EMPLOYMENT TRIBUNALS

Claimant: **Mr S Hassane**

Respondent: **GlaxoSmithKline Services Ltd**

Heard at: **via CVP** **On: 22/3/2021 to 26/3/2021**

Before: **Employment Judge Wright**
Ms S Dengate
Mr C Rogers

Representation:
Claimant: **In person**

Respondent: **Mr J French-Williams – solicitor-advocate**

LIABILITY JUDGMENT

It is the unanimous Judgment of the Tribunal that the claimant's claims fail and are dismissed.

WRITTEN REASONS

1. Having given oral judgment on the 26/3/2021 the claimant requested written reasons.

2. The claimant presented two claim forms. The first on 31/12/2018 and the second on 12/2/2019. The claimant was employed as a Director - Global Healthcare Academic Partnership between 14/1/2014 and 31/12/2018 when his employment was terminated by reason of redundancy.

3. There were three preliminary hearings on 4/4/2020, 13/11/2020 and 11/2/2021. The list of issues was finalised at the preliminary hearing on 13/11/2020 and is appended to this Judgment.

4. According to the list of issues, the claimant's claims are of unfair dismissal; automatic unfair dismissal and being subjected to a detriment(s) as a result of making protected disclosures; discrimination contrary to the Equality Act 2010 (EQA) based upon the protected characteristic of age (over 40), race (non-Caucasian) and religion (non-Christian). The prohibited conduct is direct discrimination and harassment. He also claims notice pay and redundancy pay.

5. The claimant was asked at the commencement of the hearing, whether he had withdrawn any claims and he confirmed he was pursuing all of the claims detailed in the list of issues.

6. The hearing was conducted via CVP and the claimant was based in the US[1]. For the respondent the Tribunal heard evidence from Mr Andrew Wright (at the time – Vice President of Global Health Programmes), Ms Claire Hitchcock (claimant's line manager) and Ms Ramneek Mahal (appeal officer). The Tribunal heard from the claimant on his own behalf and from a former colleague Ms Hasu Champaneri who was also made redundant.

7. The Tribunal had before it a bundle of 481-pages. The claimant produced a supplementary bundle and appended to his witness statement a 35-page transcript of a conversation on 17/10/2018, which was recorded contrary to the respondent's policy (which it regards as gross misconduct). The respondent objected to the documents being put before the Tribunal. That objection was noted and the Tribunal permitted the documents to be before it, to the extent they were referred to in the evidence-in-chief.

8. It should be noted that there was absolutely no reference by the claimant to this documentation either in his evidence-in-chief, when he was given the opportunity to provide any supplementary evidence or during his cross-examination of the respondent's witnesses.

[1] The claimant did not make an application for a later start time from the standard 10am GMT.

9. At the preliminary hearing on 11/2/2021 the claimant made an application for specific disclosure which was granted. The claimant did not refer to those documents in evidence-in-chief and only referred, very briefly, to one or two pages during questions. Those documents were not relevant to the issues which the Tribunal had to determine.

10. Another preliminary matter was two paragraphs in the claimant's witness statement, which were subject to without prejudice privilege. The respondent's application in this regard was accepted and those paragraphs were disregarded.

11. Despite the list of issues having been provided to the claimant and agreed at a preliminary hearing on 13/11/2020 (and clearly it had been provided to the claimant prior to that), the claimant had failed to address the issues in his witness statement (his evidence-in-chief). At the start of the third day the claimant said he wished to make a 'comment'. He wanted to direct how the respondent put its case to him and said he had been told at the preliminary hearing that he could not challenge the respondent's witnesses and could not put to them what he believed to be 'false' evidence.

12. Mr French-Williams who appeared at the preliminary hearing said that he had no recollection of any such instruction or conversation. He also strongly objected to the comment that there were any 'false' documents in the bundle produced by the respondent.

13. The Tribunal does not accept there were any false documents presented by the respondent. To take the one example the claimant focused on, at a preliminary hearing on 2/4/2020 the respondent was directed to provide an amended response by 14/5/2020. The clean copy of the amended response which is in the bundle has a date on the bottom of the page of 14/5/2020 and the name of the solicitor with conduct of the case (page 79). The tracked changes copy of the response has a date of 16/4/2019 crossed through and is then dated 9/5/2019 (page 78). It is accepted this is the respondent's advisor's method of amending documents and there is nothing more untoward about this.

14. In response to the claimant's comment/application, the Tribunal stated that it was not its role to put the claimant's case for him. He had had plenty of time to prepare for this hearing and there had been three preliminary hearings. He had not appealed the outcome of those preliminary hearings and he had not applied for a reconsideration.

15. There is information available on the GOV.UK website about what happens during an Employment Tribunal hearing. The claimant used that website to submit his two claim forms.

16. It takes no more than three clicks on an internet search of 'what happens at an Employment Tribunal hearing UK' to be taken to guidance from the Citizens Advice Bureaux, information on the GOV.UK website and other assistance.

17. The Tribunal on numerous occasions during the claimant's cross-examination of the respondent's witnesses suggested to the claimant that he focused on the list of issues which set out his claims, looked at the respondent's witness statement and challenged what he disagreed with. The claimant did not once say he had previously been told that he could not do that. At the start of his cross-examination it was pointed out that there was not unlimited time and that the Tribunal accepted there were lots of questions the claimant would like to put to the respondent's witnesses, to which he would like to know the answer, but that it was important that he focused his questions on the issues the Tribunal would be determining. The claimant did not heed this guidance and put his case as he saw fit.

18. It was matter for the respondent how it put its case to the claimant and questions would only be prevented if they were clearly irrelevant, unsuitable or objectionable.

