



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Weinreb

**Respondent:** Online Travel Training Group Ltd

**Heard partly in person and partly via Cloud Video Platform (London Central)**

**On:** 21, 22, 26, 27, 28 April and (in chambers) 29 April 2021

**Before:** Employment Judge Davidson  
Ms T Shaah  
Mr S Hearn

## Representation

**Claimant:** in person  
**Respondent:** Mr J Jenkins, Counsel

# JUDGMENT

It is the unanimous decision of the tribunal that:

1. the claimant's complaints of direct discrimination and harassment fail and are hereby dismissed;
2. the claimant's complaint of victimisation succeeds.

A remedy hearing will take place on 14 July 2021.

Employment Judge Davidson

Date 6 May 2021

JUDGMENT SENT TO THE PARTIES ON  
.06/05/2021..

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

# REASONS

## The hearing

1. The hearing was a 'hybrid' hearing, with the claimant and the Employment Judge physically present in a tribunal room and the other participants connecting using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.
2. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no significant difficulties.
3. The participants were told that it was an offence to record the proceedings.
4. Evidence was heard from the respondent's witnesses via video link. I was satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

## Issues

6. The issues between the parties which fall to be determined by the Tribunal are as follows:

*Section 13 Equality Act – direct discrimination (race, sex and perceived sexual orientation)*

6.1. Has the respondent subjected the claimant to the following treatment?

- 6.1.1. Patricia Andrade referred to him as 'PRINCESS' in March 2018;
- 6.1.2. Patricia Andrade told the claimant that she was not on friendly terms with him;
- 6.1.3. Louise Honan said of the all-male Business Development Team including the claimant that they are "boys who act like children";
- 6.1.4. Patricia Andrade sarcastically said that the Business Development Team including the claimant were meant to be "alpha males";
- 6.1.5. Louise Honan falsely said that the claimant was "stealing clients";
- 6.1.6. Julia Feuell laughed at the claimant when he complained about these matters;
- 6.1.7. In April 2019 the claimant had his system privileges removed without notice or valid explanation;
- 6.1.8. On 29 April 2019 Patricia Andrade stated that the claimant was "acting prestige" which was an allusion to the paid service on a gay dating app Grindr;
- 6.1.9. Also on 29 April 2019 Patricia Andrade banged on a toilet cubicle in an attempt to intimidate and harass the claimant;

- 6.1.10. Patricia Andrade sent handwritten notes with words such as "fake" when he was conversing with potential clients on the telephone;
  - 6.1.11. On 13 May 2019 the claimant's wages were deducted unlawfully by Patricia Andrade at the instruction of Julia Feuell;
  - 6.1.12. The claimant was confronted by Patricia Andrade and Demi Hadjipetrou in the respondent's kitchen due to him recording a conversation.
  - 6.1.13. Demi Hadjipetrou raised her hand to the claimant and said that she was going to teach him a lesson.
  - 6.1.14. Patricia Andrade snapped her fingers at the claimant while Demi Hadjipetrou jeered and shouted from behind her.
  - 6.1.15. On 16 May 2019 the claimant was invited to an employment review meeting. in respect of which he complains:
    - 6.1.15.1. that he was invited to the meeting at all;
    - 6.1.15.2. he was informed that an outcome of this meeting could be dismissal
    - 6.1.15.3. he was not given any advance detail as to why this meeting was being held;
    - 6.1.15.4. Julia Feuell refused the claimant's request for this meeting to be delayed and more detail given.
  - 6.1.16. On 4 June 2019 the claimant's grievance was not upheld, despite admission is that many of the continuing acts of discrimination did take place.
  - 6.1.17. Julia Feuell banged on the table at the grievance outcome meeting on 4 June 2019;
  - 6.1.18. On 20 June 2019 the claimant was invited to a second employment review meeting with the potential of dismissal;
  - 6.1.19. On 2 July 2019 the claimant was dismissed on grounds of alleged misconduct was told that part of the reason for dismissal was that he had raised very serious issues of sexism and racism.
- 6.2. Was that treatment "less favourable treatment". ie did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on hypothetical comparators.

