “Some of your comments today have been offensive. Sometimes you do go too far and I know you probably enjoy pushing boundaries. This hasn’t been the first time. This is a polite email to ask you to think before you say something. I know that you are trying to get a reaction from me but I’m much better than you think I am and I won’t give you the response you want. If it happens again I will go straight to Claire because I don’t need to put up with it any longer”.

345. Ms Lau sent a copy of that email on 22 June 2017 to Ms L Robson stating: "Just to keep you in the loop. Sometimes Peter says things I find really offensive and personal. I have sent the below email to him. Today he mentioned something that just crossed the line too much that I was fed up putting up with it. Hopefully it will encourage him to think before he speaks. Attached is a few examples. But I'm hoping I don't require to take things further and to involve you but it was to keep you in the loop. At the moment this is only for your information only hopefully he understands my email below. But if he makes any more offensive comments I will go to you to escalate matters further. Lyn don't get me wrong we have a laugh. I can have a laugh you know. But attached is a few examples hopefully you can understand comments I attached I find offensive. I know he's trying to provoke a reaction but I just don't react and just walk away. Attached comments sometimes come out of nowhere just from normal chit chat. I want to deal with matters on my own confidentially hence I've made the first step in sending him the below so it might highlight that some of his comments can be offensive. So fingers crossed he will realise his actions. It's more than office banter."

346. The examples to which Ms Lau referred in her email that was attached to the email sent to Ms L Robson were:

1. He asked me if I was one of these super rich Chinese people
2. I'm full of beans when I'm in that dress
3. I have mental health problems like him
4. Talking about dreams – what my dream meant, missed my opportunity in life, stuck in manor view. Bitter and twisted, missed "maternity"
5. He's watched me have lunch said I have got a good appetite. He likes people with a good appetite.
6. Do I have nicknames for Dominic. But nothings going on between us.
7. He corrects my English and how I pronounce things.
8. He said he is going to educate me because sometimes I will ask him what certain words mean or how to pronounce certain surnames.
9. Buddhist religion is strange/weird. I said to Peter I honestly can't comment because I'm not a Buddhist so don't know much about it
10. He's tried to Google my dad's restaurant and mentioned the only think that comes up is about cockroach infestation I refuse to reveal the name.
11. Generally he likes to twist things and says things that have hidden meaning.

Claimant uses "enemy" to describe colleague in an email

347. In reply to the email of 22 June 2017, the claimant sent Ms Lau a response, on 30 June 2017 by email as follows:

"I have taken my time and given a lot of thought about how to reply to your email of last Thursday, or whether to reply at all. I considered several approaches, conciliatory, personal or a frank rebuke to you. But I asked the Lord and He guided me to reply and be discrete, brief and clear. This is my response…

The conversation about my dream.

You instigated this conversation about my dream; the plate containing a big fish shaped burger, 5 chips and fish finger cut in half. You offered your interpretation and I shared mine. I asked you if you have ever had any interesting dreams. Your reply was "I do not have dirty dreams". Remember? Then you commented that "I know men have those kinds of dreams. Isn't it?". Did you consider that I might be offended by this change of subject? So if you were offended by that, I remind you that you introduced those kinds of dreams into the conversation not me. Not once but twice. Please take responsibility for your own words and actions instead of blaming me.

Your dream about missing exams
Perhaps it was my interpretation of your dream that you were offended by… I am sad that you could not have discussed this with me face to face.

As for you being offended…
You have offended me many times in our many talks; sometimes I have been very offended. Sometimes you have said nice things to me in private but contradictory and unkind things about me in front of others.

Boundaries…
Your comment about boundaries says a lot about your way of thinking and little about me.

Going forward
I shared with Dominic last Wednesday that I want to disengage or detox from all things Manorview, Employment Engagement etc… My life is very blessed spiritually and personally and I do not want any Manorview matters or people to spoiling my well being.

I want to set the following boundary which I ask you to respect:
Please do not discuss anything with me that is not work related. This will ensure that there is no risk I will offend you and there is no risk you will offend me. I do not want to be your enemy but I don't want to be your friend either. We should be polite and professional but no more.

If you had not written that last line about complaining to Claire, who you know is my enemy, I would have written a different kind of reply. I would have apologised for upsetting you even if I did not know what it was that offended you (unintentionally). Different people – including you and me- have their 'sore spots' and touching on that subject can make them angry or upset. I like to challenge people. I do not mind offending people if it is necessary (but not for the sake of it) but I do not like to hurt a person's feelings.

On Friday and Saturday I felt both shock and sadness at the tone of your email. But that has given way to a sense of relief that the Ms Lau - TIBMAN era has come to a close."

348. On 4 July 2017 Ms Lau forwarded the claimant's email of 30 June 2017 to her line manager, Ms L Robson stating: "Peter has sent me this below. But he

has twisted things. I'm not sure what to do. I wasn't brave enough to confront him last week because I was scared to be honest."

349. We find that the claimant's comment about Ms Paton-Baines being the claimant's enemy was not said for any reason connected to his disability. His disability was in no way a cause of his making the remarks about her.

Comments allegedly made by Ms Lau

350. On 12 December 2017 the claimant submitted a document entitled "Background to my working relationship with Ms Lau" which ran to 23 pages. While the claimant criticises Ms Lau, other than his belief that she regretted her comment about dreams, he does not provide a reason as to why Ms Lau would not tell the truth when she made her complaint about what the claimant said.

351. In the submission he alleged that Ms Lau had made comments to him about not being too old to have more children. Ms Lau admitted that in the context of the discussion she referred to the fact that men can have babies anytime, which was a generic statement. It was not directed at the claimant and was referring to the biological fact that men can produce children at an older age than women. While the claimant alleged that around April 2017 Ms Lau said "You are not too old to have more children if you want to?". We do not find that this was said by Ms Lau.

352. The claimant also said "With anyone else I would have responded by asking why she thought that or agreeing or disagreeing. But that was a red flag subject for me and each time I quickly changed the subject or just smile and walked away. Those are the sort of comments that I associate with a woman who is going to ask a man for a donation of semen."

353. In cross-examination he said that he had heard this when visiting a lesbian bar in Newcastle when a woman had said that to him. It was unclear how this was relevant to the work context and his interaction with Ms Lau.

354. At no stage prior to April 2017 had the claimant raised any concern about Ms Lau's conduct or its impact on him.

355. We do not accept Ms Lau said to the claimant that he was not too old to have children.

356. It was also alleged that Ms Lau said to the claimant, around June 2017 "Do you want to be dominated?". From the evidence we heard we find this was not something Ms Lau said to the claimant. We find this because we preferred Ms Lau's evidence. The claimant alleged it was said in response to the claimant saying that he had a preference for older people but we did not find that a convincing explanation as there is no obvious connection between being older and wishing to be dominated. We preferred Ms Lau's evidence that this had not been said.

357. It was alleged that Ms Lau said to the claimant, in or around June 2017, "You men all want younger women" and two similar comments the following week. The claimant alleged that Ms Lau said: "You men only like younger women" as he walked past the claimant, and that she said that unprovoked. He alleged that she was angry and resentful but was not clear as to why. We found no evidence to support this and preferred Ms Lau's evidence that the comment was not made.

358. While discussing dreams, Ms Lau said (as a quip or a throwaway remark): "I don't have dirty dreams". The claimant alleged that Ms Lau also said: "men have those dreams isn't it" but we do not accept that was said. She told the claimant that she had dreams about missing an exam.

359. We find that the claimant also said in interpreting the claimant's dream that she missed an exam that she may have missed any important deadlines, her career ladder that she was bitter and twisted which the claimant sought to retract. He then said the word "maternity", alluding to the fact that Ms Lau had missed maternity.

360. Ms Lau and the claimant had a reasonably good working relationship and there was no reason why Ms Lau would make those matters up. The claimant had not raised any concerns about her behaviour and she had not raised any concerns about his. Ms Lau sent the claimant an email shortly after the incident indicating that she was offended by his remarks. That supports her assertion that the claimant made offensive comments to her as did her demeanour at the time and shortly following the incident as witnessed by her manager. We find that in her email to the claimant Ms Lau was genuinely upset by his comments, that he had gone "too far" and that she wanted to resolve the issue. The claimant's response, eight days, later, inflamed the situation and then Ms Lau reported the matter further.

361. In our view it is clear from Ms Lau's email to the claimant on the 22 June 2017 that she was upset and offended by something he had said earlier that day. There was considerable agreement about what was said but also some major differences. What was not agreed were the comments relating to "missed an important deadline", "Missing my career ladder and "stuck at Manorview House, bitter and twisted" and the word "maternity". There were no witnesses to this encounter. The claimant admits to mentioning a book he had read regarding missing "a flight, bus or train" and that he interpreted this as missing an opportunity in life. As we set out below, we find the evidence of Ms Lau to be credible. Ms Lau would not have sent the claimant the email she did had she not been offended. That was the purpose in sending the email. Her comment was that the claimant had "crossed the line". His response, 8 days later, was not apologetic although he did say that he might have apologised had Ms Lau not mentioned reporting the matter to Ms Paton-Baines. We take account of the claimant's evidence that the claimant and Ms Lau had previously had a good relationship but it is clear that on 22 June 2017 that the claimant did, in fact, "cross the line", from her perspective.

Outcome of performance review

362. On 5 July 2017 Ms Paton-Baines sent an email to the claimant attaching her PMR review decision. She considered each of the points arising and concluded that Mr Harbertson followed the relevant policy. The performance action plan was to remain in place and if the claimant was unhappy with the decision he could raise a grievance.

363. On 6 July 2017 the claimant emailed Ms Paton-Baines stating that he did not accept the conclusions were justifiable and that a grievance would be raised.

364. In the email the claimant sent to Ms Paton-Baines on 6 July 2017 he stated that "we agreed on 20 April 2017 to have a discussion about this as part of the informal stage of the grievance process. We agreed to have a discussion about whether you can revise my mid-year rating, end of year rating and rescind the personal action plan produced by Mr Harbertson."

365. He asked why he was not told that there would be a written response without a meeting if that was the intention.

366. Ms Paton-Baines set out her decision on the review with in her email of 5 July 2017. She dealt with each of the points that the claimant had raised in his response. Her review set out the methodology and policy that was applicable. She was the counter signing officer, to Mr Harbertson, his line manager. She stated that she had reviewed the process element of the performance management review to see whether or not the April 2016 performance management procedure (to which she attached a link) was followed.

367. That policy states that the counter signing manager should be consulted about any disagreement and in the absence of consensus the grievance process should be followed. The policy did not require a meeting with the employee who raised the issue.

Disciplinary process proceeds

368. On 6 July 2017 Ms L Robson sent Ms C Robson and Ms Paton-Baines a document that set out an account by Ms L Robson of her conversations with Ms Lau in the period after the events of 22 June 2017. She stated that she was concerned about the content of both emails the claimant had sent as she had seen how upset Ms Lau was and that she was scared. It was agreed that matters would be taken forward formally.

369. As a result of that communication, on 6 July 2017 Ms L Robson, Ms C Robson and Ms Paton-Baines discussed matters and decided that matters should be investigated. This had arisen as a result of Ms L Robson's discussion with Ms Lau. Following Ms L Robson speaking to Ms C Robson and Ms Paton-Baines and having taken HR advice, a disciplinary investigation was commenced.

370. On 7 July 2017 Ms C Robson spoke to the claimant about a disciplinary investigation. The claimant was given written notice of a disciplinary investigation.

371. Ms C Robson told the claimant what the allegations were that were being investigated, namely the making of comments to a colleague which were perceived to be offensive and unacceptable and who had made them.

372. The letter the claimant was given on 7 July 2017 stated that a formal investigation would be conducted by Mr Hunt to independently establish the facts to fully inform any subsequent disciplinary process. The letter also stated: "In order to progress the investigation smoothly, to protect the health and wellbeing of the individuals concerned and because the working relationship has broken down I am going to relocate you on a temporary basis until the investigation is complete. Your temporary place of work will be Newcastle Combined Court."

373. The claimant accused Ms C Robson of not following the policy correctly (by not having a fact-find) and said she was "like Ms Paton-Baines". He alleged that she "had made her mind up that he was guilty".

374. Ms C Robson explained that she had followed the policy correctly and made specific reference to the document which indicated that a fact find may be appropriate but as Ms C Robson had copies of the emails involved there was sufficient information to proceed to have the allegations independently investigated.

375. The claimant denied all the allegations and refuted that he said any of the things alleged. Reference was made to an email in which the claimant had used the word "enemy" whilst referring to Ms Paton-Baines which would be investigated.

376. Ms C Robson explained that the claimant was being moved temporarily as the working relationships with his colleagues appeared to have broken down given the issues arising (which included the claimant's use of the word "enemy").

377. As the claimant was unhappy and angry he was sent home for his own welfare. Ms C Robson considered that the claimant would not be able to focus on his duties for the remainder of the day. He was given flexi-credit for the time to ensure he was not subjected to any detriment.

378. Ms C Robson completed the disciplinary investigation notification form (SOP-IVS01) as commissioning manager, appointing Mr Hunt as the investigating officer. He was independent.

379. At the meeting with Ms C Robson, the claimant's response to being told a disciplinary investigation was to describe it as "witch hunt". He said he was being persecuted. Ms C Robson was concerned by that allegation and asked the claimant to comment on who was persecuting him to which he said all the managers except her, Ms C Robson. The claimant also denied each of the 11 points that had been raised. The claimant did not mention that he believed Ms Lau had harassed him, but he said that she had been offensive to him.

380. The email in which the claimant referred to Ms Paton-Baines as the "enemy" was referred to as a matter that would be investigated.

381. The first occasion where the claimant alleged that Ms Lau had harassed him was in an email dated 12 July 2017 to Ms C Robson, Ms Paton-Baines and Ms L Robson.

382. The investigation commenced on 7 July 2017 which was before the claimant first raised the issue of sexual harassment on 12 July 2017.

Fact-find

383. In terms of the discipline policy, there should be a quick assessment to establish the facts (the fact-find). The aim is to decide whether or not there may be misconduct which would then allow a disciplinary investigation to proceed thereby avoiding an unnecessary escalation of the disciplinary process. Before 7 July 2017 when the formal investigation had commenced, Ms Lau had sent the email on 22 June 2017 to the claimant and to Ms L Robson and there had been a discussion between Ms Lau and Ms L Robson which Ms L Robson recorded in writing and the claimant had emailed Ms Lau on 30 June 2017. When Ms C Robson discussed matters with the claimant on 7 July 2017 he denied the allegations. That was what Ms C Robson considered to amount to the initial fact-find in accordance with the policy. She had enough information to make a quick assessment to establish the facts.

Decision to relocate

384. The arrangement to relocate the claimant to Newcastle Combined Court was never implemented as the claimant was absent. The reason for the decision (which was communicated to the claimant during the discussion) was to allow the investigation to proceed and to protect the health and wellbeing of those affected. Ms C Robson was also concerned that the working relationship had broken down given what was being alleged. These were the considerations that would pertain to a decision to suspend an individual but Ms Robson wanted to avoid that. She was concerned that Ms Lau was upset and scared which was what she witnessed.

Claimant sent home

385. The decision to allow the claimant to go home early on 7 July 2017 was not predetermined and arose as a result of Ms C Robson's assessment of the claimant following the meeting She was concerned for the claimant's welfare and she was concerned the claimant would find it hard to concentrate on his work that afternoon.

386. Ms C Robson did not covertly communicate any additional allegations. The claimant was told at the meeting what was being investigated.

Claimant alleges discrimination by colleague

387. On 12 July 2017 the claimant sent an email to Ms C Robson and Ms Paton-Baines in which he "reported in sick". He said: "the reason I am sick is psychological trauma and anxiety caused by the trauma following incidents including sexual harassment by a colleague (Ms Lau) and unfair treatment by Ms Robson… I am a vulnerable person who was recovering from a stress related incident and my mental health has been devastated by recent events and of the last year."

388. The claimant commenced sick leave on 12 July 2017 and remained continuously absent until his dismissal on 4 January 2018.

389. At this stage Ms L Robson was the claimant's (and Ms Lau's) line manager. Mr Harbertson did not respond to the email as it was not directed to him. He was not one of the main recipients.

390. On 12 July 2017 the claimant had a telephone conversation with Ms Paton-Baines and it was noted that Ms L Robson was on annual leave at this time. Ms Paton-Baines asked the claimant during that call if he wished to discuss the matter (which included his belief that he had been subject to unlawful treatment) but he declined to do so

391. The claimant's grievance in relation to Ms Lau was investigated by Ms Frankland and no merit was found in relation to his complaints. The claimant did not raise any issues or complaints with regard to Ms Frankland. The claimant's grievance was rejected and no complaint was raised by the claimant about that.

Claimant to meet investigator

392. On 24 July 2017 Mr Hunt wrote to the claimant inviting him to a meeting on 8 August 2017. That letter stated that the purpose of the meeting was to discuss the allegations and to independently establish the facts to fully inform any subsequent disciplinary process. The claimant was advised that the claimant would receive a copy of the report.

Statements obtained

393. On 24 July 2017 Ms Paton-Baines provided a written statement for the investigation. She stated that on 6 July 2017 Ms L Robson had asked to speak to her and Ms C Robson. Ms L Robson had an unsettled day as she had been concerned for Ms Lau. Ms Lau had a private discussion with Ms Robson whereby Ms Lau had become upset and tearful. Ms Lau indicated that the claimant had made comments which she had found offensive. It had not been the first time but

she had wanted to resolve the issue in her own way. Ms Robson had not wanted to breach her confidentiality at that time. The claimant's response to Ms Lau's email had resulted in Ms Lau feeling scared. Ms Robson had spoken to Ms Lau to identify what support she needed and Ms Lau was upset. Ms Lau wanted to avoid confrontation. It was agreed that matters would be investigated.

394. On 25 July 2017 Ms Lau provided a written statement to the investigation. She stated that on 22 June 2017 between 1615 and 1645 she had gone to the PA room to file her morning files. The claimant was there and Ms Lau made conversation. She said that she had stated that she heard about the claimant's dream about a fish and that it was perhaps a peace offering as it was cut in half. She said that she was not interpreting his dream in a nasty way. She said that she did not bring up the subject to talk about specific dirty dreams as suggested in the claimant's email.

395. The claimant asked if she had any dreams and she said she could not remember as she had not been sleeping well due to the heat. She said: "I don't have dirty dreams" as a general passing comment as they were discussing dreams. It was not meant to be offensive or to delve into anything specific. It was a throwaway comment as Ms Lau thought the discussion was about dreams in general.

396. She indicated that at the time he did not say that he had been offended and he was smiling and laughing. His body language was open, relaxed and he was not upset. The discussion continued.

397. Ms Lau said that sometimes she had the same dream about missing an exam. The claimant is alleged to crossed the line and become personal and interpreted her dream in a nasty way. He is alleged to have said "Have you missed an important deadline? Have you missed your career ladder, stuck at Manorview, bitter and twisted". Ms Lau said the claimant retracted that comment and said "only joking" and then allegedly come out with the word "maternity".

398. She stated: "By then he had moved towards the door. He was holding onto the PA room door and carrying on talking. I thought he was talking to the cleaner as he wasn't looking at me. I said let me pass. I felt he was blocking the exit. There have been other times I have felt trapped. I wasn't about to walk out straight away after his comment. I was offended and upset by what he said. I sent him an email because I know I'll just go home upset and not do anything about it. It wasn't the first time. He's made other comments that have been offensive."

399. She then explained that she wanted to deal with matters herself and sent an email. She did not confront him at the time because she was shocked and upset. She copied her manager to keep her in the loop and give examples of other comments to show it was not a one off comment. She said that she did not get the chance to confront him as she did not have the opportunity. She felt that he would have twisted things around and used fancy words to deflect. She did not feel comfortable and felt scared to confront him. She felt that his reply, 6 days later was over the top and unreasonable because of the tone and content. She

was not sure how to respond without the situation getting out of control and so spoke with her manager.

400. On 27 July 2017 Ms L Robson provided a written statement to the investigation. She referred to the email from Ms Lau on 22 June 2017 and noted that she had found some things the claimant had said to be offensive. Ms Lau did not want to take matters further as she had hoped matters would be resolved informally but on 4 July 2017 Ms Lau received an email that upset her as she believed the claimant had twisted things. She wanted to avoid confrontation. Ms Lau would reflect on how to progress matters. A few days later upon Ms Robson's return to work she spoke with Ms Lau and she was concerned about the emails. Ms Lau was upset and scared and it was agreed to progress matters.

401. The following day Ms C Robson provided a written statement to the investigation. She noted that on 6 July Ms Paton Baines and Ms L Robson advised her of concerns about Ms Lau and emails that the claimant had sent. It was agreed to seek HR input and progress matters.

402. On 7 July 2017 she explained that she had prepared the paperwork and asked to meet with the claimant. Before giving him the letter which outlined the allegations, she explained the allegations and the content of the emails. She gave the claimant the letter who read it in the office and asked why he was being "persecuted". Upon asking what he meant he said that he felt it was a witch hunt by all the managers except her. Ms Robson sought to explain that a colleague had been offended by comments and the investigation was to consider matters to determine what, if any disciplinary action would be needed, bearing in mind the live final written warning.

403. The claimant accused Ms Robson of not following the policy and said she was "like Ms Paton-Baines". When she asked what he meant by that he said that she should have carried out a fact find and that she had not done so and had made her mind up that he was guilty. She explained that as she had all the information she needed a fact find was not necessary and the matter would be referred to Mr Hunt for independent investigation.

404. The claimant denied all of the allegations and that he said any of the things Ms Lau had alleged. Ms Robson referred to the claimant's email where he stated: "if you had not written that last line about complaining to Claire who you know is my enemy" and he stated that the email was part of a private conversation but accepted that the email had been sent from his HMCTS account. When it was pointed out that the email appeared to be offensive about his delivery manager and he was asked if the comment was appropriate he became very agitated and started to raise his voice and accuse Ms Lau of being offensive to him. He was told that he would have the opportunity to explain his views and present his explanation.

405. Ms Robson explained to the claimant that to progress the investigation smoothly and protect all individuals concerned he would be temporarily relocated to Newcastle Combined Court.

406. The investigating officer met with the above individuals on 3 August 2017 to discuss their statements. Further written statements were made following those meetings.

Completing the investigation

407. At the investigation meeting, Ms Lau went through what she says happened in the PA room on the day in question. She explained that the discussion about dreams was a conversation. She had heard via a colleague about the dream the claimant had and she said maybe it was a peace offering. Upon being asked by the claimant whether she had any dreams she said she could not remember as she had not been sleeping well. She said that she doesn't have dirty dreams which she meant as a passing remark, not meaning to talk about those dreams. She said that at the time it was just a throwaway comment.

408. She said that she felt trapped. This was because of the way the door opens and she was upset but she felt she could not get out and asked him to let her past. He had turned away when talking and Ms Lau felt he was talking to someone else. She asked to be let past and he carried on talking. She did not need to ask him more than once to get past.

409. She was asked when else she felt trapped and she said that it was not in the same room but on the main floor when putting things in the locker and it was a small room and she could not get past. It had only happened a few times.

410. She had not raised it with managers as she thought it was his character. She stated that other colleagues "know he's a strange character" but the conversation about dreams "was the breaking point".

411. In passing, the claimant had referred to Ms Lau's behaviour as "strange".

412. She was asked whether she had done anything to offend the claimant.

413. She explained that she had been offended by what the claimant had said and in his emails. She said that she wanted to resolve matters herself. She sent the email straight away as she was upset. She had emailed her manager too. She said that she was hoping to speak to the claimant but she did not feel comfortable talking about it. She felt that he pushed boundaries and gave her manager examples to show it was not a one off.

414. Some of the list of 11 items were one off items. When she said that the claimant twists things she indicated that this was repetitive such as the conversation in the PA room. She had not intended the discussion to be about dirty dreams as she was just making conversation.

415. Ms Lau was shocked by the email the claimant had sent. She did not go to the PA room to talk about dirty dreams as it was a passing comment. She said that if she had not said that he offended her, he would not have said she offended

him. If he was offended he would not have come to say morning to her the following day.

416. By that stage Ms Lau said she needed to speak with her manager as she was not sure how she could resolve matters.

417. She stated that she found the comments the claimant to have made to be offensive. She also gave examples of things the claimant twists, such as comments about a TV programme called Billions and comparing clerking with escorting.

418. When asked about what comments were particularly offensive, she said it was the "maternity" comment and that she was bitter and twisted. She was not sure why he mentioned that, but she does know he is a religious man. She found the remarks offensive and demeaning.

Claimant fails to attend meeting with investigator

419. The claimant did not attend the investigation meeting that was scheduled for 8 August 2017 and Mr Hunt sent the claimant an email on 11 August 2017 noting his failure to attend and attaching a further invite for a meeting on 20 September 2017. He was advised that if he did not attend Mr Hunt would proceed to conclude his report from the information in his possession.

420. On 14 September 2017 the first respondent received a letter from the claimant's GP which stated that "the claimant is "suffering from stress at work with anxiety and depression and panic attacks, for which he is taking Citalopram and propanol. He feels that he would be able to attend an Employment Tribunal from mid November 2017."

Claimant seeks postponement

421. On 18 September 2017 the claimant replied to Mr Hunt requesting a postponement of the meeting scheduled for 20 September on grounds of ill-health. The claimant's request was granted and the meeting was subsequently rearranged for 8 December 2017.

ACAS Early conciliation

422. On 21 September 2017 the early conciliation certificate was received from ACAS in respect of the second claim.

Attendance review meeting

423. On 22 September 2017 the claimant was invited to an informal attendance review meeting on 29 September 2017. This took place and the claimant's

absence of 183 days over 2 spells was noted. Occupational health was being chased.

Second Tribunal claim lodged

424. On 6 October 2017 the second ET1 (2207335/2017) was received by the Tribunal which contains claims of sexual harassment, direct sex discrimination, and victimisation as set out in issues 19 to 26. This was the day when ACAS issued the early conciliation certificate.

Further attendance review meeting

425. On 23 October 2017 the claimant attended an attendance review meeting with Ms Robson given the claimant's attendance record which was 2 spells covering 199 days. The claimant stated that he had good and bad days and would progress with occupational health (with a referral arranged for 27 October 2017).

426. On 8 November 2017 the occupational health report stated that the claimant was unfit for work due to his symptoms and his perceived issues at work. The report stated that the perceived issues at work were a barrier to him returning. If those issues would be addressed and resolved he would likely become fit to return to work.

427. The report stated that the claimant's impairment was likely to be considered a disability.

Invitation to reconvened investigation meeting

428. On 29 November 2017 the claimant was advised by letter from Mr Hunt that the investigation meeting was rescheduled to 8 December 2017.

Claimant meets investigation officer

429. The claimant attended the investigation meeting with Mr Hunt on 8 December 2017. 13 pages of notes were taken.

430. At the meeting Mr Hunt discussed each of the allegations with the claimant. In this regard he took the claimant through each of the points Ms Lau had raised and sought his position.

431. Mr Hunt noted that Ms Lau had emailed the claimant on 22 June 2017 following what had happened in the PA room that day. The claimant was asked to explain what happened that day which he did. At the investigation meeting Mr Hunt gave the list that had been attached to Ms Lau's email to the claimant to ensure they went through each point carefully.

432. The claimant said that he was filing in the PA room when Ms Lau came in and instigated a conversation about a dream and her interpretation. He said he changed the subject by asking whether she had any interesting dreams and she said she didn't have dirty dreams. He said that meant he had those kinds of dreams and he felt ill and had a panic attack as a result. He said he continued what he was doing, which included having a conversation with Ms Lau.

433. He said it was ridiculous that Ms Lau asked him to move from the exit. He said Ms Lau left first and he followed her down the stairs. The claimant said that the question about dirty dreams was sexualising the conversation. He said he may still make a complaint about that as he felt vulnerable and unsafe and frightened in her presence.

434. He said she stated she had a dream about missing an exam. He said he had read a book and the interpretation was that it was a missed opportunity in life.

435. The claimant denied that anything he said was inappropriate. He denied that there was any reason for Ms Lau to consider them demeaning unacceptable and inappropriate.

436. The claimant disputed the specific comments Ms Lau had attributed to him.

437. The claimant alleged that the comment about dirty dreams was sexual harassment against him. Mr Hunt told the claimant that he could make a complaint about that himself if he wished.

438. The claimant said he was shocked by the discussion in the PA room and he felt vulnerable. He said he was suffering a mental illness.

439. With regard to the comments in the email of 30 June he said that he did not want to reply but he felt so unwell he had to respond in some way. He was asked whether it was appropriate to say the "Lord guided me" and he said, "Yes I'm a Christian". He was asked whether he thought if it would impact on the recipient and he said no and asked why. Mr Hunt explained that he was trying to understand what it was said and the impact.

440. The claimant confirmed that the reference to "enemy" in the email of 30 June referred to Ms Paton-Baines. The claimant was asked whether the comment was appropriate and he said that it had been going on for over 2 years and there was bullying and victimisation. He said that he would not have written it if he did not have a breakdown. The claimant said "enemy" may be a strong word and serious but not derogatory. He accepted that it was sent as a work (and not personal) email.

441. The claimant said that Ms Lau had told lies. He said that the comment about Ms Paton-Baines was true. He said it was derogatory and strong but he did not believe it crossed the boundary. He said that there was no reason why Ms Lau felt scared offended or upset. He argued that she was malicious.

Investigation report produced

442. On 11 December 2017 Mr Hunt issued his investigation report which noted that the event which led to the issues being raised occurred on 22 June 2017 when Ms Lau and the claimant were in the PA room. The report also contained the witness statements and evidence that had been obtained and these were produced along with the report. His statement summarised the evidence he had obtained from each witness.

443. Following a discussion about dreams, the claimant was alleged to have made an offensive comment which upset the claimant. The report stated that the claimant had moved to the door and was holding the handle while still talking but not looking at Ms Lau which prevented her from leaving the room and her having to ask him to let her past (which was what Ms Lau had said).

444. Ms Lau had sent the claimant an email shortly following that meeting on the same day stating that some of his comments had been offensive. She said that she would go to Ms Paton-Baines if it happened again.

445. Ms Lau had copied that email to her manager, Ms Robson, adding 11 examples of questions, comments or behaviour for which the claimant was alleged to be responsible.

446. In the email of 30 June 2017, the claimant referred to Ms Paton-Baines as his enemy. He stated in that email "… I do not want to be your enemy but I don't want to be your friend either. We should be polite and professional, but no more. If you had not have written that last line about complaining to Claire, who you know is my enemy, I would have written a very different kind of reply".

447. Mr Hunt summarised the discussion with each of the witnesses. Thus, in relation to Ms Lau, whom he interviewed first, he stated that albeit nervous, she was open to all questions and answered, "quickly and clearly". She had gone through the events of 22 June and found the claimant's interpretation of her dream to be where he had crossed the line and she was upset by it. She had hoped to resolve things amicably but wished her line manager to be aware of the position.

448. The claimant's response to her email shocked her and she felt she had no option but to refer matters to her manager, Ms Robson. She felt very upset about the claimant's response.

449. Mr Hunt noted that Ms L Robson had confirmed that Ms Lau had appeared "scared" as a result of the interactions with the claimant.

450. Ms Paton-Baines indicated that she was upset by the claimant's comment about her. At that time Ms Paton-Baines was herself considering a complaint about the claimant.

451. Mr Hunt noted that it was clear from Ms C Robson that she had concern about Ms Lau being scared.

452. Mr Hunt stated that it was at times a difficult interview with the claimant as it was hard to understand some things he was saying as he mumbled and would digress. He denied all the allegations and claimed it was Ms Lau who offended him and the claimant was considering a complaint against Ms Lau.

453. The claimant had said Ms Lau was malicious and he had done nothing to offend her and it was she who had offended him. He claimed to be scared of her. He explained that he had not complained to his line manager as he had no trust in them. He saw nothing wrong with his response of 30 June.

454. The report concluded that on the balance of probabilities it was more likely than not that the claimant had breached the conduct policy by (1) using remarks causing offence to Ms Lau on 22 June 2017, (2) by making comments prior to 22 June on various occasions which would cause offence to Ms Lau and (3) by using the word “enemy” in his email of 30 June which caused upset and offence to Ms Paton-Baines.

455. Mr Hunt made this assessment from the evidence that had been presented to him. He concluded that Ms Lau’s evidence was preferable to that from the claimant. He made this assessment from how both individuals had answered his questions and their demeanour and all the surrounding circumstances. He was of the view that Ms Lau had answered the questions “quickly and clearly”. The claimant had answered some questions quickly and clearly but on occasions he would pause, mumble and avoid answering the question which affected his credibility.

456. Mr Hunt also noted that Ms L Robson believed that Ms Lau was scared following the incident. He also recorded that Ms Paton-Baines could not think of any reason why Ms Lau would concoct the allegations and that Ms Paton-Baines was upset at the claimant’s comment in the email and she was considering a complaint herself. He also noted that the claimant could not provide specifics of the occasions when he alleged Ms Lau had offended him (other than on 22 June) and that the claimant accepted he had not raised any concern with a manager.

457. In his report he explained that he concluded on 22 June 2017 the claimant had made comments to Ms Lau in the PA room which offended her and which she found demeaning and upsetting, which included comments that Ms Lau had missed her opportunity in life, was bitter and twisted and had missed “maternity” (all in response to a discussion about dreams).

458. He also concluded that it was more likely than not that the claimant had made some of the other comments set out in the email Ms Lau had sent on 22 June 2017.

459. He also concluded that the claimant had made an inappropriate comment in an email of 30 June 2017 to Ms Lau referring to Ms Paton-Baines as his enemy which had caused upset and offence to Ms Paton-Baines.

460. There was no evidence to support the suggestion that the claimant had in some way been fearful of Ms Lau.

461. Mr Hunt did not await any comments from the claimant prior to issuing his report as he was concerned with the time that had passed. The claimant did not raise any issues once he received Mr Hunt's report. He did not seek to challenge any of the findings or ask for clarification.