19. Finally, the claimant was informed it was open to him to appeal to the Employment Appeal Tribunal (however only upon limited grounds) and he was informed of the time-limit.

Findings of fact

20. The claimant started working for the respondent on 14/1/2014 and on 1/6/2017 he was promoted from a grade 6 manager to a grade 5 director. Ms Hitchcock took over line management of the claimant in 2017.

21. From 16/7/2018 the claimant was in the US to look after his mother. The respondent understood he was due to return to the UK on 6/8/2018. He did not return to the UK and he was then on special paid leave and annual leave from 7/8/2018 until 6/9/2018 (save for the 21/8/2018 which was a consultation meeting[2]). From the 7/9/2018 to the 20/12/2018, as far as the respondent was aware, the claimant was working from home in the US. He was then on annual leave from 21/12/2018 until his employment terminated on 31/12/2018.

[2] Which was recorded on the respondent's system as a working day, as opposed to annual leave.

22. At a meeting in January 2018, the claimant said he made the first protected disclosure. According to the list of issues, it was a verbal disclosure by the claimant to Mr Wright and Ms Hitchcock that the budget for 2018 was prepared without his (the claimant's) sign off.

23. There were references to budgets in the claimant's witness statement, however, there was nothing which referred to January 2018. The allegation was not further particularised. No date for the meeting was given and the gist of what was disclosed was not set out, even in the most very general terms.

24. Mr Wright and Ms Hitchcock deny such reference was made which could amount to a protected disclosure. They also said that it was Mr Wright who signed off the budget, not the claimant. The claimant has not said how what he said was a disclosure qualifying for protection.

25. In his witness statement (paragraph 15) the claimant did cross-refer to pages 183-184 of the bundle. These are Ms Hitchcock's notes and she merely records:

> 'Updated 8 January [2018]
>
> Talked to [the claimant] to update on the situation with accruals and he said that he did not have any. I responded that I was not aware of this and that Yoshi and Tijana had circulated the list, which I had forwarded. He said he did not respond because it was a holiday – however – he was on line on Thursday 4 January because he responded to a note from Matt [M] and attended a call on the ATMI. I came into the office on Wednesday 3 January to work on the accruals.'

26. The claimant's absence record shows that he was on leave from 2/1/2018 to 5/1/2018 and that he returned to work on 8/1/2018.

27. The Tribunal accepts that it would be Mr Wright who signed off the budget, not the claimant; Mr Wright was Vice President of Global Health Programmes and was the claimant's line manager's manager.

28. The was clearly an issue over the claimant's budget which at the end of the financial year, which concerned both Mr Wright and Ms Hitchcock. The Tribunal finds there were discussions around this. It finds however, that there was no protected disclosure made by the claimant. He simply has not satisfied the burden which is placed upon him to demonstrate that he said anything, at any point during January 2018 which would qualify as a protected disclosure.

29. The claimant said he made a second disclosure during April 2018. Again, he has not advanced any evidence regarding this allegation. There is no

mention of April 2018 at all in his witness statement[3]. There is no specific date, no description of when and where the statement was made. No details of to whom the disclosure was made. The only information provided is in the list of issues which refers to a request for transparency with respect to the budget allocation.

30. That reference is not enough to amount to a protected disclosure and the claimant has again failed to discharge the burden to show that he said anything at all along those lines during April 2018, let alone anything which can amount to a protected disclosure.

31. The respondent accepted the claimant's nine-page letter of 8/10/2018 (pages 271-279) was a protected disclosure. There is one reference to the letter in the claimant's witness statement (paragraph 38). It is not however clear to the Tribunal which of the many allegations the claimant made in his letter, he claims amounts to a protected disclosure. The actual disclosure is not however relevant as the decision to dismiss the claimant by reason of redundancy pre-dated the claimant's letter.

32. The claimant was put on notice of changes to the Global Health team on 14/8/2018 (page 212) and the decision to make the claimant's role redundant was confirmed to him on 30/9/2018 (page 266).

33. In any event, there are only two detriments claimed, which post-date 8/10/2018. They are stopping the claimant's IT access on 21/12/2018 (the respondent admits this, but states that it does not amount to a detriment) and miscalculating the claimant's redundancy and holiday pay entitlement.

34. The claimant was informed his role would terminate by reason of redundancy on 31/12/2018 on 30/9/2018. The claimant was informed in the same letter the calculation of his redundancy payment. He was also told he would be paid for any outstanding holiday. To be entitled to an enhanced redundancy payment, the claimant would need to sign and return a form agreeing to accept the enhanced redundancy payment in full and final settlement of all claims against the respondent, save for those covered by s. 203 of the Employment Rights Act 1996 (restrictions on contracting out), personal injury and accrued pension rights (page 270) by 20/11/2018.

35. On 18/12/2018, following an unsuccessful appeal against the decision to make his role redundant, HR emailed the claimant to inform him that his last working day would be 21/12/2018 due to the shutdown for the Christmas period (page 325). He was told his IT access would cease from

[3] There is one reference to April 2019 in paragraph 49 on page 22.

this date. The claimant was also reminded he needed to return the form by the 20/12/2018 so the enhanced redundancy payment could be paid.

36. The claimant did not query the removal of the IT access at the time. The respondent said that due to the Christmas shutdown, no jobs would be advertised during this period.

37. The Tribunal finds the claimant's IT access was suspended on 21/12/2018. The reason for this however was nothing to do with the claimant's appeal letter and the allegations he made. The respondent's explanation is accepted, that the IT access was suspended due to the Christmas shutdown and the impending termination of the claimant's employment. The claimant has not said how he suffered a disadvantage by not having access to the respondent's IT system during the period 21/12/2018 – 31/12/2018. He had not evidenced anything he has 'missed out' on. The claimant applied for the role of SPO Director on 20/1/2019; clearly, he was aware of the vacancy and applied for the role, irrespective of the removal of the IT access.