6.3. If so, was this because of the claimant's perceived sexual orientation?

6.4. Further or alternatively, was this because of the claimant's race. in particular that he is a person of colour?

6.5. Further or alternatively was this because of the claimant's sex, in that he is a man?

*Section 26 Equality Act: harassment related to perceived sexual orientation and/or sex*

6.6. In respect of the allegations set out above under direct discrimination, in the case of each allegation established, was that conduct unwanted?

- 6.7. If so, did it relate to the protected characteristic of the claimant's perceived sexual orientation?
- 6.8. Further or alternatively was this because of the claimant's sex, in that he is a man?
- 6.9. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

*Section 27 Equality Act: victimisation*

- 6.10. The claimant raised a formal grievance raising allegations of discrimination and harassment on 19 May 2019. That was a protected act.
- 6.11. Did the respondent subject the claimant to any detriments as follows:
- 6.11.1. On 4 June 2019 the grievance was not upheld, despite acknowledgement that many of the alleged acts of discrimination did take place;
  - 6.11.2. Julia Feuall banged on the table at the grievance outcome meeting on 4 June 2019;
  - 6.11.3. on 20 June 2019 the claimant was invited to a second employment review meeting with the potential of dismissal with no grounds;
  - 6.11.4. the claimant was dismissed on grounds of alleged misconduct and was told that part of the reason for dismissal was that he had raised very serious issues of sexism and racism.
- 6.12. If so. was this because the claimant did a protected act and/or because the respondent believed the claimant had done, or might do, a protected act?

Evidence

7. The tribunal heard from the claimant on his own behalf and from Julia Feuall (Managing Director), Demi Hadjipetrou (Office Manager), John Melchior (Self-employed consultant), Phillip Miller (Self-employed accountant), Titus Johnson (independent contractor) and Kenny Smith (Business Development Manager) on behalf of the respondent. We did not hear from Patricia Andrade (Finance Manager) or Louise Honan (Product Director) nor did we see a statement from either of them. We understand they both still work for the respondent.

Facts

The tribunal found the following facts on the balance of probabilities.

8. The respondent is a global e-learning platform for travel agents and it has approximately 12 employees. It is owned by Julia Feuall, who is also the Managing Director. Within the respondent's business there is a Business Development team, responsible for bringing in new clients and an Account Management team, responsible for looking after existing clients.
9. The claimant joined the respondent in September 2017 as a Business Development Manager on a salary of £30,000 plus commission.
10. On Thursday 3 November 2017, there was an altercation between the claimant and Patricia Andrade (Finance Manager). She wrote a note of the incident in which she states that the claimant was acting normally that day and that the altercation started when she started to criticise the way he had acted the day before. We find that the day before, the claimant, being new in the role, had asked for some help and was criticised for being a 'child' and needing his 'hand held' which the claimant did not take kindly to. We find that Patricia Andrade, in bringing this up the following day, was goading the claimant and created a conflict where none was necessary.
11. The following day, Friday 4 November 2017, the claimant came up to apologise for his part in the altercation but Patricia Andrade refused to apologise. She made a further file note of the exchange.
12. On 2 February 2018 the claimant's then manager, Chris Cutler issued him with a warning for lateness.
13. The claimant has relied on various emails and text messages as evidence of casual discrimination. The respondent contends that these are simply office banter, which the claimant was happy to take part in. These include the following:
  - 13.1. the claimant sent Patricia Andrade a signed booking form after signing up a new client including the term *"\* gun fingers\*"*;
  - 13.2. on 2 March 2018 Patricia Andrade emailed the claimant asking for a document. 9 minutes later she sent him another email with the text *'WAITING PRINCESS !!!!'*;
  - 13.3. On 6 February 2019, Kenny Smith and the claimant were having a conversation on Whatsapp about teamwork when Kenny Smith wrote *'Is that the Jew coming out of u?'*
  - 13.4. On 22 March 2019, the claimant sent Patricia Andrade an email, presumably following some connection problems, saying *'apparently our computers are not on friendly terms'* to which Patricia Andrade replied *'Not just our computers'*. The claimant replied *'you're so funny. Has that fixed it?'*

