



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L C Glyde

**Respondents:** Dorset and Wiltshire Fire and Rescue Services (1)  
Mrs Jenny Long (2)

**Heard:** Southampton **On:** 29, 30 June;  
1, 2, 3, 6, 8, 9, 13,  
14, 15 July 2020

**Reserved Judgment  
Discussion On:** 11 and 12 August 2020

**Before:** Employment Judge Craft

**Members:**  
Mr N Cross  
Mr N Knight

**Representation:**  
Claimant: Himself  
Respondent: Mr P Doughty, Counsel

## UNANIMOUS RESERVED JUDGMENT

- 1) The Claimant's claims against the First and Second Respondent of discrimination on the grounds of disability and discrimination on the grounds of perceived disability fail and are dismissed.
- 2) The Claimant was unfairly dismissed by the First Respondent.
- 3) The Tribunal will now fix a hearing to consider remedy for the Claimant's unfair dismissal which will be listed with a time allocation of two days.

## REASONS

### Background

1. The Claimant was employed by the First Respondent, latterly as a Watch Manager at Salisbury Fire Station, from 6 March 1998 to 31 May 2019. He pursues claims of unfair dismissal against the First Respondent and disability

discrimination against the First and Second Respondents. These claims are denied by the Respondents. The case has been subject to extensive and diligent consideration by four Employment Judges in five preliminary hearings which were held on 20 August and 2 December 2019 and 14 February, 19 May and 3 June 2020.

2. The issues before the Tribunal included allegations of discrimination based on acts or omissions pre-dating 14 and 15 February 2019. At the hearing held on 19 May 2020 Employment Judge Rayner determined that the Claimant was not a disabled person in respect of depression and anxiety prior to 15 February 2019, or in respect of diverticulitis prior to 14 February 2019. Therefore, all claims in respect of disability discrimination in respect of alleged acts, or omissions occurring before 14 or 15 February 2019, with the exception of the claims of perceived disability discrimination, were dismissed. Furthermore, the Claimant withdrew his claims against two other employees of the Respondent, then named as the second and third Respondents in these proceedings and those claims were dismissed after which judgment to that effect was promulgated to the parties.
3. The Claimant alleges, inter alia, that his former colleagues and his Station Manager colluded to dismiss him from his job with the First Respondent, and that they fabricated evidence to do so. He submits that he was bullied and harassed during the period of his suspension and challenges the integrity of the Respondent's investigation. He submits that the comments relied upon were misinterpreted and that the Respondent's disciplinary procedure was unfair and that the decision to dismiss him was premeditated and that the sanction of dismissal was too severe. He also submits that he had not been responsible for general racist and offensive behaviour and is not a racist.
4. The Claimant also pursues claims of disability discrimination against the First Respondent and the Second Respondent comprising claims of direct discrimination and discrimination from something arising from his disability, a failure to make reasonable adjustments to the disciplinary procedure and perceived disability discrimination. The Respondent denies that the Claimant was unfairly dismissed and the allegations made by the Claimant to support his claim of unfair dismissal, and his claims of disability discrimination.
5. The Claimant was absent from work by reason of sickness and suspension from 12 January 2018 until the termination of his employment on 31 May 2019. The Claimant was dismissed with notice following a disciplinary hearing held on 27 and 28 February 2019. His appeal against this decision which was held on 30 May 2019 was unsuccessful.

### **The Issues and the Law**

6. Employment Judge Rayner set out a comprehensive list of issues in the Case Summary she prepared following the hearing on 3 June 2020. The Tribunal notes the following in respect of the claims before it:

## Unfair dismissal

- (a) In determining whether a dismissal is fair or unfair it is for the employer to show the reason for dismissal, or if there is more than one reason the principal reason. The reasons for dismissal shown by the employer must be one of the potentially valid reasons specified in **s.98(2) Employment Rights Act 1996**. In this case the First Respondent asserts that the reason for dismissal was related to conduct. This is a potentially fair reason for dismissal.
- (b) Once the employer has shown the reason for dismissal it is then for the Tribunal to be satisfied that the employer acted reasonably in dismissing for that reason. This question is to be determined in accordance with equity and the substantial merits of the case. The circumstances to be taken into account include the size and administrative resources of the employer's undertaking. In this case the Respondent must establish a genuine belief on reasonable grounds after reasonable investigation that the employee's behaviour justified his dismissal. This means that the Respondent need not have conclusive direct proof of the Claimant's conduct but must hold a genuine and reasonable belief as to that conduct reasonably tested. The function of the employment tribunal is not to determine the Claimant's guilt or innocence but to consider the behaviour of the employer in terms of the statutory test of fairness and that includes whether the Respondent adopted a fair procedure in dealing with these matters.
- (c) The Tribunal also notes that natural justice requires not merely that an employee shall have a chance to state his or her own case in detail but must know sufficiently in advance what is being said against him / her so he / she can properly prepare and put forward his / her case. Fairness requires that someone accused of a matter should know the case to be met, should be informed of the evidence in support of that case and should have the opportunity to criticise or dispute that evidence and produce evidence of his own and argue his / her case before the decision to dismiss is taken.
- (d) The Tribunal will also have to determine whether the decision by the Respondent to dismiss the Claimant was a fair sanction, that is, whether it was within a range of reasonable options open to a reasonable employer when dealing with these facts.
- (e) The Tribunal must not substitute its view of the right course of action for that of the employer. The function of the Tribunal, acting as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair.

- (f) This was summarised in **Post Office v Foley [2000] IRLR 827 CA** in which the Court of Appeal stated as follows:

*"In one sense it is true, that, if the application of that approach leaves the members of the Tribunal to conclude that the dismissal was unfair, they are in effect substituting their judgment for that of the employer. But that process must always be conducted by reference to the objective standards of the hypothetical reasonable employer which are imported by the statutory references to "reasonably or unreasonably" and not by reference to their own subjective views of what they would in fact have done as an employer in the same circumstances. In other words, although the members of the Tribunal can substitute their decision for that of the employer, that decision must not be reached by a process of substituting themselves for the employer and forming an opinion of what they would have done had they been the employer, which they were not"*

- (g) The range of reasonable responses applies equally to the conduct of investigations and the procedure used.

#### **Direct Discrimination on Grounds of Disability (s.13 Equality Act 2010)**

- (h) The essential issue is whether by dismissing the Claimant the First Respondent treated the Claimant less favourably than it treated or would have treated a hypothetical comparator and if so whether the Claimant can prove primary facts from which the Tribunal could properly and fairly conclude the difference in treatment was because of the Claimant's disability and, finally, if the Tribunal reaches that conclusion what is the First Respondent's explanation for their conduct and can it prove a non-discriminatory reason for such treatment?

#### **Direct Discrimination on Grounds of Perceived Disability (s.13 Equality Act 2010)**

- (i) The first question for the Tribunal in respect of this claim is whether the First Respondent subjected the Claimant to the following treatment falling within **s.39 Equality Act** namely that:
- (i) it removed him as a manager. This refers to the Claimant being removed as a manager by Mr Moncrieff and includes allegations that this was on the basis of information provided to Mr Moncrieff by Mr Waker, Mr Endicott and Ms Morell and with the encouragement of Mr Hardisty and Mr Wyer;
  - (ii) Mr Hardisty regarded or considered his absence due to diverticulitis as a malicious absence in May 2016;
  - (iii) it fabricated evidence that he was a racist which relates to Messrs Waker, Endicott and Wyer and Ms Morell; and
  - (iv) it dismissed the Claimant.

If such findings of facts are made by the Tribunal then the same questions have to be dealt with as are set out in the summary of the law as to direct discrimination above.

- (j) It has been held that an act will fall within **s.13(1) Equality Act 2010** where A acts because he or she thinks B has a particular characteristic even if in B does not have that particular characteristic. The particular characteristic in this case is disability. The primary definition of disability is set out in **s.6(1) Equality Act 2010**. In this case the Tribunal has to decide whether it was perceived that the Claimant had an impairment with the features set out in that section. The putative discriminator must believe that all the elements in this statutory definition of disability are present. However it is not necessary to attach the label of disability to them. Therefore, the concept of "perceived disability" presents issues that are different from those presented by the question of whether a person is in fact disabled, not least because what the putative discriminator perceives will not always be clearly identifiable as a disability. For example, many physical or mental conditions which may attract adverse treatment do not necessarily amount to disabilities, either because they are not necessarily sufficiently serious or because they are not necessarily long term.

#### **Discrimination Arising from Disability (s.15 Equality Act 2010)**

The allegation of unfavourable treatment as "something arising" in consequence of the Claimant's disability falling within **s.39 Equality Act 2010** is that the First and Second Respondents refused the Claimant workplace colleague support at the disciplinary hearing. No comparator is needed to take forward this claim. The issue before the Tribunal is whether the Claimant can prove that the First and / or Second Respondent treated him as set out above because of the "something arising" in consequence of the disability. The Claimant relies upon behavioural issues namely offending individuals during the process since March 2018.