Claimant raises grievance against colleague

462. On 12 December 2017 the claimant raised a formal grievance against Ms Lau alleging bullying, harassment, discrimination and victimisation. He alleged that Ms Lau made causal ageist and sexist remarks in a resentful manner.

463. On 12 December 2017 the claimant sent a 13-page email to Ms L Robson and Miss L Grieveson entitled: "complaint about the behaviour of Ms Lau".

Process in relation to second disciplinary hearing against claimant

464. On 13 December 2017 Ms Telfer wrote to the claimant formally inviting him to a disciplinary hearing on 28 December 2017.

465. That letter referred to the fact that the claimant knew formal enquiries had been undertaken following allegations that were made in respect of his conduct. Specifically, it was alleged that the claimant breached the conduct policy by making comments to a colleague which were perceived to be offensive and those comments were seen by the person receiving them as demeaning and unacceptable. The letter stated that following the investigation there was sufficient evidence to justify holding a disciplinary hearing to consider a charge of serious misconduct.

466. The claimant was advised that he should be aware that one outcome of the hearing could be dismissal given he was still subject to a final written warning that was issued on 20 January 2017 for serious misconduct.

467. The claimant was given a copy of the investigation report and the attachments (which included the witness statements).

Claimant's grievance progressed

468. On 13 December 2017 Ms Paton-Baines appointed an independent and impartial manager to investigate the claimant's grievance. Ms Frankland was appointed. He claimant was advised on 15 December 2017 that his formal grievance in relation to discrimination, harassment, victimisation and bullying by Ms Lau would be investigated and that Ms Frankland would investigate matters.

469. On 19 December 2017 Ms Frankland wrote to the claimant to confirm she would proceed to investigate matters. She did so.

Claimant seeks postponement of disciplinary hearing

470. At 941pm on 26 December 2017 the claimant sent an email to Ms Telfer replying to her email of 13 December 2017. He stated that he was too ill to attend the meeting on 28 December and that this sick absence had been certified by his GP. He stated that he had annual leave booked from 2 to 26 January 2018 and that he needs to have access to his work computer to obtain and prepare for the hearing. He said that "therefore I suggest that you do not consider rescheduling the meeting until w/c 5 February 2018. Please arrange for the hearing for somewhere that is not part of the team member's normal work environment.".

471. He concluded by stating that "I also need to inform you that I am disabled as defined by the Equality Act 2010. This was confirmed by the opinion of the occupational health assessor in the report dated 1 November 2017. I trust you are aware of your legal obligations concerning disability under the Act. Please send copies of all witness statements."

472. The reason why the claimant sought a postponement therefore related to his view as to his fitness and his need to obtain documents to prepare for the hearing. At no stage between being advised as to the hearing proceeding and that date did the claimant ask about further documents. He did not raise any issue as to the existence of other documents following that request.

Claimant submission to disciplinary hearing

473. On 26 December 2017 the claimant also sent an email to Ms Telfer forwarding the email he had sent to Ms Robson dated 12 December 2017.

Disciplinary hearing proceeds in claimant's absence: allegations proven

474. As the claimant's email to Ms Telfer seeking an adjournment had been sent on a public holiday, Ms Telfer did not read the email until the morning of 28 December 2017 when she returned to work and switched on her email systems. She had attended the office to meet with the claimant and conduct the hearing. She replied to his email by email on 28 December at 1215. She stated: "I note your request to adjourn the disciplinary hearing today until 5 February 2018. This was an option open to me this morning however I must take into consideration the wellbeing of everyone involved in this case, including yourself and the effect any further delay might have, bearing in mind it is now 6 months form the date of the first alleged incident. With that in mind I made the decision to proceed with the hearing in your absence, although I did wait until 11am just in case you attended.

I have read through the investigation report dated 11 December 2017 and all the witness statements and based on the evidence before me I have found the allegations proven.

I now need to consider all the options open to me which because you have a final written warning in place includes dismissal.

Before I make my decision, however, I would like to give you the opportunity to put any further submissions to me in writing.

In relation to your request for witness statements, these were attached to the investigation report I sent to you on 13 December 2017.

I will review the case again and make my decision on 3 January 2018. Please let me have any further documents before then. I will email and write to you formally with the outcome after that date."

Claimant complains of maladministration re disciplinary process

475. Following Ms Telfer's decision, the claimant complained to the HR Director of HMCTS of maladministration in respect of the 2 disciplinary processes to which he was subject. The HR Director advised that her depute director would consider matters. Having done so, the Deputy Director advised the claimant that Ms Telfer would proceed to review the disciplinary case on 3 January 2018 taking account of any further submissions or statements the claimant had provided. The response noted that the claimant had not advised of any new health condition and the occupational health report in respect of the existing condition had indicated that the claimant was fit to participate in the disciplinary process which should help the condition improve. For that reason, it was important that the matter was addressed in a timely manner.

476. The claimant was advised by email of 2 January 2018 to send any further documents or mitigation, so far as he had not already done so, to be taken into consideration. Ms Telfer would then make her decision and there would be a right of appeal.

477. On 2 January 2018 the claimant sent a further email to Ms Johnson and Ms Cook stating that the email contained "two complaints of maladministration concerning the 2 disciplinary processes I have been subjected to in the last 18 months. I have been a civil servant for 20 years and in that time I have never had an appraisal below good or equivalent and never received a disciplinary sanction until 2017." He said that: "I need to make this point as I have ran into enormous difficulties recently. In the four year cycle before I became ill I only took a handful of sick days. Now I am considered by OH to have a disability."

478. His first attachment to his email is headed "Complaint about maladministration in disciplinary process 17 June 2016 to 20 January 2017". In that document he set out his criticisms of the disciplinary process, which included the (alleged) absence of an initial fact find, that his accuser was not sure when

the incidents took place and a total of 28 reasons. He stated (at number 26) that "the disciplinary officer was discriminatory. She ignored my claims of religious harassment. Therefore I was subjected to religious discrimination by her". He then explained his argument that the final written warning was given in bad faith.

479. Under the heading "What I would like you to do" he says he wanted the maladministration investigated, allow an appeal to take place since he said he had been too ill to do so since.

480. His second attachment to his email is headed "Urgent: Complaint about maladministration" and states "for the second time in 18 months I have been subject to unfair treatment, discrimination and victimisation in the workplace". This document refers to "complaint about maladministration 7 July 2016 to date". This is a 22 page document in which he sets out why he says he was subject to maladministration. His reasons include Ms Robson allegedly not carrying out an initial fact find and that "she also discriminated against me on the basis of sex". This is because, he said, Ms Robson breached the policy in her approach to the investigation.

481. He also argued that "it is also sex discrimination because she treated me less favourably than my comparator Ms Lau. Every complaint she made was uncritically accepted and advanced". Other grounds included that he believed Ms Robson was victimising him for making a Tribunal claim and making a complaint of maladministration and that the investigation was unfair. He explained that he believed it was sex discrimination to prefer the evidence of Ms Lau.

482. Under the heading "What I would like you to do" he stated that he wants the process started again with an outside manager, as he says the mutual duty of trust and confidence was breached in the two disciplinary processes.

483. Ms Johnson replied on 2 January 2018 stating that her deputy would be in touch.

484. Later same day, at 6.38pm, another email from Ms McKenzie, her deputy was sent to the claimant. She said she had made enquiries and confirmed that Miss Telfer would review the disciplinary case on 3 January to make a decision in accordance with the email of 28 December 2017. The claimant had been asked to send any further documents he wanted taken into account and that he would have the right of appeal.

485. The response the claimant received to his complaints was that due process would take place in relation to the disciplinary issues, which was the forum for his raising the concerns he had.

Hearing regarding claimant's mitigation re disciplinary issues

486. On 3 January 2018 Ms Telfer conducted a telephone hearing with the claimant to allow him to provide any further evidence or mitigation. Ms Telfer stated that the purpose of the hearing was to consider any further submissions

or mitigating points. It was not to go over evidence already submitted which had been considered but she would consider any further points arising.

487. The claimant indicated that he wanted the original hearing postponed to get access to documents. Ms Telfer noted that the claimant had been sent all the documents on 13 December 2017 and no other request had been received.

488. The claimant also stated that he was certified sick by his GP and not well enough to attend a disciplinary hearing. Ms Telfer acknowledged that the claimant was suffering from stress but that the letter from the claimant's GP in September stated the claimant was fit enough to attend a tribunal.

489. Ms Telfer stated that she would consider the evidence that was submitted and issue her decision. At that hearing she would have considered any new points going to the substance of the decision if the claimant had raised any new points.

Outcome letter – claimant dismissed

490. Having considered matters, Ms Telfer issued her decision on 4 January 2018. She stated that she considered all the evidence and concluded that the allegations that the claimant had breached the Conduct Policy by making inappropriate comments to Ms Lau on 22 June 2017 and prior to that date and that the claimant made an inappropriate comment in relation to Ms Paton-Baines in an email of 30 June 2017 was upheld.

491. The letter noted that the current occupational health report indicated that the claimant's health condition should improve if he were to participate in the disciplinary process.

492. The letter also stated that Ms Telfer considered all the evidence available at the hearing on 28 December 2017 and that before a decision on sanction be applied she wanted to give the claimant a further chance to submit any further evidence or submissions. She stated that before making a decision on the sanction she considered the claimant's emails and his submissions.

493. She noted that one part of the mitigation the claimant provided on 3 January 2018 was a note from his GP that he would be fit from the end of November 2017 which she concluded meant that it was right to have proceeded with the hearing on 28 December as the claimant was fit to attend. She had considered an adjournment but decided to proceed given there was no evidence to suggest the claimant was unfit and that it was in the interests of all concerned that the hearing proceed.

494. Having considered all the evidence before her, she concluded that the claimant did make inappropriate comments to Ms Lau on 22 June 2017 and other inappropriate comments alleged to have been made previously. She concluded that he was also guilty of misconduct by making an offensive remark about Ms Paton-Baines.

495. The claimant had been guilty of repeated unwanted behaviour, which was offensive and abusive. Ms Telfer took the view that each of the allegations individually amounted to serious misconduct in themselves given the language used by the claimant and his behaviour.

496. As the claimant was subject to a live final written warning, she stated that having considered all the facts, including any mitigation, she decided that dismissal was an appropriate sanction. She concluded that there had been an irretrievable breakdown of trust between HMCTS and the claimant.

497. She stated that "the cumulative effect of this misconduct and the live final warning that is still in force are interrelated as you have demonstrated a clear pattern of behaviour where a number of relationships have irretrievably broken down, making it impossible to continue with your employment."

498. The claimant was given the right to appeal. His last day of service was 4 January 2018, and he was paid in lieu of notice.

Claimant appeals against dismissal

499. On 26 January 2018 the claimant lodged his appeal against his dismissal.

500. Mr Keane was appointed to hear the appeal. The claimant's request to have the hearing after 10 February as he was awaiting information from a subject access request was granted.

501. On 9 February 2018 the claimant sent Mr Keane historic emails between the claimant and Ms Lau. He stated that he was submitting the evidence as he alleged he had been the victim of sexual harassment from Ms Lau following by a "smear campaign characterised by multiple malicious and uncorroborated accusations". He stated that he believed the emails showed evidence of a working relationship that was respectful, encouraging, supportive and humorous. He suggested that the emails provided clear evidence that Ms Lau gave false evidence.

502. On 13 February 2018 the claimant sent an email making some corrections to his appeal document to Mr Keane. On that date the claimant also sent further documents to Mr Keane regarding his working relationship with Ms Lau and on 14 February 2018 the claimant sent his "final submission" to Mr Keane which runs to around 26 pages. He argued that there was no evidence that Ms Lau's evidence should be have been preferred to his evidence. He also explained why he used the word "enemy". His submission refers to case law and excerpts from statute and guidance. He argued that he should have received the benefit of the doubt given the lack of independent witnesses.

503. He also sent Mr Keane a copy of the Equality and Human Rights Commission Code of Practice (referring to the foreword, purpose, human rights and chapters 2,3,5,6,7 19 and appendix 1). He also included the occupational

health report, an email from Ms Lau of 12 June 2017 and an email from Ms Robson to Ms Cook which was copied to Ms Paton-Baines.

Appeal hearing

504. Mr Keane conducted the appeal hearing with the claimant on 14 February 2018. The hearing lasted for almost 2.5 hours.

505. The purpose of the hearing was to allow the claimant to explain why the decision was unreasonable and to allow Mr Keane to consider it. He said the hearing was not a rehearing of the evidence but it would consider all the points the claimant raised. The hearing was wide ranging and detailed. Mr Keane went through each of the points the claimant had raised. The claimant asserted that he had been the victim of sexual harassment.

506. Mr Keane noted that the claimant had received an email from Ms Lau shortly following the incident in the PA room in which Ms Lau had stated that she was upset. He asked whether the claimant asked why she was so upset and he said did that he did not. He had tried to have a chat with her the next day but she did not want to talk. Mr Keane noted that the claimant received an email "out the blue" from Ms Lau saying she's upset but he didn't seem surprised. The claimant said he was upset. He was asked whether it would have been reasonable for him to have asked why she was upset and the claimant explained that a manager should have intervened earlier.

507. The claimant accepted that Mr Hunt had gone through the list of concerns Ms Lau had set out in her email but he said he had done so very quickly and did not have time to understand and there were no witnesses to prove what Ms Lau had said. The claimant argued that Ms Lau was not telling the truth.

508. The claimant said that the claimant had spoken to Ms Lau in the PA room and yet said she was nervous. He noted she said she felt trapped, wary and nervous of the claimant in a small room and yet she asked him about "dirty dreams". Mr Keane noted that the comment was not directed at the claimant.

509. The claimant also denied that he had said anything about maternity when giving his interpretation of Ms Lau's dream about missing exams. The claimant said that his mind and heart were racing and he felt unwell and had to get out the room. The claimant said that he left the room first.

510. Mr Keane noted that in his statement the claimant had said that there was a breakdown of trust from his perspective, evidenced by what Ms C Robson had said in an email about the claimant being "the problem". The claimant stated that it was profoundly wrong to say to a senior manager that a person is a problem. Mr Keane explained that Ms Robson said "the problem" as in the centre of the current issue. She did not say that the claimant was "a problem".

511. The claimant also stated that he had a problem with Mr Harbertson, that he was bullying him and that was why he had a warning. The claimant also said

that he was profoundly ill when he sent the email on 30 June albeit he was still at work. Mr Keane noted that the claimant had stated in the email that he had reflected on things.

512. Mr Keane also noted that the grievance the claimant had raised had been passed to him. Ms Frankland had conducted the investigation but given he had left the organisation by the time she concluded matters, her findings were held for any possible appeal. The claimant was given her report.

513. In passing we note that the claimant made no complaint or criticism about that grievance investigation (or outcome).

514. The claimant was of the view that it was sexual harassment to ask if men have dirty dreams and not asking Ms Lau about that was shocking.

515. Mr Keane explained that each of the claimant's allegations were put to Ms Lau and she denied them.

516. Mr Keane asked the claimant why he went into Ms Lau's room the day after the incident if he was upset the day before. He said that was not a risky thing to do as the door was open and at no point did she say he made her feel uncomfortable.

517. Mr Keane then noted that the claimant was arguing his final written warning was manifestly inappropriate but had not appealed against it. The claimant said that he felt the process was unfair. He said he felt that he was the person being harassed, Mr Keane explained what the appeal process was for and the claimant said he did not have faith in the system. Mr Keane explained that this left the claimant with a final written warning which would be taken into account in any subsequent misconduct.

518. The issue as to the failure to adjourn the 28 December hearing was also discussed. The claimant was of the view that the policy said the hearing should have been relisted in 5 working days. He was asked why he left his request until the day before the hearing and he said he was waiting to see if he was well enough to attend. Mr Keane noted that the claimant had the opportunity to present evidence.

519. The claimant also complained that Ms Telfer reached her decision on the balance of probability but that was not proof. He argued that if someone is accused of doing something but they say they did not do it, evidence is needed to arrive at one side or another. The claimant was asked whether or not he was puzzled about what upset Ms Lau when she received his email. He said he did not ask her. The claimant he wanted to tell her about how he was upset. He argued that she contradicts herself by saying she challenged the claimant in the past and yet did not feel comfortable challenging him.

520. Mr Keane also pointed out that Ms Lau told him that he had offended her but the claimant waited a week to reply.

521. The claimant was asked if he had anything else he wanted considered. He argued that when unwanted sexual attention is introduced that was harassment which is what he said mentioning dirty dreams was. He argued this represented "a table of provocation". If she felt trapped why would she talk with the claimant, he asked. He also noted that Mr Hunt did not give reasons for coming to his conclusions. He said her evidence was unreliable and inconsistent and had untruthful statements.

522. The claimant stated that Mr Hunt did not conduct an investigation; it was a therapy session. She was given the chance to embellish her evidence and "she kills her own credibility and evidence". He argued that the investigation should have found there was some form of conflict and seek mediation.

523. The claimant also said that it was inappropriate for Ms Lau to refer to Ms Paton-Baines and "the whole point of the word enemy is that is what Ms Lau used about forgiveness."

524. Mr Keane asked the claimant what specifically does he say his disability causes and he said "all of it". He was asked what it was that his disability caused him to do and he said he felt threatened by it and uncomfortable about her behaviours and that his anxiety caused him to have a panic attack.

Appeal outcome

525. Mr Keane considered the papers the claimant had lodged and his oral submissions and on 21 February 2018 issued his outcome.

526. Mr Keane dealt with the evidence that had been presented. He noted that the claimant had sought to rely on evidence that he said showed there was a good relationship with Ms Lau and that she had instigated conversations with the claimant, including the one about dreams that brought matters to a head. He said the claimant thought this contradicted a number of comments Ms Lau made in her interview with Mr Hunt, particularly with regard to being nervous around the claimant.

527. Mr Keane noted that many colleagues do appear to have a healthy and good natured working relationship but Ms Lau had made it clear that she and the claimant had "had a laugh". That did not mean that she was always comfortable around the claimant and the evidence the claimant had presented does not necessarily contradict Ms Lau's view that at times the claimant's comments overstepped the mark.

528. Mr Keane also dealt with the argument that the process was unfair and inconsistent. One of the key points of the claimant's appeal was that he alleged neither Mr Hunt nor Ms Telfer questioned the allegations made by Ms Lau and as such they had no reasonable grounds to believe her statements over the claimant's and that the claimant's statement that he was subject to unwanted and uninvited comments of a sexual nature were disregarded.

529. Mr Keane stated that in the claimant's interview with Mr Hunt he did not overtly accuse Ms Lau of anything, albeit he did state that she commented she did not have dirty dreams and some men did. The claimant accepted not reporting matters to a manager. Mr Keane also pointed out that in his submission to Ms Telfer on 3 January he claimed there were inconsistencies in Ms Lau's statement but did not properly demonstrate any such inconsistences.

530. While the claimant alleged sexual harassment in an email of 12 July 2017 it was not until his separate grievance against Ms Lau on 12 December that the claimant began to specify allegations of sexual harassment. By the time his grievance was investigated he had been dismissed.

531. Mr Keane also considered the argument that the claimant had been unfairly treated by not adjourning the 28 December hearing. Mr Keane referred to the policy which stated that occasionally the meeting should be rearranged due to unforeseen circumstances and generally within 5 days but there were no unforeseen circumstances in this case. The claimant had emailed Ms Telfer the day before the hearing saying he was not going to attend and that he would be taking annual leave once the sick note expired such that he would not be available until 26 January. Mr Keane noted that the claimant had already notified managers through a Doctor's note of 14 September that although absent he would be able to attend an unrelated Employment Tribunal from mid-November. Given that fact and in the absence of any new medical information suggesting any worsening of the condition and having sought legal advice Ms Telfer could see no reason why the claimant could not attend.

532. He noted that despite dealing with the matter in his absence she did arrange a subsequent date of 3 January 2018 to allow the claimant to provide further evidence or mitigation before deciding on any sanction. The claimant had attended that meeting by telephone and submitted written evidence which Ms Telfer had considered.

533. Mr Keane also dealt with the argument that the claimant's disability had not been taken into account. Mr Keane pointed out that some adjournments had been granted and although the 28 December meeting had not been adjourned, Ms Telfer felt she had good grounds for continuing and made reasonable adjustments for the claimant to provide any further evidence or mitigation she had not already seen.

534. It was noted that the claimant stated that it was his stress and anxiety that caused him to reply to Ms Lau in his email of 30 June in the way he did but there was no medical evidence provided in support of this to either Mr Hunt or Ms Telfer and none was provided during the appeal process.

535. The final ground of appeal was that the decision to dismiss was unreasonable because Mr Hunt could find no evidence that Ms Lau was telling the truth and that Ms Telfer had no reasonable reason for accepting the conclusions in his report. Mr Keane noted that others may well have questioned Ms Lau in a different manner or been more pressing about what particularly upset her once the discussion in the PA room turned to missed opportunities in life. Mr

Hunt did, however, have her witness statement in front of him where Ms Lau lists examples the claimant gave of interpretations of the missed exam dream (which included missing an important deadline, career ladder, stuck, bitter and twisted and maternity). That was not lost to him as he questioned the claimant about these matters including the sensitive maternity issue.

536. While Mr Keane appreciated that the claimant denied saying "maternity", his alternative of a missed exam did not make sense given the discussion was about interpreting a dream about that very thing. Mr Hunt noted that his intention was to clarify the allegations Ms Lau had made and her impact and he added that she answered his questions quickly and clearly which Mr Keane understood to mean he found her a credible witness.

537. Mr Keane noted that the claimant argued the final written warning was manifestly inappropriate but as it had not been appealed, Ms Telfer had to take it into account.

538. Mr Keane noted that the claimant had lodged a grievance against Ms Lau on 12 December alleging sexual harassment and bullying. That had been investigated by Ms Frankland who found that the grievance was a direct response to the allegations made by Ms Lau which led to his dismissal. She found no case to answer. As the claimant had left the organisation by the time the report had been concluded it was decided to pass the report to the appeal manager to be dealt with at the same time. The report was included with the appeal outcome letter.

539. Mr Keane considered the documentation and agreed with Ms Frankland that none of the allegations made by the claimant was raised at the time and appeared to Mr Keane to "represent a retaliatory strike against someone who had raised concerns about you."

540. In summary, he concluded that the evidence relied upon by the claimant did not show that Ms Lau must have fabricated her allegations or her genuine sense of upset. Mr Keane said he found what the claimant said contradictory since he had argued that there was a cordial working relationship with Ms Lau not being troubled and yet he was arguing at the same time that during all this the claimant was anxious and concerned by her behaviour. The emails did not show that either.

541. Mr Keane was satisfied that due processes were carried out correctly. He was satisfied that Ms Telfer's findings were reasonable, namely that the claimant had committed serious misconduct as a result of his comments and behaviour on 22 June 2017, his comments previously to Ms Lau and as a result of his comment about Ms Paton-Baines in the email of 30 June 2017.

542. If the claimant wanted to raise concerns about Ms Lau there were processes for doing so and he did not do so until 12 December 2017, months after the alleged incidents took place.

543. Mr Keane said that the organisation had a duty to deal with matters as quickly as can reasonably be done and that it is incumbent on persons involved in a disciplinary matter to cooperate with the process. The claimant's position was reasonably accommodated and it was not unreasonable not to adjourn the meeting.

544. The claimant's disability was taken into consideration. Mr Hunt allowed adjournments and Ms Telfer had not received any further medical evidence to suggest the claimant could not attend the 28 December meeting. Mr Keane was not convinced by the claimant's description of the relationship between his disability and the email the claimant had sent to Ms Lau about Ms Paton-Baines.

545. He noted that the claimant seemed to suggest he would not have sent it and probably not have used the word "enemy" to describe Ms Paton-Baines if he had not been suffering from his disability. Mr Keane noted that nearly a week had passed before the claimant responded and he had been attending the office in the usual way with no record of the claimant being ill. There was no evidence to suggest that his disability was in any way connected to sending the email.

546. Mr Keane noted that dismissal is a step that needs serious consideration. Ms Lau's allegations by themselves may not have justified dismissal but the claimant had an extant final written warning for misconduct arising from the claimant's behaviour towards another individual.

547. In light of all the circumstances, Mr Hunt had two key people before him. One was Ms Lau, an individual who with some reluctance had raised grievances against a fellow worker. The other was the claimant, whose main defence was that the first individual had done this out of malice and to protect themselves from possible disciplinary proceedings because of their actions to the claimant.

548. From his report it was clear that Mr Hunt was convinced that Ms Lau was genuinely upset and he could not find anything in the claimant's evidence to suggest he was the victim and that any actions were as a result of the treatment the claimant received from Ms Lau. Mr Keane did not think it unreasonable to conclude on the balance of probabilities that Ms Lau was telling the truth.

549. Mr Keane noted that Mr Hunt then went on to find that in relation to referring to one of his managers as the enemy the claimant had further breached the code of conduct.

550. Similarly, when Ms Telfer came to hear the disciplinary hearing, she had no further compelling evidence from the claimant to reasonably allow her to ignore Mr Hunt's recommendations. It was her job to decide upon a reasonable and proportionate sanction. Given there was already a final written warning in place which resulted from actions by the claimant of threatening behaviour, those were very serious and could have resulted in dismissal at the time.

551. Mr Keane noted that the point of a final warning is that it has to be seen as a very serious sanction and one which if triggered by further misconduct can

result in dismissal. Ms Telfer was acting within the policy to deem dismissal as reasonable having found further misconduct on the claimant's behaviour.

552. Mr Keane noted that much of the claimant's argument at the appeal was inconsistent and contradictory. For example, the claimant had claimed Ms Lau was sexually harassing him and had done so over a period of time but this had never been mentioned until Ms Lau raised her concerns. There had never been any outward signs the claimant was suffering this problem. For a week following Ms Lau's email to the claimant he continued as if nothing had happened.

553. The claimant had also stated that he had a panic attack on 22 June when Ms Lau mentioned dirty dreams and yet he had continued the conversation including how he might interpret a dream she had.

554. In addition, the claimant claimed that his anxiety led to his writing the email of 30 June but on other occasions appeared to defend his response as reasonable. Mr Keane stated that he struggled to understand why having received an email from a colleague pointing out that he had upset her, he did not simply ask her what he had done. That would be a reasonable reaction from someone who was genuinely puzzled about how the upset had arisen. On the other hand, someone who knew they had caused upset might react by going on the attack.

555. Mr Keane stated that he believed Ms Lau accepted that what she had done was foolish but from what we know about what followed, he did not believe that the claimant had been thrown into panic. He did not accept that from what the claimant showed in email exchanges Ms Lau's action was another example of alleged sexism to which she was subjecting the claimant.

556. Mr Keane concluded that the disciplinary process was conducted according to the relevant policies and that there was adequate and appropriate opportunity for the claimant to attend and challenge the findings and allegations. He was satisfied that Ms Telfer made an appropriate finding and that dismissal was appropriate given the final written warning. There was no evidence to suggest that the decision that was taken was unreasonable and so the appeal was unsuccessful.

Third Tribunal claim

557. On 22 February 2018 ACAS receive the early conciliation notification R121280/18/24 and issue the certificate on 9 March 2018. The third Tribunal claim is received on 27 March 2018 and deals with the issues 27 to 57.

Law

Jurisdiction

558. The complaints of disability discrimination were brought under the Equality Act 2010. By section 109(1) an employer is liable for the actions of its employees in the course of employment.

Burden of proof

559. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides as follows:

"(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."

560. The section goes on to make it clear that a reference to the Court includes an Employment Tribunal.

561. It is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

562. In **Hewage v Grampian Health Board** 2012 IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in **Igen Limited v Wong** 2005 ICR 931 and was supplemented in **Madarassy v Nomura International plc** 2007 ICR 867. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

563. With regard to the burden of proof in reasonable adjustment cases, the Employment Appeal Tribunal in **Project Management Institute v Latif** 2007 IRLR 579 at paragraph 54 said:

"…the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made*."*

564. In this case the Tribunal has been able to make positive findings of fact without resort to the burden of proof provisions.

Time limits

565. The time limit for Equality Act claims appears in section 123 as follows:

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

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

(b) such other period as the Employment Tribunal thinks just and equitable …

(2) …

(3) For the purposes of this section –

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

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

566. A continuing course of conduct might amount to conduct extending over a period, in which case time runs from the last act in question. The case law on time limits to which we had regard included **Hendricks –v- Commissioner of Police of the Metropolis** 2003 IRLR 96 which deals with circumstances in which there will be an act extending over a period. In dealing with a case of alleged race and sex discrimination over a period, Mummery LJ said this at paragraph 52:

"The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of "an act extending over a period." I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a "policy" could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."

567. The focus in this area is on the substance of the complaints in question — as opposed to the existence of a policy or regime — to determine whether they can be said to be part of one continuing act by the employer.

568. **Robinson v Surrey** 2015 UKEAT 311 is authority for the proposition that separate types of discrimination claims can potentially be considered together as constituting conduct extending over a time.

569. In **Barclays v Kapur** 1991 ICR 208 the then House of Lords held that a discriminatory practice can extend over a period. The key issue is to distinguish

between a continuing act and an act with continuing consequences. The Court held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time

570. Since 6 May 2014, anyone wishing to present a claim to the Tribunal must first contact ACAS so that attempts may be made to settle the potential claim, (s18A of the Employment Tribunals Act 1996). In doing so, time stops running for the purposes of calculating time limits within which proceedings must be issued, from, (and including) the date the matter is referred to ACAS to, (and including) the date a certificate issued by ACAS to the effect that settlement was not possible was received, (or was deemed to have been received) by the claimant. Further, (and sequentially) if the certificate is received within one month of the time limit expiring, time expires one month after the date the claimant receives, (or is deemed to receive) the certificate. See section 140B of the Equality Act 2010 and **Luton Borough Council v Haque** 2018 UKEAT/0180/17.

Extending the time limit

571. Section 123 of the Equality Act 2010 requires that any complaint of discrimination within the Act must be brought within three months of the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable.

572. When considering whether it is just and equitable to hear a claim notwithstanding that it has not been brought within the requisite three month time period, the Employment Appeal Tribunal has said in the case of **Chohan v Derby Law Centre** 2004 IRLR 685 that a Tribunal should have regard to the Limitation Act 1980 checklist as modified in the case of **British Coal Corporation v Keeble** 1997 IRLR 336 which is as follows:

(a) The Tribunal should have regard to the prejudice to each party.
(b) The Tribunal should have regard to all the circumstances of the case which would include:
    (1) Length and reason for any delay
    (2) The extent to which cogency of evidence is likely to be affected
    (3) The cooperation of the respondent in the provision of information requested
    (4) The promptness with which the claimant acted once he knew of facts giving rise to the cause of action
    (5) Steps taken by the claimant to obtain advice once he knew of the possibility of taking action.

573. In **Abertawe v Morgan** 2018 IRLR 1050 the Court of Appeal clarified that there was no requirement to apply this or any other check list under the wide discretion afforded to Tribunals by section 123(1), but that it was often useful to do so. The only requirement is not to leave a significant factor out of account.

Further, there is no requirement that the Tribunal must be satisfied that there was a good reason for any delay; the absence of a reason or the nature of the reason are factors to take into account.

574. In the case of **Robertson v Bexley Community Services** 2003 IRLR 434 the Court of Appeal stated that time limits are exercised strictly in employment law and there is no presumption, when exercising discretion on the just and equitable question, that time should be extended. Nevertheless, this is a matter which is in the Tribunal's discretion.

575. That has to be tempered with the comments of the Court of Appeal in **Chief Constable of Lincolnshire v Caston** 2010 IRLR 327 where it was observed that although time limits are to be enforced strictly, Tribunals have wide discretion.

576. Finally we have also taken into account the judgment of Underhill LJ in **Lowri Beck Services v Brophy** 2019 EWCA Civ 2490 and in particular at paragraph 14. Ultimately the Tribunal requires to make a judicial assessment from all the facts to determine whether to allow the claims to proceed.

Direct discrimination

577. Discrimination is defined in section 13(1) as follows: "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."

578. The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies: "On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case."

579. The effect of section 23 as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person.

580. Further, as the Employment Appeal Tribunal and appellate courts have emphasised in a number of cases, including **Amnesty International v Ahmed** 2009 IRLR 884, in most cases where the conduct in question is not overtly related to [the protected characteristic], the real question is the "reason why" the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator. That is what the Tribunal has been able to do in this case.

581. The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In **Amnesty International v Ahmed** 2009 IRLR 884 the Employment Appeal Tribunal recognised two different approaches from two (then) House of Lords authorities - (i) in **James v Eastleigh Borough Council** 1990 IRLR 288 and (ii) in **Nagaragan v London Regional Transport** 1999 IRLR 572. In some cases, such as **James**, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such as **Nagaragan,** the act complained of is not discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in **R (on the application of E) v Governing Body of the Jewish Free School and another** 2009 UKSC 15**.** The burden of establishing less favourable treatment is on the claimant.

582. The Tribunal should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions) – as explained in the Court of Appeal case of **Anya v University of Oxford** 2001 IRLR 377.

583. In **Glasgow City Council v Zafar** 1998 IRLR 36**,** also a (then) House of Lords case, it was held that it is not enough for the claimant to point to unreasonable behaviour. She must show less favourable treatment, one of whose effective causes was the protected characteristic relied on.

584. In **Shamoon v Chief Constable of the RUC** 2003 IRLR 285, a (then) House of Lords authority, Lord Nichols said that a Tribunal may sometimes be able to avoid arid and confusing debate about the identification of the appropriate comparator by concentrating primarily on why the complainant was treated as she was, and leave the less favourable treatment issue until after they have decided what treatment was afforded. Was it on the prescribed ground or was it for some other reason? If the former, there would usually be no difficulty in deciding whether the treatment afforded the claimant on the prescribed ground was less favourable than afforded to another.