- 13.5. On 6 June 2019, Priti posted some images on the Whatsapp group which implied that Kenyan people were stupid. Julia Feuell said to Priti that, although it was funny, she should take it down because the claimant was 'supersensitive' at the time.
  - 13.6. On one occasion, the claimant was on the phone with a client and Patricia Andrade put a note in front of him with the word 'Fake' written on it.
  - 13.7. Patricia Andrade said to the all-male Business Development team that they should have better sales figures as they were meant to be 'alpha males'
  - 13.8. Louise Honan referred to the all-male Business Development team as 'boys who act like children' and she implicitly accused the claimant of 'stealing clients'.
14. In relation to 13.8, we did not hear evidence from Louise Honan, nor was there much by way of documentary evidence so, on balance, we accept the claimant's account.
15. On 18 March 2018 there was an altercation between Patricia Andrade and the claimant during which reference was made to the incident on 3 November 2017. Patricia Andrade sent an email to Demi Hadjipetrou attaching her note of the earlier incident. The details of the 2017 incident which formed part of the argument on this occasion (Patricia Andrade alleged that the claimant had banged the table and had come extremely close to her face) were not included in her contemporaneous note of 3 November.
16. On 30 January 2019, there was an unexpected fire drill. These are generally announced in advance but Patricia Andrade did not do so on this occasion as she did not realise it was about to happen. When the fire alarm went off, three individuals, including the claimant, were slow to leave and one (A, female) did not leave at all as she was on a client call. Julia Feuell spoke to the claimant and to the other two people involved who reported to her. A's manager spoke to her about the matter.
17. On 27 March 2019, the respondent decided to remove system privileges from the Business Development team (comprising three males). The Account Management Team (comprising three females) did not have their privileges removed. There was no prior consultation and the Business Development team were frustrated at the impact it had on them doing their job. The claimant and the others complained about this. One of the team in a slightly different role (PM) said he need this access and it was restored to him. The respondent explains that this was due to GDPR considerations.
18. By 2 April 2019, Kenny Smith had been promoted above the claimant to the role of Head of Global Partnerships, the clamant having been unsuccessful in his application for the role. There was a disagreement when the claimant took

issue with the way Kenny Smith spoke to a colleague and refused to agree to raise all matters with him, as his manager and not to go direct to Julia Feuell. Kenny Smith sent Julia Feuell an email setting out what had happened in his view.

19. On 26 April 2019, Julia Feuell held a quarterly performance review with the claimant at which she raised the pattern of 'run-ins' between him and other staff. This led to a discussion about the appointment of Kenny Smith, which the claimant was clearly unhappy about and mentioned that someone in the industry had joked that he would never get the job as he was not 'white and gay' and it was obvious a black man would never get the job. Julia Feuell denied that race was a factor but she was sufficiently concerned about the content of the conversation that she felt she should make a file note.
20. On 29 April 2019, there was an incident when Patricia Andrade came into the Business Development office and started a conversation with Kenny Smith about homosexuality, promiscuity and Grindr. The claimant said he didn't see the attraction, to which Patricia Andrade responded '*look at you acting prestige*' which he took to mean that he was a closet homosexual. He was upset by this and went to the toilet to get away from the situation. Patricia Andrade followed him there and banged on the toilet door.
21. On 13 May 2019, the claimant queried with Patricia Andrade the amount of his commission. He was expecting 5%, the normal 10% having been split with a colleague. Patricia Andrade explained that it had been split with Priti, an Account Manager, and he was only getting 2.5%. In fact, this was an error and the split with Priti was from 10% to 5%. The claimant was upset about this, particularly because he had not been consulted. The claimant's account of the encounter was that Patricia Andrade was flippant and unhelpful. He decided to make a voicenote of the conversation. Although he did not hide the fact he was recording it, he did not ask permission. In the end Julia Feuell confirmed that Patricia Andrade was incorrect about the commission but that Julia Feuell was the one who had not made it clear enough. No apology was made to the claimant by either Patricia Andrade or Julia Feuell.
22. Patricia Andrade complained to Julia Feuell about the claimant making a recording and Julia Feuell invited her to raise a formal grievance if she felt aggrieved. Julia Feuell then sent an email to Demi Hadjipetrou asking her to take HR advice from their external advisers. It is apparent that Julia Feuell accepted Patricia Andrade's account without having asked the claimant for his comments and that she considered that he should get some sort of warning.
23. On 14 May 2019 the claimant approached Patricia Andrade in the kitchen area and apologised for making the recording the day before. Patricia Andrade refused to accept the apology. Demi Hadjipetrou then joined the conversation and they both verbally attacked him for having made the recording, saying that it was illegal. There was a conflict of evidence between the claimant and Demi Hadjipetrou regarding the details of the altercation but it was common ground that there was a heated exchange.