38. The claimant has not said how his redundancy pay and notice pay were miscalculated. The Tribunal therefore finds the claimant has not provided any evidence to support his allegation this was a detriment and it finds the allegation has not been made out by the claimant.

39. If it is the claimant's case that he was not paid the enhanced redundancy payment, then the respondent's explanation is accepted. He was not paid the enhanced payment as he did not sign and return the form the respondent required receipt of, before it processed the payment.

40. For the sake of completeness, the Tribunal's findings in respect of the allegations of detriment are:

    a. There was no monitoring of the claimant's work from January 2018. Ms Hitchcock as the claimant's line manager was entitled to oversee the work he was doing.

    b. The claimant did not advance any evidence of the respondent asking him to work from the office from January 2018. It is accepted the claimant's contractual place of work was Brentford and any of the respondent's locations in West London. The claimant worked remotely in the US from 16/7/2018 and the respondent allowed him to do so. There was no evidence from the claimant of the respondent asking him to work from the office.

c. The respondent did investigate the claimant's travel expenses in May 2018 and it was entitled to do so. The claimant was informed of the outcome on 30/5/2018 and he was given a verbal warning to last for six months (page 205). The manager who gave that warning was independent of Ms Hitchcock. The Tribunal finds the investigation and outcome were reasonable.

d. The claimant was given a performance rating of four/partial for the 2017 financial year. This score was as a result of discussions between Ms Hitchcock, Mr Wright and Mr Ribeiro. Both Ms Hitchcock and Mr Wright said they had rarely scored an employee as low as four. Mr Wright conceded that he did not consult the claimant's previous line manager or seek her views in respect of the score for the first six months of 2017. His previous line manager had scored him as a three/strong performance. The Tribunal accepted that by Mr Wright's and Ms Hitchcock's standards, the claimant's performance was a concern. If nothing else, the claimant had under-spent his budget by 1/3 and Mr Wright did not approve the claimant's proposals as he considered them to be sub-standard. The Tribunal accepts the reasons provided for the claimant's score.

41. For the claims under the Equality Act 2010 (EQA) the claimant relies upon three different protected characteristics: age (over 40), race (non-Caucasian) and religion or belief (non-Christian). He claims that he was subjected to the prohibited conduct of direct discrimination and harassment. The complaint would appear to be a detriment (s. 39 (2) (d) EQA).

42. The claimant has not advanced any evidence on this aspect of his claim. An example of this is that when Mr French-Williams put it to the claimant that he had simply not presented any evidence on his claim of unlawful race discrimination; the claimant replied he had. He said he had :

> 'Presented for everyone's education and entertainment a picture of the whole team at page 207, this is my proof to you white Brits…'

43. There is a team picture on page 207 and it shows 12 people (one holding a baby) sat around a table in what would appear to be a restaurant. It is not clear who took the picture, whether or not it was the claimant and if he attended this event.

44. The claimant had not referred to the picture in his evidence, much less said how this showed direct race discrimination in not modifying his role, not providing him an opportunity to remain with the respondent until an

alternative role became available to him or denied him other roles. Equally, it does not establish how those allegations could amount to the prohibited conduct of harassment related to race.

45. The claimant's named comparators for the direct race discrimination case are Daryl Barnaby, Jenny Cozins and Sarah Pasternak. Daryl Barnaby's role was not potentially redundant and therefore he is not a comparator. The Tribunal does not know the race of the claimant's comparators, although it presumes they are Caucasian as opposed to non-Caucasian. The claimant has done no more than to reference a protected characteristic and then has made vague allegations. What he has not done is to provide any evidence or any other detail/particularisation at all.

46. The protected characteristic of age was put as the claimant being over-40. Despite not being a named comparator, the claimant in answer to a question referred to Adele Cheli as being white and under-40. He has not advanced any direct evidence in respect of the age discrimination claim.

47. As far as the religious discrimination claim was put, the claimant put it to Mr Wright that his father and brother were priests in cross-examination. Mr Wright disagreed this was the case and said that he could not recall having had such a conversation with the claimant. Mr Wright said his brother was a pastor.

48. There was also a reference by the claimant to being required to attend a meeting on 21/8/2018 during Eid Aladha which was referred to in the list of issues, which the claimant did not refer to in his evidence. Similarly, he did not refer to a meeting on 11/9/2018 in his evidence; although this was referred to in the list of issues. When he was asked about this in cross-examination, the claimant made the ludicrous claim that due to the 11/9/2001 terror attacks in the US, that he as a Muslim, should not be invited to a meeting on this date.

49. The claimant also referred to an undated lunch meeting where sandwiches were provided and consumed whilst he was fasting for Ramadan. This was first mention at the hearing and did not feature in the list of issues.

50. That was the extent of the evidence the Tribunal heard on this part of the claimant's claim and again, there was no direct evidence from him of the allegations he had made of direct discrimination or harassment.

51. Unfortunately for the claimant, this demonstrated the weaknesses in his claim overall and particularly his claim of unlawful discrimination.

52. Mr French-Williams put it to the claimant that allegations of discrimination are extremely serious and in response, the claimant referred to ‘racial cleansing’.

53. The claimant also claims ‘ordinary’ unfair dismissal. The burden is on the respondent to show a potentially fair reason for dismissal and it relies upon redundancy.