585. It is also important to note that the treatment would be “because of the protected characteristic” if it was “a substantial or effective though not necessarily the sole or intended reason for the treatment” (**R v Commission for Racial Equality** 1984 IRLR 230).

Harassment

586. In terms of section 26 of the Equality Act 2010:

(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and 25
(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."

587. Section 26(4) of the Act provides that:

"(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;
(c) the other circumstances of the case;
(d) whether it is reasonable for the conduct to have that effect."

588. The terms of the statute are reasonably clear, but guidance was given by the Court of Appeal in **Pemberton v Inwood** 2018 IRLR 542 in which the following was stated by Lord Justice Underhill:

"In order to decide whether any conduct falling within sub-paragraph 10 (1)(a) of section 26 Equality Act 2010 has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))."

589. The Equality and Human Rights Commission's Code of Practice states (at paragraph 7.18) that in deciding whether or not conduct has the relevant effects account must be taken of the claimant's perception and personal circumstances (which includes their mental health and the environment) and whether it is reasonable for conduct to have that effect. In assessing reasonableness an objective test must be applied. Thus something is not likely to be considered to be reasonable if a claimant is hypersensitive or other people are unlikely to be offended.

590. The Code also states (at paragraph 7.19) that where the employer is a public authority, and the alleged harasser is exercising their convention rights (as protected by the Human Rights Act 1998), such as the freedom of thought, conscience or religion or freedom of speech, these may need to be taken into account when considering all the circumstances of the case.

591. The question of whether the conduct in question "relates to" the protected characteristic requires a consideration of the mental processes of the putative harasser (**GMB v Henderson** 2017 IRLR 340) bearing in mind that there should be an intense focus on the context in which the words or behaviour took place (see **Bakkali v Greater Manchester** 2018 IRLR 906).

592. Further as Underhill LJ stated above when deciding whether the conduct has the relevant effects (of violating the claimant's dignity or creating the relevant environment) the claimant's perception and all the circumstances must be taken

into account and whether it is reasonable for the conduct to have the effect (**Lindsay v LSE** 2014 IRLR 218). Elias LJ in **Land Registry v Grant** 2011 IRLR 748 focused on the words "intimidating, hostile, degrading, humiliating and offensive" and said "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upset being caught".

Discrimination arising from disability

593. Section 15 of the Act reads as follows:-

"(1) a person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if (A) shows that (A) did not know, and could not reasonably have been expected to know, that (B) had the disability".

594. Paragraph 5.6 of the Equality and Human Rights Commission: Equality Act 2010 Code of Practice provides that when considering discrimination arising from disability there is no need to compare a disabled person's treatment with than of another person. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability.

595. In order for the claimant to succeed in his claims under section 15, the following must be made out:

(a) there must be unfavourable treatment;

(b) there must be something that arises in consequence of the claimant's disability;

(c) the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability;

(d) the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim

596. Useful guidance on the proper approach was provided by Mrs Justice Simler in the well-known case of **Pnaiser v NHS England** 2016 IRLR 170:

"A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises. The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the

conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it."

597. Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and the respondent's motive in acting as he or she did is simply irrelevant.

598. There are 2 causation issues. Firstly, the unfavourable treatment must be "because of something" which gives rise to the same considerations as in direct discrimination with the focus on the alleged discriminator's reasons for the treatment (**Dunn v Secretary of State** 2019 IRLR 298). The Tribunal must identify what the reason was, the reason being a substantial or effective reason, not necessarily the sole or intended reason.

599. Secondly the "something" must more than trivially influence the treatment but it need not be the sole or principal cause (**Hall v Chief Constable** 2015 IRLR 893 and **Pnaiser** above). It is enough if the unfavourable treatment is the cause of the something (irrespective of whether the respondent knew the something arose as a consequence of the disability – **City of York v Grosset** 2018 EWCA Civ 1105, "Grosset")). This is a matter of objective fact decided in light of the evidence (**Sheikholeslami v University of Edinburgh** 2018 IRLR 1090 and **Risby v London Borough of Waltham** UKEAT/0318/15/DM, "Risby")) and there may be a number of links in the chain and more than one relevant consequence may need consideration.

600. As to justification, in paragraph 4.27 the Code considers the phrase "a proportionate means of achieving a legitimate aim" (albeit in the context of justification of indirect discrimination) and suggested that the question should be approached in two stages:-

- is the aim legal and non-discriminatory, and one that represents a real, objective consideration?
- if so, is the means of achieving it proportionate – that is, appropriate and necessary in all the circumstances?

601. As to that second question, the Code goes on in paragraphs 4.30 – 4.32 to explain that this involves a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts. It goes on to say the following at paragraph 4.31:-

"although not defined by the Act, the term "proportionate" is taken from EU directives and its meaning has been clarified by decisions of the CJEU (formerly the ECJ). EU law views treatment as proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. But "necessary" does not

mean that the [unfavourable treatment] is the only possible way of achieving a legitimate aim; it is sufficient that the same aim could not be achieved by less discriminatory means."

602. The Code contains some provisions of relevance to the question of justification. Paragraph 5.2.1 suggests that if a respondent has failed to make a reasonable adjustment it will be very difficult for it to show that its unfavourable treatment of the claimant is justified. The onus is on the respondent to establish justification.

603. As to that second question, the Code goes on in paragraphs 4.30 – 4.32 to explain that this involves a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts. It goes on to say the following at paragraph 4.31:-

"although not defined by the Act, the term "proportionate" is taken from EU directives and its meaning has been clarified by decisions of the CJEU (formerly the ECJ). EU law views treatment as proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. But "necessary" does not mean that the [unfavourable treatment] is the only possible way of achieving a legitimate aim; it is sufficient that the same aim could not be achieved by less discriminatory means."

604. Also of note is that in paragraph 19.9 of the Code it is made clear that: "where an employer is considering the dismissal of a disabled worker for a reason relating to that worker's capability or their conduct, they must consider whether any reasonable adjustments need to be made to the performance management or dismissal process which would help improve the performance of the worker or whether they could transfer the worker to a suitable alternative role".

605. The Code at paragraph 4.26 states that "it is for the employer to justify the provision, criterion or practice. So it is up to the employer to produce evidence to support their assertion that it is justified. Generalisations will not be sufficient to provide justification. It is not necessary for that justification to have been fully set out at the time the provision ration or practice was applied. If challenged, the employer can set out the justification to the Employment Tribunal."

606. In **Chief Constable v Homer** 2012 ICR 704 Baroness Hale stated that to be proportionate a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so. She approved earlier authorities which emphasised the objective must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. It is necessary to weigh the need against the seriousness of the detriment.

607. The question is whether the action is, objectively assessed, a proportionate means to achieve a legitimate end. The employer has to show (and the onus is on the employer to show) that the treatment is a proportionate means of achieving a legitimate aim. The Tribunal can take account of the reasonable needs of the respondent's business but the Tribunal must make its own judgment

as to whether the measure is reasonably necessary. There is no room for the range of reasonable response test.

608. The Tribunal is required to critically evaluate, in other words intensely analyse, the justification set out by the employer. The assessment is at the time the measure is applied and on the basis of information known at the time (even if the employer did not specifically advert to the justification position at that point). Flaws in the employer's decision-making process are irrelevant since what matters is the outcome and now how the decision is made.

609. There must firstly be a legitimate aim being pursued (which corresponds to a real need of the respondent), the measure must be capable of achieving that aim (ie it needs to be appropriate and reasonably necessary to achieve the aim and actually contribute to pursuit of the aim) and finally it must be proportionate. The discriminatory effect needs to be balanced against the legitimate aim considering the qualitative and quantitative effect and whether any lesser form of action could achieve the legitimate aim.

Reasonable Adjustments

610. Section 39(5) of the Equality Act 2010 provides that a duty to make reasonable adjustments applies to an employer. Further provisions about that duty appear in Section 20, Section 21 and Schedule 8. The relevance of this duty to dismissals is illustrated by the decision of the Employment Appeal Tribunal in **Fareham College Corporation –v- Walters** 2009 IRLR 991 where the Employment Appeal Tribunal made it clear that if a dismissal and a failure to make reasonable adjustments are inextricably linked, dismissal can itself be a breach of the duty to make reasonable adjustments.

611. The duty does not apply if the employer did not know, and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the disadvantage in question by the PCP (Schedule 8 paragraph 20).

612. That duty appears in Section 20 as having three requirements, and the requirement of relevance in this case is the first requirement in Section 20(3):-

"the first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage".

613. The importance of a Tribunal going through each of the constituent parts of that provision was emphasised by the Employment Appeal Tribunal in **Environment Agency –v- Rowan** 2008 ICR 218 and reinforced in **The Royal Bank of Scotland –v- Ashton** 2011 ICR 632.

614. As to whether a "provision, criterion or practice" ("PCP") can be identified, the Commission Code of practice paragraph 6.10 says the phrase is not defined

by the Act but "should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions". The question of what will amount to a PCP was considered by the Employment Appeal Tribunal in October 2012 in **Nottingham City Transport Limited –v- Harvey** UKEAT/0032/12 in which the President Mr Justice Langstaff (dealing with a case under the Disability Discrimination Act 1995 and the Disability Rights Commission's Code of Practice from 2004, both now superseded by the provisions summarised above) said of the phrase "provision, criterion or practice" in paragraph 18:

"Although those words are to be construed liberally, bearing in mind that the purpose of the statute is to eliminate discrimination against those who suffer from a disability, absent provision or criterion there still has to be something that can qualify as a practice. "Practice" has something of the element of repetition about it. It is, if it relates to a procedure, something that is applicable to others than the person suffering the disability. Indeed, if that were not the case, it would be difficult to see where the disadvantage comes in, because disadvantage has to be by reference to a comparator, and the comparator must be someone to whom either in reality or in theory the alleged practice would also apply. These points are to be emphasised by the wording of the 1995 Act itself in its original form, where certain steps had been identified as falling within the scope to make reasonable adjustment, all of which, so far as practice might be concerned, would relate to matters of more general application than simply to the individual person concerned."

615. The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is one in respect of which the Code provides considerable assistance, not least the passages beginning at paragraph 6.23 onwards. A list of factors which might be taken into account appears at paragraph 6.28 and includes the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources and the type and size of the employer. Paragraph 6.29 makes clear that ultimately the test of the reasonableness of any step is an objective one depending on the circumstances of the case. Examples of reasonable adjustments in practice appear from paragraph 6.32 onwards

616. For the duty to arise, the employee must be subjected to "substantial disadvantage in comparison to a person who is not disabled" and with reference to whether a disadvantage resulting from a provision, criterion or practice is substantial, section 212(1) defines "substantial" as being "more than minor or trivial". The question is whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison to those who do not have the disability (**Sheikholeslami v University of Edinburgh,** above).

Victimisation

617. Victimisation in this context has a specific legal meaning defined by 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.

618. This provision does not require any form of comparison. If it is shown that a protected act has taken place and the claimant has been subjected to a detriment, it is essentially a question of the "reason why". In other words, the protected act must be an effective and substantial cause of the treatment, it does not need to be the principal cause.

619. Something amounts to a detriment if the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment – see paragraphs 31-37 of the speech of Lord Hope in **Shamoon v Chief Constable of the RUC** 2013 ICR 337.

Unfair dismissal

620. The Tribunal has to decide whether the employer had a reason for the dismissal which was one of the potentially fair reasons for dismissal within section 98(1) and (2) of the Employment Rights Act 1996 and whether it had a genuine belief in that reason. One of the potentially fair reasons is for matters relating to "conduct". The burden of proof here rests on the respondent who must persuade the Tribunal that it had a genuine belief that the employee committed the relevant misconduct and that belief was the reason for dismissal.

621. Once an employer has shown a potentially fair reason for dismissal within the meaning of section 98(2), the Tribunal must go on to decide whether the dismissal for that reason was fair or unfair which involves deciding whether the employer acted reasonably or unreasonably dismissing for the reason given in accordance with section 98(4).

622. Section 98(4) provides that the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer);

a) Depends on whether in the circumstances (including the size and administrative rescores of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

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

623. What a Tribunal must decide is not what it would have done but whether the employer acted reasonably; **Grundy (Teddington) Ltd v Willis HSBC Bank Plc (formerly Midland Bank plc) v Madden** 2000 ICR 1283.

624. Mr Justice Browne-Wilkinson in his judgement in **Iceland Frozen Foods Ltd v Jones** ICR 17, in the Employment Appeal Tribunal set out the law in term so the approach Tribunal must adopt as follows;

a. "The starting out should always be the words of section 98(4) themselves

b. In applying the section, a Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Tribunal) consider the dismissal to be fair

c. In judging the reasonableness of the employer's conduct a Tribunal must not substitute its decision as to what was the right course to adopt

d. In many (though not all) cases there is a band of reasonable responses to the employee's conduct which in which the employer acting reasonably may take one view, another quite reasonably take another.

e. The function of the Tribunal, as an industrial jury, is to determine whether in the circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which the reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair, it is falls outside the band it is unfair."

625. In terms of procedural fairness, the (then) House of Lords in **Polkey v AE Dayton Services Ltd** 1988 ICR 142 firmly establishes that procedural fairness is highly relevant to the reasonableness test under section 98(4). Where an employer fails to take appropriate procedural steps, the Tribunal is not permitted to ask in applying the reasonableness test whether it would have made any difference if the right procedure had been followed. If there is a failure to carry out a fair procedure, the dismissal will not be rendered fair because it did not affect the ultimate outcome; however, any compensation may be reduced. Lord Bridge set out in this case the procedural steps which an employer in the great majority of cases will be necessary for an employer to take to be considered to have acted reasonably in dismissing:

”in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation.”

626. Where the employer relies on conduct as the fair reason for dismissal, it is for the employer to show that misconduct was the reason for dismissal. According to the Employment Appeal Tribunal in **British Home Stores v Burchell** 1980 ICR 303 the employer must show:

(a) It believed the employee guilty of misconduct

(b) It had in mind reasonable grounds upon which to sustain that belief

(c) At the stage at which that belief was formed on those grounds it had carried out as much investigation into the matter as was reasonable in the circumstances.

627. The employer need not have conclusive evidence of misconduct but a genuine and reasonable belief, reasonably tested. The burden of proof is on the employer to show a fair reason but the second stage of reasonableness is a neutral burden. The Tribunal must be satisfied that the employer acted fairly and reasonably in all the circumstances in dismissing for that reason, taking account of the size and resources of the employer, equity and the substantial merits of the case.

628. In considering a claim for unfair dismissal by reason of conduct, the Tribunal is required to consider the terms of the ACAS Code of Practice on Disciplinary and Grievance matters. This sets out what a reasonable employer would normally do when considering dismissal by reason of conduct. This includes conducting a reasonable investigation, inviting the employee to a meeting, conducting a fair meeting, issuing an outcome letter and allowing an appeal. The claimant was directed to consider the Code in advance of the conclusion of the case.

629. The reasonableness of the decision to dismiss is scrutinised at the time of the final decision to dismiss – at the conclusion of the appeal process (**West Midland v Tipton** 1986 ICR 192).

630. The leading authority in relation to how previously issued final written warnings should be dealt with is found in the comments of then President Langstaff in the **Wincanton -v- Stone** 2013 IRLR 178. At paragraph 37 the court emphasised that the Tribunal should take into account the fact that a final written warning has been issued, and in particular not go behind a warning to take into account factual circumstances giving rise to the warning except in limited circumstances. It is worth quoting that paragraph from the judgment in full:

"We can summarise our view of the law as it stands, for the benefit of Tribunals who may later have to consider the relevance of an earlier warning. A Tribunal must always begin by remembering that it is considering a question of dismissal to which section 98, and in particular section 98(4), applies. Thus the focus, as we have indicated, is upon the reasonableness or otherwise of the employer's act in treating conduct as a reason for the dismissal. If a Tribunal is not satisfied that the first warning was issued for an oblique motive or was manifestly inappropriate or, put another way, was not issued in good faith nor with *prima facie* grounds for making it, then the earlier warning will be valid. If it is so satisfied, the earlier warning will not be valid and cannot and should not be relied upon subsequently. Where the earlier warning is valid, then:

(1) The Tribunal should take into account the fact of that warning.
(2) A Tribunal should take into account the fact of any proceedings that may affect the validity of that warning. That will usually be an internal appeal. This case is one in which the internal appeal procedures were exhausted, but an Employment Tribunal was to consider the underlying principles appropriate to the warning. An employer aware of the fact that the validity of a warning is being challenged in other proceedings may be expected to take account of that fact too, and a Tribunal is entitled to give that such weight as it sees appropriate.
(3) It will be going behind a warning to hold that it should not have been issued or issued, for instance, as a final written warning where some lesser category of warning would have been appropriate, unless the Tribunal is satisfied as to the invalidity of the warning.
(4) It is not to go behind a warning to take into account the factual circumstances giving rise to the warning. There may be a considerable difference between the circumstances giving rise to the first warning and those now being considered. Just as a degree of similarity will tend in favour of a more severe penalty, so a degree of dissimilarity may, in appropriate circumstances, tend the other way. There may be some particular feature related to the conduct or to the individual that may contextualise the earlier warning. An employer, and therefore Tribunal should be alert to give proper value to all those matters.
(5) Nor is it wrong for a Tribunal to take account of the employers' treatment of similar matters relating to others in the employer's employment, since the treatment of the employees concerned may show that a more serious or a less serious view has been taken by the employer since the warning was given of

circumstances of the sort giving rise to the warning, providing, of course, that was taken prior to the dismissal that falls for consideration.

(6) A Tribunal must always remember that it is the employer's act that is to be considered in the light of section 98(4) and that a final written warning always implies, subject only to the individual terms of a contract, that any misconduct of whatever nature will often and usually be met with dismissal, and it is likely to be by way of exception that that will not occur."

631. Where a claimant has been unfairly dismissed compensation is awarded by way of a basic award (calculated as per section 119 of the Employment Rights act 1996) and a compensatory award, per section 123 of the Employment Rights Act 1996 ("the 1996 Act"), being such amount as is just and equitable so far as attributable to action taken by the employer. A basic award can be reduced in terms of section 122 of the 1996 Act where the Tribunal considers that any conduct of the claimant before the dismissal was such that it is just and equitable to reduce the basic award. A compensatory award can be reduced in terms of section 123(6) where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant.

Submissions

632. Both parties had submitted lengthy and detailed written submissions. These are referred to where appropriate in our decision section below. We considered the written submissions together with the oral submissions that were presented on the final day of the hearing. We also considered the 109 page bundle of authorities provided by the respondents.

Respondents' agent's submissions

Time limit points

633. With regard to time limits, the first claim was raised on 3 January 2017 (which was before the final written warning was issued on 20 January 2017). On 24 May 2017 the claimant was granted permission to include the final written warning as an amendment to that claim.

634. With regard to the early conciliation certificate for the first claim, Day A (which is when conciliation was commenced) is 30 November 2016 and Day B is 3 January 2017. The respondent argued that applying the rules with regard to time limits and early conciliation, anything that occurred after 3 months before day A on 30 November 2016 is in time as early conciliation was commenced within 3 months of that date. This means that anything that occurred after 30 August 2016 is in time and anything before 30 August 2016 is out of time.

635. That means that the following claims are, on the face of it, out of time: the claims in respect of issues 1.5, 3.1 to 3.9, 5.1 to 5.43, 9.1 to 9.8, 12.1 to 12.4 and 13.1 to 13.8 (all inclusive)

636. The respondent argued that the complaints do not form part of series of acts extending over a period (a continuing act) and even if they were it is not just and equitable to hear the claims nonetheless.

637. A series of acts is something which is known when it is seen. While adjectives like practice or policy might be indicators, they are not determinative and it is up to the Tribunal to assess what is a continuing act from the facts.

638. The respondents' agent pointed to a number of factors that are inconsistent with the existence of a continuing act. The acts are plainly discrete events and are not part of a common theme or series. For example, the issues regarding the claimant and Mr Harris in 2016 and the disciplinary process are entirely separate and distinct in concept and character from the complaints of victimisation the claimant made against Mr Harbertson, such as in relation to instructions around a snooker cue and pedestal or supervision of a course. There is simply no relationship at all amongst these events to bring all disparate complaints together as a continuing act.

639. The respondents' agent also noted that there are completely different perpetrators in place. Those relied upon as agents of discrimination comprise Mr Harbertson, Ms Paton-Baines, Ms Robson, Ms Banks and Mr Harris. The claimant had sought to include Mr Harris personally but those claims were dismissed.

640. Further, if on the Tribunal's analysis of the facts, the incidents of discrimination as alleged by the claimant did not happen, they cannot be regarded as part of a continuing act.

641. With regard to discretion, the respondents' agent noted that the burden of proof is on the claimant to show facts and circumstances that persuade the Tribunal to exercise its discretion. There has been no evidence led by the claimant to show why it is just and equitable to hear the claims which are time barred.

642. There was no impediment which prevented the claimant from raising his claims sooner than he did. There is no evidence that at material time, the latter part of 2016 the claimant suffered any illness that affected his cognition, understanding, ability to express himself in writing or his ability to complete the online form.

643. The claimant does not say he was waiting for something to happen before submitting a complaint. He lodged his claim on 3 January and the final written warning was issued on 20 January so he could not have been waiting for the outcome of that process.

644. With regard to the second claim, the ET1 was lodged on 6 October 2017. Day A for the purposes of early conciliation is 21 September 2017 and Day B is 6 October 2017. Thus anything that occurred after 3 months before day A, namely anything after 21 June 2017 is in time and anything before that is, on the face of it, out of time.

645. With regard to the third claim, the ET1 was lodged on 27 March 2018. Day A is 22 February 2018 and Day B is 9 March 2018. Thus anything that occurred after 22 November 2017 is in time and anything before is out of time.

646. The respondents' agent indicated that the claims underpinning the following issues were therefore out of time: issues 19.1, 19.2, 22.4, 22.5, 24 (in respect of those issues imported from the direct discrimination issue at 22.4 and 22.5) and 43.1. Although this was not raised with the agent at the time, in fact the claims underlying issues 30.2, 30.4 and 43.2 to 43.11 are also out of time.

647. The respondents' agent reiterated his submissions in relation to time bar for the first claim. He argued those claims that are out of time in respect of the second and third claims are not part of a continuing act. They are discrete acts. There are separate people relied upon and there is no evidence showing why it is just and equitable to extend time.

Liability issues

648. Given the large amount of issues the respondents' agent indicated that this is time consuming and complicated.

649. Unfortunately the claimant chose to focus on the final written warning and his dismissal overlooking a very large number of claims that had been raised and which were subject to little scrutiny by the claimant despite the respondent's witnesses taking the time to consider. Years had been spent trying to focus the issues and identify and then present the facts.

650. Days of evidence were spent with the claimant being taken assiduously through every one of the issues he was pursuing. At various relevant points the claimant was asked if he wished to continue to pursue the issues, even though there was no obvious link with any protected characteristic or protected act. With a few limited exceptions, the claimant maintained his position.

651. The respondents' agent submitted that the claimant has shown that he is simply too quick to allege discrimination with no thought or consideration being given as to whether complaints can be made out despite the huge professional impact upon the individuals. The claimant was had been glib in his complaining of discrimination.

652. With regard to the allegation of sexual harassment against Ms Lau based on events of 22 June 2017, the claimant fairly put this point to the relevant witnesses. He put to Mr Hunt, Ms Telfer and Mr Keane, that what Ms Lau said to

him on 22 June was harassment. None of them could see how on any assessment what was said amounted to sexual harassment by law.

653. The fact the claimant is too quick to allege harassment is important because it casts doubt on whether there was unlawful discrimination and also pertains to the claimant's motive.

654. When it comes to the timing and manner of his complaints, they appear to be made to deflect attention from himself and obfuscate the issues about *his* conduct. The same thing happened time and time again. Thus when Mr Harbertson tries to manage the claimant's performance and communication issues, he is accused of discrimination. When Mr Harris, on mature reflection, considers what the claimant said to him and raises concerns, the claimant escalates and accesses the security officers of discrimination. When Ms Lau, on mature reflection, raises concerns about the claimant some time later he alleges she discriminated against him.

655. The difficulty is that at no juncture does he raise these issues before he himself is subject to proceedings or complaints. The allegations would have greater credence if there was some was history of him raising the concerns autonomously outside of context when his conduct was being scrutinised. That did not happen.

656. This behaviour of the claimant seriously damages his credibility and the claims he has raised.

657. The respondents' agent also noted that Mr Harbertson was medically unfit. The Tribunal has seen the medical certificate confirming his absence is medically related. Miss Paton-Baines gave live evidence and submitted a 30 page witness statement commenting directly on most of the issues involving Mr Harbertson and the claimant. She was not questioned about those issues.

658. The Tribunal has heard live evidence from the person alleged to have discriminated the claimant and can make findings of fact as to what actually happened.

659. The respondents' agent noted that his written submission explains why the Tribunal should find Ms Lau a credible witness. It was obvious from her evidence that she was telling the truth from her demeanour, responses and general presentation. That gave colour and context to Mr Hunt's point about the investigation process and why he chose to prefer Ms Lau's evidence to the claimant's. Mr Hunt believed Ms Lau and not the claimant because he knew from speaking to both individuals who was telling the truth. Ms Lau's presentation illustrates what Mr Hunt had said in his evidence. It is a slightly arid exercise to go through typed notes of a meeting to understand the impression he had which came from how the person presented.

660. What was striking about the claimant's challenge to Ms Lau's evidence was that one of the most horrendous allegations from the 22 June episode was the alleged use of "maternity" which gave rise to the obvious implication that she

had missed a deadline of maternity. That in itself could potentially justify dismissal and was itself a discriminatory comment. Despite the severity of the issue, the claimant did not put this issue to Ms Lau. His focus was where he was alleged to have been at the time of the discussion.

661. With regard to the failure by Ms Telfer to adjourn the hearing on 28 December, this should be viewed from two perspectives, in respect of unfair dismissal and reasonable adjustments.

662. With regard to unfair dismissal, the question is whether proceeding on 28 December was a decision that fell outside the range of reasonable responses (which applies to the decision to dismiss and procedure leading up to and taking the decision to dismiss). The second question is whether the dismissal was unfair since even if it was unreasonable, that does not mean the dismissal was unfair. The process needs to be considered in the round.

663. The claimant had the full opportunity to put his case to Mr Keane at the appeal hearing. Each issue the claimant raised on appeal was fully considered and rejected. He was even handed.

664. Ms Telfer looked at the policy and decided whether the circumstances were unforeseeable and justified which was how she read the policy. She reasonably concluded they were not unforeseeable nor justified in context.

665. A key point for Ms Telfer was that the claimant saw Mr Hunt on 8 December (a few weeks before) and acquitted himself well. He was still signed off sick then and there was no indication that in the intervening period between 8 and 28th December his condition had deteriorated or he was otherwise unfit to attend. She showed a healthy scepticism about his request which appeared to be an attempt to kick matters “into the long grass” given the claimant’s request to delay until February.

666. The claimant also asked to get documents but this was a disciplinary process that commenced on 7 July some 5.5 months prior to 28 December and at no point before 28 December did the claimant ask for specific documents. He did nothing in response to the invite to the hearing on 13 December.

667. The ACAS Code is guidance and while the Tribunal must have regard to it, the code does not bind an employer as each case depends on its own facts and merits. This was not a typical case and Ms Telfer gave reasons for not adjourning which were reasonable and fell within the range of reasonable responses.

668. With regard to the reasonable adjustment claim, the Tribunal was directed to **Rowan v Environment Agency** which emphasised the need to consider each part of the statutory provision. The respondents’ agent accepts there was a requirement to attend the hearing on 28 December but the claim fails on substantial disadvantage. **Latif** confirms that the claimant needs to prove (not just assert) substantial disadvantage. The burden is on the claimant. It cannot be assumed that he could not attend because of his disability as there was no

evidence to support that. There must be something more than just saying that was the position.

669. The facts are important. He attended a meeting with Mr Hunt a few weeks before and explained himself. There was literally no evidence to indicate his condition worsened and there was no evidence of a medical nature showing his condition was a block or impediment or obstacle to him attending on 28 December.

670. The only evidence the respondent had was to the contrary. The letter the claimant sent from his GP prior to the hearing said that he was fit to attend an Employment Tribunal. There is nothing more demanding than a Tribunal and if he was certified fit to attend Tribunal shortly before the disciplinary hearing the claimant really needed to provide cogent objective and ideally medical evidence showing why he could not attend on 28th December. There was no evidence as to why he could not attend.

671. The respondents' agent made the point that proving substantial disadvantage is not inferential; it cannot simply be assumed because the claimant says he was or would be disadvantaged. It is difficult to see how can asking the claimant to come on 28th December to a hearing put him at a substantial disadvantage compared to a non-disabled person.

672. Nothing at all was said between 13th and 26th December to suggest unfitness. It was left almost literally to the last moment. The facts allow a healthy scepticism about what was really happening when the claimant sent the email.

673. Further, the claimant did not just seek an adjournment because of his alleged health since he sought access to documents.

674. The section 15 claim gives rise to the question as to whether something arises in consequence of disability. **Grosset** and **Pnaiser** deal with these issues. The "something" must arise in consequence of disability and the treatment must be because of the "something". The test is whether the factor had a significant influence on the treatment. Motive is irrelevant.

675. The question in this regard is therefore whether the claimant's sending the email and choice of wording arose in consequence of his disability. **Grosset** informs the Tribunal as to the legal approach. The Court of Appeal notes there need be an immediate causative link (the something does not need to immediately flow from the disability) but there must be a link so it can be said to arise in consequence of the disability.

676. The respondents' agent argued that there needs to be evidence that in sending of and in choosing the content of the email, this was in some way a consequence of the claimant's disability.

677. The only link is the claimant saying to Ms Telfer and Mr Keane that there was a link. The claimant gave no explanation, no material or building blocks to show why he arrived at that conclusion; he states it blindly. The respondents'

agent notes that the burden is on the claimant to show a connection exists. There was no evidence.

678. On the contrary there are many reasons that show the reason was unconnected to any impairment. He begins the email by emphasising he took time to write it and reflect on content. It was written some time after the event.

679. There is also nothing in the email that gives any apparent credible basis for his suggesting that there is a link between his disability and the email. It was said for a purpose: to get him "off the hook".

680. The respondents' agent confirmed that knowledge of disability was not an issue and that Ms Telfer and Mr Keane knew the claimant was disabled at the relevant time.

681. With regard to knowledge of substantial disadvantage, the respondent could not have known about the substantial disadvantage.

682. The respondents' agent also noted that in the event that the section 15 claim was made out, it is argued that the treatment was justified, the legitimate aim being the need for adherence to consistent standards of behaviour. As Mr Keane said even if a person is disabled, they still need to conduct themselves properly.

Claimant's submissions

683. The claimant was given time to consider the submissions that had been presented orally. He already had time to consider the respondent's written submission.

684. When we resumed, the claimant agreed with regard to the respondents' agent's submissions on time limits. He also accepted the respondents' agent's list of the issues that were on the face of it out of time and that there was no evidence before the Tribunal to justify an extension of time. He declined to make any submission on the issue of time bar and asked the Tribunal to make its decision based on the information before it. He accepted there was no evidence before the Tribunal on this point and declined to make any submissions.

685. The claimant was asked whether or not he wished to withdraw any of the claims, given what he had conceded and the point made by the respondents' agent that the focus of the claimant's submissions had been in relation to the final written warning and dismissal. It was also noted that his written submissions had not address a very large number of his claims.

686. He indicated that he would consider matters and let the Tribunal know if he wished to withdraw any of his claims but at the moment we were to proceed to assume all his claims and issues were progressing. No such communication was received and we therefore consider all the claims. We asked what his submissions were in relation to the matters not contained in his oral or written

submissions and he said that the Tribunal was to assess his claims as against the evidence.

687. With regard to points made by the respondents' agent in submissions, in connection with substantial disadvantage the claimant pointed out that he was certified as sick. Further he said the respondent's policy says if an employee does not turn up to a hearing, it would be adjourned once, which is consistent with the ACAS code.

688. With regard to the questioning of Ms Lau, Ms Lau went through what was said. With regard to credibility she said the claimant had asked her about nicknames and she denied there were any. Despite that, the last document submitted had reference to a nickname she had used before the claimant joined.

689. The claimant explained that he found cross examination difficult but cathartic, especially with regard to Ms Lau. He pointed out that he put a number of the alleged comments to her which he said touched on credibility, particularly with regard to the character from the TV programme and issues about charisma.

690. The claimant alleged that while Mr Keane presented as reasonable, the claimant submitted that "beneath the surface he is hostile with prejudicial attitudes". The comment about a disability not being a "get out of jail free card" says it all about his cynicism in the claimant's submission.

691. With regard to seeking documents, the claimant noted that he had made a number of subject access requests. Ms L Robson had denied the claimant access to his work computer which he submitted he wanted to see what documents he had which might be of relevance.

692. The claimant said that he attended the meeting with Mr Hunt on 8 December because he thought it would be good for his health and there would be a few questions about the 22 June incident only. He assumed that whatever he was being accused me, it would be one person's word against another and that would be the end of it.

693. The claimant submitted that Mr Hunt's evidence spoke for itself. He said the only reasons he accepted Ms Lau's evidence in preference to the claimant's was that she answered "quickly and clearly" but he was unable to evidence this from the meeting notes. Moreover he was unable to show where the claimant did not give answers quickly and clearly which affected his credibility.

694. The claimant said it was hurtful to have been accused of those things which he considered were sprung on him. Having seen a documentary involving Harvey Weinstein with suggestions about blocking exits, the claimant felt worse.

695. With regard to the test for misconduct, there needs to be a reasonable investigation and reasonable grounds. An assertion about standard of proof is not enough. It is not credible for a woman who says she is nervous around a man and who feels trapped to make a quip about dirty dreams. That shows the opposite, that she is comfortable and good friends with the person.