24. Following that altercation, Patricia Andrade raised a formal grievance against the claimant.
25. Late on Thursday 16 May 2019, the claimant was invited to an 'Employment Review Meeting' (ERM) to discuss his 'conduct' and was informed that this might result in the termination of his employment. Julia Feuell accepts that she was only intending to issue a warning but she had been advised to include wording that the meeting might result in his dismissal. The meeting was due to take place on the following Monday at 11.30am, the same day on which he was due to fly out to Frankfurt on business at 7.30pm.
26. In the bundle, there was a document listing various incidents involving the claimant going back to the 3 November 2017 incident which had been prepared by Demi Hadjipetrou and Julia Feuell for the purpose of the ERM. The claimant was not given a copy of this at any stage and only saw it after disclosure in these proceedings. Many of the items on the list were matters which had been addressed with the claimant at the time and which were regarded as having been dealt with.
27. He asked for clarification of the allegations against him and for a postponement of the meeting. He also made the comment that he felt he was being victimised and prejudiced. Julia Feuell refused to give him the details of what conduct was in issue and insisted that the meeting would go ahead on 20 May. She added that if he felt prejudiced or victimised, he should raise this in a grievance to Demi Hadjipetrou.
28. On 19 May 2019, the claimant raised a grievance regarding the ERM process and his treatment more generally, alleging discrimination on grounds of race, sex and sexual preference. In particular he cited the way Patricia Andrade had treated him, the culture at the respondent and he alleged discrimination and harassment.
29. At about the time that the claimant challenged the ERM and raised his grievance, Julia Feuell cancelled the claimant's business travel to Frankfurt.
30. Julia Feuell investigated Patricia Andrade's grievance by speaking to her, someone who was present in the kitchen at the time (AM) and the claimant. She did not ask to hear the claimant's voicenote. She upheld Patricia Andrade's grievance and decided that the claimant and Patricia Andrade should communicate only by email in future.
31. Julia Feuell asked John Melchior, Chair of the Advisory Board, to investigate the claimant's grievance. He was given copies of the contract and handbook and interviewed the claimant, Patricia Andrade, Demi Hadjipetrou, Kenny Smith, Kristian Brumby, Louise Honan, Priti and Julia Feuell. He did not take notes of these conversations.