#### **Reasonable Adjustments (s.20 and 21 Equality Act 2010)**

The PCP relied upon by the Claimant is the implementation of the First Respondent's disciplinary process. The Claimant argues that the application of that provision put him in a substantial disadvantage in comparison with persons who are not disabled because the disciplinary process aggravated his diverticulitis and his mental health. The Claimant submits that the adjustments reasonably required were for the Respondent to have dealt with the process more quickly.

#### **Documents and Witnesses**

7. There were 2492 pages of documents in six binders; Exhibits R1, 2, 3, 4, 5 and 6. Three additional documents were added to that bundle during the course of the hearing comprising 15 pages. The Respondent received evidence from 14 witnesses on behalf of the Respondent. Messrs Ansell and

Plumley did not give oral evidence. All of the Respondent's witnesses gave their evidence in chief by written statement. The Tribunal lists the Respondent's witnesses below with the reference in brackets after each listed witness being the exhibit number for their statement.

Witness	Role	Exhibit Number
Mr J Plumley	Station Manager	R7
Mr B Ansell	Chief Fire Officer	R8
Mr A Hardisty	Firefighter / Red Watch	R9
Mr J Moncrieff	Group Manager	R10
Mr J Wyer	Firefighter / Red Watch	R11
Mr M Waker	Crew Manager / Red Watch	R12
Mr N Endicott	Firefighter / Red Watch	R13
Ms M Morrell	Firefighter / Red Watch	R14
Mr R Coleman	Group Manager	R15
Mr D Graham	Area Manager	R16
Mr S Why	Area Manager	R17
Mrs J Long	Director of People Services	R18
Mr J Mahoney	Director of Community Safety	R19
Mrs C Swan	HR Delivery Manager	R20

8. The Claimant's, witness statement (Exhibit C1) comprised 69 pages. There is a cast list (Exhibit R21); a schedule cross referencing witness interviews in the Investigation Report to page numbers in the Bundle (Exhibit R22); a chronology prepared by the Respondents (Exhibit R23) and Mr Doughty's Outline Submissions (Exhibit R24). The Tribunal was also referred to the following authorities by Mr Doughty: **Amnesty International v Ahmed [2009] IRLR 884; City of York Council v Grosset [2018] IRLR 746; and Chief Constable of Norfolk v Coffey [2019] IRLR 805.**

### Findings of Fact

9. The Tribunal made the following findings of fact after considering all the written and oral evidence submitted to it, those documents to which it was referred, or which its deliberations led it to consider. This was an onerous task. The parties had not exercised sufficient rigour in their preparation of the agreed Bundle as was demonstrated by the fact that a substantial number of the documents were not relied upon, or referred to by either party. However, the transcripts of interviews and meetings prepared by the Respondent have been invaluable as an accurate record of events and were to the Respondent's credit, as were the meticulous records of the extensive correspondence received from the Claimant, and the First Respondent's responses to him as to various matters during the protracted disciplinary procedure. The fact that the Tribunal may not have referred to various incidents that occurred, and correspondence relevant to them does not mean that such matters were not considered but that it was not relevant for the Tribunal to do so to make relevant findings of fact or provide further context to what occurred in assessing the merits of the Claimant's claims.