696. The "equity" of the situation needs to be taken into account in assessing the dismissal. The claimant submitted that he put to various witnesses that he had been treated differently from other staff. Thus Ms C Robson used the word "problem", which means something harmful that needs to be eliminated, to describe the claimant. That suggested attribution. Reference to the claimant being called "strange" by Ms Lau. None of those issues were taken forward and yet his use of "enemy" was.

697. With regard to the other claims, he said that substantial disadvantage was that his illness related to anxiety. He was certified sick by his GP. The anxiety was linked to the email. He had no intention to designate anyone as his enemy. If the claimant had anxiety and panic attacks it is reasonable to make the connection that the person would feel threatened and have a disproportionate reaction. It was open to the employer to seek medical evidence to show a link if they wished.

698. The claimant also pointed out that there was no mention in the response form that it was not reasonable for the claimant to react to the claims being made by Ms Lau by raising claims himself. There is a subjective test with regard to harassment internally. The claimant submitted that what he suffered was clearly harassment.

699. The claimant pointed out that Ms Robson did not progress the claimant's complaints but did progress Ms Lau's. There was an antecedent protected act, his claims to the Tribunal which she mentioned in her April 10th email calling the claimant "the problem". Her acts and omissions were therefore related to the protected act.

700. The claimant confirmed that he had said all he wanted to say.

Decision and reasons

701. We note that the following issues were withdrawn by the claimant during the course of the hearing and the claims underlying said issues are accordingly dismissed: issues 3.1, 5.18, 5.27, 5.41, 5.53 to 5.58, 9.1 to 9.6, 9.9 and 9.10, 22.4 and 22.5, (inclusive).

702. Before moving to the decision, we note that the claimant's submissions were limited in scope to essentially the final written warning (which he argued was manifestly inappropriate) and the dismissal (which he argued was unfair and discriminatory). Regrettably there are no submissions on the very large number of other issues. The claimant wanted us to look at the evidence and make our decision.

703. We have looked at the facts which we found and applied the law. We have taken account of the parties' submissions in each of our decisions. With a view to being proportionate, reference is made to the submissions only where

necessary. We are very conscious that there are a large number of issues which is why we have gone through each one carefully and set out our view below. We have taken into account all the evidence that was led before us, both orally and in writing and focus on the matters required for a determination of the claims before us.

704. We turn now to the legal issues. The decision represents the unanimous view of the Tribunal following its detailed consideration of the evidence.

Time limits

705. We note that the parties had agreed the position in respect of time limits.

706. The first claim was raised on 3 January 2017 (with permission being given to the claimant on 24 May 2017 to include the final written warning that was issued on 20 January 2018 as an amendment to that claim).

707. For the purposes of time limits, Day A is 30 November 2016 and Day B is 3 January 2017. We note the parties' agreement that any act relied upon that occurred after 30 August 2016 is in time and anything before 30 August 2016 is out of time.

708. That means that the following claims are, on the face of it, out of time: the claims in respect of issues 1.5, 3.1 to 3.9, 5.1 to 5.43, 9.1 to 9.8, 12.1 to 12.4 and 13.1 to 13.8 (all inclusive)

709. Looking at the facts underlying the issues we conclude that they are discrete and separate acts and in no way could they be fairly described as conduct extending over a period. This was not a point that the claimant put to any of the witnesses.

710. The claims before the Tribunal are about individual acts of unfairness rather than any act that extends over a period of time. Looking at the issues underlying the claims in this regard, we note that the issues relate to separate and discrete acts/omissions and behaviours ranging from failing to obtain a witness statement, to objecting to phrases in emails to asking the claimant not to attend engagement sessions. The acts relied upon are acts and omissions of different people. The acts essentially amount to things with which the claimant was unhappy in the course of his employment which he believed was due to an unlawful action. There is no suggestion by the claimant that there is conduct extending over a period of time nor that they are connected in any way.

711. Taking a step back the claimant seems to believe that each of those who managed him had decided to discriminate against him or treat him unlawfully. Having examined the evidence, we can find no evidence of this at all. The claimant may have disliked what he was told and how he was managed, but that was not unlawful and his managers were carrying out their managerial functions. In no sense whatsoever was there conduct extending over a period. The claims comprise discrete and self-contained management acts about which

the claimant takes issue but are not connected in the sense set out by the authorities above to entitle them to be taken together.

712. We note that we did not find facts underlying the following issues or we found that the facts relied upon did not support the issues (such that the issues would be dismissed in any event): 1.1, 1.5, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, 5.1, 5.5, 5.6, 5.8, 5.9, 5.10, 5.11, 5.12, 5.14, 5.15, 5.16, 5.19, 5.21, 5.22, 5.23, 5.26, 5.28, 5.29, 5.30, 5.32, 5.35, 5.36, 5.38, 5.40, 5.42 and 5.43, 9.1, 9.2, 9.5, 9.6, 9.7, 9.8, 12.2, 12.3, 12.4, 13.1, 13.2, 13.4, 13.6, 13.7 and 13.8. As such these matters could not form part of conduct extending over a period. We find there is no conduct extending over a period in respect of the remaining facts.

713. In all the circumstances and having carefully considered each of the issues and claims made in the first claim, we find that the claims in respect of issues 1.5, 3.1 to 3.9, 5.1 to 5.43, 9.1 to 9.8, 12.1 to 12.4 and 13.1 to 13.8 (all inclusive) are standalone issues/claims and were raised outwith the statutory time limit. We looked at each of the issues individually and took a step back to see whether or not there was any fair connection that would entitle us to find that there was conduct extending over a period. We found no such evidence as the incidents were separate and discrete with different individuals involving separate management issues.

714. The claimant accepted that there was no evidence before us to show why it was just and equitable to allow the claims to proceed. The claimant was given the opportunity at submissions to explain the position but accepted there was no such evidence.

715. Despite the claimant's acceptance of the lack of evidence and the absence of any submissions on this point, we considered whether it was just and equitable to hear the claims although late. The absence of a good reason from the claimant by itself is not conclusive.

716. We appreciate that the claims include claims for discrimination and there is a societal aspect whereby it is important that such claims are not dismissed lightly. Equally there are time limits to follow and the claimant bears the onus of showing that it is just and equitable to allow claims to proceed where they were lodged late. The claimant was reminded of the onus in this regard on a number of occasions and that there was no presumption in favour of extending time.

717. We looked at the claims raised within the first claim individually and when they were lodged and considered the factors referred to in the authorities.

718. With regard to prejudice to each party, we balanced the fact that the claimant would be deprived of those claims being determined as against the prejudice to the respondent in having to respond to claims lodged late. This factor in our view supported the claimant's position and we placed it in the balance accordingly.

719. The delay varied between 10 months or so (with some of the out of time issues occurring in October 2015) to a few days (with some matters occurring in August 2016). We took account of the length of the delay including that the delay was in some cases relatively short. We also took account of the fact that the claimant was unable to provide any reason for it. The claimant was articulate and intelligent. While we note he was suffering from a mental impairment, we considered the circumstances carefully and the claimant was clearly capable of enforcing his rights with alacrity. There was no evidence to suggest the claimant was unaware of his rights, the Tribunal or remedies or time limits. There was also no evidence that suggested any impairment prevented the claimant from taking action within the statutory time limits. This factor supported the respondents' position.

720. As we heard evidence on all the issues, it could be said that the cogency of evidence was unlikely to be considerably adversely affected but there were a number of the issues in respect of which the delay had resulted in uncertainty.

721. We are not satisfied that the claimant acted promptly when he knew of facts giving rise to the cause of action. He was clearly aware of the issues and unhappy with the outcome but delayed raising proceedings. We heard no evidence as to any steps taken by the claimant to obtain advice once he knew of the possibility of taking action. This was a matter that supported the respondents' position.

722. We balanced all the relevant factors for each of the claims that were lodged late in exercising our discretion. We concluded that the claims were not raised within such other period we think just and equitable. The claimant could have raised the claims within time and there was no evidence we found to lead us to conclude the claims were raised within such period that was just and equitable. We accepted the respondents' agent's submission in this regard. It is not just and equitable to extend the time limit and the claims raised before 30 August 2016 are therefore dismissed.

723. We are not satisfied that there was any justifiable reason for the delay in bringing the claims. The claimant was an intelligent person who was very capable of enforcing his rights. We balanced the prejudice to the claimant if his claims were dismissed and take account of the fact that a fair trial of the issues is possible.

724. Applying the legal tests we find that the claims that were lodged outwith the statutory time limit (those raised before 30 August 2016) should be dismissed, the claimant not having satisfied us that the claims were raised within such period that is just and equitable.

725. With regard to the second claim, the ET1 was lodged on 6 October 2017. Day A is 21 September 2017 and Day B is 6 October 2017. Anything that occurred after 3 months before day A, namely anything after 21 June 2017 is in

time and anything before that is, on the face of it, out of time. We shall consider this along with the third claim given the claims that were lodged in both claims.

726. With regard to the third claim, the ET1 was lodged on 27 March 2018. Day A is 22 February 2018 and Day B is 9 March 2018. Thus anything that occurred after 22 November 2017 is in time and anything before is out of time.

727. We considered again whether the claims made in this regard could properly be regarded as conduct extending over a period. We carefully considered the issues, the facts and those responsible. The issues relied upon range from Ms Lau making alleged comments to the claimant in a room, to how a manager investigated the issues, how the hearing and appeal were dealt with.

728. We find again that the acts are not part of any continuing act nor are they a course of conduct. We looked at each of the issues individually and took a step back to see whether or not there was any fair connection that would entitle us to find that there was a conduct extending over a period. We found no such evidence as the incidents were separate and discrete with different individuals involving separate management issues. We find that the acts relied upon are separate and discrete things that the claimant disagreed with and decided to challenge by way of his complaints before the Tribunal.

729. We note that the claim underlying issue 19.2 would have been dismissed in any event given our findings on the facts (and as such it could not form part of conduct extending over a period).

730. Taking a step back, as we did for the first claim, this is another example of the claimant believing that those who managed him had decided to discriminate against him or treat him unlawfully when they made decisions in the course of their role with which he disagreed. Having examined the evidence, we can find no evidence of this at all. The claimant may have disliked what he was told and how he was managed, but that was not unlawful and his managers were carrying out their managerial functions. In no sense whatsoever was there conduct extending over a period in respect of the claims raised in the second and third proceedings. The claims comprise discrete and self-contained management acts about which the claimant takes issue but are not connected in the sense set out by the authorities above to entitle them to be taken together.

731. We considered whether or not the claims were lodged within a period that we found just and equitable, absent any evidence or submissions from the claimant as to why we should allow the claims to proceed. We applied the legal test set out above in deciding whether the claims were lodged within such other period that was just and equitable. They were not. The claimant could have raised the claims within time. He accepted that there was no evidence before us to explain why they were not raised within time. We accepted the respondents' agent's submission in this regard. We placed that in the balance, recognising that the absence of a reason for delay is not conclusive.

732. We applied the test for the second and third claims that were lodged late. We again appreciated that the claims include claims for discrimination and there is a societal aspect whereby it is important that such claims are not dismissed lightly. There are time limits to follow and the claimant bears the onus of showing that it is just and equitable to allow claims to proceed where they were lodged late. This was a matter that was raised with the claimant on a number of occasions.

733. We looked at the claims raised in the second and third claims individually and when they were lodged and considered the factors referred to in the authorities.

734. With regard to prejudice to each party, we balanced the fact that the claimant would be deprived of those claims being determined as against the prejudice to the respondent in having to respond to claims lodged late. This factor in our view supported the claimant's position and we placed it in the balance accordingly.

735. The delay in respect of the issues raised in the second and third claims that were lodged out of time varied. We took account of the length of the delay including that the delay was in some cases relatively short. We also took account of the fact that the claimant was unable to provide any reason for it. The claimant was articulate and intelligent. While we note he was suffering from a mental impairment, we considered the circumstances carefully and the claimant was clearly capable of enforcing his rights with alacrity. There was no evidence to suggest the claimant was unaware of his rights, the Tribunal or remedies or time limits. He had already raised a claim and clearly understood the procedure. We found no evidence that suggested any impairment prevented the claimant from raising claims in time. This factor supported the respondents' position.

736. As we heard evidence on all the issues, it could be said that the cogency of evidence was unlikely to be considerably adversely affected. This clearly supported the claimant and was placed in the balance.

737. We are not satisfied that the claimant acted promptly when he knew of facts giving rise to the cause of action. He was clearly aware of the issues and unhappy with the outcome but delayed raising proceedings. We heard no evidence as to any steps taken by the claimant to obtain advice once he knew of the possibility of taking action.

738. We balanced each of these factors for each of the claims that were lodged late in exercising our discretion. We concluded that the claims were not raised within such other period we think just and equitable. The claimant could have raised the claims within time and there was no evidence we found to lead us to conclude the claims were raised within such period that was just and equitable. We accepted the respondents' agent's submission in this regard. It is not just and equitable to extend the time limit and those claims are therefore dismissed.

739. As for the first proceedings claims, there was no justifiable reason for the delay in bringing the second and third proceedings. The claimant was aware of the right to bring a claim and of the time limits. The prejudice to the respondents in allowing the matters to proceed is significant as is the prejudice to the claimant in not having his claims determined (although the prejudice to the claimant is greater and we take this into account). We also take into account that a fair trial of the issues is possible given we heard evidence in relation to each of the issues (which is an important factor placed in the balance).

740. Applying the tests and exercising our discretion, we find that the claims that were lodged outwith the statutory time limit (those raised before 21 June 2017 for the second claim and those raised before 22 November 2017 for the third claim) should be dismissed, the claimant not having satisfied us that the claims were raised within such period that is just and equitable.

741. Therefore the claims underlying issues 19.1, 19.2, 22.4, 22.5, 24 (in respect of those issues imported from the direct discrimination issue at 22.4 and 22.5), issues 30.2 and 30.4 and 43.1 to 43.11 (which are the issues arising before 22 November 2017) are dismissed, having been lodged late and on a date we considered was not within a period that we considered just and equitable.

Conclusion on time bar

742. In short we uphold the respondents' agent's submissions with regard to time bar and having applied the test within the authorities and balanced each of the relevant factors, we have decided that the claims raised outside the statutory time limit should be dismissed. We considered each of the claims individually and balanced each of the factors in reaching our conclusion.

743. We recognise that there is no presumption in favour of extending time and we must exercise our discretion in accordance with the legal tests, applying the overriding objective. We took account of the facts and circumstances in this case and the absence of evidence from the claimant justifying the delay. We also took account of the importance of discrimination claims to society generally and that the claimant is not legally represented. We also recognised that there may be cases where a failure by a claimant to explain a delay does not necessarily mean discretion should not be exercised in the claimant's favour and that decisions can be made in claimants' favour even without evidence being presented. We also took account of the fact that a fair trial was possible given we heard evidence on each of the issues and that the period of time in respect of the delay varied. We balanced all the factors in reaching our decision in this regard. We exercised our discretion in accordance with the authorities.

744. In all the circumstances in this case we were not satisfied that it was just and equitable to allow the claims that were raised outwith the statutory time limit set out above to proceed.

Decision on the substance of the claims

745. For completeness, and given we heard evidence in relation to each of the issues, we will address each of the issues in the order set out above. We therefore cover those claims that the claimant had withdrawn and those which we found out of time (and that the statutory conditions for extension of time had not been satisfied).

746. As the claimant did not provide us with any submissions on the vast majority of the issues we shall consider ourselves the position in light of the facts we found and the applicable law and deal with the respondent's submissions where relevant. We have considered the written and oral submissions of the claimant in detail and will refer to these where appropriate. Just because we do not refer to them does not mean we did not take them into account. We aim to be proportionate in light of the issues in this case.

FIRST CLAIM (2500003/2017)

Direct discrimination (religion) (section 13 Equality Act 2010)

747. We turn to the first set of issues which deal with direct discrimination because of religion. There are 10 separate incidents on which the claimant relies which he said happened and amounted to less favourable treatment because he was a Christian. We deal firstly with the incidents and make appropriate comments about the reason for them before summarising the position.

748. With regard to issue 1.1 we find that Ms Paton-Baines did not fail to follow the disciplinary policy by obtaining a witness statement from Mr Harris. Ms Paton-Baines carried out a fact find in accordance with the policy and as such her actions were legitimate and in accordance with the policy. She simply spoke with Mr Harris to find out the position.

749. The respondents' position is that this allegation is factually inaccurate as Ms Paton-Baines did not "obtain a witness statement". We agree. Ms Paton-Baines asked Mr Harbertson to "find out what had gone on" as part of the initial fact On the basis that she did what was required of her by the policy, which is what the reason for her actions were, there is discrimination. On that basis the claim underlying this issue fails.

750. With regard to issue 1.2, that Ms Paton-Baines refused to tell the claimant who had made the allegations, we found that the reason why she did so was because she did not want to damage working relationships. At that stage she was carrying out her fact find and there was no reason to disclose the identity of the complainer, since to do so would needlessly adversely impact upon the working relationship. We found that was the sole reason why she did not provide the details the claimant requested at that stage. The details were provided when it was clear that the allegation was being progressed. On that basis the claim underlying this issue fails.

751. With regard to issue 1.3, which related to the allegation that Ms Paton-Baines considered suspending the claimant without first getting her side of the story. We accept the respondent's submissions that the allegation is artificial. Ms Paton-Baines was advised by HR to consider suspension but she decided that suspension was not appropriate.

752. We accept the respondent's submission that it cannot be a detriment merely to consider a course of action which does not impinge on the individual at all, especially where the manager decides against action which might affect the employee. On this basis the claim underlying this issue fails.

753. With regard to issue 1.4, the failure on 6 July 2016 to expand the scope of the disciplinary investigation to include allegations of religious harassment by the claimant against Scott Harris, we note that the claimant did not ask Ms Paton-Baines to extend the scope of the investigation but rather asked to whom he could complain about the actions of Mr Harris, who was employed by a third party. There was no request from the claimant to extend the investigation and it was not reasonable to do so given Mr Harris was employed by a third party and Ms Paton-Baines sought advice from HR and advised the claimant how to progress (having made enquiries with the third party). That was the only reason for her actions in this regard. This claim is accordingly dismissed.

754. Turning to issue 1.5, the investigation officer failing to acknowledge on 24, 25 and 26 August 2016 evidence casting doubt on the evidence of Mr Harris, we find it difficult to understand what is meant by this allegation. While we found this was raised out of time, we still consider the factual position.

755. The claimant accepted that the issues he raised may have been outwith the remit of the investigation which it was. The investigation officer did not fail to acknowledge the claimant's position. She reached a decision as to its relevance. We note that the investigation officer specifically recorded in her report that she included all communications from the statement that she received after the investigation. We accepted her evidence that she did consider all the issues that the claimant raised. On that basis the claim underlying this issue fails.

756. With regard to issue 1.6, the content of the investigation report (the criticisms of which are more particularly set out in page 4 of the claimant's further particulars of claim). Ms Banks' investigation report was detailed and clear. She explained her findings and conclusions at length. We find that her conclusions were reasonable and supported by the evidence she had obtained. We shall deal with the claimant's criticisms in turn:

(a) As Ms Banks had a written statement from Mr Hope there was no need to interview him again. He was not a direct witness.

(b) The reference to methodology is a record of what was done and was clear.

(c) While the claimant may disagree with the conclusions, we accept that the conclusions she reached were reasonable from the information before her.

(d) We note that the claimant did not request that Mr Harris be re-interviewed. In any event there was no need to give the information that had been obtained.

(e) The reason why Ms Banks did not find that there was a significant extenuating factor with regard to the claimant was because there was none. His concerns about Mr Harris' conduct were to be addressed in a separate grievance process.

(f) The cleaner did not want to be involved in the process but it was relevant and reasonable for her initial response to the incident, as reported by other witnesses, to be taken into account.

(g) The timescale for interviewing Mr Southern was driven by the date on which he indicated he was prepared to give a statement. There was no delay by Ms Banks. We find that she acted expeditiously once she knew Mr Southern was prepared to give evidence.

(h) Finally the claimant's observation as to Ms Banks' knowledge of the policy is, he accepted, pure speculation and was not based on knowledge of any facts.

757. In short, we find that the investigation report was reasonable and was prepared on the basis of Ms Banks carrying out her role professionally and without any consideration being given to the claimant's religion. The claim underlying this issue is dismissed.

758. Turning to issue 1.7, Ms Paton-Baines informing the claimant on 2 September 2016 that he would face a disciplinary hearing for 'threats of violence' when the investigation report did not conclude that the claimant had threatened anyone with violence, we considered the invitation to disciplinary hearing letter of 9 September 2016. The stated allegations are "name calling which could be perceived as inappropriate and making comments which could suggest violence."

759. The allegation underlying this issue is inaccurate since the investigation did conclude there was a case to answer in relation to the allegation that the claimant "made comments which would suggest violence" and the invitation to disciplinary hearing letter reflected the outcome of the investigation report. On that basis the claim underlying this issue is dismissed.

760. With regard to issue 1.8, Ms C Robson ignoring the claimant's evidence at the disciplinary hearing on 20 January 2017 that he had been the victim of religious harassment and a hate crime, we agree with the respondents' submission that Ms Robson did not ignore the claimant's evidence on this point. The claimant's complaints against the security guards were at this time the

subject of a separate grievance process. Ms Robson's role was to consider whether the claimant's explanations excused his actions, as proven, or provided mitigation. Ms Robson explored these issues with the claimant at the disciplinary hearing, not least to understand the background to the allegations. There is no basis for this allegation as a matter of fact and it is dismissed.

761. With regard to issue 1.9, Mr Harbertson objecting to the claimant's use of the phrase "with the Lord's help" in an email of 11 January 2016, we consider the context in which the email was sent having considered the terms of Mr Harbertson's statement carefully.

762. The discussion took place in private. The communication was respectful. He did not state he was "offended" but expressed his view that he did not think it was appropriate to reference religion in work emails (as was his right).

763. The treatment complained of was not because of the claimant's Christianity. We agree with the respondent's submission in this regard. Thus by constructing a hypothetical comparison, if Mr Harbertson's colleague had been, for example, a Muslim, Jew, Buddhist or any other person of faith and that colleague had used a similar reference, Mr Harbertson's response would have been exactly the same. There was therefore no less favourable treatment and the claim underlying this issue is dismissed

764. With regard to issue 1.10, on 20 January 2017 issuing the claimant with a Final Written Warning, we have carefully considered the claimant's submissions in this regard. He argues that it was manifestly inappropriate to issue the warning (and, we assume, thereby argues that issuing the warning was in some way connected to his religion). We reject that assertion. Having carefully considered the evidence in detail and the claimant's submissions we find that there were clear and reasonable and legitimate grounds for the final written warning being issued.

765. The incident was witnessed by more than one person and although not identical, it was clear that Ms Banks took the full factual matrix into consideration. There was clear evidence in support of the outcome. Thus during his interview of 5 July 2016 Mr Harris confirmed that the claimant had called him a "prick" and that he said "I'll take you outside" to him which was entirely consistent with his original written statement. There were other consistencies that supported what had happened as the respondents' agent submitted. That included what Mr Southern had said and Ms Paton-Baines' investigation and the cleaner.

766. It is notable that the claimant was equivocal on the core allegations during his investigation interview as the respondents' agent pointed out, which is a relevant consideration in assessing what happened.

767. The conclusions reached in the investigation report are, we find, reasonable based upon the information before the first respondent at the time. While the claimant may disagree with their content, we find that the way in which the investigation was carried out was reasonable and the conclusions reached sustainable and fair in all the circumstances.

768. The investigation report fairly summarised the evidence with justifiable conclusions. The approach to the investigation was entirely reasonable and even-handed, evidenced by the decision not to take the first allegation (of the three) any further as it was unsupported by the evidence.

769. We carefully considered the claimant's arguments as to the inconsistencies in relation to the witnesses and investigation. We do not consider these such as to render the investigation or its conclusions unreasonable.

770. We accept the respondents' agent's submission that minor differences amongst witness recollections can often be an indication of a credible set of accounts given the passage of time and memory. If the evidence was identical on every detail that could suggest collusion.

771. We carefully examined each of the claimant's arguments as to the first disciplinary process. We accept that he believed it was unfair but that was due to his disagreement with what was said and by whom. Ms Banks' job was to assess what was said and reach a conclusion. She did so and did so reasonably. She also took account of the claimant's points, including those made after the hearing.

772. It is relevant to note that the claimant did not appeal the outcome, as he could have done if he believed the outcome was discriminatory or wrong. He did not do so. The complaint of maladministration was made some time later and advised the claimant that an appeal was the appropriate way to deal with matters.

773. In all the circumstances and having carefully considered all the evidence before us, we are satisfied that the final written warning that was issued was reasonable and entirely unconnected to any protected characteristic or protected act. The outcome was based solely upon the assessment of the evidence which is the reason why it was issued. We were able to make direct findings without the need for resort to the burden of proof. The claim underlying this issue is therefore dismissed.

774. We have dealt with each of the 10 incidents relied upon under the first heading. We considered carefully what the reason for the treatment was. With regard to the first claim, we are satisfied that the treatment was in no sense whatsoever (even in a minor or trivial way) connected to the claimant's religion of Christianity. We do not require to rely upon the burden of proof provisions as we are able to make direct findings from our assessment of the evidence before us. In any event the respondents have shown that religion was in no sense whatsoever the reason for any of the 10 incidents relied upon. It was not connected to religion in any way.

775. The claims of direct discrimination by reason of religion in the first claim are ill-founded and are therefore dismissed.

Direct discrimination (sex) (section 13 Equality Act 2010)

776. We now turn to the third issue, which deals with the claim of direct sex discrimination.

777. While we have found that the claims underlying issues 3.1 to 3.9 are out of time and are dismissed, we nonetheless consider the issues for the avoidance of doubt, given the time that was spent on them in evidence and the seriousness of the allegations.

778. Turning to issue 3.1, Ms Paton-Baines failing to follow the disciplinary policy by obtaining a witness statement from Scott Harris on 27 May 2016, we note that this issue was withdrawn by the claimant. In any event we find that the allegation is factually inaccurate. Ms Paton-Baines did not "obtain a witness statement". She asked Mr Harbertson to "find out what had gone on" as part of the initial fact find. The claim underlying this issue is therefore dismissed.

779. With regard to issue 3.2, Ms Paton-Baines' alleged plagiarism on 10 October 2015 of a "Terms of Reference" document written by the claimant, we find that the issue is not made out on the facts. As we set out above, the claimant had volunteered his earlier "Terms of Reference" document for Ms Paton-Baines's use and he emailed it to her on 15 October 2015. That was a document the claimant had prepared as part of his employment with the first respondent and he did not place any qualification on its use or request that he be credited. We accept that when the document was revised and issued the claimant was unhappy that there was no reference in the final document to the fact he had prepared the initial draft but that is not the issue. The claimant knew that Ms Paton-Baines would use the document (with those who had volunteered) for the relaunch. It was described as a "starting point".

780. We do not accept that the document was plagiarised as alleged. Further the reason why the document was used was for entirely legitimate reasons. There was no requirement to include the claimant's name as the original author.

781. For those reasons the claim underlying this issue is dismissed.

782. With regard to issue 3.3, Ms Paton-Baines allegedly excluding the claimant from the Reward and Recognition process in October 2015, we find that this is not accurate. Ms Cook and Ms Thornton had volunteered to assist with the reward and recognition relaunch. The claimant had not done so nor expressed a desire to get involved, albeit he was an employee engagement champion. Ms Paton-Baines naturally went to those who had volunteered to get involved to progress the reward and recognition process. That did not involve the claimant, for entirely genuine reasons.

783. As the respondents' agent says, the claimant was not excluded; he was not specifically invited because he did not volunteer. We agree.

784. The reason for the treatment was entirely unrelated to sex and was solely related to approaching those who had volunteered. The claim underlying this issue must also fail and be dismissed.

785. Issue 3.4 relates to the same facts relied upon in issue 3.3 but covers November 2015. We do not find that the claimant was excluded *per se*. He was not invited to participate because he had not volunteered and that was the reason why he was not invited. We are entirely satisfied that had the claimant put his name forward (as he did subsequently) he would have been included.

786. Issue 3.5 relates to Mr Harbertson allegedly criticising the claimant on 14 March 2016 for taking most of a day to complete his PMR.

787. We agree with the respondents' agent that the issue was not that the claimant had taken the time to work on his PMR, but that he had not checked with his line manager that he could do so. That was the reason why Mr Harbertson had a discussion with the claimant. It was in no way connected to the claimant's sex.

788. We accept the respondents' argument that the comparison with Ms Warren is not valid since Ms Warren had Mr Harbertson's permission to work on her PMR.

789. For those reasons the claim underlying this issue must fail.

790. Issue 3.6 relates to Mr Harbertson preparing a note on 17 March 2016 that the claimant had not been utilised as a Business Skills Coach because of concerns over his conduct.

791. We note that "conduct" is only one of three reasons which Mr Harbertson gives for not utilising the claimant as a Business Skills Coach. The other two are the claimant's commitment to the ODPQ course and the effect on delivery. We find that all three are legitimate reasons for not utilising the claimant as a Business Skills Coach and are in no way connected to gender.

792. The reference to "conduct" was justified given, as the respondents' agent pointed out, the note was made three days after the claimant called Mr Harbertson "vain, narcissistic and arrogant".

793. Issue 3.7, that Ms Paton-Baines allegedly failed to respond in July 2016 to the Claimant's email setting out why she should adopt the 12-month engagement cycle we find that Ms Paton-Baines did not "fail to respond" and in fact there was an extended conversation on 27 July 2016. For those reasons the claim underlying this issue fails.

794. Issue 3.8 relates to Ms Paton-Baines allegedly excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016

795. We do not accept that the claimant was "excluded" as it was a request from Ms Paton-Baines that the claimant not attend. She wanted Ms Brown to lead

the session herself without the presence of the claimant. That would assist her confidence. This was a request by Ms Paton-Baines in accordance with her role and was entirely unrelated to the claimant's gender. For those reasons the claim underlying this issue must fail.

796. Issue 3.9 is that Ms Paton-Baines allegedly insinuated on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown.

797. We accept the respondents' agent's submissions that Ms Paton-Baines acted in accordance with her genuine belief that Ms Brown would feel better conducting the session alone. We appreciate the claimant did not like that decision, particularly as a colleague and employee engagement champion, but it was entirely legitimate for Ms Paton-Baines to decide who should attend and how the sessions are dealt with. It was her responsibility to do so. Her actions in his regard were entirely unrelated to sex. For these reasons the claim underlying this issue fails.

798. Issue 3.10 relates to Mr Harbertson allegedly refusing to allow the claimant to discuss Ms Paton-Baine's criticism at the OLM meeting for September 2016

799. We found that the reason why Mr Harbertson did not allow further discussion on this point was because he was not privy to the conversation about which the claimant was complaining. It was not for Mr Harbertson to comment as he could not. He therefore entirely legitimately stated that the claimant should raise his concern with Ms Paton-Baines or as a grievance. There was no connection whatsoever to sex and this claim therefore fails.

800. We considered in respect of each of the 10 incidents relied upon whether the claimant's sex was in any way connected to the treatment or a reason for the treatment (not necessarily "the" reason). We were satisfied that there was no connection whatsoever to the claimant's sex which was not in any sense a reason for the treatment. The treatment was entirely related to legitimate business reasons. We make this decision without resort to the burden of proof from the evidence and are satisfied in any event that the reason for the treatment was entirely unconnected to sex. The claimant's sex discrimination claim in this regard is ill-founded and should be dismissed.

Victimisation (section 27 Equality Act 2010)

801. We now turn the victimisation complaint set out at issues 5 to 8. We deal firstly with the incidents relied upon and assess the reason for them which will allow us to determine the relationship with the protected act.

802. We note in passing that we found the issues raised at 5.1 to 5.58 all to have been raised outwith the statutory timescale and are dismissed accordingly. Nevertheless we consider the issues given the importance of them to the people involved.

803. The victimisation claims at issues 5.1 to 5.17 relate to Mr Harbertson and cover the period prior to 11 January 2016 when the claimant sent Mr Harbertson an email referring to "the Lord's help". They all rely on a protected act articulated at issue 6.1, namely Employment Tribunal proceedings brought in or around May 2012.

804. We carefully considered the claimant's evidence in this regard particular that found in his second statement. We note that the 2012 Tribunal claim about which it is alleged the acts relate had nothing to do with Mr Harbertson. He was not the subject of the complaints and he was not involved in the proceedings. In cross examination the claimant was unable to give any reason why Mr Harbertson would have been motivated to treat him differently given the Tribunal claim did not concern him and had occurred three years before the acts in question.

805. Issue 5.15 concerns Ms Paton-Baines and her involvement in relation to the claimant within Reward and Recognition meetings in November 2015. We accept the respondents' agent's submissions that the same observations apply as above since the 2012 tribunal did not concern Ms Paton-Baines either and the claimant was unable to give any reason why Ms Paton-Baines would be motivated to treat him in such a way because of these proceedings.

806. We agree with the respondents' agent's comments with regard to these issues generally since they display the claimant's willingness to elevate something relatively innocuous into a complaint of discrimination. This is evidenced in issues 5.1 and 5.12 which concern him using a locker on the floor where he actually worked and that he stored a snooker cue safely. They also show a lack of insight into the claimant's own conduct which underlines the need for management intervention (such as issues 5.2 and 5.3 which concern reasonable requests that the claimant avoid talking to security officers and a representative in public areas). Finally, they demonstrate the claimant's tendency raise issues with things said or done by his managers some time after the events in question. This is seen in the delay between Mr Harbertson's email of 17 March 2016 with the claimant taking issue with it on 27 May 2016, over two months later.

807. With regard to issue 5.1, that the claimant was asked to give up his pedestal for entirely legitimate reasons, namely to ensure he stored his belongings on the floor where he worked. To the extent this was a detriment, we find there was no connection at all to any of the protected acts relied upon. The reason was solely to ensure the claimant's belongings were on the floor where he worked,

808. With regard to issue 5.2, namely Mr Harbertson accusing the claimant of "loitering" with Mr Southern on 15 May 2015 and having conversations unrelated to work and issue 5.3, accusing the claimant of talking to a representative in reception on the same day, Mr Harbertson acted entirely legitimately. He was concerned about the potential perception of impartiality and of clerks having discussions in public places. To the extent that this was an accusation and

detriment, we find that it had no connection whatsoever to any of the protected acts and was solely to ensure professionalism was maintained.