32. In his findings, John Melchior stated that Julia Feuell confirmed to him that she would have been happy to delay the ERM. This is contrary to what the documentary evidence shows although we accept this is what John Melchior had been told by her. Julia Feuell was unable to explain to us why she had told contrasting things to the claimant and to John Melchior. In relation to the 'banter' incidents, John Melchior accepted that they mostly took place and that many instances were inappropriate but he did not regard them as acts of discrimination. Other elements of the claimant's grievance were found to be irrelevant to an allegation of discrimination. In any instances where there was a conflict of evidence between the claimant and Demi Hadjipetrou or Julia Feuell, John Melchior preferred the evidence of Demi Hadjipetrou and Julia Feuell. His conclusion was that there had not been any discrimination but he recommended that management speak to Patricia Andrade '*reminding her of the rules of showing respect to her colleagues both in her spoken and written communication*'.
33. John Melchior sent the claimant the grievance outcome and invited him to a meeting on 4 June 2019 so that he could discuss the outcome of the grievance. John Melchior said that the purpose of the meeting was to give the claimant a chance to ask any questions and to find a way forward following the outcome of the grievance. John Melchior invited Julia Feuell to the meeting and introduced her as 'just listening'. We find that it was inappropriate for Julia Feuell to be present at this meeting. The claimant recorded this meeting and the respondent produced no notes of the meeting so the claimant's recording was the only record of the meeting before the tribunal.
34. During the meeting, Julia Feuell made 49 interventions while John Melchior was still present. He then left and the meeting continued between Julia Feuell and the claimant. During the first part of the meeting, Julia Feuell became frustrated and banged on the desk saying she was upset and offended by the allegations of discrimination and she was concerned about her feelings rather than the claimant's. We find that Julia Feuell was dismissive of the claimant and his concerns and took the allegations as a personal affront to her. John Melchior confirmed that the claimant was not aggressive at any point.
35. The claimant appealed against the grievance outcome by email dated 10 June 2019. His appeal was addressed to Phillip Miller, who invited him to an appeal meeting on 18 June 2019. The grounds of appeal were as follows:
- 35.1. John Melchior's assessment included inaccuracies;
  - 35.2. he had misunderstood the nature of the grievance;
  - 35.3. those involved had failed to apologise for behaviour found by John Melchior to have taken place;
  - 35.4. Julia Feuell's presence at the grievance outcome meeting; and
  - 35.5. her conduct in that meeting.
36. The claimant emphasised that he was just asking for an apology.

37. Phillip Miller rejected the grievance on the grounds that the grievance would not have been raised if he had not been invited to an ERM; the grievances went back a long time and had not been brought earlier; that the allegation of falsehoods was incorrect. He failed to address the ground of appeal relating to Julia Feuell's presence at the grievance outcome meeting.
38. On 20 June 2019, the claimant was sent a second invitation to the ERM.
39. The claimant was sick with food poisoning and asked for a delay to the ERM as he was going to the doctor later that day. Julia Feuell agreed to delay the hearing from 26 June to 2 July 2019.
40. The claimant submitted a fit note following his visit to the doctor signing him off until 17 July 2019.
41. He was aware that the ERM would go ahead in his absence and, despite not having been given details of the agenda for the ERM or invited to make representations, he sent Julia Feuell an email setting out his position and his allegations.
42. The ERM took place on 2 July 2019 in the absence of the claimant. His representations were considered and rejected. For example, the claimant alleged that the respondent had completely ignored the ACAS Code of Conduct to which Julia Feuell replied '*I disagree, we have followed the ACAS code of conduct*'. She did not explain why she believed this. We find that the respondent had not followed the ACAS Code of Conduct and Julia Feuell's response is simply inaccurate.
43. The letter went on to inform the claimant that he had been dismissed because his conduct was unacceptable. The letter did not specify what conduct was being referred to. He was given the right of appeal.
44. Julia Feuell had prepared a note for the ERM. It was not clear to us from the text of the dismissal letter whether this was sent to the claimant but, based on references to it made by the claimant in his pleadings but not in his appeal, we find that it was sent to him at one point but we cannot tell when. In the note Julia Feuell refers to the various arguments with staff over the last six months culminating in the grievance against him by Patricia Andrade. This led to a reaction from the claimant raising a grievance making allegations of race and sex discrimination which Julia Feuell found serious and upsetting. She also found them to be spurious because the grievance had been raised in response to the ERM. She was unhappy that he had called people liars and concluded that the working relationship had broken down and that he should be dismissed. This explanation is not reflected in the wording of the dismissal letter.
45. On 2 July 2019 the claimant appealed to Titus Johnson against his dismissal on the grounds that the dismissal was not in accordance with the respondent's disciplinary policy, he had not been told in advance what conduct was in issue

at the ERM and that the dismissal was an act of victimisation for having raised allegations of discrimination.