54. It was not clear if the claimant understood the concept of redundancy as it applies in this jurisdiction (England and Wales). It seemed to be his case that as his salary accounted for less than half of one percent of the budget, he should not have been made redundant. He also claimed that he should have been allowed to continue in post indefinitely, until an alternative role was found for him. He made many references to the fact that some of the partnerships he managed were continuing to this day. The Tribunal accepted that the corona virus pandemic may have extended some projects beyond what was anticipated. Even then, it was the position at the time of the reorganisation which was relevant, not what had happened since then.

55. In late 2017 Rogerio Ribeiro was appointed as the head of the newly formed Global Health Unit and he was the line manager of Mr Wright. The future development of the Unit was reviewed. This resulted in a three-year plan and a realignment of the current activities. Some areas of operation were to be phased out under the future plan. Mr Wright identified his own role as potentially redundant, along with six other roles, including the claimant’s.

56. Irrespective of the claimant’s view, it is not the Tribunal’s role to go behind the respondent’s decision to reorganise in such a way so as to achieve its objective in terms of the direction it had decided to take.

57. Accepting that the reorganisation was genuine and that the conclusion was that several roles were no longer needed, the Tribunal finds the end result was that the respondent was no longer going to pursue academic partnerships (the claimant’s responsibility). Albeit that some partnerships would continue and these would require managing. The respondent had decided to re-prioritise the Unit’s projects and it would honour all existing partnerships and in future reduce investment in others and stop some.

58. Ms Hitchcock took the view that what would be left of the claimant’s role would be no more than 15% of what it had been.

59. The Tribunal finds that was a genuine redundancy situation. The reorganisation had resulted in it being anticipated (and without the benefit

of hindsight at this point in time) that the role of Director - Healthcare Academia Partnership would cease or diminish to such an extent that it came within the definition of redundancy.

60. The Tribunal also finds the process the respondent followed was fair. Ms Hitchcock informed the claimant on 14/8/2018 in an email that she was setting up a meeting for 21/8/2018 to discuss changes in the Unit (page 212).

61. The claimant attended the meeting and he was informed of the reorganisation[4]. Ms Hitchcock sent him the slides which had been produced to explain the reorganisation to the Unit the following day (page 215). The claimant asked some questions and Ms Hitchcock engaged with him and lengthy correspondence (emails running to 11-pages) was exchanged (page 252-262).

62. The consultation period ended on 30/9/2018, the claimant was given three months' notice of termination and informed his employment would end on 31/12/2018.

63. The Tribunal finds that the respondent was open minded during the consultation. For example, Ms Cozins made a case for her role to be extended by three months in order that she could complete some work she was involved in and this was granted. This decision invoked the claimant's ire and he was highly aggrieved that he was not able to secure such an extension himself, especially as Ms Cozins was then able to secure an alternative role before her employment ended.

64. The claimant said in closing submissions that any reasonable person would have interpreted what he proposed in correspondence was a request for an extension to his termination date. This is incorrect. The Tribunal finds the claimant did not make a specific business case that his employment should continue for a limited period of time; unlike Ms Cozins.

65. The claimant was offered the right of appeal, which he exercised on 8/10/2018. An appeal hearing was held on 11/12/2018 by Ms Mahal. The claimant objected to Ms Mahal hearing the appeal, arguing that contrary to the respondent's policy, she was not more senior than Mr Riberio and the same level as Mr Wright.

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[4] It is not accepted by the Tribunal that Ms Hitchcock deliberately arranged the meeting during Eid Aladha. The claimant did not object to the date of the meeting and did not ask Ms Hitchcock to rearrange it. The Tribunal finds that had the claimant made such a request, Ms Hitchcock would have rearranged it taking into account the religious holiday.

66. The respondent’s policy provides that the appeal will be heard by a manager who is no less senior than the manager who reached the decision to make the role redundant.

67. The Tribunal finds that the future direction of the unit was a decision taken by Mr Riberio and he presumably reported to his superiors the decisions which had been taken. As a result of that and in order to implement it, the deletion of the role was a decision taken by Mr Wright. Ms Mahal’s review was therefore undertaken by a manager who was no less senior than Mr Wright.

68. Ms Mahal considered both the decision to delete the claimant’s role and the process which was followed. She upheld that decision and set out her reasons in her outcome letter dated 18/12/2018 (pages 321-324). It is accepted the claimant was unhappy about the outcome, however, the Tribunal finds the process was handled fairly, reasonably and in accordance with the respondent’s own policy.

69. The claimant’s claim for redundancy pay was not set out in his evidence and it was unclear to the Tribunal what the basis of this claim was. The statutory redundancy payment was correctly calculated. If the claim related to the enhanced redundancy payment the respondent offered, then the findings set out about when referring to that allegation as a detriment are repeated.

70. The last claim was a claim for notice pay. The claimant has not particularised this claim and it is unclear what it is he is advancing. The claimant was given notice of dismissal on 30/9/2018 and that three-month notice period expired on 31/12/2018, The claimant remained in the US during his notice period and the respondent said that it was not clear what work he was doing during this period; however, he was paid for that time. The notice period was given in accordance with his amended terms of service (page 117).

71. Finally and although not contained in the list of issues: the claimant was much excised by an incident he said he had witnessed whilst on a business trip to Siena on 19/7/2017. The issue the claimant had was not clear to the Tribunal, save to say that he referred to corruption and millions of pounds (£700,000,000?) being wasted/squandered. The claimant reported this in his appeal against the redundancy decision on 8/10/2018. It is not clear to the Tribunal why it took the claimant so long to make this report (especially as he had photographic evidence). Particularly as the respondent’s policy for reporting misconduct and unlawful conduct states employees are responsible for making reports ‘promptly’ (page 140). The respondent investigated this and found there was no wrongdoing.