809. With regard to issue 5.4, an exchange of emails on 20 May 2015 between Mr Harbertson and the claimant concerning the claimant's use of flexi-credit we found that in an exchange of emails on 20 May 2015 between the claimant and Mr Harbertson a discussion took place as to use of flexi-credits. This relates to the core hours of the flexi system which are 10 to 1130am and 2 until 3pm. Mr Harbertson had stated that the claimant needed to be in work by 10am, which was something the claimant had failed to confirm. There was no detriment to the claimant as Mr Harbertson was simply confirming what the policy required. In any event there was no connection at all to any of the protected acts relied upon and the sole reason Mr Harbertson made the comments he did was as part of the exercise of his management responsibilities, which was entirely legitimate.

810. With regard to issue 5.5, Mr Harbertson's alleged refusal to sign the Claimant's flexi-sheets in the period April 2015 to October 2015 we found that Mr Harbertson had asked the claimant to provide him with all his annual leave and flexi sheets for authorisation and signature. That was a request made of all staff and not just the claimant. This was a request by Mr Harbertson entirely in accordance with his management duties. It was not a detriment and was in no way connected to any of the protected acts relied upon by the claimant. This was the claimant's manager exercising his managerial functions.

811. With regard to issue 5.6, Mr Harbertson accusing the claimant on 21 July 2015 of taking an excessive amount of time to finish his working day we were not satisfied on the balance of probabilities that this was said and on that basis do not uphold the claim.

812. Issue 5.7 relates to Mr Harbertson suggesting in July 2015 that the claimant should take a course in active listening. We found that this again was entirely legitimate of Mr Harbertson and part of his managerial duties. The claimant did not complain about doing so. The request was in no way a detriment nor connected to any protected act.

813. Issue 5.8 relates to Mr Harbertson allegedly refusing to confirm what value for conditioned hours the claimant should input into the claim form for travel time. In this regard the email of 3 August 2015 did not amount to Mr Harbertson refusing to confirm the position but rather he reminded the claimant that he himself had provided the data. That again was part of the normal management interaction on a day to day basis a manager would have with staff and was not a detriment. In any event we find there was no connection with any of the protected acts relied upon.

814. Issue 5.9 and 5.10 relate to the allegation that Mr Harbertson accused the claimant on 22 September 2015 that he had advised a court-user to complain and that he taunted the claimant in September 2015 that the court-user had complained and the claimant had advised him to do so. We did not find that Mr Harbertson had done anything wrong with regard to these 2 issues. Mr Harbertson had cautioned the claimant against discussing matters with

appellants given the case in question related to a judicial decision. His admonition was well founded given the complaint that had been made. We find that the claimant was not subjected to any detriment and that in any event the reason for the treatment was in no way connected to any of the protected acts relied upon.

815. Issue 5.11 relates to Mr Harbertson allegedly accusing the claimant on 29 September 2015 of not communicating with the receptionist, Mr Hope. We found that Mr Harbertson asked the claimant to allow Mr Hope to finish any discussion before walking off. Again this was part of the normal management responsibility Mr Harbertson had in relation to the claimant. He was asking him to reflect on his conduct at work. This was not a detriment and in any event had no connection whatsoever to any of the protected acts relied upon by the claimant.

816. Issue 5.13 relates to an allegation that Mr Harbertson criticised the claimant on 5 October 2015 for leaving a snooker cue in clerk's room. We found that this was not a criticism but a reasonable management request to ensure any potential weapons were stored safely and securely. That was an entirely legitimate request by Mr Harbertson. It was not a detriment and was entirely unconnected to any protected act.

817. Issue 5.14 relates to an email exchange between Mr Harbertson and the claimant of 6 October 2015 concerning the claimant's bi-monthly performance review. In the email the claimant had asked that Mr Harbertson bring down a signed coped of the OLM document that had been emailed in August. Mr Harbertson replied saying that in future the claimant should retain his own copy. Other team members had also not had their documents signed. The claimant accepted that the signature of the parties did not make a difference to the objectives and development points in the document and that there was no reason why the claimant could not have asked for the document when it was completed in August 2015. There was nothing inappropriate with regard to the email exchange. It was not a detriment and had no connection whatsoever to any of the protected acts relied upon.

818. Issue 5.15 relates to Mr Harbertson's conduct of the performance review of 6 October 2015 in which the claimant alleges he was "rude, unpleasant and hostile". We found that this allegation has not been established. The claimant did not express any concerns at the time as to the way in which Mr Harbertson conducted the meeting and we are satisfied Mr Harbertson conducted the meeting in a professional way. On that basis the claim underlying this issue is dismissed. In any event there was no connection with any of the protected acts whatsoever.

819. Issue 5.16. relates to Ms Paton-Baine's alleged plagiarism on 10 October 2015 of a "Terms of Reference" document written by the claimant. As we set out above, we do not accept that there was plagiarism. Ms Paton-Baines acted entirely legitimately and her actions were in no way connected to any of the protected acts.

820. Issue 5.17 relates to the allegation that Mr Harbertson was disparaging on 12 October 2015 regarding a continuous improvement paper written by the

Claimant. We found no evidence that Mr Harbertson was disparaging. The discussion was part of Mr Harbertson's management duties and was in no way connected to any protected act.

821. Issue 5.18 is an allegation that Mr Harbertson failed to set tasks for the claimant for his Skills for Justice Level 3 Certificate Courts and Tribunals Clerking on 16 and 20 November 2015. We carefully considered the evidence presented to the Tribunal and we are satisfied that Mr Harbertson did not fail to set tasks. Mr Harbertson had tried to work with the claimant and supported him during his qualification. The claimant did not take that support on board. Mr Harbertson's approach was again part of his line management duties. Further, the actions were in no way whatsoever connected to any of the protected acts relied upon.

822. Issue 5.18 was withdrawn, the allegation that Mr Harbertson allegedly failing to discuss the claimant's work towards the Level 3 qualification in the period 15 to 19 February 2016. The evidence clearly showed Mr Harbertson did discuss the claimant's work in this regard.

823. Issue 5.19 was the allegation that Mr Harbertson refused to pay the claimant for travel time in the period 17 February to 11 April 2016. As a matter of fact the claimant was paid for this time once the paper work was properly updated. The allegation is therefore not accurate.

824. Issue 5.20 is the allegation that of Mr Harbertson accusing the claimant on 9 March 2016 of being derogatory. We did not accept that Mr Harbertson was derogatory towards the claimant. This was another example of the claimant's line manager seeking to manage the claimant but the claimant not being prepared to accept the position. The claimant may not have liked the comments made by his manager, but his manager was entitled to have the discussion. There was no connection whatsoever to any of the protected acts.

825. Issue 5.21 is an allegation of Mr Harbertson refusing on 9 March 2016 to release the claimant for training. This was not made out on the facts since the claimant accepted that Mr Harbertson asked that he finish his discussion with the claimant which was a legitimate request. The claimant completed the training later. There was no detriment and there was no connection to any of the protected acts whatsoever.

826. Issue 5.22 is set out as the allegation that Mr Harbertson criticised the claimant on 14 March 2016 for taking most of a day to complete his PMR but as we set out above (under issue 3.5) Mr Harbertson's concern was that the claimant had not secured consent to spend the time on that matter given the context. That was entirely reasonable and part of Mr Harbertson's duties as the claimant's line manager. There was no connection at all with any protected act.

827. Issue 5.23 is an allegation of Ms Paton-Baines refusing on 14 March 2016 to discuss Mr Harbertson's behaviour with the claimant. This followed Mr Harbertson's relaying to Ms Paton-Baines (his line manager) the comment the claimant made about Mr Harbertson (that he was "vain, narcissistic and arrogant").

828. This was an example of the claimant using words which he believed to be accurate but failing to appreciate the impact such words could have. From a strict linguistic point of view, the claimant believed his description to be accurate but he failed to appreciate the impact such comments would have nor whether or not it was appropriate to make the comments at that time and in that way.

829. We agree with the respondents' agent's comment that this was "the first symptom of a course of conduct" that led to the claimant's dismissal. The respondents' agent, with some justification, draws parallels with the claimant's interaction with Mr Harbertson on 14 March 2016, Mr Harris in the week of 9 May 2016 and Ms Lau on 22 June 2017.

830. We agree with the respondents' agent's observation that it was also a "symptom of another trait: complaining about others as a deflection of attention from his own conduct". This is an important point given a similar occurrence arose following the claimant's interaction with Mr Harris (whom the claimant alleged discriminated against him, when Mr Harris complained about the claimant) and then between the claimant and Ms Lau (when he alleged she discriminated against him when Ms Lau raised concerns about the claimant's behaviour).

831. It is correct to say that no one has found any substance in the complaints the claimant made in these contexts. It is important to note that there was no evidence that linked any of these individuals in any way and the interactions arose entirely independently, all as a result of the claimant's actions.

832. The claimant was reminded by Ms Paton-Baines of the need to ensure that his conduct was appropriate given the terms of the relevant policy documents. No complaint was made by the claimant about this informal warning.

833. We are satisfied that Ms Paton-Baines did not refuse to discuss the claimant's concerns. He was told, correctly, that if he had concerns about his manager's conduct, they should be raised formally by way of a grievance. They never were. This allegation is therefore not made out on the facts.

834. Issue 5.24 is that Ms Paton-Baines failing to commission another manager to carry out a formal investigation into Mr Harbertson's behaviour;

835. The respondents' agent alleges that this allegation is disingenuous given the content of the communications that show Ms Paton-Baines did all she could to inform the claimant that his concerns had to be raised through a formal grievance to be investigated independently. He failed to do so. We agree that this allegation is not made out on the facts.

836. We consider that there is merit in the respondents' agent's observation that this allegation is an example of the claimant "wanting to have it both ways". He does not raise a formal complaint, but at the same time criticises a manager (and accuses them of victimisation) for not commissioning an investigation. The claim underlying this issue is dismissed.

837. Issue 5.25 is Mr Harbertson preparing a note on 17 March 2016 that the claimant had not been utilised as a Business Skills Coach because of concerns over his conduct. We dealt with this issue at issue 3.6 above. We considered that there were entirely justifiable reasons for the comments Mr Harbertson made, which were in the course of his management of the claimant, which we find was done in an entirely reasonable and legitimate fashion.

838. Issue 5.26, that of Ms Paton-Baines failing to respond on 29 March 2016 to the Claimant's question of whether Mr Harbertson disputed anything about the claimant's account set out in his email of 23 March 2016.

839. This is not made out from the facts since Ms Paton-Baines requested that she meet with the claimant to discuss matters which was followed up with a request that the claimant raise a formal grievance if we wished his concerns to be investigated independently He did not do so.

840. Issue 5.27 was withdrawn by the claimant. Reference had been made to an email which Mr Harbertson could not recall and which could not be located.

841. Issue 5.28 is the allegation of Mr Harbertson misrepresenting the Claimant's performance in an email to Ms Paton-Baines of 15 April 2016. We found that the comments in the email were based on a survey of Presenting Officers who had experience of using the system. We accept the respondents' agent's submission that there was no misrepresentation by Mr Harbertson in this regard. His email was accurate. We also find no connection to any protected act whatsoever.

842. Issue 5.29 is of Mr Harbertson making unfounded criticisms of the Claimant's performance at a meeting of 27 May 2016. The comments Mr Harbertson made stemmed from comments he had received from colleagues. They were raised as part of Mr Harbertson's duties in managing the claimant. We find there to be merit in the respondents' agent's observation that this is an example of the claimant being unwilling to accept feedback on his performance. There is no merit in this allegation.

843. Issue 5.30 is an allegation that Ms Paton-Baines failed to follow the disciplinary policy by obtaining a witness statement from Mr Harris on 27 May 2016. We dealt with this at issue 3.1 above. Ms Paton-Baines did not fail to follow the policy and her actions were entirely unconnected to any protected act.

844. Issue 5.31 relates to Ms Paton-Baines' refusal to tell the claimant on 2 June 2016 who had made three allegations against him. We dealt with this at issue 1.2 above. There were entirely justifiable reasons for Ms Paton-Baines not disclosing the person's identity (to protect working relationships) and there was no connection at all to any protected act.

845. Issue 5.32 concerns Ms Paton-Baines's consideration of suspending the claimant in June 2016 without getting his 'side of the story' which we considered at issue 1.3 above. Ms Paton-Baines acted entirely in accordance with the advice

she received and her actions did not amount to a detriment. They were in no sense connected to any protected act.

846. Issue 5.33 relates to Mr Harbertson introducing performance objectives on 14 June 2016. Mr Harbertson had set objectives for improvement within the discussion on that day as recorded at box 2 of the document. The objectives represented Mr Harbertson's views in light of his experience of his interactions with the claimant. We accept the respondents' agent's point that from Mr Harbertson's perspective, by June 2016 the working relationship had become "mired in lengthy written correspondence which had created an obstacle to effective management and communication". The claimant was not prepared to accept the views of Mr Harbertson and continued to raise matters in correspondence. We consider that Mr Harbertson acted entirely legitimately. We accept that the claimant disagreed with his manager's view, but ultimately his manager is entitled to that view and to seek to manage the claimant accordingly. The objectives were not part of a formal performance management process but were set with a view to avoiding a formal performance improvement plan having to be introduced. That was not a detriment in our view and has no connection whatsoever to any protected act.

847. Issue 5.34 is Mr Harbertson allegedly failing to meet the claimant to discuss his performance objectives in the period 14 June to 9 September 2016. Mr Harbertson discussed the objectives on 14 June 2016 and the claimant was aware of what was required of him. We find that he was not thereby disadvantaged in his achievement of the objectives. There was no detriment. In any event there was no connection at all to any protected act.

848. Issue 5.35 is Mr Harbertson allegedly "shutting down the conversation" concerning why the claimant had been unwilling to sign the OLM for June 2016. We did not find that Mr Harbertson shut down the conversation. Instead Mr Harbertson made it clear that if the claimant was not raising any new points during the discussion, there was no point going over old ground. There were no new points being made and therefore the discussion could move on. There was no detriment and there was no connection whatsoever to any protected act.

849. Issue 5.36 is Ms Paton-Baines allegedly failing to respond in July 2016 to the Claimant's email setting out why she should adopt the 12-month engagement cycle. As we said under issue 3.7 above, Ms Paton-Baines did respond to the claimant in this regard and there was a conversation about this on 27 July 2016. This allegation is therefore not made out.

850. Issue 5.37 is the alleged failure on 6 July 2016 to expand the scope of the disciplinary investigation to include allegations of religious harassment by the claimant against Mr Harris. As we said under issue 1.4 above, Ms Paton-Baines properly advised the claimant as to his options with regard to his complaint against Mr Harris. It was not appropriate that she "expand the scope of the disciplinary investigation" as the claimant's response to the allegations against him and any mitigation would be considered as part of that process, which it was.

The allegation is therefore not made out. In any event there is no connection whatsoever to any protected act.

851. Issue 5.38 is Mr Harbertson's alleged breach of the Conduct Policy on 2 August 2016 by speaking about the disciplinary investigation with Mr Southern. Mr Harbertson's discussions with Mr Southern were part of the initial fact find pursuant to a request by Ms Paton-Baines. Mr Southern told Mr Harbertson that he was prepared to give a statement. We do not consider that Mr Harbertson breached the policy since he was working in close proximity to Mr Southern and was carrying out the instructions of his manager in seeking to understand what happened. The allegation is not made out. We find no connection whatsoever to any protected act.

852. Issue 5.39 is Mr Harbertson in a witness statement on 2 August 2016, referring to the claimant threatening someone with violence and writing "…that behaviour, regardless of when it took place, it was obvious to me, had taken place and it is not acceptable given the Civil Service Code of Conduct…". This allegation relates to Mr Harbertson's comments in his witness statement to Ms Banks when he referred to having spoken to the cleaner. We accept the respondents' agent's submission that it was a legitimate comment from Mr Harbertson to make in relation to his assessment of the gravity of what had happened. There was no detriment to the claimant given it was an accurate and fair statement of Mr Harbertson's view. In any event we are satisfied that there was no connection to any protected act whatsoever.

853. Issue 5.40 is Ms Paton-Baines allegedly excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016. We dealt with this under issue 3.8 above. Ms Paton-Baines asked the claimant not to attend the session as she wished to accede to his colleague's request. That was a reasonable and legitimate exercise of her managerial discretion. While we accept the claimant was subjected to a detriment, being asked not to attend the session, we are satisfied that there is no connection whatsoever to any protected act. The reason for the action was solely to manage the claimant's colleague and support her. That was reasonable and lawful and had no connection to any protected act whatsoever.

854. Issue 5.41 is Ms Paton-Baines allegedly insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown. As we said under issue 3.9 above and in the preceding paragraph, Ms Paton-Baines was carrying out her role and doing so for legitimate reasons. We accept that the claimant suffered a detriment given his desire to participate and support colleagues, but the reason why Ms Paton-Baines made the comment was entirely due to her belief as to what was in the best interests of the organisation. It was entirely unrelated to any protected act.

855. Issue 5.42 is that the disciplinary investigation officer allowed Mr Southern to give contradictory evidence without challenge on 18 August 2016. The respondents' agent's position is that "the allegation does not make much sense since the purpose of the investigating officer is to gather evidence and draw conclusions based on the totality of the evidence. Their role is not to "challenge"

witnesses as such. Any inconsistencies may be reflected in the investigator's conclusions. For the avoidance, there were no inconsistencies in Mr Southern's evidence that might reasonably cause Ms Banks to reject his account". We agree with this submission. We are satisfied that Ms Banks carried out a fair and reasonable investigation and considered all the evidence that was presented to her. The factual basis of this allegation is not therefore made out. The claimant did not suffer any detriment in any event and there is no connection at all to any protected act.

856. Issue 5.43 is that the investigation officer allegedly failed to acknowledge on 24, 25 and 26 August 2016 evidence casting doubt on the evidence of Mr Harris. The respondents' agent properly note that this allegation is unclear without stating what is meant by the allegation or what or how Ms Banks, as investigation officer meant to "acknowledge". We carefully considered Ms Banks's approach to the investigation and what she considered. She considered each of the claimant's communications, which included his communications after his investigation meetings and his assertion that the evidence presented by the security guards was inconsistent. She properly analysed the evidence, taking account of the claimant's points, and reached a fair and reasonable conclusion. There is no merit in this allegation. She exercised her discretion as investigation officer and carried out her role properly. We accept that the claimant did not like her decision but that is not the issue. The claimant was not subjected to a detriment given Ms Banks did what was required of her. In any event there was no connection whatsoever to any protected act.

857. Issue 5.44 is the content of the investigation report (the criticisms of which are more particularly set out in page 4 of the Claimant's further particulars of claim). We dealt with this issue under issue 1.6 above and our response to each of the points levelled by the claimant. We carefully considered the report in light of the evidence that was before Ms Banks. We are entirely satisfied that she considered each of the points raised by the claimant and reached a reasonable view in her conclusions. The claimant was not subjected to a detriment given Ms Banks carried out her role properly. There was no connection whatsoever to any protected act. The reason why Ms Banks reached the conclusions she did was because she considered the evidence before her and, in accordance with the policy, set out her views.

858. Issue 5.45 is that Ms Paton-Baines informed the claimant on 2 September 2016 that he would face a disciplinary hearing for 'threats of violence' when the investigation report did not conclude that the claimant had threatened anyone with violence. We dealt with this issue under issue 1.7 above. Ms Paton-Baines adopted the language used in the correspondence that had been used in the disciplinary process, stemming from the investigatory report. This allegation is not made out. The claimant suffered no detriment and there was no connection whatsoever to any protected act.

859. Issue 5.46 was Mr Harbertson refusing to allow the claimant to discuss Ms Paton-Baines's criticism at the OLM meeting for September 2016. We dealt with this under issue 3.10 above. As Mr Harbertson was not part of the discussion the claimant had with Ms Paton-Baines it was entirely reasonable of him to ask him

to raise the issue with her or through the formal routes. He suffered no detriment and we find no connection whatsoever to any protected act given the explanation for the action, which was reasonable.

860. Issue 5.47 is Mr Harbertson stating on the afternoon of 9 September 2016 that the Claimant's performance objectives would remain indefinitely. The document made it clear that the objectives would be the subject of review at mid-year. That was entirely reasonable and part of Mr Harbertson's role as the claimant's line manager. He suffered no detriment. There was no link whatsoever to any protected act.

861. Issue 5.48 is Mr Harbertson signing off a mid-year performance review on 13 October 2016 with a rating of 'must improve'. We considered this carefully and examined Mr Harbertson's views. Mr Harbertson was of the view that the claimant required to improve in certain areas. He believed that the rating he gave was appropriate. We are satisfied that this was a legitimate exercise of his managerial function as the claimant's line manager. The evidence clearly shows that the claimant would refuse to accept comments from his line manager and engage in detailed discussion presenting his view, rather than reflecting on what his manager's view was, whether accepted or not. While the claimant was subjected to a detriment, in having a review with a "must improve" rating, we are satisfied the reason for that was his line manager's assessment of the claimant's performance. It was in no sense whatsoever connected to any protected act.

862. Issue 5.49 is that on 20 January 2017 the claimant received a Final Written Warning. We considered this at length under issue 1.10. In our view that was an entirely fair outcome given the evidence that was before the first respondent at the time. The fact the claimant did not appeal against the outcome is relevant. While being in receipt of a final written warning is detrimental, the reason for the treatment was solely because it was part of the disciplinary process. We considered carefully whether there was any connection with any of the protected acts relied upon and are entirely satisfied there was no connection at all with any protected act.

863. Issue 5.50 is of Mr Harbertson instigating a Personal Assistance Plan on 24 March 2017. This relates to the discussion the claimant had with Mr Harbertson following his return to work (from a lengthy period of absence). The reasons for the plan were clearly tied to the mid-year performance rating. We consider that Mr Harbertson was entirely justified in instigating a personal assistance plan upon the claimant's return to work. There was compelling evidence before Mr Harbertson that justified his decision. We accept that the claimant did not agree, and was subjected to a detriment, but this was solely as a result of Mr Harbertson's properly exercising his rights as a manager to put in place a performance management process to assist the claimant in performance improvement. It was in no sense whatsoever connected to any protected act.

864. Issue 5.51 is Mr Harbertson stating on 24 March 2017 that the reason he did not use the claimant as a Business Skills Coach was because he did not want to expose visitors from other offices to the Claimant's behaviour. We accept the respondents' agent's submission that this allegation is based on a mis-

description of what Mr Harbertson said. Mr Harbertson wanted the claimant to focus on his course and deal with the disciplinary process. It was an entirely legitimate exercise of Mr Harbertson's management duties. In any event it was entirely unconnected to any protected act.

865. Issue 5.52 is Ms C Robson allegedly ignoring the claimant's evidence at the disciplinary hearing on 20 January 2017 that he had been the victim of religious harassment and a hate crime. We dealt with this under issue 1.8. The factual basis of this allegation has not been established as Ms Robson did take account of the claimant's assertion that he had been the victim of religious harassment and a hate crime. She took account of the points the claimant made. Her decision was part of her duties and was in no way connected to any protected act.

866. Issue 5.53 is Ms Paton-Baines insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown. This is a repetition of issue 5.41 which we deal with above. Ms Paton-Baines acted entirely in accordance with her role and exercised professional judgment. There was no connection whatsoever to any protected act.

867. Issues 5.54 to 5.58 are a repetition of issues 5.46 to 5.51 and were withdrawn by the claimant.

868. Issue 6 is whether or not the alleged detriments at issues 5.1 – 5.17 were done because of the following act of the claimant: His claim to an Employment Tribunal in or around May 2012.

869. It is not disputed that the claimant's claim to the Employment Tribunal in 2012 was a protected act. We carefully considered each of the issues and were satisfied that there was no connection whatsoever linking the acts and the claim. The protected acts were in no sense a reason for the treatment set out. As we indicated above, the claim did not involve Mr Harbertson nor Ms Paton-Baines and there is no evidence whatsoever linking the claim in 2012 with the events in question, some time later.

870. On that basis the claims underlying those issues are ill-founded and are dismissed.

871. Issue 7 is whether the alleged detriments at issues 5.18 – 5.58 were done because of one or more of the following acts of the claimant: accusing Mr Harbertson of religious discrimination following his objection to the claimant's use of the phrase "with the Lord's help" in an email of 11 January 2016; and/or informing Ms Paton-Baines on 12 January 2016 that Mr Harbertson was guilty of religious discrimination?

872. We must consider whether these 2 acts amount to a protected act in terms of section 27 of the Equality Act 2010.

873. Dealing with the claimant's email of 11 January 2016 first, the respondents' agent argue that the claimant's reply was not a protected act because it was neither of:

(a) doing any other thing for the purposes of or in connection with the Equality Act 2010 (section 27(2)(c)); nor
(b) alleging (whether expressly or otherwise) that the respondent or another person has contravened the Equality Act 2010 (section 27(2)(d))

874. The respondents' agent points out that the claimant was plainly unhappy at Mr Harbertson's request but he did not complain that the request was, itself discrimination. It is submitted that stating that "you can't ask me that" and "I've had this before" is not an allegation of a contravention or something done for the purpose of, or in connection with, the Equality Act 2010.

875. We agree with that submission. It is clear from the terms of the claimant's email that he is unhappy with what Mr Harbertson's request but there is no suggestion (at least at that stage) that the claimant believed he had been unlawfully discriminated against contrary to the Equality Act 2010. The claimant was unhappy that this matter had been raised and believed that he had been treated unfairly but we did not find that he referred to his belief that he had been discriminated against by reason of his religion, which was something we considered he believed subsequently to that discussion.

876. With regard to the second act relied upon, informing Ms Paton-Baines on 12 January 2016 that Mr Harbertson was guilty of religious discrimination, the respondents' agent submitted that the claimant stated that he was being treated "unfairly" not that he had suffered discrimination and accordingly it cannot be a protected act. It is also relevant to note that the claimant did not refer to discrimination in his subsequent email of 13 January 2016. The respondents' agent notes too that the claimant thanked Ms Paton-Baines for the conversation which he described as "well balanced and sensible". It is submitted that the claimant has provided no reason for why this "well balanced and sensible chat" would cause Ms Paton-Baines to victimise him in the future.

877. We carefully considered these submissions and agree with them. We considered the terms of the claimant's communications to the respondent. He does not allege that he was the subject of unlawful discrimination. The approach taken at the time is what is relevant, and not the label that is applied to the treatment subsequently.

878. We find that the email of 11 January 2016 and the discussion on 12 January 2016 do not amount to a protected act in terms of section 27 of the Equality Act 2010.

879. In any event, we spent a very considerable amount of time assessing each individual act and identifying whether there was any connection to the protected

acts relied upon by the claimant. We found no evidence whatsoever that could reasonably support that contention. These acts were not a reason for the treatment. For the reasons we have set out above each of the incidents were in fact entirely unconnected to each of the protected acts.

880. For all of those reasons the claimant's claim that he was victimised in respect of the first claim is ill-founded and should be dismissed.

Harassment related to sex (section 26 Equality Act 2010)

881. We turn now to the claim of harassment related to sex. We consider the issues in turn. We note that issues 9.1 to 9.8 were out of time and it was not just and equitable to allow them to proceed but we will consider them given the importance to the people involved. We also note that the claimant withdrew issues 9.9 and 9.10.

882. Issue 9.1 is of Ms Paton-Baines' alleged plagiarism on 10 October 2015 of a "Terms of Reference" document written by the claimant which we considered at issue 3.2 above. We are satisfied that Ms Paton-Baines did not plagiarise the document that the claimant provided to her as a starting point for the relaunch. The conduct was entirely unrelated to the claimant's sex. The respondents' agent submission is that the treatment cannot "cross the threshold of harassing treatment" because that was not its purpose and even if the claimant argued it was the effect (and there is no credible evidence that it was) it was not reasonable for the claimant to perceive it in that way. We agree with that submission.

883. Issue 9.2 is Ms Paton-Baines excluding the claimant from the Reward and Recognition process in October 2015 which we dealt with at issue 3.3 above. As we found, the claimant was not excluded but rather asked not to attend to allow his colleague to present the session on her own and boost her confidence. The conduct was entirely unrelated to the claimant's sex. In any event as the respondents' agent submits the treatment does not "cross the threshold" of harassing treatment since that that was not its purpose and even if the claimant argued that it was the effect (and there is no credible evidence that it was) it was not reasonable for the claimant to perceive it in that way. We agree.

884. Issue 9.3 is Mr Harbertson preparing a note on 17 March 2016 that the claimant had not been utilised as a Business Skills Coach because of concerns over his conduct which we dealt with under issue 3.6 above. The note in fact contained 3 reasons that explained why Mr Harbertson did not use the claimant as a Business Skills Coach and those were his legitimate views. The conduct was entirely unrelated to the claimant's sex and did not have its purpose or effect of creating the necessary effects required for harassment.

885. Issue 9.4 is Ms Harbertson writing an email on 15 April 2016 stating that the claimant had been excluded from the Business Skills Coach role because of his behaviour which we dealt with under issue 5.27. No such email was identified and on that basis the claim could not proceed.

886. Issue 9.5 is Mr Harbertson "shutting down the conversation" concerning why the claimant had been unwilling to sign the OLM for June 2016 which we dealt with under issue 5.35. Mr Harbertson asked the claimant if he was raising any new issues. He said he was not and so Mr Harbertson fairly indicated that there was no point covering old ground. That was plainly not harassment.

887. Issue 9.6 Is Ms Paton-Baines failing to respond in July 2016 to the Claimant's email setting out why she should adopt the 12 month engagement cycle which we considered at issue 3.7 above. There was in fact a discussion on 27 July 2017. The allegation is not established.

888. Issue 9.7 is Ms Paton-Baines excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016 which we covered at issue 3.8 above. The claimant was not excluded as such. Ms Paton-Baines had a legitimate commercial reason for asking the claimant not to attend. That was entirely unrelated to sex and does not amount to harassment as defined.

889. Issue 9.8 is Ms Paton-Baines insinuating on 10 August 2016 that a comment made by the claimant had undermined the confidence of a colleague, Ms Brown which we considered at issue 3.9. Ms Paton-Baines did what she thought was right as a manager. While the claimant did not like it, and wished to use his skills as an employee engagement champion, the decision was one for Ms Paton-Baines and it was entirely unrelated to sex nor behaviour that has the necessary ingredients to amount to harassment.

890. Issue 9.9 is Mr Harbertson refusing to allow the claimant to discuss Ms Paton-Baines' criticism at the OLM meeting for September 2016 which we considered at issue 3.10 above. The reason Mr Harbertson did not wish to discuss the matter was because he was not party to the discussion and he fairly suggested the claimant take it up with the person who was or raise the matter formally. This was entirely unrelated to sex and not harassment as defined.

891. Issue 9.10 Is Mr Harbertson stating on 24 March 2017 that the reason he did not use the claimant as a Business Skills Coach was because he did not want to expose visitors from other offices to the claimant's behaviour which we dealt with under issue 5.51. This had nothing to do with sex. Nor did it amount to harassment.

892. With regard to issue 10, we have carefully considered each of the incidents relied upon under issue 9. We are satisfied that none of the incidents was in any way related to sex. Each of the matters that we found established were related to the legitimate exercise of the manager's functions. There was no evidence whatsoever to link any of the issues with sex.

893. With regard to issue 11, we considered each of the issues under issue 9 and are satisfied that the conduct which was established did not have as its purpose violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant within the meaning of section 26. The purpose of the behaviour underlying each of the issues was to legitimately manage the claimant. The purpose was in no way to

violate the claimant's dignity nor to create an intimidating, hostile, degrading, humiliating or offensive environment.

894. We then considered whether or not the effect of each of the issues was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We must take into account the claimant's perception and all the circumstances of the case and whether it was reasonable for the conduct to have that effect. We found no evidence that the incidents did in fact have such effects taking account of all the circumstances. We took account of what the claimant said and the evidence before us.

895. We were satisfied that, in any event, it would not have been reasonable for the claimant to believe that the issues had the relevant effects. The claimant's managers were managing him and issuing him with instructions. While he believed those instructions were unfair, it was not reasonable to believe the effect of the instructions was to violate his dignity or create an intimidating hostile degrading humiliating or offensive environment for him in all the circumstances.

896. The necessary ingredients within the definition were absent.

897. In all the circumstances and having examined each of the issues in this area, we are satisfied that in relation to the first claim, the claimant's claims of harassment related to sex are ill-founded and should be dismissed.

Harassment related to religion (section 26 Equality Act 2010)

898. We turn now to the claim of harassment related to religion. We note that the claims underlying issues 12.1 to 12.4 and 13.1 to 13.8 were out of time and it was not just and equitable to extend the time limit but given the importance of the issues to the persons involved we deal with each of the issues below.

899. Issue 12.1 is Mr Harbertson objecting to the claimant's use of the phrase "with the Lord's help" in an email of 11 January 2016 which we dealt with at issue 1.9 above. We found that the way Mr Harbertson communicated his objection to the claimant was appropriate and fair. Even if asking someone not to send work emails with reference to religion is conduct related to religion, we accept the respondents' agent's submission that the treatment was not harassing since it did not have that purpose and could not reasonably have that effect. The claimant accepted that Mr Harbertson was entitled to his views too and both individual's views should be respected.

900. Issue 12.2 is Mr Harbertson "shutting down the conversation" concerning why the claimant had been unwilling to sign the OLM for June 2016 which we considered at issue 5.35. This had nothing at all to do with religion and was an entirely reasonable suggestion Mr Harbertson that the discussion did not cover old ground. It contained none of the ingredients necessary for harassment.