46. There was an appeal meeting on 12 July 2019 which was recorded and we had sight of the transcript. Titus Johnson confirmed that he had never found the claimant aggressive and that he handled himself and conducted himself well during the meeting. Following the meeting Titus Johnson carried out an investigation by telephoning Patricia Andrade and asking her a question, although he could not recall what he asked her. He did not speak to anyone else. Contrary to the statement in the outcome letter that he had carried a 'robust investigation', we find that his investigation was limited.
47. He gave the claimant the outcome by letter dated 30 July 2019. He rejected the appeal. He said that the ERM was not part of the respondent's formal disciplinary procedure and was carried out in accordance with Best Practice. He said that Julia Feuell was not legally obliged to send out the allegations in advance of the meeting but that the claimant had been made aware of the issues. We find that this is not correct and the claimant was not made aware of the issues. Titus Johnson also concluded that he was not dismissed for having raised a grievance. It is not clear what evidence he relied on in reaching this finding and he was unable to recall what documentation he had received. Unfortunately, we did not have before us the email in which documentation was sent to him and he did not list the evidence he relied in reaching his findings with the letter itself. Mr Johnson failed to address the point raised by the claimant in relation to the reason for his dismissal and simply relied on the fact that the grievance had not been upheld.

### Law

48. The relevant law is as follows:

#### *Direct discrimination*

Section 13 Equality Act provides:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

#### *The shifting burden of proof*

Section 136 Equality Act provides for a "shifting burden of proof" in discrimination claims:

(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.

#### *Harassment*

Section 26 of the Equality Act provides:

A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either:

- a) Violating B's dignity, or
- b) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

*Victimisation*

Section 27 Equality Act provides:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
  - (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
  - (a) bringing proceedings under this Act;
  - (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.

Determination of the issues

49. The unanimous determination of the tribunal is set out below.

*Direct Discrimination*

50. We find that the respondent subjected the claimant to the following treatment:

- 50.1. Patricia Andrade referred to him as 'PRINCESS' in March 2018.
- 50.2. Patricia Andrade told the claimant that she was not on friendly terms with him.
- 50.3. Louise Honan said of the all-male Business Development Team including the claimant that they are "boys who act like children" and implicitly accused the claimant of stealing clients.
- 50.4. Patricia Andrade sarcastically said that the Business Development Team including the claimant that were meant to be "alpha males".
- 50.5. In April 2019 the claimant had his system privileges removed without notice or valid explanation.
- 50.6. On 29 April 2019 Patricia Andrade stated that the claimant was "acting prestige" which was an allusion to the paid service on a gay dating app Grindr.
- 50.7. Also on 29 April 2019 Patricia Andrade banged on a toilet cubicle when the claimant was inside.

- 50.8. Patricia Andrade put handwritten notes with words such as "fake" in front of the claimant when he was talking to potential clients on the telephone.
- 50.9. On 13 May 2019 the claimant's commission was calculated wrongly by Patricia Andrade due to misunderstanding with Julia Feuell.
- 50.10. The claimant was confronted by Patricia Andrade and Demi Hadjipetrou in the respondent's kitchen due to him recording a conversation.
- 50.11. On 16 May 2019 the claimant was invited to an employment review meeting and was informed that an outcome of this meeting could be dismissal; he was not given any advance detail as to why this meeting was being held and Julia Feuell refused the claimant's request for this meeting to be delayed and more details given.
- 50.12. On 4 June 2019 the grievance was not upheld, despite acknowledgement that many of the acts complained of did take place.
- 50.13. Julia Feuell banged on the table at the grievance outcome meeting on 4 June 2019.
- 50.14. On 20 June 2019 the claimant was invited to a second employment review meeting with the potential of dismissal with no grounds.
- 50.15. On 2 July 2019 the claimant was dismissed on grounds of alleged misconduct and was told that part of the reason for dismissal was that he had raised very serious issues of sexism and racism.

51. We find that it is less favourable treatment.

52. In relation to the removal of systems privileges and the mistake on the commission calculation, we find that these were business matters and not related to the claimant's protected characteristics.

53. We find that the 'banter' often crossed the line of acceptable behaviour. We note that it is often difficult for the butt of the joke to complain about the joke for fear of being regarded as humourless and, indeed, we find that the claimant put up with a lot of unpleasant banter without complaint in order to have a good working environment. We find that none of the claimant's own communications targeted another person's protected characteristic.