The Law

72. Section 94 of the Employment Rights Act ("ERA") states that an employee has the right not to be unfairly dismissed by his employer.

73. Section 98 ERA states:

> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
>
> > *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
> >
> > *(b) that it is either a reason falling within subsection* ***(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held***
>
> *(2) A reason falls within this subsection if it—*
>
> > *(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
> >
> > *(b) relates to the conduct of the employee,*
> >
> > ***(c) is that the employee was redundant, or***
> >
> > *(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*
>
> *…*
>
> ***(3) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—***
>
> > ***(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or***

unreasonably in treating it as a sufficient reason for dismissing the employee, and

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

[Tribunal's emphasis]

74. Section 98 (1)(b) ERA, dismissal for some other substantial reason is referred to by the initialism SOSR.

75. Section 139 ERA states:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

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

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

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

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

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

76. If the employer fails to show a potentially fair reason for a dismissal it is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied. The helpful test is the range or band of reasonable responses, a test which originated in the misconduct case of British Home Stores v Burchell [1980] ICR 303, but which has been subsequently approved in a number of decisions of the Court of Appeal. An approach based on the 'Burchell test' can be useful in cases other than

conduct cases, albeit that the focus must always be on the statutory wording.

77. The manner in which the employer handled the dismissal is important in considering whether the respondent acted reasonably in all of the circumstances in treating that reason as a sufficient reason for dismissing the claimant. A Tribunal will therefore be keen to find out that the process which led to the claimant's dismissal was affected in an appropriate way, i.e. within the range of reasonable responses applicable to an employer of the size of the respondent with such administrative resources available.

78. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer.

79. The case of Gwynedd Council v Shelley Barratt & other Respondents [2020] UKEAT UKEAT/0206/18/VP involved the dismissal of the claimants for redundancy following the closure of the school where they worked. They were unsuccessful in applying for positions at a new school that opened at the same location. The Tribunal held that the dismissals were unfair because of the failure to provide the claimants with a right of appeal, the absence of consultation and because of the manner in which they were required to 'apply for their own jobs'.

80. The Tribunal is not obliged to find that the reason for dismissal was that advanced by either side Kuzel v Roche Products Ltd 2008 ICR 799, CA:

> 'If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so. As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side.'

81. 'Mislabelling' can occur in relation to business reorganisations that may or may not amount to redundancy. In Hannan v TNT-IPEC (UK) Ltd 1986 IRLR 165, EAT, the respondent contended the reason for dismissal was redundancy. The EAT upheld the Tribunal's decision that the reason for the dismissal was a reorganisation constituting SOSR, and not redundancy, even though the employer had not pleaded or canvassed SOSR. The EAT took the view, the difference was simply and genuinely one of labels: all the facts and issues had been fully canvassed at the tribunal hearing. Also in Jocic v London Borough of Hammersmith and

Fulham and ors EAT 0194/07, the EAT held that the substitution was no more than the attachment of a different label (SOSR rather than redundancy) to precisely the same set of facts and had not caused any prejudice.

82. The prohibited conduct is under s. 13 and s. 26 of the EQA, namely direct discrimination and harassment.

13 Direct Discrimination

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.

23 Comparison by reference to circumstances

(1) 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.

26 Harassment

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

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

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

(i) violating B's dignity, or

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

S. 136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

83. In respect of harassment under s. 26 EQA, in Richmond Pharmacology v Dhaliwal 2009 IRLR 336 the EAT set out a three-step test for establishing whether harassment has occurred: (i) was there unwanted conduct; (ii) did it have the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person and (iii) was it related to a protected characteristic?

84. At paragraph 22 of Richmond Pharmacology, the EAT said:

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

85. The burden of proof in s. 136 EQA provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred.

86. The authority on the burden of proof in discrimination cases is Igen v Wong 2005 IRLR 258. That case makes clear that at the first stage the tribunal is to assume that there is no explanation for the facts proved by the claimant. Where such facts are proved, the burden passes to the respondent to prove that it did not discriminate.

87. In Shamoon v Chief Constable of the RUC 2003 IRLR 285 it was said that sometimes the less favourable treatment issues cannot be resolved without at the same time deciding the reason-why issue. It is suggested that tribunals might avoid arid and confusing disputes about identification of the appropriate comparator by concentrating on why the claimant was treated as she was and postponing the less favourable treatment question until after they have decided why the treatment was afforded.

88. In Madarassy v Nomura International plc 2007 IRLR 246 it was held that the burden does not shift to the respondent simply on the claimant establishing a different in status or a difference in treatment. Such acts only indicate the possibility of discrimination. The phrase 'could conclude

means that 'a reasonable tribunal could properly conclude from all the evidence before it that there may have been discrimination'.

89. In Hewage v Grampian Health Board 2012 IRLR 870 the Supreme Court endorsed the approach of the Court of Appeal in Igen Ltd v Wong and Madarassy v Nomura International plc. Which said that it is important not to make too much of the role of the burden of proof provisions. They require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

90. The courts have given guidance on the drawing of inferences in discrimination cases. The Court of Appeal in Igen v Wong approved the principles set out by the EAT in Barton v Investec Securities Ltd 2003IRLR 332 and that approach was further endorsed by the Supreme Court in Hewage. The guidance includes the principle that it is important to bear in mind in deciding whether the claimant has proved facts necessary to establish a prima facie case of discrimination, that it is unusual to find direct evidence of discrimination.

91. The Court of Appeal in Ayodele v Citylink Ltd 2017 EWCA Civ 1913 confirmed that the line of authorities including Igen and Hewage remain good law and that the interpretation of the burden of proof by the EAT in Efobi v Royal Mail Group Ltd EAT/0203/16 was wrong and should not be followed.