901. Issue 12.3 is Ms Paton-Baines failing to respond in July 2016 to the Claimant's email setting out why she should adopt the 12-month engagement cycle. On the facts she did and a discussion took place on 27 June 2016.

902. Issue 12.4 is Ms Paton-Baines excluding the claimant from the third of three Employment Engagement coffee mornings on 10 August 2016 which we considered at issue 3.8. We accepted that it was Ms Paton-Baines's genuine belief that the claimant's conduct had undermined his colleague's confidence and that by allowing Ms Brown to lead the third session alone would boost her confidence. That was a matter for Ms Paton-Baines to determine which she did legitimately. It was entirely unrelated to religion and had none of the necessary ingredients for harassment.

903. Issues 12.1, 12.2 and 12.4 refer to conduct which was unwanted.

904. Issue 13.1 is Mr Harbertson failing to follow the disciplinary policy by going on a 'fishing expedition' on 16 or 17 May 2016. We found no evidence that Mr Harbertson went on a "fishing expedition". He undertook some basic initial enquiries at the request of Ms Paton-Baines as part of the fact find. The conduct was entirely unrelated to religion and contains no harassment.

905. Issue 13.2 is Ms Paton-Baines failing to follow the disciplinary policy by obtaining a witness statement from Mr Harris on 27 May 2016. As we said when we considered this under issue 1.1, Ms Paton-Baines carried out the initial fact-find and sought to understand what had happened. That was entirely unconnected to religion and had none of the necessary ingredients relating to harassment.

906. Issue 13.3 is Ms Paton-Baines' refusal to tell the claimant on 2 June 2016 who had made three allegations against him. As we said when we considered this at issue 1.2, it was entirely appropriate for Ms Paton-Baines to refuse to disclose the identity of the complainer because she did not want to unnecessarily adversely affected working relationships. If the allegations were to proceed, the identity would be disclosed, which it was. There was no connection at all to religion and the issue did not have the necessary effects to amount to harassment.

907. Issue 13.4 is Ms Paton-Baines' consideration of suspending the claimant in June 2016 without getting his 'side of the story' which we considered at issue 1.3. Ms Paton-Baines acted in good faith having sought advice. She did not suspend the claimant as she rejected the option. The conduct was entirely unrelated to religion and was not unlawful harassment.

908. Issue 13.5 is the failure on 6 July 2016 to expand the scope of the investigation to include allegations of religious harassment by the claimant against Mr Harris which we considered at issue 1.4. Ms Paton-Baines acted in good faith, sought advice and gave the claimant the information to allow him to pursue a complaint against the relevant individuals. She was not asked to expand the scope of her investigation and she conducted the relevant fact find to ascertain the position and the disciplinary process took its course. This allegation is not made out. It has no connection whatsoever to religion and is not harassment.

909. Issue 13.6 is Mr Harbertson's alleged breach of the Conduct Policy on 2 August 2016 by speaking about the investigation with Mr Southern. We examined this at issue 5.38. Mr Harbertson acted entirely appropriately and carried out the instructions he had been given by Ms Paton-Baines. This had absolutely nothing to do with religion and was not harassment.

910. Issue 13.7 is the investigation officer allowing Mr Southern to give contradictory evidence without challenge on 18 August 2016 which we assessed under issue 5.42. We accept the respondents' agent's submissions that the role of the investigating officer is to gather evidence and draw conclusions based on the totality of the evidence. Their role is not to "challenge" witnesses as such and any inconsistencies may be reflected in the investigator's conclusions. It was submitted that there were no inconsistencies in Mr Southern's evidence that might reasonably cause Ms Banks to reject his account. We accept that submission. This allegation is not made out and has no connection whatsoever to religion and is not harassment.

911. Issue 13.8 is the investigation officer failing to acknowledge on 24, 25 and 26 August 2016 evidence casting doubt on the evidence of Mr Harris which we assessed at issue 1.5. Ms Banks did consider the evidence the claimant provided and we are satisfied from carefully considering the evidence that she considered the inconsistency the claimant alleged. On that basis the allegation is not made out. We find that it has no connection whatsoever to religion and does not have the requisite effects to amount to harassment.

912. Issue 13.9 is the content of the investigation report (the criticisms of which are more particularly set out in the claimant's further particulars of claim). We examined this allegation and the criticisms in detail at issue 1.6. We do not consider that the contents of the report amount to unwanted conduct since it represented Ms Banks properly carrying out her duties as investigation officer. In any event it is clearly entirely unrelated to religion and has none of the necessary ingredients to amount to harassment. The report was fair, balanced and a genuine attempt to set out her review and conclusions on the evidence that was before her at the time.

913. Issue 13.10 is Ms Paton-Baines informing the claimant on 2 September 2016 that he would face a disciplinary hearing for 'threats of violence' when the investigation report did not conclude that the claimant had threatened anyone

with violence. We assessed this issue under issue 1.7 and found that the wording Ms Paton-Baines used was that from the investigation report. She acted entirely appropriately and the conduct was not unwanted nor was it in any sense related to religion. It had none of the necessary ingredients to amount to harassment.

914. Issue 13.11 is Ms Robson ignoring the claimant's evidence at the disciplinary hearing on 20 January 2017 that he had been the victim of religious harassment and a hate crime. We discussed this at issue 1.8 and were satisfied that Ms Robson did consider these issues. This allegation is not made out. It is not conduct related in any way to religion and is not harassment.

915. Issue 14 requires us to consider whether any of the conduct set out at issues 12 and 13 related to the claimant's religion of Christianity. We analysed each individual issue and, with exception of issue 12.1, we found none of the issues had any connection whatsoever to religion.

916. Issue 15 requires us to consider whether any of the conduct set out at issues 12 and 13 had the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010.

917. We considered each of the issues under issues 12 and 13 and are satisfied that the conduct which was established did not have as its purpose violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant within the meaning of section 26. The purpose of the behaviour underlying each of the issues was to legitimately manage the claimant. The actions were entirely reasonable and an exercise of the relevant manager's power. The purpose was in no way to violate the claimant's dignity nor to create an intimidating, hostile, degrading, humiliating or offensive environment.

918. We then considered whether or not the effect of each of the issues was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We must take into account the claimant's perception and all the circumstances of the case and whether it was reasonable for the conduct to have that effect. We found no evidence that the incidents did in fact have such effects taking account of all the circumstances. We took account of what the claimant said and the evidence before us. We accept that the claimant was unhappy about Mr Harbertson but we did not consider that the unhappiness went beyond that. None of the other issues caused the claimant to feel that his dignity had been violated or that the requisite environment had been created.

919. We were satisfied that, in any event, it would not have been reasonable for the claimant to believe that the issues had the relevant effects. The claimant's managers were managing him and issuing him with instructions. While he believed those instructions were unfair, it was not reasonable to believe the effect of the instructions was to violate his dignity or create an intimidating, hostile,

degrading, humiliating or offensive environment for him in all the circumstances. The context of the comments and actions was important.

920. The necessary ingredients within the definition were absent.

921. In all the circumstances and for the foregoing reasons we find that the claimant's claims for harassment relating to religion in terms of his first claim are ill-founded and are dismissed.

922. Issues 16, 17 and 18 deal with time limits which we addressed at the outset of our decision. We carefully examined each of the issues that were outwith the statutory time limit and concluded that there was no act or omission that extended over a period and it was not just and equitable to extend the time.

SECOND CLAIM (2207335/2017)

Sexual Harassment (section 26 Equality Act 2010)

923. Turing to the claim of sexual harassment raised in the second claim, we note that issues 19.1 and 19.2 were time barred but given the importance of the issues we consider them nevertheless.

924. Issue 19.1 is whether Ms Lau said, around April 2017: "You are not too old to have more children if you want to? The Tribunal has considered the evidence that was led before it very carefully. In particular we consider the evidence that Ms Lau provided in this regard and that of the claimant in relation to this issue. In light of our assessment of the evidence and having seen those who were present, namely the claimant and Ms Lau, we can make our decision.

925. The respondents' agent submits that we should prefer the evidence of Ms Lau to that of the claimant. He submits that she was resolute in her evidence on the critical details, that she did not falter under cross-examination, she was plainly upset at her recollection of her interactions with the claimant in a manner that seemed entirely genuine and she gave no indication that her upset was false or "put on" as the claimant alleges. It was also submitted that her presentation as a witness to the Tribunal was consistent with Mr Hunt's assessment of her because she answered questions directly and was to the point and her answers were not calculated nor follow unexplained pauses, which it was submitted shows that she was giving details from her genuine recollection and not reconstructed based on an untruth.

926. We consider those points to be fair and accurate from our assessment of the evidence before us.

927. The respondents' agent noted that with regard to issue 19.1 it is relevant to note that the claimant's allegation was not known to the respondents prior to the events of 22 June 2017. The claimant did not articulate the issues at the time

which is a significant issue with regard to the claimant's credibility since he did not raise the issue at the time, contrary to Ms Lau's approach.

928. The specific point was not put to Ms Lau and we therefore have to assess the position from the evidence we have.

929. We note that Ms Lau did make a comment that "men can have babies anytime" which was a general statement not directed at the claimant and, as the respondents' agent submits, was based on the biological fact that men can produce children at an older age than women.

930. We were puzzled by the claimant's evidence in his first witness statement that this comment was "the sort of comment that I associate with a woman who is going to ask a man for a donation of semen". He indicated that he had heard this in a lesbian bar in Newcastle. The respondents' agent points out that the claimant toned down his observation in his amended statement to refer to Hugh Hefner's sperm count. It is suggested that the claimant's evidence on this point casts doubt on his credibility.

931. Having carefully balanced both accounts, we decided to accept Ms Lau's evidence on this point. Her denial appeared to us to be honest and clear. She had no reason not to tell the truth and she was open and consistent in setting out what she did say and what happened. We accept the respondents' agent's submissions on this point.

932. We therefore find that Ms Lau did not say what is alleged in issue 19.1 and that allegation fails.

933. Even if we were wrong, we do not accept that the comment relates to sex. The comment relates to having children. Furthermore we did not consider the purpose of the conduct to have the requisite effects to amount to unlawful harassment. We found no evidence that it did have the effects and even if it did have the necessary effects it was not reasonable for it to do so. We accepted Ms Lau's evidence that there was no appreciable effect on the claimant at the time.

934. Issue 19.2 is Ms Lau allegedly saying, in June 2017, "Do you want to be dominated?". We carefully considered the claimant's evidence and that of Ms Lau. For the reasons we set out under issue 19.1 we have found on the balance of probabilities, that Ms Lau's evidence is to be preferred and this statement was not made. It appeared to us to be entirely inconsistent with everything else Ms Lau had said and entirely out of context. We found Ms Lau to be more credible in relation to this point. On that basis we find the comment was not said and the allegation fails.

935. Issue 19.3 is Ms Lau saying on 22 June 2017 "I don't have dirty dreams" and "I know that men have those kinds of dreams, isn't it?". Ms Lau accepted to saying the former but not latter statement. Having carefully considered the evidence before us we accept her position. We found it more likely than not that the second sentence was not said as we found her evidence to be more credible

than the claimant's evidence on this point. Ms Lau raised concerns at the time and was clear and open as to what was said.

936. The claimant was clear that he believed that to amount to sexual harassment. Each of the witnesses to whom that was put disagreed. The legal position requires the conduct to be unwanted and related to sex. We are not at all clear from the evidence that the conduct was unwanted since the discussion was around dreams and Ms Lau made the remark as a throwaway comment. It was not an invitation to talk about any matters nor was it, as the claimant contended, an attempt to sexualise the discussion.

937. The conduct was not related to sex. It related to dreams that Ms Lau believed men had which may or may not be accurate.

938. We are satisfied that the purpose of the conduct was not to create the requisite effects. We find that it was not reasonable for the claimant to believe that its effects were to violate his dignity etc. The comment may amount to harassment as defined by the first respondent in their policy given the absence of any objective assessments but it does not amount to unlawful harassment.

939. Issue 19.4 is Ms Lau allegedly saying: "You men all want younger women" and two similar comments the following week. We again assessed the evidence of the claimant and Ms Lau in the absence of any other evidence we find that the comments were not made and that Ms Lau's evidence on this point is to be preferred. The comments as alleged are out of character to the discussion and comments Ms Lau had with the claimant.

940. As is pointed out subsequently, the claimant indicated that there was a good working relationship and that there was a degree of banter between the 2 individuals and yet argues that he was fearful of Ms Lau and felt vulnerable.

941. Ms Lau appeared to the Tribunal to be credible and reliable. Her evidence was clear and as a whole consistent. We took into account the claimant's point in his submissions that she had initially denied there being nicknames but appeared latterly to accept some nicknames were used which we put into the balance. The claimant cross examined Ms Lau and sought to challenge her credibility. From our assessment of the material before us, we found her evidence to be more credible than the claimant's evidence. We took account of her oral evidence and the material produced at the relevant time.

942. For those reasons this allegation has not been established. Even if the comment had been established, we were not convinced the comment was related to sex or of a sexual nature. Ms Lau appeared to be indicating that men want (in the sense of being in a relationship with) younger women. That was not related to sex as such. In any event we would not have been satisfied that the conduct had the requisite effects to amount to unlawful harassment. It was not intended

to have the relevant effects and we would not have found it reasonable to have such effects from the context of the discussion that took place.

943. Issue 20 requires us to consider whether the conduct was related to the Claimant's sex or of a sexual nature. We analysed what was alleged to have been said carefully. We were not satisfied that the comments were related to sex or of a sexual nature for the reasons set out above.

944. Issue 21 requires us to consider whether the conduct had the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) of the Equality Act 2010. We examined each of the issues carefully. We are satisfied that none of the behaviours that we found had the purpose of violating the claimant's dignity or creating an adverse environment for him in terms of section 26. The actions were taken solely to manage the claimant and were entirely legitimate.

945. Next we assessed whether the claimant believed the conduct to have the effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010. We found that it did not. While, after the event, in response to allegations made against him, he argued that the conduct amounted to harassment, we did not find that the comments that were made by Ms Lau in fact violated the claimant's dignity or created the adverse environment in the sense set out in section 26. The claimant was having a discussion with Ms Lau about interpretation of dreams and she made a quip about dreams men have, in her opinion. The claimant continued to have the discussion. Other than the claimant arguing that it was harassment after the event, there is no evidence that we found to justify the claimant's later assertion that it was harassment. We did not find that evidence credible.

946. We also assessed whether or not it was reasonable for him to so conclude on the facts. We take account of the claimant's specific circumstances, including his mental health and the environment. The claimant in his written submission notes he was alone at the time and suffered poor mental health. We take that into account. We do not accept, however, that it was reasonable for the conduct in question, even if established, to have the effects set out in section 26. This was evidenced by the fact that each of the witnesses to whom the claimant put the point failed to see how the conduct in question could amount to unlawful sexual harassment. We agree. Looking at the matter objectively, taking the claimant's circumstances into account, it was not reasonable to regard the conduct as having the relevant effects. It was part of a discussion and Ms Lau gave her opinion.

947. In all the circumstances and for the foregoing reasons we find that the claims of sexual harassment within the second claim are ill-founded and should be dismissed.

Direct sex discrimination (section 13 Equality Act 2010)

948. We turn now to the claim of direct sex discrimination. While the claims underlying issues 22.4 and 22.5 were out of time and claim underlying issue 22.5 was withdrawn, we shall consider each of the issues given the importance of them to the people involved.

949. In dealing with the issues under issue 22 we shall consider whether or not the allegation has been made out on the facts and whether or not the treatment was less favourable than an actual or hypothetical comparator and then whether the reason for any less favourable treatment was sex.

950. Issue 22.1 is instigating a disciplinary investigation against the claimant on 7 July 2017 concerning comments made to Ms Lau, thereby disregarding the claimant's allegation that he had been bullied and sexually harassed by her. From the facts we have found, the disciplinary investigation was commissioned on 7 July 2017 following the claimant's discussion with Ms C Robson. The claimant did not allege harassment until he sent his email of 12 July 2017 which was 5 days later. It is therefore not correct to say the investigation was instigated and the allegation was disregarded given the allegation was made after the investigation was instigated. This allegation must therefore fail. We can find no evidence that a woman would have been treated any differently on the facts.

951. Issue 22.2 is failing to carry out a fair initial fact finding in accordance with the disciplinary policy. The policy is clear that the purpose of an initial fact find is to make a quick assessment about the situation to establish the facts to enable a decision to be made as to whether misconduct possibly occurred, what the general circumstances are and whether the possible misconduct is likely to be of a serious or gross nature, thereby determining whether or not the formal process is to be initiated. From the facts we found, that was what Ms Robson did in this case. We accept the respondents' agent's submission that much of the relevant material was already documented in the emails of 22 and 30 June 2017 together with Ms L Robson's account of her interactions with Ms Lau. There was no failure therefore to carry out a fair fact find in accordance with the disciplinary policy and this allegation fails. We find that a woman (whose circumstances were not materially different to the claimant's) would have been treated in the same way.

952. Issue 22.3 is seeking to temporarily relocate the claimant pending the investigation. As we set out in our facts, the reasons for the proposed relocation were explained to the claimant as part of the 7 July 2017 conversation. Ms C Robson wanted to allow the investigation to proceed unimpeded and to protect the health and wellbeing of those affected, which included not just the claimant but Ms Lau. Ms C Robson was also concerned that the working relationship had broken down given what was being alleged.

953. The alternative to a relocation was suspension but Ms Robson did not wish to do so. It was not feasible to maintain the status quo while the investigation progressed given what had been alleged.

954. The reasons for the relocation which we have found demonstrate that a female employee in the same circumstances as the claimant would have been treated in the same way. The reason why Ms Robson acted was entirely unconnected to gender and was focused on allowing the investigation to proceed and recognised the reality of the situation with regard to the working relationships. There was absolutely no connection to gender.

955. Issue 22.4 was seeking to persuade Ms Cook to relocate the claimant pending the resolution of the claimant's claim to the Employment Tribunal (the first Claim) and issue 22.5 is suggesting in her email of 10 April 2017 that the claimant be put on garden leave.

956. We considered the terms of Ms C Robson's email carefully in this regard together with her oral evidence. Ms Robson was clear as to why she wrote the email and the 3 reasons for it, namely the operational difficulty of moving the claimant's team to a different manager, the additional pressures this placed on other staff and the concern for Mr Harbertson's mental health. These reasons are borne out by the email itself, which refers to each of these reasons.

957. The respondents' agent reminded the Tribunal that in the context of discrimination it is important to draw a proper distinction between the reason for a decision and the background to it.

958. We note that Ms Robson's "wish" was not implemented and that the claimant did not see this email until some months after the incident in question (via a subject access request). The respondents' agent makes the point that whether he received it at the time or subsequently, is irrelevant since the email was not detrimental. We agree with that analysis given the facts.

959. Ms Robson's thought as to whether the claimant could be moved or placed on garden leave is not unfavourable treatment.

960. In any event we are satisfied that a woman in the same situation would have been treated in precisely the same way as the claimant. In other words, we are satisfied that the reason for the claimant's treatment by Ms Robson was entirely unconnected to his gender.

961. Issue 23 requires us to consider whether there was any less favourable treatment because of the claimant's sex. We examined each of these issues and assessed how a woman would be treated in each case, where the circumstances were not materially different.

962. In the claimant's written submissions he argues that an actual comparator is Ms Lau since he says Ms Robson received information about Ms Lau but no formal action was taken against her. We do not consider that to be a legitimate

comparator since Ms Lau's circumstances were materially different to those facing the claimant. We are satisfied that if the roles had been reversed and Ms Lau had been where the claimant was, Ms Lau would have been treated in precisely the same way as the claimant.

963. We do not find that there is any reasonable basis upon which to conclude the claimant's gender was relevant. We do not need to resort to the burden of proof provisions as we can make findings from the facts of the reason why the treatment happened.

964. We used a hypothetical comparator. We are clear that the reason for the treatment in each case was entirely unconnected to the fact the claimant was a man. Gender was in no sense at all a reason for the treatment relied upon. Had he been a woman, the treatment would have been exactly the same.

965. We are satisfied that the claimant's claims for direct sex discrimination in his second claim are ill-founded and are dismissed.

Victimisation (section 27 Equality Act 2010)

966. We turn now to the victimisation claims in the second claim. Issue 24 replicates the 5 issues from 22. We found that issue 22.4 and 22.5 were out of time but we shall consider each issue in turn.

967. Issue 24 requires us to consider whether Ms C Robson subjected the claimant to a detriment by reason of the matters set out at issues 22.1-22.5 inclusive

968. Issue 22.1 is instigating a disciplinary investigation against the claimant on 7 July 2017 concerning comments made to Ms Lau, thereby disregarding the Claimant's allegation that he had been bullied and sexually harassed by her. From the facts we have found, the disciplinary investigation was commissioned on 7 July 2017 following the claimant's discussion with Ms C Robson. The claimant did not allege harassment until he sent his email of 12 July 2017 which was 5 days later. It is therefore not correct to say the investigation was instigated and the allegation was disregarded given the allegation was made after the investigation was instigated. This allegation must therefore fail. This cannot therefore amount to a detriment.

969. Issue 22.2 is failing to carry out a fair initial fact finding in accordance with the disciplinary policy. The policy is clear that the purpose of an initial fact find is to make a quick assessment about the situation to establish the facts to enable a decision to be made as to whether misconduct possibly occurred, what the general circumstances are and whether the possible misconduct is likely to be of a serious or gross nature, thereby determining whether or not the formal process is to be initiated. From the facts we found, that was what Ms Robson did in this

case. We accept the respondents' agent's submission that much of the relevant material was already documented in the emails of 22 and 30 June 2017 together with Ms L Robson's account of her interactions with Ms Lau. There was no failure therefore to carry out a fair fact find in accordance with the disciplinary policy and this allegation fails.

970. Issue 22.3 is seeking to temporarily relocate the claimant pending the investigation. As we set out in our facts, the reasons for the proposed relocation were explained to the claimant as part of the 7 July 2017 conversation. Ms C Robson wanted to allow the investigation to proceed unimpeded and to protect the health and wellbeing of those affected, which included not just the claimant but Ms Lau. Ms C Robson was also concerned that the working relationship had broken down given what was being alleged.

971. The alternative to a relocation was suspension but Ms Robson did not wish to do so. It was not feasible to maintain the status quo while the investigation progressed given what had been alleged.

972. We do not consider that seeking to temporarily relocate the claimant is a detriment given it was never in fact implemented. In any event we considered what the reason for the treatment was and we are satisfied that the sole reason for the treatment was for the reasons set out above. There were no other reasons or motivations that led to the treatment.

973. Issue 22.4 was seeking to persuade Ms Cook to relocate the claimant pending the resolution of the claimant's claim to the Employment Tribunal (the first Claim) and issue 22.5 is suggesting in her email of 10 April 2017 that the claimant be put on garden leave. We considered the terms of Ms C Robson's email carefully in this regard together with her oral evidence. Ms Robson was clear as to why she wrote the email and the 3 reasons for it, namely the operational difficulty of moving the claimant's team to a different manager, the additional pressures this placed on other staff and the concern for Mr Harbertson's mental health. These are the reasons within the email.

974. We set out above the respondents' agent's submissions in this regard. Ms Robson was clear that by referring to the claimant as "the problem" she was referring to him being at the centre of the issues she was confronted with. It was a fair assessment.

975. We note that Ms Robson's "wish" was not implemented and that the claimant did not see this email until some months after the incident in question (via a subject access request). The respondents' agent makes the point that whether he received it at the time or subsequently, is irrelevant since the email was not detrimental. We agree with that analysis given the facts.

976. This is because, as the respondents' agent submitted, if the description of the claimant as "the problem" is a fair assessment based on objective fact, which is something with which we agree, it cannot be a detriment to the claimant in the sense explained by the (then) House of Lords in **Shamoon v Royal Ulster**

Constabulary, above, that is to say if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work.

977. Further, Ms Robson's thought as to whether the claimant could be moved or placed on garden leave is not a detriment if never acted upon. The position is not dissimilar to that before the Employment Appeal Tribunal in **Bayode v Chief Constable of Derbyshire** UKEAT/0499/07 in which the claimant police officer complained about notes taken about her by her colleagues. If she did not dispute the accuracy of the notes and no action was taken against her as a result, she did not suffer a detriment.

978. In any event we are satisfied that the sole reason for the treatment was as set out above and in no way connected to the Tribunal claim or claim of maladministration.

979. In terms of issue 26 we considered in respect of each of the 4 issues above whether they were done because of the claimant's claim to the Employment Tribunal (the first Claim) or because of the claimant's complaint of maladministration of a disciplinary investigation in which he received a written warning. We recognised that the protected acts need not be the principal cause, provided they are a substantial or effective cause. We looked at the evidence before the Tribunal and were satisfied that neither the Tribunal claim nor the maladministration were in any sense whatsoever connected to the treatment: these were not in any sense reasons for the treatment. The sole reason for the treatment was as we have set out above. We do not accept that the reason for the treatment was connected to any of the acts relied upon in any way.

980. Issue 26 requires us to consider whether the claimant's complaint of maladministration in relation to the disciplinary warning amounts to a protected act within the meaning of section 27(2) Equality Act 2010? In his complaints he argues that he was subjected to sex discrimination, which is an allegation that the Equality Act 2010 was breached. That complaint does therefore amount to a protected act.

981. In all the circumstances the claimant's claim of victimisation in his second claim is ill-founded and is dismissed.

THIRD CLAIM (2500677/2018)

Unfair dismissal

982. The next claim to consider is that of unfair dismissal.

983. Issue 27 is whether the claimant was dismissed for the potentially fair reason of conduct. The claimant was dismissed because of what he was found

to have said to Ms Lau, his behaviour, in other words for matters relating to his conduct.

984. The next issue is whether the first respondent acted reasonably in treating the Claimant's conduct as sufficient for dismissal? Without limitation to the Tribunal's general enquiry into fairness pursuant to section 98(4) of the Employment Rights Act 1996, the claimant wished the Tribunal to have particular regard to: whether the final written warning issued in January 2017 was manifestly inappropriate; and his Convention rights under Article 10 ECHR (the right to freedom of expression and information).

Final written warning – manifestly inappropriate?

985. We deal firstly with the claimant's argument that the final written warning was manifestly inappropriate.

986. We considered the claimant's submissions and evidence in this regard. We carefully assessed the evidence that led the first respondent to issuing the final written warning. We find that there were clear and reasonable and legitimate grounds for the final written warning being issued.

987. The incident in question was witnessed by more than one person and although the evidence was not identical, and there were inconsistencies, which the claimant pointed out, it was clear that Ms Banks took the full factual matrix into consideration. There was clear evidence in support of the outcome. Thus during his interview of 5 July 2016 Mr Harris confirmed that the claimant had called him a "prick" and that he said "I'll take you outside" to him which was entirely consistent with his original written statement. The evidence of Mr Southern, Ms Paton-Baines's investigation and the cleaner were all relevant considerations.

988. The claimant was equivocal on the core allegations during his investigation interview as the respondents' agent pointed out, which is a relevant consideration in assessing what happened.

989. The conclusions reached in the investigation report are, we find, reasonable based upon the information before the first respondent at the time. While the claimant may disagree with their content, we find that the way in which the investigation was carried out was reasonable and the conclusions reached sustainable and fair in all the circumstances.

990. The investigation report fairly summarised the evidence with justifiable conclusions. The approach to the investigation was entirely reasonable and even-handed, evidenced by the decision not to take the first allegation (of the three) any further as it was unsupported by the evidence.

991. We carefully considered the claimant's arguments as to the inconsistencies in relation to the witnesses and investigation. We do not consider these such as to render the investigation or its conclusions unreasonable.

992. The final written warning was issued in good faith. The procedure was robust and fair. There were clear *prima facie* grounds for imposing it given the evidence that was before the employer at the time. The claimant argues that it was manifestly inappropriate and we have spent time considering this in detail from the information before the employer at the time.

993. With regard to inconsistency in evidence, we accept the respondents' agent's submission that minor differences amongst witness recollections can often be an indication of a credible set of accounts given the passage of time and memory. If the evidence was identical on every detail that could suggest collusion.

994. We carefully examined each of the claimant's arguments as to the first disciplinary process. We accept that he believed it was unfair but that was due to his disagreement with what was said and by whom. Ms Banks' job was to assess what was said and reach a conclusion. She did so and did so reasonably. She also took account of the claimant's points, including those made after the hearing. We considered that the outcome of the hearing was a fair and reasonable outcome.

995. It is relevant to note that the claimant did not appeal the outcome, as he could have done if he believed the outcome was discriminatory or wrong. He did not do so. The claimant included part of Beatson LJ's speech in **Davies** [2013] EWCA Civ 135 at paragraph 38 (page 7 of the submission) where he states: "Where there has been no appeal against a final written warning, I consider there would need to be exceptional circumstances for going behind the early process". The complaint of maladministration was made some time later and advised the claimant that an appeal was the appropriate way to deal with matters.

996. We do not accept that there are exceptional circumstances in this case. The approach that was taken by Ms Banks was fair and reasonable.

997. Mr Keane pointed out during cross examination that dismissal could well have been a reasonable outcome given the nature of the allegations at that time (which was a reasonable comment to make). The allegations were serious and the approach taken was even handed (seen by the fact one of the allegations was not taken forward) and that Ms Telfer took account of the mitigation and surrounding circumstances particularly in relation to the third allegation. The claimant was given a final written warning because of how serious the allegations were that were upheld. She took into account the totality of the evidence in respect of the allegations that were upheld and came to a view which was reasonable in the circumstances, which was entirely consistent with the policy.

998. The claimant submits that the decision with regard to this process "failed the Burchell test". That is the test relevant to dismissal rather than with regard to whether or not a previously issued final written warning can be challenged upon subsequent misconduct, where the issue is essentially whether the warning was manifestly inappropriate. We must apply the law as set out above in considering whether or not the final written warning can in essence be "reopened".

999. Ms Robson fairly considered the evidence that was placed before her. She did not ignore the fact that the claimant believed he had been subjected to a hate crime and that he believed he had been subject to discrimination. That was taken into account. The claimant was progressing his grievance with those individuals' employer.

1000. The claimant's comments upon being told of the final written warning: "So because it's serious I am getting a final? Thank you. It's not the worst outcome; I need to think about where to go next. I have learnt a lesson from it all." is a fair reflection of the outcome. The misconduct the claimant was reasonably found to have committed was serious and the outcome was not the worst, since dismissal was a possibility. The disciplining officer fairly examined all the circumstances, including the mitigation, and decided upon a fair sanction, a final written warning.

1001. In all the circumstances and having carefully considered all the evidence before the first respondent at the time, we are satisfied that the final written warning that was issued was reasonable. The outcome was based solely upon the assessment of the evidence following a reasonable and robust process. We reject the argument that it was manifestly inappropriate. There are no exceptional circumstances that would entitle us to reopen that outcome.

1002. As a consequence, as the authorities in this area show, given the claimant was subject to a legitimate final written warning and had been warned that any subsequent acts of misconduct could result in his dismissal, we need to assess whether or not there were subsequent acts of misconduct that justified his dismissal in light of the final written warning.

Genuine belief in the guilt of the employee?

1003. We first consider whether or not the first respondent genuinely believed that the claimant was guilty of misconduct. We accepted that the investigation manager, disciplinary manager and appeal manager all carried out their roles with professionalism and in good faith. They acted on the basis of the information before them. The respondents genuinely believed the claimant was guilty of misconduct.

Honestly held belief in misconduct?

1004. The next question is whether that belief was honestly held in the sense of there being reasonable grounds to sustain it. Having assessed all the evidence we have no doubt that the belief that the claimant was guilty of misconduct was honestly held. Statements were obtained from all the relevant witnesses. The claimant was given the chance to put forward his position, both in writing and orally. The dismissing manager sought to ensure she had all the relevant information before concluding her deliberations. As the claimant had an extant final written warning, as the authorities show, the level of misconduct that needs to be established to justify dismissal is less than that needed if the employee had a clean disciplinary record.

1005. Furthermore in this case the claimant had been found guilty of a number of different acts of misconduct, in the sense that this was not a one off action. The allegations comprised speaking inappropriately to Ms Lau on 22 June, previous inappropriate discussions with her and the inappropriate comment in an email about his manager. Those comments followed an informal warning having been given about how the claimant speaks and communicates to his colleagues (given how he described Mr Harbertson in March 2016) and Ms Paton-Baines's warning to him to ensure he treated people with respect and was polite and reasonable in his dealing with people. There was a clear pattern of behaviour on the part of the claimant.

1006. In light of that and in light of the outcome of the investigation and the disciplinary and appeal hearings from the facts we found the genuine belief in the claimant's guilt was honestly held. The first respondent had reasonable grounds on which to sustain its belief that the claimant was guilty of misconduct.

Was there as much investigation as was reasonable in the circumstances?

1007. One of the key questions is whether the respondent carried out as much investigation as was reasonable in the circumstances. The claimant's real challenge to his dismissal was that the investigation was insufficient and unreasonable.

1008. With regard to the investigation, the respondents' agent submitted that the sole question is whether it provided reasonable grounds for the sanction which resulted in dismissal. He argued that of the two core allegations – concerning the events of 22 June 2017 and the claimant's use of the word "enemy" in reference to Ms Paton-Baines – the former was a pure assessment of credibility; the latter was simply an exercise in assessing its intended meaning and effect, since there could be no dispute over what the email actually said. We consider that a fair summary of the position. We also consider the 2 allegations, the events of 22 June 2017 and the "enemy" reference, to be properly described as the "core allegations".

1009. Mr Hunt interviewed all relevant witnesses and the claimant has not alleged that there were other lines of enquiry which were not pursued. The claimant's main issue if the fact that Mr Hunt preferred the position advanced by Ms Lau to his without giving explicit reasons for so doing.