54. The respondent relies on the claimant being apologetic for various incidents as evidence of his wrongdoing. We find that he was prepared to apologise, sometimes because he regretted his behaviour but on other occasions in order to move on and have a quiet life. We also note the absence of apologies, both when requested and when not requested from the other members of staff. For

example, on 3 November Patricia Andrade called the claimant a 'child' and refused to apologise despite the claimant apologising for his reaction and asking her to apologise for what she said; neither Patricia Andrade or Julia Feuell apologised to the claimant for the mistake on his commission; Julia Feuell did not apologise at the time for banging on the desk in the grievance outcome hearing and Kenny Smith's refusal to apologise at the tribunal hearing for an anti-semitic message he had written to the claimant (who is Jewish). All the claimant wanted from his grievance was a simple apology and despite grievance findings of unacceptable behaviour (albeit not discriminatory), none of the people involved were prepared to apologise. For example, Patricia Andrade has never apologised to the claimant nor has anyone with management responsibility for her suggested that she should.

55. We note the claimant's allegation that he was repeatedly 'gaslit' in that he was made to think incidents were his fault when that was not always the case and we understand why he would feel like that in the light of much of the evidence before us. In relation to the recording, we understand why a person who feels 'gaslit' would resort to making a voicenote, whether covert or not, to provide objective evidence of what actually happened. Julia Feuell was critical of the claimant making a voicenote but failed to consider this as an explanation.

56. However, we do not find sufficient evidence that the less favourable conduct set out above relates to the claimant's perceived sexual orientation, race or sex.

#### *Harassment*

57. In relation to the harassment allegations, we find that the conduct was unwanted but that it did not related to the claimant's protected characteristics.

58. We find that Patricia Andrade in particular bullied the claimant but we do not have sufficient evidence to link this to his protected characteristics. We find that Patricia Andrade's interactions with the claimant were aggressive and, at times, unpleasant.

59. We find that Julia Feuell protected Patricia Andrade generally. She invited her to raise a grievance against the claimant but it is clear that she accepted her account from the outset before she had carried out any investigation. Before the investigation had concluded, she had decided to hold an ERM and had decided that the sanction would be some form of warning. With regard to the investigation of Patricia Andrade's grievance, we note that Julia Feuell did not ask to hear the voicenote which was likely to contain relevant evidence to assist her in reaching a robust decision. In all circumstances, Julia Feuell consistently believed the evidence of Patricia Andrade over the claimant. However, we attribute this more to the loyalty between them due to working together over a long time than to the fact that they are white females.

60. In relation to the 'banter' with Kenny Smith, we find that this was a misguided attempt on his part to be lighthearted and, at the time, arose from ignorance

rather than malice. We note that Kenny Smith was unable to explain his anti-semitic whatsapp message but (unprompted) said that he refused to apologise for it.

*Victimisation*

61. We find that the formal grievance dated 19 May was a protected act together with the further information and allegations provided by the claimant during the course of the grievance investigation.

62. We find that the respondent subjected the claimant to detriments as follows:

- 62.1. On 4 June 2019 the grievance was not upheld, despite acknowledgement that many of the acts complained of did take place.
- 62.2. Julia Feuell banged on the table at the grievance outcome meeting on 4 June 2019.
- 62.3. On 20 June 2019 the claimant was invited to a second employment review meeting with the potential of dismissal with no grounds specified.
- 62.4. The claimant was dismissed on grounds of alleged misconduct and was told that part of the reason for dismissal was that he had raised very serious issues of sexism and racism.

63. We find that

- 63.1. the grievance not being upheld was not, itself, an act of victimisation.
- 63.2. Julia Feuell banging on the table at the grievance outcome meeting on 4 June 2019 was an act of victimisation. She was angry that the claimant had raised the issue of discrimination and she took the matter personally. She would not have behaved this way if he had not made the allegations of discrimination.
- 63.3. The claimant being invited to a second employment review meeting with the potential of dismissal with no grounds specified was an act of victimisation because the claimant made it clear within his grievance that he needed that information to prepare for the hearing. The information was available to the respondent and we have been given no explanation why it was not shared with the claimant. In the light of our findings regarding Julia Feuell's response to the grievance, we find that this is a likely explanation for her actions in pursuing the ERM in this way.