92. In Dresdner Kleinwort Wasserstein Ltd v Adebayo 2005 IRLR 514 the EAT said that the shifting of the burden to employers meant that tribunals are entitled to expect employers to call evidence which is sufficient to discharge the burden of proof. The EAT said that one of the factors to be taken into account, in an appropriate case, could be the respondent's failure to call witnesses who were involved in the events and decisions about which the complaint is made, in cases where the burden is found to have passed to the employer.

93. A detriment has been held to be 'putting under a disadvantage' and 'exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment' (MoD v Jeremiah 1980 ICR 13), 'disadvantaged in the circumstances and conditions of work' (De Souza v AA 1986 ICR 513 CA, or simply a 'disadvantage' (Porcelli v Strathclyde Regional Council 1986 ICR 564).

94. The complaint is under s. 39 of the EQA.

39 Employees and applicants

(1) An employer (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—

(a) as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

95. The respondent also takes issue with the time limit under s.123 EQA, that the claims have been presented out of time.

123 Time Limits

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

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

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

96. The claimant pleads that he has made a protected disclosure under s. 43B of the Employment Rights Act 1996 (ERA). He also claims he was subjected to a detriment under s. 47B ERA and automatically unfairly dismissed per s. 103 ERA.

43B Disclosures qualifying for protection.

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

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

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

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

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

47B Protected disclosures.

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

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

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

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

on the ground that W has made a protected disclosure.

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

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

103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

97. In Kilraine v London Borough of Wandsworth [2018] ICR 1850 the Court of Appeal said that the word 'information' in S.43B(1) ERA has to be read with the qualifying phrase 'tends to show'; the worker must reasonably believe that the information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f) ERA. An example was given of a hospital worker informing their employer that sharps had been left lying around on a hospital ward. If instead the worker had brought their manager to the ward and pointed to the abandoned sharps, and then said 'you are not complying with health and safety requirements', the oral statement would derive force from the context in which it was made and would constitute a qualifying disclosure. The statement would clearly have been made with reference to the factual matters being indicated by the worker at the time.

98. Section 43B(1) ERA requires that, in order for any disclosure to qualify for protection, the person making it must have a 'reasonable belief' that the disclosure 'is made in the public interest'. That amendment was made to avoid the use of the protected disclosure provisions in private employment disputes that do not engage the public interest.

Conclusions

99. The claimant did not make protected disclosures in January and April 2018. As he did not make protected disclosures, he cannot have been

subjected to any detriments. The allegations of detriments were not made out by the claimant, save that his expenses were legitimately investigated and his IT access was, for equally legitimate reasons suspended on 21/12/2018.

100. The Tribunal is not clear which allegation(s) the claimant made in his letter of 8/10/2018 it is accepted amounted to a protected disclosure and how they satisfied the legislation. In any event, the Tribunal found there were no detriments which post-dated the letter of 8/10/2018. The decision to dismiss the claimant had been taken prior to the matters he raised in the letter of 8/10/2018.

101. The claimant has simply failed to advance his discrimination claims. There was no evidence-in-chief in respect of them. In light of that, he had not transferred the burden to the respondent to give a non-discriminatory explanation. As far as the respondent and the Tribunal did understand the claimant's claims of discrimination, the Tribunal accepted the non-discriminatory explanation. For example, it found Ms Hitchcock did not deliberately arrange a meeting during a religious holiday and that she would have rearranged it had the claimant asked.

102. The discrimination claims were weak, were not actively pursued and were a disingenuous and opportunistic use of the legislation by the claimant.

103. The claimant's dismissal was fair by reason of redundancy. The partnerships the claimant was servicing were expected to diminish or cease as a result of the respondent's change in direction as a result of the reorganisation. The respondent acted fairly and reasonably. It demonstrated that it supported its potentially redundant staff into finding alternative employment. That the claimant did not do so was down to him; not to the respondent's actions.

104. In the alternative, the Tribunal would accept that the dismissal was fair for some other substantial reason, based upon the same findings.

105. The claims for a redundancy payment and notice pay were not actively pursued and lacked particularisation. In not being able to identify the basis of these claims and based upon the Tribunal's findings, they are dismissed.

106. Finally and for the sake of completeness, if any of the discrimination claims had succeeded, the claimant made no attempt to persuade the Tribunal they were continuing acts or to exercise its discretion to extend

the time limit. The claimant has not particularised his claims and as such it was not possible to determine whether or not they were presented in time.

107. For those reasons, all the claimant’s claims fail and are dismissed.

____
Employment Judge Wright
Date: 7 April 2021

1. January 2018

1.1 Was the Claimant allegedly notifying Andy Wright and Claire Hitchcock verbally that the budget for 2018 was prepared without the Claimant's sign-off a qualifying disclosure?

1.1.1 Did the Claimant disclose information?

1.1.2 Did the Claimant reasonably believe the information disclosed tended to show that a criminal offence had been, was being or was likely to be committed?

1.1.3 Did the Claimant reasonably believe it was in the public interest to make the disclosure?

1.2 Was the Claimant's alleged disclosure in January 2018 a protected disclosure?

1.2.1 Was the disclosure made in accordance with section 43C of the Employment Rights Act 1996? In particular was the qualifying disclosure made to the Respondent or to any person falling within section 43C(1)(a), (1)(b) or (2).

1.2.2 The Claimant alleges that he made a qualifying disclosure to Andy Wright and Claire Hitchcock.

2. April 2018

2.1 Was the Claimant's alleged request for transparency with respect to budget allocation that was made verbally during April 2018 a qualifying disclosure?

2.1.1 Did the Claimant disclose information?

2.1.2 Did the Claimant reasonably believe the information disclosed tended to show that a criminal offence had been, was being or was likely to be committed?