1010. The respondent argues that this is not a fair criticism. While Mr Hunt conceded that he could have expressed his conclusions more fully, his report shows why he reached the conclusions he did. The claimant's principal criticism of the dismissal process is why Mr Hunt preferred Ms Lau to his own account as the claimant argues he was telling the truth. Mr Hunt reached his conclusion from how Ms Lau and the claimant presented their response to Mr Hunt and from all the circumstances. He met with both individuals. The respondents' agent submits that as he was the only individual present for both interviews we should give due respect to his judgment, unless there is a reason for concluding his assessment

was unreasonable or biased. It is argued that notes of an interview are a poor substitute for a witness's presentation in person. We apply appropriate weight to that fact. We take account of the notes that were taken at the time and take cognisance of the fact that oral evidence was given in relation to matters that occurred over 2 years ago.

1011. The claimant has given no reason as to why Mr Hunt would not seek fairly to assess the evidence before him. There was no reason for him to prefer Ms Lau to the claimant. He was independent and there was no suggestion by the claimant that Mr Hunt was in some way favourably disposed towards her or for some reason he was not favourably disposed towards the claimant. Mr Hunt carried out his investigation from the information he was given and reached a view from the information thus obtained. He did not "close his mind" to the situation but reached a conclusion, as he was permitted to do. He did his best to carry out a fair investigation in light of the information he had.

1012. The claimant submitted that "my submission is simple. A woman makes allegations against a man. A man, the claimant, denies the allegations. Therefore an impasse is reached. A reasonable person could stop there and find the allegations not proven or make further investigations that produce evidence that form the basis of a reasonable finding that the woman's allegations are found as fact." While we accept a reasonable employer could do that, an equally reasonable employer, in our view, could make an assessment of credibility from all the information before them. That assessment would include not just how the person answers the questions and their answers but also the context, what happened at the time of the events in question and the full factual matrix. That, in our view, is equally as reasonable. It was what happened in this case.

1013. The respondents' agent in their written submissions note that Mr Hunt's written report has the following important features:

(a) It contained summaries of the witness evidence which were done to tease out those aspects of the evidence which Mr Hunt considered important.

(b) The report recorded that, despite her nervousness, Ms Lau was "open to all questions from me and answered quickly and clearly". That was an important part of his assessment that Ms Lau was telling the truth. We did take account of Mr Hunt's response to the questions at the Hearing in this regard and considered the claimant's response at the investigation. Ultimately, assessing credibility is about reaching a view from all the information. The fact Mr Hunt concluded Ms Lau answered in the way she did was one but not the only reason why he preferred her position.

(c) Mr Hunt noted that Ms L Robson's impression that Ms Lau was "scared" following the incident was consistent with the suggestion that something serious had happened.

(d) Mr Hunt also recorded Ms Paton-Baines' view that she could not think of a reason for why Ms Lau would make up the allegations;

(e) He recorded Ms Paton-Baines' upset as to the "enemy" comment, to the extent that she had considered bringing her own complaint;

(f) Mr Hunt recorded that the claimant could not provide the specifics of occasions on which Ms Lau had offended him when asked and that he had not raised a formal complaint about her conduct.

1014. These are relevant considerations when assessing Mr Hunt's evidence and in our view show that the decision reached by Mr Hunt fell within the range of responses open to a reasonable employer with regard to the investigation process.

1015. We deal with the claimant's criticisms of the investigation under issue 30.5 here as they go to the fairness of the investigation. We have considered each of the claimant's issues carefully and the investigation and disciplinary process. We turn to the specific criticisms made by the claimant under issue 30.5 in this regard.

(a) The first complaint was that the allegations were "sprung upon" him at the investigation meeting of 8 December 2017. That is not a fair criticism since Ms C Robson discussed the allegations at length during the meeting on 7 July 2017 when the letter was given to him. The claimant knew what the allegations were and was given specific details and a chance to comment.

(b) The claimant makes a criticism of him being asked whether the comments were offensive. We consider it clearly relevant for the respondents to consider the claimant's understanding of the seriousness of the comments.

(c) The third criticism of the investigation is that the claimant alleges that Ms Lau's interview was a "counselling session". He accepted that this was only a view or perception as he was not present. He was unable to articulate precisely what he meant by that. We are satisfied that the investigation meeting conducted with Ms Lau was fair and reasonable, with the allegations being put to her, and she being asked whether or not she had offended the claimant.

(d) This leads to the fourth complaint which is an allegation that Mr Hunt did not ask Ms Lau about the alleged "unwanted comments" from Ms Lau on 22 June. We are satisfied that Mr Hunt did ask whether Ms Lau had done anything to offend the claimant.

(e) The claimant was unable to explain his fifth criticism which related to Mr Hunt having highlighted certain documents. It was clearly part of Mr Hunt's preparation for the meeting for him to have done so which was unobjectionable.

(f) His sixth criticism is that Mr Hunt asked him about the reference to "the Lord" in his reply of 30 June 2017 to Ms Lau. Mr Hunt explained that he wanted to understand the context of this and he took the matter no further when he confirmed that he was a Christian. The question had stemmed from Ms Lau's suggestion that she was "shocked" by the content of the 30 June email. It was reasonable for him to make the enquiries and to do so in the way he did.

(g) The claimant argues in his seventh complaint that there was a double standard given Mr Hunt did not censure Ms Lau when she referred to the claimant as "strange". That criticism is unfair since the claimant was not censured when he referred to Ms Lau's behaviour as "strange". We accept the respondents' agent's submission that there is no material difference between the two comments.

(h) Complaint 8 concerns the level of questioning around the allegations which preceded 22 June. We accepted Mr Hunt's evidence that he did not simply "roll up" the allegations and treat them as an indivisible block. We are satisfied that he treated each allegation on its merits and asked questions accordingly. His principal focus was in relation to the events on 22 June which he considered in detail and then he examined the previous examples of the claimant's conduct which Ms Lau had provided, which she said showed that the behaviour was not isolated, a matter that Mr Hunt considered and in respect of which reached a fair conclusion. As we said above, the core allegations were what was alleged to have been said by the claimant on 22 June and his comment about Ms Paton-Baines. The other allegation was set as background showing that the comments of 22 June were not isolated.

(i) The claimant's final complaint is that Mr Hunt finalised his report before obtaining the claimant's comments on the investigation meeting notes. Mr Hunt explained that the investigation had already faced lengthy delays due to the claimant's availability and the occupational health advice was that it was in the claimant's interests to conclude the matter as soon as reasonably possible. In any even the claimant did not reply when Mr Hunt sent the notes to him and there was no reason why he could not have done so. The claimant has not provided any evidence to show that what he would have said would have made any difference whatsoever. Mr Hunt stated in cross examination that his conclusions would have remained the same from what he knows now. We do not consider the failure to send the notes to the claimant to be material. He had the opportunity to raise any issues after he received the report (and did not do so) and a further chance to do so at both the disciplinary hearings and the appeal hearing. He set out all he wished to set out, all of which was considered.

1016. The claimant argues that the investigation manager had "a mind so closed to the alternative that Ms Lau was not telling the truth". He argues that this is evidenced from the report and from the evidence before the Tribunal.

1017. We accept that the investigation report does not provide detailed reasons as to why Ms Lau's evidence was preferred to that of the claimant (and note that Mr Hunt accepted that it could have been written better). We do not accept, however, that Mr Hunt did have a closed mind. He considered the evidence that he had obtained. He spoke with the claimant about each of the allegations and he considered what the claimant said. He spoke with Ms Lau and considered what she said. He did consider the inconsistencies raised by the claimant but concluded that in all the circumstances, on the balance of probabilities, Ms Lau was telling the truth. That was a reasonable action.

1018. It is not correct to say, as the claimant submitted, that the only reason Mr Hunt preferred Ms Lau was because she gave her answers "quickly and clearly". He took into account the full factual matrix before him, both in terms of how she answered, what she said and the context, including contemporaneous communications, as he did for the claimant.

1019. He carefully considered the events on the day in question and considered what Ms Lau said and what the claimant said. From the evidence before him, which included what was alleged to have been said by both, how the individuals presented before and, importantly, from the context (which included how Ms Lau communicated with her manager immediately after the event and what she said and how she presented to her manager), it was reasonable for him to conclude that Ms Lau's position was to be preferred.

1020. The claimant believed that what he said was accurate and that Ms Lau was not telling the truth. As Mr Hunt's reasoning had not been fully set out in writing, the claimant believed that he had been treated unfairly. Given the information before Mr Hunt, his conclusions were reasonable but we have sympathy with the claimant given the lack of detail that was set out in this regard.

1021. We must not substitute our view. Rather we must decide whether or not what was done in this case, from the information available at the time, was reasonable in all the circumstances. Could a reasonable employer have done what happened in this case? We must look at all the information before the respondents in assessing this question which we have done.

1022. We have carefully considered the points made by the claimant and the process generally. We concluded that the investigation that was carried out fell within the range of responses open to a reasonable employer.

Was the dismissal procedurally fair?

1023. The claimant made reference to a number of failures to follow the first respondent's policy. While not in his submissions, he took issue with the number of letters that had been issued and a failure to follow the precise wording of the policy. While there may have been a failure to follow the policy, if interpreted literally, we do not find any procedural errors that had any bearing on the fairness of the process. The claimant knew what the allegations were and was given a fair amount of time to prepare his response. He was given the chance to present his

response at an investigation meeting. He was given the investigation report. He was given the opportunity to attend a disciplinary hearing and an appeal hearing and all his submissions were considered.

1024. The main challenge to the procedure in this case was with regard to the failure to adjourn the disciplinary hearing. The claimant argued that in fixing the disciplinary hearing the respondents should have liaised with him and fixed a date that was suitable and, critically, the decision to proceed to determine his case in the face of an application to adjourn, rendered the decision unfair.

1025. We considered carefully whether the decision to proceed to hear the matter in the claimant's absence was fair. We have taken into account the ACAS Code of Practice in this area. We considered Ms Telfer's evidence and the terms of the first respondent's policy.

1026. We took careful account of the claimant's position in this regard. He refers in particular to the "manager's guidance" section of the policy which states that "If the employee simply does not turn up you will rearrange the hearing once. If they fail to attend the rearranged hearing you should conduct the hearing in their absence based on the information available at the time.". He points to the fact the policy says "will", and that it is therefore mandatory and unfair to him not to have allowed an adjournment.

1027. In context, however, the policy makes it clear that the employee is under an obligation to attend the hearing. The use of the word "simply" to describe not attending the hearing in the policy is, in our view, significant. It suggests that where there is no explanation for non-attendance, in the sense that an employee simply does not attend, the hearing should be adjourned and one further attempt given for the employee to attend. This is not necessarily applicable if the employee chooses not to attend. The text immediately preceding this part of the guidance talks about the need to rearrange where there are unforeseeable circumstances. In this case Ms Telfer concluded the claimant chose not to attend: this was not a case where the employee "simply does not turn up". There were no unforeseeable circumstances and in her view it was reasonable for him to attend, him having chosen not to attend.

1028. We acknowledge that the policy is not clear and there does appear to be an inconsistency. The claimant's interpretation is reasonable but Ms Telfer's view is equally as reasonable. We do not consider Ms Telfer acted in a way that no reasonable employer would act in her decision given the circumstances before her. The fact that we or indeed other employers would have adjourned is not the issue given we find from the information before Ms Telfer, a reasonable employer could have done as she did.

1029. Ms Telfer considered the full circumstances before her before deciding to proceed to hear the matter. She considered the timing of the claimant's request for an adjournment and the test which she understood she had to apply. The time that had passed was also a significant factor, given the events had happened in June 2017, some 6 months earlier.

1030. The claimant was invited to the hearing by letter on 13 December 2017 given his absence. He was told in that letter to contact Ms Telfer if the proposed time or venue of the hearing was unsuitable, or if he required any other adjustment. We accept the respondent's submission that the respondent did in essence liaise with the claimant as to fixing a date, as required by the policy since the letter indicated when the hearing was to take place and asked for a reply if there were any issues. The claimant chose to do nothing in reply until the late evening on a public holiday just before the hearing was to take place.

1031. The question which Ms Telfer asked herself, as the policy says, was whether the claimant's absence was unforeseeable and justified. The claimant was fully entitled to do what he did. The question for Ms Telfer was whether she acted fairly and reasonably in doing what she did.

1032. She concluded from the information before her that the claimant's absence was foreseeable and unjustified. It is relevant to note that there is nothing in the claimant's application to adjourn that suggests his condition changed, that is, deteriorated. Ms Telfer took into account that the claimant had been well enough to attend the investigation meeting with Mr Hunt which was only a few weeks before her hearing. Given the absence of any evidence from the claimant that his health had deteriorated since that meeting and the suggestion the meeting be delayed for over a month and in light of the occupational health report's contents, she decided to proceed. She also took account of the impact further delays would have on those affected, which included the claimant.

1033. The claimant had said he was not fit to attend, but from the evidence Ms Telfer had, including the fact the claimant had been fit to attend an investigation meeting a few weeks previously and the fact there was nothing to suggest the claimant's medical position had deteriorated, she acted reasonably in proceeding.

1034. Ms Telfer also responded to the claimant's request that he wanted access to computer systems since the claimant had known about the allegations for around 6 months. His subject access requests had sought recovery of documents but this was to "see what documents might be relevant" rather than obtain documents germane to the allegations that the claimant knew existed. It is relevant to note that the claimant did not ask for specific documents nor at any other stage rely on other documents he did not already possess in December. In any event the allegations were about what was said at the time and his email description of Ms Paton-Baines. The claimant was able to put his full response forward to those allegations.

1035. Ms Telfer waited to see whether or not the claimant would attend, given she was unable to respond to his email, as she only received it on the day of the hearing. When he did not attend, she applied the policy as she understood it.

1036. We have taken the ACAS Code into account in this regard. Ordinarily there should be an adjournment where an employee fails to attend. However, in this case Ms Telfer genuinely believed that the claimant could have attended but

chose not to do so. She believed he did not have good cause to attend. On that basis we do not consider that her actions were unreasonable. While some reasonable employers would have adjourned, we do not consider that an equally reasonable employer could not do what Ms Telfer did in the circumstances of this case, taking into account the context and in particular the information before her.

1037. She then considered all the evidence before her and decided that the allegations would be upheld but rather than determine the matter there and then she gave the claimant an opportunity to make representations on the appropriate sanction.

1038. We accept that Ms Telfer would have considered any compelling evidence the claimant had in relation to the allegations had there been any such evidence presented at the reconvened hearing. The claimant had already had the chance to put his position forward at the investigation meeting and he had sent communications by email to Ms Telfer. He was given a fair opportunity to set out his response to the allegations. He had done so in writing at length.

1039. Each of the points the claimant made were considered by her. It was not unreasonable for her to conclude that Ms Lau was telling the truth.

1040. We accept that some reasonable employers would have adjourned and awaited the claimant to return to better health. But equally we are satisfied that an equally reasonable employer in light of the particular facts of this case, including the medical position, the claimant's attendance at the investigation meeting, his ability to send written communications, the time that had passed and the claimant's suggestion matters be postponed for weeks, would have acted as the respondents did in this case.

1041. The process was not perfect but no employer is and that is not the test we must apply. We have found that procedure that was carried out that led to the claimant's dismissal was a process that a reasonable employer could have followed. The procedure fell within the range of reasonable responses open to a reasonable employer.

Was the decision to dismiss fair in all the circumstances?

1042. The final and key question in our assessment of this issue is whether or not the dismissal for misconduct was fair in all the circumstances taking account of size, resources, equity and the merits of the case.

1043. We concluded that Ms Telfer adopted a conclusion which was reasonably open to her from the facts that were before her. Ms Telfer believed Ms Lau and not the claimant. We consider that this was an option open to her as a reasonable employer. She concluded that the claimant had behaved in an inappropriate and offensive manner towards Ms Lau on 22 June 2017 and on earlier occasions.

1044. Ms Telfer was of the view that the language used on the 22 June 2017 was of itself very serious. The comment with regard to "maternity" (the decision

the claimant having said that being a conclusion that was reasonably open to her) to be serious and offensive. She considered whether or not the claimant did in fact say the words he was alleged to have said (as did Mr Keane). From the information before them, including the information from the claimant and his oral submissions, they reasonably concluded that the claimant did say what was alleged.

1045. We note in passing that the claimant denied making the "maternity" remark and suggested in his witness statement that Ms Lau lied, suggesting that it is possible she did not tell the truth "knowing how other people, particularly other women, would react with sympathy towards her". We consider this to be an unfair stereotype about women and men since men can be equally sympathetic.

1046. In light of the respondents' findings, we consider that the lack of detail around the earlier comments (the remaining 10 items in Ms Lau's list appended to her email) did not materially affect the outcome in this case. The examples Ms Lau provided were more examples, as Ms Lau said in that email, of the claimant's approach and dealings with her which she said justified the fact that her raising the behaviour of the incident on 22 June 2017 itself was not a one-off issue. The other 2 allegations were reasonably described by the respondents' agent as the "core allegations".

1047. Even if the earlier comments had not been established, the comments the claimant made at the meeting on 22 June 2017 was serious misconduct by itself. The same applies to the claimant's email of 30 June 2017 and his description of Ms Paton-Baines as "my enemy" which was reasonably considered by Ms Telfer to be inappropriate and damaging to the relationship between an employee and their line manager, that is, serious misconduct. We accept the respondents' agent's submission that the claimant's downplaying of his use of that phrase was semantic and unpersuasive. He had failed to appreciate how his comment could be received, which sadly was a common theme during the claimant's employment, something about which he had been informally warned before in his discussions with Ms Paton-Baines as to his comments about Mr Harbertson in 2016.

1048. Ms Telfer was entitled to take the live final written warning at face value. She need only be persuaded of further misconduct which justified dismissal given with the existing sanction. We agree with the respondents' agent's submissions that the misconduct so found by her was clearly sufficient. That would be so even if the claimant's conduct prior to 22 June was not taken into account, even although it was more likely than not that the claimant had made some of the comments given in the list of examples.

1049. We consider it significant that the claimant's misconduct was part of a pattern of behaviour which caused offence to his managers and colleagues. We agree with the respondents' agent's submissions that there was a recurring theme whereby the claimant consistently failed to appreciate how his words would be received, evidenced by the claimant's description of Mr Harbertson as "vain, narcissistic and arrogant", which resulted in the verbal warning, to his

description of Mr Harris as a "prick", which in part resulted in the final written warning.

1050. Serious misconduct is defined in the first respondent's policy as "offensive, abusive or repeated unwanted behaviour". It was clear that what the employer found in this case was "offensive, abusive or repeated unwanted behaviour". The comments that the claimant was found to have made on 22 June and in his email of 30 June were undoubtedly serious misconduct in themselves. That was a reasonable conclusion to reach.

1051. While the evidence before the first respondent as to what was found to have been said on 22 June was clear, that cannot be said about the 10 other matters that were on Ms Lau's email attachment. We carefully considered the impact of this on the claimant's dismissal. The absence of detail around this issue led to the claimant not fully understanding the position that had been reached in relation to those matters.

1052. We have sympathy with the claimant in that regard given the lack of detail that had been recorded. Nevertheless as the detail with regard 22 June was clear, and those words were found to amount to serious misconduct, we are of the view that the lack of detail around the other matters did not alter the outcome at all. Those were examples which Ms Lau had said supported her view as to what the claimant said on 22 June was not an isolated event. Mr Hunt concluded that "it was more likely than not that the claimant had made some of the comments in that list". He put the points to the claimant and reached that conclusion. While he did not give detail as to each particular point, it was a conclusion he reached on the information before him, having assessed both Ms Lau and the claimant on these points. The decision in relation to those incidents was not a decision that would have altered the decision to dismiss, given the other 2 allegations amounted to serious misconduct.

1053. Further, in relation to the claimant's assessment of his use of "enemy" to describe his colleague, while he believed his use of the word was accurate, as he did when he called Mr Harbertson the words he did, the issue was how his words had been interpreted and how the person reading or hearing those words felt. The claimant had failed to appreciate that and the respondent reasonably took account of the claimant's explanation but reached a conclusion that was reasonable in all the circumstances.

1054. We are satisfied that the weight of credible evidence before Ms Telfer entitled her to reach the conclusion that she did. Her outcome letter made it clear why the outcome was what it was, given the severity of what she had found.

1055. We are also satisfied on the evidence before us that the claimant was given a full opportunity to present his defence at the appeal hearing. It was clear that Mr Keane intended to consider all of the points the claimant wished to make. He was prepared to examine matters thoroughly to ensure that the decision that had been taken was not unreasonable. Mr Keane in the lengthy hearing and in

his detailed response provided a substantial and cogent justification for the decision that was taken.

1056. We considered the points the claimant made about the appeal process in his submissions and witness statement. He argued that the inconsistencies in the evidence was not addressed by Mr Keane. The claimant argued that the fact Ms Lau said she was nervous was inconsistent with making quips. Mr Keane responded by saying that was not necessarily inconsistent. We did not consider Mr Keane's position to be unreasonable. It is possible for someone to feel nervous and make quips. While Mr Keane did not address every single point of inconsistency the claimant raised, he fairly stood back and made an assessment of all the evidence. That was what Ms Telfer did too.

1057. One of the challenges Ms Telfer and Mr Keane had was with regard to the very large amount of information the claimant provided. Mr Keane in particular had been given a very large amount of information, much of it going back months in relation to the claimant's relationship with Ms Lau. We have sympathy with Mr Keane given the very large amount of detail the claimant provided. Mr Keane and Ms Telfer did their best to consider the information before them, so far as they could. They acted reasonably in doing so and in reaching the conclusions they did.

1058. It is common for there to be inconsistencies in witness evidence for reasons we set out above. Ultimately the employer must act fairly and reasonably. Mr Keane did his best from the large amount of material the claimant had presented to reach a fair view. He did so and his decision was reasonable in all the circumstances. He genuinely considered the points the claimant raised and did his best to reach a view.

1059. We recognise that dismissal is a process, culminating in the appeal hearing and must be viewed as such. In this case to the extent that the claimant felt he did not have the chance to put his case forward, his appeal hearing rectified that issue. The appeal hearing was comprehensive and detailed. The claimant spent a large amount of time reiterating his case and Mr Keane fully and fairly considered it. Any failures in the process were, in our view, resolved given the detailed and thorough nature of the appeal hearing which in our view ensured the claimant was given a fair opportunity to present his case fully.

1060. Our consideration of the decision to dismiss must consider, equity, the size of the employer, its resources and the merits of the case. We considered the claimant's argument in his written submission that he was not treated equitably and that Mr Hunt's treatment of him was inequitable. He compares himself to Ms Robson and her use of the word "problem" and Ms Lau and her use of the word "strange".

1061. We do not consider that to be a fair comparison. The claimant himself called Ms Lau "strange". He was entitled to that view as was Ms Lau entitled to hers. We have dealt with why Ms Robson used the word "problem". We do not consider that to be offensive given the context and what she was describing. We do not agree that the claimant was not treated equitably.

1062. We also do not accept that the claimant was treated unfairly as his allegations against Ms Lau were not dealt with. A grievance process was undertaken in that regard and his complaint was investigated. That was a reasonable way in which to deal with matters. The claimant's contention that he was discriminated against was taken into account, as was the claimant's health. These were matters that were considered.

1063. We have also considered the claimant's human rights, including his right to freedom of expression and his Convention rights. That is not an absolute right and requires to be balanced with the rights of others. Any interference with his Convention rights must be proportionate.

1064. The claimant and all civil servants are bound by the terms of the Civil Service Code which requires staff to treat each other fairly, respectfully and decently. Staff should not be offensive to each other. Irrespective of the claimant's views as to what the words mean, the effect of his conduct was to offend his colleagues. The respondents acted reasonably and any interference with the claimant's human rights was proportionate.

1065. As we said above, the investigation and decision that was reached in respect of the claimant's conduct prior to 22 June was not clear which caused the claimant justified uncertainty. Those were examples Ms Lau had given that she said supported the fact what the claimant had said on 22 June was not an isolated incident and the disciplinary process had proceeded with those examples essentially forming a separate allegation. The examples were not specific in some respects. We must look at the whole process and the reason why the claimant was dismissed.

1066. The position was clear in relation to the other 2 "core" allegations: The conduct of the claimant as found to have taken place on 22 June and the position in respect of the email sent by him and his comment about Ms Paton-Baines were clear and the conclusion reached with regard to both these allegations, that the claimant had been guilty of serious misconduct, was reasonable. Each of these allegations themselves amounted to serious misconduct. Any failures with regard to the allegation about the claimant's conduct prior to 22 June would have had no difference on the outcome.

1067. Finally, with regard to mitigation, Ms Telfer and Mr Keane both considered the information the claimant presented and considered what the outcome should be in light of all the facts. The fact that the claimant was disabled and the circumstances surrounding his making the comments on 22 and 30 June that the claimant raised were fully considered. The decision to dismiss the claimant in light of that information was a decision open to a reasonable employer, even if another employer might have chosen a lesser sanction.

1068. The decision by the respondents to conclude that the claimant was guilty of serious misconduct was a decision a reasonable employer could take. The claimant was subject to a valid final written warning. The decision to dismiss the

claimant in all the circumstances was also reasonable. The procedure that was undertaken and the decision to dismiss the claimant both fell within the range of responses open to a reasonable employer.

Fair dismissal

1069. In summary, having assessed the evidence before the respondents at the time, we find that respondents acted fairly and reasonably in treating the reason (his conduct) as sufficient to dismiss in all the circumstances, taking account of size, resources, equity and the substantial merits of this case. The decision to dismiss and the procedure that was carried out fell within the range of responses open to a reasonable employer on the facts of this case. The claimant was accordingly fairly dismissed.

1070. Issue 29 deals with issues arising in event the dismissal was unfair. We consider this for completeness. If we had found the dismissal to be unfair, issue 29.1 is whether the claimant's own blameworthy conduct contribute towards his dismissal and, if so, to what extent?

1071. We find that the claimant contributed to his dismissal by reason of his conduct. As we heard evidence from the claimant and Ms Lau we were able to make positive findings as to what actually happened which is what we set out in relation to the meeting with Ms Lau above. We would have reached the same conclusion as the respondents did with regard to preferring the evidence of Ms Lau. We would have found the claimant 100% responsible for his dismissal. It was not just and equitable to award any compensation to the claimant in the circumstances. His basic and compensatory award would have been reduced to nil, applying the (different) tests to reduction of the basic and compensatory awards to our findings.

1072. Issue 29.2 is whether the claimant would have been dismissed in any event had the first respondent acted reasonably, thereby entitling the claimant to a nil or reduced compensatory award? Had we found that the dismissal was unfair by reason of the procedure, we find that the claimant would have been dismissed in any event. He was already subject to a final written warning. He had committed serious misconduct. To that extent his dismissal was inevitable and it is not just and equitable to award the claimant any compensation.

Direct sex discrimination

1073. The next claim is that of direct sex discrimination. in relation to these issues we consider whether the claimant was treated less favourably than an actual or hypothetical comparator in relation to each of the issues.

1074. Issue 30.1 is that the first respondent caused or permitted the investigation into the claimant's misconduct to be carried out 'in bad faith'. We have found no evidence to substantiate the allegation that the investigation was carried out in bad faith. We found that the investigation that was carried out in this case was done in a reasonably professional manner.

1075. Mr Hunt met with the individuals, took relevant witness statements and sought the claimant's response to the relevant issues. We accept that there were shortcomings in his approach, which he accepted himself during cross examination. Nevertheless we do not consider that in any sense shows any bad faith. We find that the investigation and indeed the process generally was carried out in good faith and this allegation is not made out.

1076. In any event we are satisfied that the reason for the treatment, the investigation, was entirely unconnected to the claimant's gender. He would have received precisely the same treatment if he were a woman. The respondents applied the policy as best they could. The claimant's gender was in no sense whatsoever connected to the process. The claimant's complaints about Ms Lau were investigated as part of his grievance.

1077. Issue 30.2 is that Ms Paton-Baines, Ms C Robson and Mr Harbertson ignored the claimant's email of July 2017 informing them that he was the victim of sexual harassment by Ms Lau. The reason why Mr Harbertson did not reply to the email was because it was not directed to him and he was at this stage not the claimant's line manager. There was therefore no reason why Mr Harbertson would reply and there is no evidence at all that the claimants gender was connected in any way to that matter.

1078. Ms C Robson was of the view that any concerns the claimant had with regard to Ms Lau's behaviour would be addressed as part of the disciplinary investigation. That was a reasonable conclusion for her to take and explains why she did not respond. There was no suggestion whatsoever to link Ms Robson's approach to gender.

1079. Ms Paton-Baines did not ignore his email as she tried to speak to the claimant about it on 12 July 2017, but the claimant did not want to and she thought it would be addressed as part of the disciplinary investigation.

1080. There was no evidence at all to link these behaviours with the claimant's gender. In any event we are satisfied that if the claimant were female he would have been treated in precisely the same way.

1081. Issue 30.3 is the first respondent failing to respond to the claimant's complaints in December 2017 that the disciplinary investigation commenced in July 2017 was carried out in bad faith. As we set out above, the claimant did receive a response to his complaints. He was advised that he should ensure all issues are put before Ms Telfer at the 3 January meeting. This allegation is not

made out. We appreciate the claimant did not like the response that he received but he did receive a response. In any event there is no evidence whatsoever linking the treatment to gender and we are satisfied that he would have received precisely the same response if he were a woman. The reason why the respondent acted in the way it did was not connected to his sex at all.

1082. Issue 30.4 is that the first respondent failed to respond to the claimant's complaint of maladministration in the disciplinary process that ended on 20 January 2017. The outcome in respect of this issue is the same as the preceding issue. The claimant did receive a reply which told him that he ought to have appealed, which was the correct forum to challenge the process. He may not have liked the outcome but he received a response. The actions were entirely unconnected to his gender.

1083. Issue 30.5 relates to the manner of Mr Hunt's investigation and conclusions, the criticisms of which are more particularly set out at pages 11-15 of the grounds of complaint attached to the Third Claim. The respondents' agent submitted that there was no evidence led of any connection between the investigation and the claimant's gender and that whatever the claimant may say of the quality of the investigation, it was plain that Mr Hunt conducted the investigation in good faith and in furtherance of his commission. We agree with that submission. There was no suggestion that any part of the investigation would be in any way different had the claimant been female.

1084. We considered the claimant's submissions with regard to discrimination carefully. He argues that where an impasse is reached a reasonable employer would either find the allegations not proven or seek further evidence and if nothing else is done he argues that an inference of discrimination on the basis of sex should be made. In order to make an inference, however, there needs to be something to which the claimant can point that suggests there a *prima facie* case of discrimination. There needs to be something more than just difference in treatment. In this case we do not even have a difference in treatment. We do not accept that in the specific facts of this case the employer could not determine whose evidence to prefer. From the facts it was legitimate and reasonable for Mr Hunt to conclude that Ms Lau's evidence was preferable.

1085. We have found no evidence whatsoever that would suggest the claimant's gender was in any way relevant to the issues. We do not require to have resort to the burden of proof provisions since we are able to assess from the evidence the reason why the respondents acted as they did.

1086. Had the roles been reversed, and had Ms Lau been facing the allegations and the claimant having made the complaint, we are entirely satisfied Ms Lau would have been treated in precisely the same way as the claimant. Gender was in no sense a substantial or effective cause of the treatment.

1087. We set out our response to the specific criticisms made by the claimant as to the investigation process. None of these criticisms indicate in any way that there was less favourable treatment because the claimant was a man. The

disciplinary process was carried out irrespective of gender and we are satisfied that the reason for the treatment was entirely unconnected to gender.

1088. Issue 30.6 is the first respondent dismissing the claimant. In the claimant's written submission, he compares himself with Ms Lau. That is not a relevant comparator since her circumstances are materially different to those of the claimant as she was not subject to the same circumstances as the claimant. That having been said, we are clear that if Ms Lau had done what the claimant was alleged to have done, we are of the view that she would have been treated in precisely the same way as the claimant was treated.

1089. We are satisfied from the evidence before us that the decision to dismiss the claimant was entirely unrelated to his gender. The claimant would have been treated in precisely the same way if he were a woman. The reason why he was dismissed was because of his conduct and the fact that he had a final written warning. His gender was entirely unrelated to the decision to dismiss him.

1090. Issue 30.7, Ms Telfer dismissing the claimant, is essentially the same point at issue 30.6. Ms Telfer dismissed the claimant because of his conduct and his final written warning. There was no connection whatsoever to his gender. We note that in the claimant's statement he states that "In the absence of any reasons for finding the allegations by Ms Lau proven I must conclude that Ms Telfer has discriminated against me on the basis of my sex." That confuses (perceived) unfairness with unlawful discrimination. As indicated above, in order for there to be a *prima facie* case of discrimination there must be some suggestion that the protected characteristic was a factor. Difference in treatment alone is not enough. We can find no reasonable basis to find that the claimant's gender was in any way relevant or connected to the issues.

1091. Issue 30.8 is Mr Keane rejecting the claimant's appeal against dismissal. We considered the terms of the appeal letter and Mr Keane's evidence carefully. We also examined the claimant's submissions regarding this issue. We are satisfied that the decision to reject the appeal was based solely on Mr Keane's assessment of the merits of the case and in no way whatsoever connected to the claimant's gender. We are satisfied that the claimant would have had his appeal refused even if he were a woman. His reasoning was very clear and his approach was thorough.

1092. The claimant states in his witness statement that "Mr Keane's methodology can be summed up as I believe everything Ms Lau writes or says. I disbelieve everything you write or say. That is sex discrimination." Again the claimant points to a difference in treatment but provides no credible basis for suggesting gender was in any way relevant. Had the claimant been the individual making the allegations about what was said by Ms Lau (ie if the roles were reversed) we are satisfied the treatment would have been identical. Ms Lau was believed because on balance her evidence was more credible and in all the circumstances of this case it was reasonable so to do. The claimant's gender was entirely irrelevant to the appeal outcome.