- 63.4. The claimant's dismissal was an act of victimisation. We note that, before the grievance was raised, Julia Feuell was planning to give the claimant a warning for misconduct, notwithstanding she had not yet heard the claimant's side of the story. The major factor which led to her dismissing the claimant instead of giving a warning was the fact that he had raised allegations of discrimination.
64. The purpose of protection against victimisation is to give reassurance to an employee who raises a grievance that they can do so without fear of being penalised on those grounds. We find that this is precisely what happened to the claimant in this case.
65. We do not accept the respondent's submission that the claimant acted in bad faith. The respondent points to the fact that the grievance was only raised as a response to the ERM and in an attempt to 'put spikes' in it. We note the decision of the EAT in *Saad v Southampton University Hospital Trust* UKEAT0276/17 which held that the claimant's ulterior motive in raising a grievance was less important than his honesty in believing in the allegation.
66. We find that the claimant raised his grievance in good faith and that he genuinely believed that his protected characteristics were a potential explanation for his treatment. He was entitled to hold that belief, for example some of Patricia Andrade's comments clearly had the potential to relate to the claimant's perceived sexual orientation.
67. We note that Julia Feuell told the claimant to raise a grievance if he felt that he had been discriminated against and therefore we are surprised that the respondent should argue that this was not the right course for him to follow.
68. We find that one of Phillip Miller's grounds for rejecting the appeal against the grievance outcome was that the matters raised stretched back several months and should have been dealt with at the time. We find this surprising given that, in the parallel ERM process, the respondent appeared to be relying on matters going back to 2017. We also note that, for an employee who feel aggrieved, it is a big step to raise a grievance and, inevitably there is fear (in this case, well-founded) that this will bring their employment to an end. In any event, on occasions the claimant did complain and was told not to dwell on things. The fact that the allegations go back in time does not necessarily mean the grievance has no foundation and there is no evidence that Phillip Miller considered this point.
69. Phillip Miller also relied on the fact that the claimant raised his grievance in response to the ERM. It is not uncommon for employees to raise a grievance while there is a procedure being followed against them. It does not necessarily mean that the grievance is without foundation and Phillip Miller does not appear to have considered this point.



70. Phillip Miller also concluded that the claimant had made allegations of lying which had no foundation. However, the claimant's allegations of falsehoods within the grievance outcome had some validity to them, for example Julia Feuell telling John Melchior that she would have allowed a postponement of the ERM when she had expressly refused the claimant's request for a postponement. This was evident on the documentation but does not seem to have been taken into account by Phillip Miller.
71. Phillip Miller did not listen to the transcript of the grievance outcome meeting during his appeal investigation. He told the tribunal that with hindsight, Julia Feuell should not have been there but he did not address this matter at all as part of the appeal.
72. In relation to the appeal against dismissal, we find that Titus Johnson's conclusion that best practice was followed is not correct. The allegation that the dismissal was due to him raising a grievance was not properly investigated and Titus Johnson's conclusion that the dismissal was 'categorically' not for that reason is not explained other than to say that the grievance had not been upheld, which is a different point.
73. We acknowledge that this is not an unfair dismissal case but we take the view that we should take into account the various failures in the appeal processes (both grievance and dismissal) identified above and conceded by the respondent. While these have not been relied on as acts of victimisation, we find that they are illustrative of the respondent's failure to take the claimant seriously, particularly after he had made allegations which the respondent found unpalatable.
74. We note that Julia Feuell, in her evidence, suggested that the claimant might punch someone. This is not consistent with anything she has said previously and is direct contrast to the evidence of Phillip Miller and Titus Johnson. We find that this was an attempt by Julia Feuell to overstate the claimant's alleged misconduct and to portray him unfairly to us as an aggressive or violent person.
75. We do not accept the respondent's submissions that the reason for dismissal was the claimant's failure to accept the situation of his grievance not being upheld. In any event, the claimant still had a right of appeal and was permitted (within the respondent's own procedure) not to accept the grievance outcome by virtue of his right to appeal. It would be contradictory to allow an appeal against a finding and yet dismiss somebody for not accepting the finding.
76. In conclusion, we find that the claimant was victimised for having made allegations of discrimination. A remedy hearing will take place to consider remedy.