2.1.3 Did the Claimant reasonably believe it was in the public interest to make the disclosure?

2.2 Was the Claimant's alleged disclosure in April 2018 a protected disclosure?

2.2.1 Was the disclosure made in accordance with section 43C of the Employment Rights Act 1996? In particular was the qualifying disclosure made to the Respondent or to any person falling within section 43C(1)(a), (1)(b) or (2).

2.2.2 The Claimant alleges that he made a qualifying disclosure to Andy Wright and Claire Hitchcock.

3. 8 October 2018

3.1 Was the Claimant's letter dated 8 October 2018 a qualifying disclosure?

3.1.1 Did the Claimant disclose information?

3.1.2 Did the Claimant reasonably believe the information disclosed tended to show that a criminal offence had been, was being or was likely to be committed?

3.1.3 Did the Claimant reasonably believe it was in the public interest to make the disclosure?

3.2 Was the Claimant's letter dated 8 October 2018 a protected disclosure?

3.2.1 Was the disclosure made in accordance with section 43C of the Employment Rights Act 1996? In particular was the qualifying disclosure made to the Respondent or to any person falling within section 43C(1)(a), (1)(b) or (2).

3.2.2 The Claimant alleges that he made a qualifying disclosure to Claire Hitchcock.

4. Unfair Dismissal

4.1 It is accepted that the Claimant was dismissed with effect from 31 December 2018.

4.2 Reason for dismissal

4.3 If the Claimant made a protected disclosure, was that the reason (or the principal reason) for dismissal?

4.4 If the principal reason for dismissal was that the Claimant was redundant, was the making of a protected disclosure the reason for which the Claimant was selected for dismissal?

4.5 If the answer to paragraph 4.3 and 4.4 is NO:

> 4.5.1 Had the requirements of the business for employees to carry out work of a particular kind ceased or diminished or were they expected to do so?
>
> 4.5.2 If so, was the Claimant's dismissal wholly or mainly attributable to that fact?
>
> 4.5.3 If not, was the principal reason for the Claimant's dismissal a business reorganisation and, if so, was this a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held?

4.6 In the circumstances, did the Respondent act reasonably in treating this reason as a sufficient reason for dismissing the Claimant, taking into account its size and administrative resources and having regard to equity and the substantial merits of the case?

5. Detriment: protected disclosure

5.1 The Claimant alleges that the Respondent subjected him to a detriment, in contravention of section 47B of the Employment Rights Act 1996, by doing the following things:

5.1.1 by monitoring his work from January 2018;

5.1.2 by asking the Claimant to work from the office from January 2018;

5.1.3 by investigating the Claimant's travel expenses during May 2018;

5.1.4 his performance rating for the 2017 financial year;

5.1.5 stopping his IT access on 21 December 2019;

5.1.6 miscalculating his redundancy and holiday pay entitlement.

5.2 Whether detrimental acts occurred

5.3 Did the Respondent do the acts listed in paragraph 5.1.1 to 5.1.6?

5.4 Was the Claimant subjected to a detriment not amounting to dismissal by the acts complained of?

5.5 Whether claim(s) in time and ACAS conciliation completed with respect to each alleged detriment?

5.6 Did the Claimant comply with the requirement in section 18A(1) of the Employment Tribunals Act 1996 to contact ACAS before instituting proceedings in relation to the alleged detriments?

5.7 Was the alleged detriment included in the claim forms submitted under early

conciliation certificate: R359072/18/07?

5.8 Was the claim brought within the time limit set by section 48(3)(a) of the Employment Rights Act 1996? This gives rise to the following sub-issues:

5.8.1 What was the date of the act/failure to act to which the complaint relates?

5.8.2 Was the act/failure to act to which the complaint relates part of a series of similar acts/failures? If so, what was the date of the last of those acts/failures?

5.9 If not, was it reasonably practicable for the complaint to be presented within the time limit set by section 48(3)(a) of the Employment Rights Act 1996?

5.10 If not:

5.10.1 within what further period would it have been reasonable for the complaint to be presented?

5.10.2 was the complaint presented within that further period?

5.11 Reason for treatment

If the Claimant made a protected disclosure, was this the reason for the treatment complained of?

6. Direct Discrimination – Age

6.1 The Claimant alleges that the Respondent did the following things which constituted direct age discrimination:

6.1.1 not modifying the Claimant's role;

6.1.2 not providing an opportunity for the Claimant to remain within the workforce until an alternative role became available; and

6.1.3 denying the Claimant other roles.

6.2 Whether Claimant subjected to a relevant detriment

Did the Respondent do any of the alleged acts or failures to act set out at paragraphs 6.1.1 to 6.1.3?

6.3 Whether treatment was less favourable

6.3.1 In doing the act complained of, did the Respondent treat the Claimant less favourably than it treated Daryl Barnaby, Jenny Cozins or Sarah Pasternak?

6.3.2 If so, was there any material difference between the circumstances relating to the Claimant and Daryl Barnaby, Jenny Cozins or Sarah Pasternak

6.3.3 In doing the act complained of, did the Respondent treat the Claimant less favourably than it would have treated others in comparable circumstances?

6.4 Reason for less favourable treatment

If the Respondent treated the Claimant less favourably, was this because of the Claimant's age?

6.5 Whether treatment justified

Was the treatment a means of achieving a legitimate aim? If so, was it a proportionate means of achieving that aim?

7. Age related harassment

7.1 The Claimant alleges that the Respondent engaged in the following conduct which constituted age related harassment:

7.1.1 not modifying the Claimant's role;

7.1.2 not providing an opportunity for the Claimant to remain within the workforce until an alternative role became available; and

7.1.3 denying the Claimant other roles.