1093. In terms of issue 31, we require to consider whether any of the treatment alleged under issue 30 was because of the claimant's sex. Given Ms Lau was not a valid comparator because her circumstances were materially different, we constructed a hypothetical comparator which would be a person facing the same allegations as the claimant with the same disciplinary record. In such a case there is no evidence to suggest that the treatment would be in any way different. The reason why the claimant was treated in the way he was, was purely because of his conduct and actions and entirely unconnected to his gender which we found totally irrelevant. In no sense whatsoever was sex a reason for the treatment relied upon. We do not require to rely upon the burden of proof provisions as we can make direct findings.

1094. In all the circumstances the claimant's claim that he was subject to direct sex discrimination, in terms of his third claim, is ill-founded and is dismissed.

Direct religious discrimination (section 13 Equality Act 2010)

1095. Turning to issue 32, it is alleged that the claimant was treated less favourably than an actual or hypothetical comparator by Mr Hunt asking the claimant in an interview of 8 December 2017 about his reference to 'God' in an email. We considered Mr Hunt's evidence in this regard carefully together with the claimant's position. The exchange was short during the claimant's investigation interview. Mr Hunt had raised the issue as the claimant had made reference to the Lord in his email to Ms Lau of 30 June 2017 which had shocked Ms Lau. When the claimant explained that he was a Christian no further action was taken by Mr Hunt.

1096. We do not consider that the treatment, asking the claimant about his reference to God in his email, amounted to less favourable treatment. Mr Hunt was simply asking about why he used the word.

1097. Issue 33 requires us to consider whether that treatment was because of Christianity. The treatment was not because the claimant was a Christian but was because Mr Hunt was concerned that Ms Lau was shocked and he wanted to understand why the claimant had referred to his email in the way he did. The reason why this happened therefore was not religion; religion was not a reason for the treatment. If the claimant had been any other religion (or none) he would have been treated in precisely the same way.

1098. In all the circumstances we find that the claimant's claim that he was directly discriminated because of his religion in his third claim is ill-founded and is dismissed.

Discrimination arising from disability (section 15 Equality Act 2010)

1099. Issue 34 was whether the claimant was treated unfavourably by Ms Telfer and/or Mr Keane taking account of an email written by the claimant on 30

December 2017 addressed to Ms Lau in which he referred to Ms Paton-Baines as 'the enemy'? The claimant was treated unfavourably to the extent that this allegation was upheld and it contributed to his dismissal. They key issue is issue 35.

1100. Issue 35 is whether the claimant's reference to "the enemy" was because of something arising in consequence of his disability. The authorities make it clear that it is for the claimant to prove that the email arose in consequence of his disability. The respondents' agent argued that it is a question of medical causation and that the claimant's assertion is insufficient given the claimant is not qualified to comment. They argue that there is no cogent evidence of any description tending to show that the claimant's disability might cause him to write an email in those terms.

1101. The issue is whether or not the disability has a "significant influence" on the action. It does not need to be the main or sole cause but it must be an effective cause. We do not agree that there must be medical evidence; there must be sufficient evidence from which the Tribunal can determine, as a matter of fact, that there was a connection in the sense the authorities require.

1102. The claimant accepted that there was no medical evidence that showed any connection between his mental impairment and his writing the email and his use of "enemy" in particular that had been produced to the respondent or this Tribunal. He argues that the respondents could have sought such medical evidence. They knew he had a mental impairment. While he indicates in his witness statement that medical evidence was provided, he in fact refers to the GP letter that was sent to the respondent dated 14 September 2017 which states the claimant was suffering from stress at work with anxiety and depression and panic attacks and on medication but that he would be fit to attend an Employment Tribunal hearing in November. That is not evidence linking the email and his disability. The only "evidence" was the claimant's assertion that there was a connection.

1103. In the claimant's written submission he submits that "the test is not related to the subjective thoughts of the decision makers". We agree. Equally the test is not related to the subjective thought or assertion of the claimant. We must decide on the evidence whether the disability was an effective cause or not. We make that decision from the evidence before us in light of the relatively low threshold identified by the authorities.

1104. The claimant referred to paragraph 27 of the court's judgment in **Grosset** which noted that medical evidence presented to the Tribunal showed that the claimant committed the misconduct when he was disabled such that misconduct was an expected consequence. The Tribunal found that the misconduct in very large part arose from the disability. We do not find that in this case from the evidence before us as a matter of fact.

1105. At paragraph 38 of the court's judgment the court makes it clear that that the second causation question is objective, namely whether or not there is a causal link between the disability and the "something". The court noted that in

that case the Tribunal found there was a causal link from the evidence presented to the Tribunal. In this case, we have found no such link from our analysis of the evidence.

1106. The claimant also refers to **Risby** which we considered. In that case it was accepted that the claimant's personality was one cause but equally there was evidence before the Tribunal that showed that his disability could have caused the outburst. There were therefore 2 potential causes that had been established by evidence. The claimant refers to paragraph 18 of the judgment where the court noted that the claimant's misconduct "was the product of indignation caused by the decision. His disability was an effective cause of that indignation." That is not the case before this Tribunal from the evidence we have. We find the claimant's misconduct was his choosing to write the email in the way he did using language which was likely to be regarded as offensive, something similar to which he had done before and been warned about before. We do not find that the claimant's disability was an effective cause of that conduct (in any way) as a matter of fact. We make this finding taking account of the reasoning in **Sheikholeslami** above, having carefully assessed the evidence and the cause of the behaviour.

1107. In the case before us we find that the claimant has not discharged the burden of proof in showing that his writing of the email and in particular his use of the word "enemy" was connected to his disability. There are a number of reasons for this.

1108. Firstly, it is accepted by the claimant that there is no evidence linking the two, medical or otherwise. Although the claimant asserted that to be so, the claimant has no shown us why he is able to establish as a fact that his disability would cause him to write the email in the way he did. The respondent acted on the basis of the information they had. A bare assertion in this case is not enough.

1109. Secondly, the claimant spent a considerable period of time in his defence of the allegations in seeking to establish the context of the word and the way in which he used it. In other words, he was arguing that there was a legitimate explanation for his use of the phrase in context (which was entirely separate from his disability). That is inconsistent in our view with his assertion that his disability in some way led to his approach.

1110. Thirdly, the content and context of the email is inconsistent with his assertion, since the email began by stressing the time and reflection which the claimant had taken in composing his response. It was accepted that he had spent time reflecting on what to say and how to frame it.

1111. Fourthly, the issue was the use of the word "enemy" and how it could reasonably be interpreted. The claimant had previously received an informal warning because of the words he used to describe Mr Harbertson and he received a warning because of the words he used in communicating with Mr Harris. There is a similarity in the course of conduct and the way in which the claimant communicated with others in the course of his employment. There was no suggestion that the claimant's disability was in any way related to those words or actions. There is also a clear similarity with regard to his comments he was

found to have made to Ms Lau on the day in question and previously (which were not suggested to be connected to his disability in any way). Those factors strongly point towards the fact that the claimant chose the words in his email carefully, with his disability having no impact or connection.

1112. Fifthly, we considered very carefully the reasons why the claimant said his disability caused him to make the comments he did. He submits that he was anxious and stressed and felt under threat given the allegations against him and the treatment he believed he had suffered. He argues that "given the emphasis placed on the time lag between the sexual harassment by Ms Lau and the attack by email and his reply the Tribunal should accept there is a sufficient causative link between the email and the disability." He refers to his anxiety and panic attacks. In our view his explanation does not explain why the claimant would make the comment in relation to Ms Paton-Baines, rather than say Ms Lau. We do not consider the explanations tendered by the claimant at the time of the disciplinary process and before us sufficient to link his disability and the specific comments he made in the circumstances of this case.

1113. Finally, it is easy simply to assert that one's impairment was a reason or in some way connected (particularly as a defence to a disciplinary allegation) but in our view given the strong evidence that suggests the contrary, we do not consider what the claimant to have said to be accurate, from the evidence. If there was no evidence to suggest the contrary position, the claimant saying that his disability was a reason would have had greater strength but we must look at the full picture in making this decision.

1114. We are unable to accept from the evidence before us that the disability had a "significant influence" or was an effective cause in this case. Applying the words of the statute, the question is whether or not the unfavourable treatment (the upholding the allegation) was because of something (the email) arising in consequence of the disability. We take account of what the claimant said at the time and his evidence before the Tribunal. He made clear that he believed it was because of his disability. We looked at the context and make a decision from the facts before us (which are the same facts before the respondents). On the facts we cannot accept that it was an effective cause as required by the authorities in this area and the legal test. The email did not arise in consequence of his disability, even as widely defined in **Risby** and **Grosset**.

1115. In **Risby**, without the claimant's disability the circumstances that led to the comments made would not have arisen since the location would have created no concern for the claimant. In **Grosset** the medical evidence showed a direct link between the disability and the decision the claimant took. In both cases the conduct was in consequence of the disability. In this case the sending of the email (and its contents) did not arise in consequence of the disability since from the evidence we find the email the claimant sent would have been sent irrespective of his disability. It did not therefore arise in consequence of his disability.

1116. We therefore find that the claimant's disability was not a cause of the something that led to his dismissal.

1117. Issue 36 requires us to consider whether the claimant's dismissal was a proportionate means of achieving a legitimate aim, namely the need for employees to abide by consistent standards of behaviour.

1118. In this regard the respondents argue that they had a legitimate aim in upholding the allegation since they required to ensure all staff adhered to a consistent standard of behaviour. We accept that this is a legitimate aim.

1119. In determining whether the respondent acted proportionately we must then carry out a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts. Treatment is proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. While "necessary" does not mean that the treatment must be the only possible way of achieving a legitimate aim, it is sufficient that the same aim could not be achieved by less discriminatory means. We must intensely analyse the aim as against the discriminatory effect.

1120. The claimant argues that upholding the sanction was not proportionate because the first respondent took no action against Ms Robson for using the word "problem". The claimant focuses on the dictionary meaning of "problem" and of "enemy" and says that the approach taken to him was inconsistent. No action was taken against Ms Robson.

1121. For the reasons we set out above, the context in which Ms Robson used the word shows why that word was appropriate. It was not referring to the claimant in a negative way and took account of the significant operational difficulties Ms Robson had and the severe impact upon Mr Harbertson's mental health. That is entirely different from the situation facing the claimant. The context in which he said the word "enemy" was (and is) taken into account. It is not correct to say the context was ignored. His explanation was considered and the surrounding circumstances were examined. His disability was taken into account in considering these issues.

1122. In our view upholding the sanction was an appropriate and necessary way of ensuring a consistent standard of behaviour. The terms of the Civil Service Code are clear with regard to how staff should treat each other: they should treat each other decently. The claimant had already received an informal warning and then a final written warning about his language. The issue was how the words he used were reasonably interpreted in their context, not applying strict dictionary definitions. Ensuring consistent standards of behaviour is an integral part of being a civil servant. The unfavourable treatment relied upon is upholding the allegation. By not upholding the allegation, the Code would not be applied and behavioural standards would not be met. No alternative was suggested by the claimant: the sanction was either upheld or it was not.

1123. We need to assess whether or not the upholding of the allegation and its being included in the decision that led to the dismissal was proportionate. We need to carry out an "intense analysis" of the treatment. The burden of proof is on the respondents in this regard. There is a need to ensure consistent standards

of behaviour given the nature of the role. We take account of the impact upholding the allegation had on the claimant and balanced this against the need to ensure consistency of treatment. Having carried out the balance, bearing in mind the impact this had upon the claimant, and having looked at the alternatives, we consider upholding the allegation was a proportionate means of achieving the aim relied upon.

1124. We are satisfied that there was a legitimate aim (which corresponded to a real need of the first respondent), that the measure was capable of achieving that aim in that it was appropriate and reasonably necessary to achieve the aim and did actually contribute to pursuit of it) and finally we considered that the measure used to achieve the aim was proportionate, balancing the discriminatory effect against the legitimate aim, both qualitatively and quantitatively, and looked at whether any lesser form of action could achieve the legitimate aim.

1125. Issue 37 asks whether any relevant respondent knew that the claimant was a disabled person at any time material to his claims. This was conceded by the respondents.

1126. In all the circumstances and having carefully considered the facts before the Tribunal and the applicable law, we find that the claim that the claimant suffered unfavourable treatment because of something arising in consequence of his disability is ill-founded and should be dismissed.

Failure to make reasonable adjustments (section 20 Equality Act 2010)

1127. Issue 38 requires us to consider whether the first respondent applied the following PCPs to the claimant: a requirement to attend a disciplinary hearing on 28 December 2017 (the first PCP); a requirement to attend a disciplinary hearing at Middlesbrough (the second PCP); and a requirement to comply with the first respondent's standards of behaviour (the third PCP). These are not disputed.

1128. Issue 39 requires us to consider whether each of the PCPs placed the claimant at a substantial disadvantage in comparison with a person who was not disabled. This is a matter for evidence. We considered whether there was any disadvantage that was more than minor or trivial and compared this with persons who were not disabled.

1129. The respondents' agent submitted that the claim fails because the claimant had failed to show that the timing of the disciplinary hearing placed him at a substantial disadvantage in comparison with a person who was not disabled. He has not alleged that the requirement to attend a disciplinary hearing placed him at a particular disadvantage in a way which a non-disabled person would not have experienced. He has not proven (as opposed to merely asserted) that his disability prevented or in any way inhibited him from attending the hearing on 28 December.

1130. There was no evidence before the Tribunal that demonstrated that the claimant, as a disabled person, was at any substantial disadvantage compared

to someone who was not disabled with regard to requiring him to attend the hearing on 28 December 2017. There was no evidence, for example, that he was medically unfit to attend and deal with the issues arising. He had shown that he was able to attend meetings during his absence from work and clearly, articulately and intelligently present his response. He had done so at the investigation meeting. He was also able to send lengthy emails and communicate effectively. There is no evidence that allows us to find that he was placed at any disadvantage compared to a person who was not disabled with regard to the date of the hearing.

1131. The respondents' agent argued that like the claim relating to the date of the hearing, the second claim falls down due to the claimant's failure to explain or evidence how the hearing venue placed him at a substantial disadvantage in comparison with a non-disabled person. He has not said how and in what way attending Manorview would disadvantage him because of his disability. We agree. There is no evidence that there was any disadvantage in having to attend a hearing at Middlesbrough as opposed to any other place. The claimant's disability had no bearing whatsoever with regard to the location of the hearing from the evidence presented to the Tribunal.

1132. The respondents' agent argued that the claim of a failure to make reasonable adjustments relating to dismissal has been inadequately explained. There is no substantial disadvantage to which the claimant was subject by reason of his disability that would have been alleviated through not dismissing him. This was not, for example, a case of absence where the employee's disability had put him at risk of dismissal.

1133. We find that there is no evidence that would allow us to find that the claimant was at any disadvantage compared to a non-disabled person with regard to the requirement the claimant comply with standards of behaviour. There was no evidence that suggests the claimant was more likely to breach the standards than a non-disabled person.

1134. Issue 40 requires us to consider whether the following would alleviate any substantial disadvantage.

1135. Issue 40.1 applies to the first PCP and is failing to adjourn the disciplinary hearing to a later date. In the absence of any evidence showing that the claimant was placed at any disadvantage because of the date of the hearing, failing to adjourn would not have been a reasonable adjustment.

1136. Issue 40.2 is in relation to the second PCP and is failing to convene the disciplinary hearing at a more convenient location. The claimant has failed to show why this location was not convenient, with regard to his disability, and what he was proposing.

1137. Issue 40.3 in relation to the third PCP was not dismissing the claimant. We accept the respondents' agent's argument that this claim is unclear. There is no evidence showing the disadvantage the claimant suffered because of his disability was such that dismissal would alleviate it.

1138. Issue 40.4 is upholding the appeal. We agree with the respondents' agent's submissions that the appeal outcome letter is thorough, inquiring and even-handed. We do not consider that not upholding the appeal would have removed any substantial disadvantage the claimant suffered as a result of the claimant's disability. We find that his disability was not connected to his dismissal.

1139. Issue 41 relates to whether or not any relevant respondent knew that the claimant was a disabled person at any time material to his claims? This was not disputed.

1140. Issue 42 asks whether any relevant respondent knew that the claimant was substantially disadvantaged in a manner alleged by the claimant by reason of his disability at any time material to his claims. On the basis that the claimant has not provided any evidence to the Tribunal showing what the substantial disadvantage was, nor was there any evidence led showing that the respondents were aware of said disadvantage, we find that the respondents did not know of the substantial disadvantage in relation to each of the 3 adjustments relied upon.

1141. In all the circumstances we have concluded that the claimant's claim in respect of the respondents' failure to make reasonable adjustments is ill-founded and is dismissed.

Victimisation (section 27 Equality Act 2010)

1142. We now turn to consider the victimisation claims under issue 43. While issue 43.1 was found to be out of time, we consider all of the issues given their importance

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1143. We consider whether there was a detriment and the reason for it.

1144. Issue 43.1 is Ms Robson sending an email on 10 April 2017 in which she described the claimant as 'the problem'. We considered this under issues 22.4 and 22.5 since those comments (about placing the claimant on garden leave) feature in the same email.

1145. Ms Robson was concerned about the operational difficulty of moving all of the claimant's team to a different manager, the additional pressures this placed on other staff and the concern for Mr Harbertson's mental health. By referring to the claimant as "the problem" we accepted her evidence that she was referring to the fact that he was at the centre of the issues she was confronted with. It was a fair assessment. Ms Robson was not referring to the Tribunal proceedings as the problem.

1146. It is relevant to note that the email was not addressed to the claimant and he did not receive it at the time. The respondents' agent's submission is that the timing of receipt is a moot point since the email was not detrimental. It is argued that if the description of the claimant as "the problem" is a fair assessment based on objective fact, which it is, it cannot be a detriment to the claimant in the sense explained by the (then) House of Lords in **Shamoon v Royal Ulster Constabulary** 2003 IRLR 285, that is to say if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work.

1147. The claimant's argument that it was detrimental because she identified the claimant as the problem (not Mr Harbertson) or that he felt worse off and less secure because his attempts to seek a remedy had been "delegitimised", that he was blamed for Mr Harbertson's illness (and the other points in his witness statement) are not well founded. Ms Robson was legitimately setting out her concern to a colleague.

1148. The claimant was not therefore subjected to a detriment.

1149. Further the reason why the email was sent was entirely unrelated to the Tribunal proceedings or the complaints of maladministration. The email was sent solely because Ms Robson was concerned about the three operational issues under her control. The protected acts relied upon were in no sense whatsoever connected to the treatment.

1150. Issue 43.2 is Ms Robson refusing to allow a grievance process which the claimant instigated in 2016 to proceed to the appeal stage. We do not accept that Ms Robson "refused" to allow the claimant's grievance in relation to the security officers to proceed to the appeal stage. It was not a matter within her control as this was an issue being dealt with by the security officers' employer. This allegation has not therefore been established. Ms Robson undertook enquiries on behalf of the claimant and provided the response, which was that there was no appeal. It was not her decision. There was no connection whatsoever to any of the protected acts relied upon.

1151. Issue 43.3 is Ms Lau sending a threatening email to the claimant on 22 June 2017. We considered the terms of Ms Lau's email carefully. The respondents' agent submitted that the email was not threatening because it did not contain a threat. We agree with that submission. In any event as the respondents' agent submitted there is no (credible) evidence of any connection with a protected act nor had the claimant explained what interest Ms Lau had in any of the alleged protected acts such that they might motivate her to victimise him. There was no connection whatsoever between the protected acts and the issuing of the email.

1152. Issue 43.4 is Ms Robson instigating a disciplinary process against the claimant. The respondents' agent's submission in response to this issue is that given the circumstances, Ms Robson could do little else. It was potentially serious

misconduct of an employee who was already in receipt of a live final written warning. We agree with that submission. We also find that having taken advice Ms Robson decided that it was appropriate to commission a disciplinary investigation. The reason why such action was taken was because of the information Ms Robson had at the time which suggested a disciplinary process was needed. That was the only reason for her actions and we find there to be no connection whatsoever to any of the protected acts.

1153. Issue 43.5 is Ms Robson failing to speak to the claimant before instigating the disciplinary process, in breach of the Civil Service Code. We considered the terms of the Civil Service Code and found no evidence that this had been breached by Ms Robson in her approach. The Code does not address what should be done in advance of a disciplinary investigation and Ms Robson acted entirely consistently with the core principles contained in the Code. At the discussion the claimant had with Ms Robson, when he was told of the allegations on 7 July 2017 he was given the chance to respond. This allegation is therefore not made out. In any event there is no evidence of any connection between the alleged treatment and any protected act.

1154. Issue 43.6 is Ms Robson failing to exclude herself from the investigation of the Claimant's misconduct. As Ms Robson did not conduct the investigation, this allegation is not made out.

1155. Issue 43.7 relates to Ms Robson arranging to have the claimant relocated pending disciplinary investigation, in breach of the disciplinary policy which we considered at issue 22.3. We do not consider this a breach of the policy. The policy allowed for suspension and Ms Robson considered the same factors in support of her decision with regard to relocation. The reason why she wished to relocate the claimant was entirely unconnected to the protected acts relied upon. Ms Robson wanted to allow the investigation to proceed unimpeded and to protect the health and wellbeing of those affected, which included not just the claimant but Ms Lau. Ms C Robson was also concerned that the working relationship had broken down given what was being alleged. The reasons were in no sense whatsoever connected to the protected acts relied upon.

1156. Issue 43.8 relates to Ms Robson allegedly covertly communicating additional allegations against the claimant to the investigating officer beyond those of which the claimant had been informed. There were no covert communications during this process. The claimant was given all relevant documents. On that basis the allegation is not made out.

1157. Issue 43.9 relates to Ms Robson sending the claimant home in a "stage managed" exit on 7 July 2017. Ms Robson did not plan to send the claimant home. She was concerned about his welfare and inability to concentrate. Her decision was in no sense whatsoever connected to any protected act.

1158. Issue 43.10 was stated to be Ms Paton-Baines allegedly refusing to arrange a face to face PMR with the claimant for the reporting year 2016/17 but

the parties agreed it was in fact that Ms Paton-Baines did not hold a meeting with the claimant to discuss his challenge to his PMR rating. We found that Ms Paton-Baines conducted a detailed review of the PMR rating. That was a paper exercise. The claimant knew what was being done and the outcome was clear. The claimant had stated by email of 6 July 2017 that he was going to raise a grievance which would have resulted in a meeting to discuss his concerns but he did not do so. The reason no meeting was arranged was because no meeting was needed. The review was done by assessing the process and issues and providing a detailed written report. There was no connection whatsoever to the protected acts relied upon.

1159. Issue 43.11 is Ms Paton-Baines failing to respond to the claimant's email of July 2017 complaining that he had been the victim of sexual harassment by Ms Lau which we considered under issue 30.2. Ms Paton-Baines offered to speak with the claimant about this on 12 July and in any event that his response would be considered as part of the disciplinary process (as his response to the allegations). Thus there was no failure and in any event the reason why Ms Paton-Baines acted in the way she did was entirely unconnected to the protected acts relied upon.

1160. Issue 43.12 is the first respondent failing to respond to the claimant's complaints in December 2017 that the disciplinary investigation commenced in July 2017 was carried out in bad faith. We considered this in relation to issue 30.3. There was a response and consequently this allegation is not made out. In any event we find no connection whatsoever to any of the protected acts.

1161. Issue 43.13 is the first respondent failing to respond to the claimant's complaint of maladministration in the disciplinary process that ended on 20 January 2017 which we considered at issue 30.4. The claimant did receive a response. Consequently, the claim underlying this issue is dismissed. There was no evidence of any connection with any protected act whatsoever.

1162. Issue 43.14 is the manner of Mr Hunt's investigation and conclusions, the criticisms of which are more particularly set out at pages 11 to 15 of the grounds of complaint attached to the Third Claim which we considered in detail under issue 30.5. We dealt with the specific criticisms at length. We do not accept that the claimant was subjected to any detriment in this regard. The investigation was fair and reasonable. We accept it was not perfect but Mr Hunt did his best to capture the allegations and each of the witnesses' response. In any event there is no evidence linking the investigation and conclusions in any way to any of the protected acts whatsoever.

1163. Issue 43.15 is Ms Telfer dismissing the claimant by letter of 4 January 2018 including her supporting reasoning as set out in that letter. We deal with this under issues 30,6 and 30.7. While dismissal is clearly a detriment, we can find no evidence at all linking the dismissal with any of the protected acts relied upon. Ms Telfer acted in accordance with her duty in assessing the evidence before her. She dismissed the claimant solely for the reasons set out above which related only to the claimant's conduct. We find that there is no connection

whatsoever between the dismissal and the protected acts relied upon under this head.

1164. Issue 43.16 relates to Mr Keane rejecting the claimant's appeal against dismissal. Again, while refusing an appeal is a detriment, we find no connection whatsoever between the decision and the protected acts. Mr Keane relied solely on the evidence before him, having thoroughly considered each of the points the claimant raised and having fairly assessed matters and reached his own conclusion.

1165. Issue 44 is whether the detriments were because the claimant had done a protected act, specifically bringing a claim to the Employment Tribunal (the first Claim) or complaining of maladministration in the disciplinary process that ended on 20 January 2017?

1166. We took the time to consider each issue under issue 43 and whether or not there was any connection, that was not trivial or minor, with either the lodging of the claim of the complaining of maladministration. We asked whether either act was a reason, even if not the reason, for the treatment. We recognise that the protected act must be an effective/substantial cause but need not be the principal cause. There was no evidence which we found that connected the issues with either of these acts and concluded that the protected acts were not an effective nor substantial cause of any of the issues.

1167. We took account of the email that was sent by Ms Robson. She was describing the operational difficulties that arose as a result of the Tribunal claim and she was honest about the issues that faced her in the email she sent to her colleagues. That email did not show that the acts and omissions of Ms Robson were therefore because of the Tribunal claim (as the claimant submitted). We saw no evidence to link the two that supported that assertion and from the evidence before us we were satisfied that there was no connection between the protected acts relied upon and the issues.

1168. We were satisfied that each of the issues was a result of the exercise of the individual's duties as part of their employment and entirely unrelated to the protected acts. In other words, the protected acts were in no sense whatsoever connected to the alleged detriments.

1169. The claimant's claims of victimisation in his third claim are ill-founded and are dismissed.

Sexual harassment (section 26(3) Equality Act 2010)

1170. Issue 45 is whether the claimant was subjected to sexual harassment by Ms Lau as set out in issue 19. As we set out in issue 19 we found that the claimant was not subjected to sexual harassment by Ms Lau. Ms Lau acted appropriately in the circumstances.

1171. With regard to issue 46, As we found in relation to issue 43.3 the email of Ms Lau dated 22 June was not threatening as it did not contain a threat when reasonably considered in context.

1172. Issue 47 requires us to consider whether the conduct in the preceding issue was because of the claimant's rejection or submission to the conduct. Since we found that there was no harassment and no threat, this is not applicable. The email sent to the claimant was not threatening. Ms Lau was essentially saying that if the claimant was offensive to her she would escalate matters. That was a justifiable thing to say.

1173. Issue 48 requires us to consider whether this was less favourable treatment than if the claimant had not rejected or submitted to Ms Lau's conduct. As the foregoing aspects have not been established, the claim fails.

1174. The claimant's claim of sexual harassment in his third claim is ill-founded and is dismissed.

Harassment related to age (section 26 Equality Act 2010)

1175. Turning to harassment related to age, issue 49.1 requires us to consider whether there was unwanted conduct by Ms Lau's remarks made to the claimant on an undated occasion in June 2017, including "You men all want younger women" and "Do you want to be dominated"; and in relation to issue 49.2 Ms Lau repeating the "You men all want younger women" comment several weeks later. As we found in relation to issues 19.2 and 19.4, on the balance of probabilities, these comments were not said by Ms Lau and no that basis these allegations fail.

1176. Issue 50 requires us to consider whether the conduct was related to the Claimant's age (or age). We would have found that the issues do relate to age given the reference is to the age of women (and by implication "older" men).

1177. Issue 51 requires us to consider whether the conduct had the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010. We would not have found this to be so. We are satisfied that Ms Lau was having a general discussion with the claimant at the time the comments were alleged to have been made. This was at the time the claimant indicated that he believed the relationship to have been good (albeit he indicated that he also believed that he was vulnerable). In our view from the evidence we heard we do not consider that the conduct had the purpose of creating the adverse environment.

1178. We also find that it did not have in fact that that effect. We considered the evidence of the claimant and the surrounding circumstances, including the claimant's mental health and the facts presented to us. We accepted Ms Lau's evidence that at the time the claimant was unaffected by the comments.

1179. Finally we would not have considered that it was reasonable for the claimant to have believed the remarks would have the necessary effects as set

out in section 26 taking account of all the circumstances. The way in which Ms Lau presented her views to the claimant was reasonable and it was not reasonable to believe the effects were to amount to those set out in section 26. We intensely analysed the context of the remarks in this regard.

1180. For the foregoing reasons we consider that the claimant's claim that he was subjected to harassment related to age in this third claim is ill-founded and is dismissed.

Harassment related to religion (section 26 Equality Act 2010)

1181. Issue 52 is whether the claimant was subjected to unwanted conduct by Mr Hunt asking the claimant in an interview of 8 December 2017 about his reference to 'God' in an email? We dealt with this under issue 32.1. It was legitimate for Mr Hunt to ask the questions he did. He was seeking to understand what the claimant said and why. We find on the evidence that the conduct was unwanted.

1182. With regard to issue 53 which is whether the conduct was related to the claimant's religion of Christianity we find that it was not. The comment was made because Mr Hunt was investigating concerns Ms Lau had raised. She had expressed shock at the claimant's email which had included the phrase and Mr Hunt was investigating why the comment was made. It was not related to religion but was related to the investigation. We have carried out an intense focus on the context as required by the court in **Bakkali**, above.

1183. In any event in terms of issue 54, the conduct did not have the purpose or effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010. We are satisfied that the purpose of the conduct was to investigate the issues that had arisen and it was not reasonable for the claimant to believe the conduct to have violated his dignity or created an adverse environment for him. We apply the reasoning of Elias LJ in **Land Registry**, above.

1184. In all the circumstances the claimant's claim that he was subject to harassment by reason of his religion in his third claim is ill-founded and is dismissed.

Harassment related to disability (section 26 Equality Act 2010)

1185. Turning to issue 55.1, the question is whether the claimant was subjected to unwanted conduct by Mr Keane saying to the claimant that he had never shown any outward signs that he was suffering "this problem" (which appears to be a reference to sexual harassment by Helen Lau).

1186. We considered the terms of Mr Keane's outcome letter carefully and his evidence before the Tribunal. Mr Keane's reference to "the problem" was a reference to the claimant's allegation that he had suffered sexual harassment by Ms Lau. That was not conduct related to disability.

1187. In his oral submissions the claimant argued that "beneath the surface Mr Keane was hostile with prejudicial attitudes". We disagree with that comment which we find to be unfair. Mr Keane did take the claimant's disability into account and reached a view which was reasonable from the evidence before him. His point about disability not being a "get out of jail free card" was noting that standards of conduct require to be consistent.

1188. Issue 55.2 is Mr Keane saying that his understanding of panic attacks suggest that the claimant could not have continued a conversation with Ms Lau during the attack.

1189. The Tribunal considered the terms of Mr Keane's outcome letter and his evidence. We accepted his explanation that he demonstrated a "healthy scepticism" from the evidence before him. The claimant had not mentioned a panic attack at the time and there was no medical evidence to suggest one had occurred. The claimant had also continued with his conversation and nobody had observed any outward signs of distress and he continued to work, without being signed off or otherwise raising an issue. No other person commented on any issues the claimant encountered.

1190. We accept that the conduct underpinning the issues is unwanted conduct given the claimant's reaction.

1191. We also considered that the conduct relates to disability given the reference to panic attacks which applies in relation to issue 55.2. The conduct in relation to issue 55.1 was unrelated to disability since it related to the claimant's allegation that he had suffered sexual harassment by Ms Lau.

1192. The respondents' agent's submission that the remark cannot be harassment if there is justification for the remark and it is a legitimate assessment of the situation is not well placed in our view. We consider that it is possible for a well-intentioned remark which is a legitimate assessment of the situation in certain cases still to amount to unlawful harassment. However, on the facts of this case we are satisfied that the remark did not have its purpose to create the relevant effects and in the context in which it was said, we consider that it was not reasonable for the claimant to believe it to be so even if it did have the effect on the claimant, albeit there was no evidence before us of the effect on him.

1193. In relation to issue 56 we found that the conduct at issue 55.1 was not conduct related to the claimant's disability. We found that the conduct at issue 55.2 was related to disability.

1194. In relation to issue 57, having carefully assessed the words used, their context and the position of the claimant, we are satisfied that the conduct relied upon did not have the purpose of violating the claimant's dignity or creating an

adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010. The purpose was as set out above.

1195. From the evidence presented we also find that the conduct did not have the effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26. There was no evidence before us that would justify this finding.

1196. In any event we do not consider that it would be reasonable for it to have the effect of violating the claimant's dignity or creating an adverse environment for him within the meaning of section 26(1)(b) Equality Act 2010. In context the behaviour is entirely legitimate and unobjectionable.

1197. In the circumstances the claim for harassment related to disability is ill founded and is dismissed.

Conclusion

1198. We considered the evidence led before the Tribunal and the submissions made. In all the circumstances we find that none of the claims has any merit and the claims should be dismissed.

1199. While some of the issues within each claim were withdrawn and some of the issues within some of the claims giving were separate claims raised late (in circumstances where it was not just and equitable to extend the time limit), all as set out above, given the overall circumstances and judgment of HHJ Hand, QC **Greenwood v NWF Retail Ltd** UKEAT/0409/09 the judgment section of this decision shall simply record that each of the claims is dismissed. The reasons above set out the position in respect of each issue and our decision.

1200. We wish to record our thanks to the professionalism of the parties.

Employment Judge Hoey
12 October 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
26 January 2021

FOR THE TRIBUNAL OFFICE

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