7.2 Whether incidents/events complained of occurred
Did the Respondent do any of the alleged acts or failures to act set out at paragraphs 7.1.1 to 7.1.3?

7.3 Whether conduct related to age
Was the conduct in question related to the Claimant's age?

7.4 Whether conduct unwanted

Was the conduct in question unwanted?

7.5 Purpose/effect of conduct

7.5.1 Did the conduct in question have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

7.5.2 Did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

8. Direct discrimination – Race

8.1 The Claimant alleges that the Respondent did the following things which constituted direct race discrimination:

8.1.1 not modifying the Claimant's role;

8.1.2 not providing an opportunity for the Claimant to remain within the workforce until an alternative role became available; and

8.1.3 denying the Claimant other roles.

8.2 Whether Claimant subjected to a relevant detriment

Did the Respondent do any of the alleged acts or failures to act set out at paragraphs 8.1.1 to 8.1.3?

8.3 Whether treatment was less favourable

8.3.1 In doing the act complained of, did the Respondent treat the Claimant less favourably than it treated Daryl Barnaby, Jenny Cozins or Sarah Pasternak?

8.3.2 If so, was there any material difference between the circumstances relating to the Claimant and Daryl Barnaby, Jenny Cozins or Sarah Pasternak?

8.3.3 In doing the act complained of, did the Respondent treat the Claimant less favourably than it would have treated others in comparable circumstances?

8.4 Reason for less favourable treatment

If the Respondent treated the Claimant less favourably, was this because of any aspect of race as defined by section 9(1) of the Equality Act 2010?

9. Harassment - Race

9.1 The Claimant alleges that the Respondent engaged in the following conduct which constituted harassment related to race:

9.1.1 not modifying the Claimant’s role;

9.1.2 not providing an opportunity for the Claimant to remain within the workforce until an alternative role became available; and

9.1.3 denying the Claimant other roles.

9.2 Whether incidents/events complained of occurred

Did the Respondent do any of the alleged acts or failures to act set out at paragraph 9.1.1 to 9.1.3?

9.3 Whether conduct related to race

Was the conduct in question related to any aspect of race as defined by section 9(1) of the Equality Act 2010?

9.4 Whether conduct unwanted

Was the conduct in question unwanted?

9.5 Purpose/effect of conduct

9.5.1 Did the conduct in question have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

9.5.2 Did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's

perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

10. Direct Discrimination – Religion or Belief

10.1 The Claimant alleges that the Respondent did the following things which constituted direct religious or belief discrimination:

10.1.1 notified the Claimant of the redundancy consultation on 21 August 2018. A religious holiday (Eid Aladha (20-24 August 2018)); and

10.1.2 arranging a consultation meeting on 11 September.

10.2 Whether Claimant subjected to a relevant detriment

Did the Respondent notify the Claimant of the proposed changes to the Global Health Team on 21 August 2018 and arrange a consultation meeting on 11 September 2018?

11. Whether claim(s) in time

11.1 Has the Claimant brought his claim within the time limit set by Section 123(1) of the Equality Act 2010?

11.2 If not, is it just and equitable for the Employment Tribunal to extend time for the presentation of the complaint pursuant to section 123(1)(b) of the Equality Act 2010?

11.3 Whether treatment was less favourable

11.3.1 In doing the act complained of, did the Respondent treat the Claimant less favourably than it treated Daryl Barnaby, Jenny Cozins or Sarah Pasternack?

11.3.2 If so, was there any material difference between the circumstances relating to the Claimant and Daryl Barnaby, Jenny Cozins or Sarah Pasternack?

11.3.3 In doing the act complained of, did the Respondent treat the Claimant less favourably than it would have treated others in comparable circumstances?

11.4 Reason for less favourable treatment

If the Respondent treated the Claimant less favourably, was this because of the Claimant's religion?

12. Religion or belief related harassment

12.1 The Claimant alleges that the Respondent engaged in the following conduct which constituted harassment related to religion or belief:

12.1.1 notified the Claimant of the redundancy consultation on 21 August 2018. A religious holiday (Eid Aladha (20-24 August 2018)); and

12.1.2 arranging a consultation meeting on 11 September.

12.2 Whether incidents/events complained of occurred

Did the Respondent notify the Claimant of the proposed changes to the Global Health Team on 21 August 2018 and arrange a consultation meeting on 11 September 2018?

12.3 Whether claim(s) in time

12.4 Has the Claimant brought his claim within the time limit set by Section 123(1) of the Equality Act 2010? What was the date of the act to which the complaint relates?

12.5 If not, is it just and equitable for the Employment Tribunal to extend time for the presentation of the complaint pursuant to section 123(1)(b) of the Equality Act 2010?

12.6 Whether conduct related to religion or belief

Was the conduct in question related to the Claimant's religion?

12.7 Whether conduct unwanted

Was the conduct in question unwanted?

12.8 Purpose/effect of conduct

12.8.1 Did the conduct in question have the purpose of violating the Claimant's

dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

12.8.2 Did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

13. Holiday Pay

13.1 Did the Respondent fail to pay the amount due to the Claimant with respect to untaken leave?

14. Redundancy Pay

14.1 Amount of redundancy payment due

14.1.1 31 December 2018 was the relevant date for the purposes of s162 of the Employment Rights Act 1996.

14.1.2 What was the length of the Claimant's period of continuous employment at the relevant date?

14.1.3 £508 was the cap on a week's pay for the Claimant.

14.1.4 Has the Claimant received the sum of £3,048.00?

14.1.5 Has the Respondent already paid to the Claimant the sum due under the Employment Rights 1996?