10. On 1 April 2016 the Wiltshire and Swindon Fire Authority and the Dorset Fire Authority combined to create the Dorset and Wiltshire Fire and Rescue Authority (the First Respondent). The Claimant's employment with Wiltshire transferred to the merged Authority. He was at the time of the events under consideration the Watch Manager of Red Watch and so responsible for the operational management of one of the four whole-time Watches at Salisbury Fire Station which is a whole time station.
11. The Watches work day and night shifts, undertaking two day shifts and two night shifts in a four day cycle, followed by a four day break. The Watch is on call throughout a shift. A Watch comprises a Watch Manager, Crew Manager and five Fire Fighters. Mr Waker was the Crew Manager. Ms Morrell and Messrs Hardisty, Wyer and Endicott were Fire Fighters working full time on Red Watch at the relevant time. Ms Morrell had joined the Respondent in September 2017, when she transferred from West Midlands Fire Service where she had also worked as a Fire Fighter. Mr Moncrieff was the Station Manager for South Wiltshire from March 2017 to October 2018. In that job he was responsible for Amesbury and Wilton on-call Stations and Salisbury (whole time) Fire Station. Seven Watch Managers reported to him and he had overall management responsibility for around 70 personnel. He had previously held the position of Head of Professional Standards in the Respondent.
12. Some members of Red Watch attended on Mr Moncrieff in March or April 2017 in the absence of the Claimant. This was an informal meeting during which they expressed concerns about the Claimant's management style. Mr Moncrieff was then new to his job. He told them that he had not observed any behaviour by the Claimant such as they described. Those attending this meeting did not want Mr Moncrieff to take any action in respect of their observations. They wanted him to be aware of this potential difficulty for them. He agreed he would keep the situation under review going forward.
13. Members of Red Watch attended on Mr Moncrieff again for a further informal meeting in November 2017. The Claimant was away from the Station at that time. They told him that they were finding the Claimant's management style to be abrasive and difficult to deal with. Once again, he told them that he had not observed any such behaviour by the Claimant. Mr Moncrieff was also informed of inappropriate comments of a racial nature which the Claimant had made at a Business Continuity Training Course ("the Course") at the end of October 2017. This was a course which had been run by Mr Paul Clement. Mr Moncrieff was also told that two of those present had challenged what the Claimant had said. Mr Moncrieff considered the comments reported to him attributed to the Claimant to be a pathetic attempt at humour by the Claimant. He treated it as a one-off occasion. He did not consider that he needed to discuss it with the Claimant and did not do so.
14. Mr Endicott attended on Mr Moncrieff shortly after this meeting. He told Mr Moncrieff that he considered the Claimant was being rude to his colleagues and asked Mr Moncrieff to raise this behaviour with the Claimant. By this time Mr Hardisty had taken advice about his position because of the Claimant's management style. He had been informed that he could submit a request to move to another Watch and spoke to Mr Moncrieff about his

situation. Mr Hardisty told the Tribunal that from his own observations, and one conversation with the Claimant in which he indicated there were difficulties with his daughter, he thought the Claimant might be under some stress in his private life and that this might be affecting his behaviour at work. He did not know that the Claimant suffered from diverticulitis.

15. Mr Moncrieff completed the Claimant's Personal Review, which was an annual performance appraisal, on 4 December 2017. The Tribunal had a copy of the agreed written record of that meeting available to it. It was considered by both parties to be a constructive meeting.
16. It is part of a Personal Review that the manager discusses with the employee what the Respondent refers to as the RESPECT behaviours and which RESPECT areas could be developed or strengthened. The note of the meeting records the Claimant as stating:

*"I demonstrate the RESPECT behaviours on a daily basis, where I place myself on the forefront of challenging inappropriate behaviour, being professional, communicating well and being respectful of others."*

Mr Moncrieff noted the following:

*"Lee has always displayed the RESPECT behaviours whenever I have seen him working. I have no issues with how he has worked."*

17. Mr Moncrieff raised issues in respect of his management style with the Claimant without disclosing the discussion with Mr Endicott. The Claimant accepted that he could be overly blunt when trying to correct things. He agreed that this was something for him to work on. This is confirmed by the comment agreed between them noted in the Personal Review. In response to the question which RESPECT areas could he develop or strengthen the response is:

*"Transformation – I wish to better manage difficult staff through this period of change. This would be relying on influencing the individuals and bringing them on board."*

18. The Tribunal accepted Mr Moncrieff's explanation that this was a note that reflected his efforts to demonstrate to the Claimant the more inclusive style of management that would avoid the concern that had been raised by a member of Red Watch. The Personal Review also asked the Claimant whether he had any concerns regarding Equality, Diversity and Inclusion and his recorded response at the meeting was:

*"I have challenged EDI breaches on Watch and they have not had to be re-visited."*

19. After the meeting Mr Moncrieff received feedback from Mr Endicott that over the next few weeks he had experienced no difficulties with the Claimant's



behaviour. When Mr Moncrieff was on duty on the weekend January 6 he received a text message from Mr Waker which stated that Mr Waker and the Claimant had an issue between them. Mr Moncrieff arranged to meet Mr Waker the following day. When he did so it became clear Mr Waker and the Claimant had been involved in a heated argument. Mr Moncrieff travelled to Salisbury Station to discuss the situation with Red Watch. The Claimant was not present at this meeting because he had been given special leave to deal with an issue concerning his daughter and his ex-wife. During this discussion Mr Moncrieff received a number of further criticisms of the Claimant's management style. However the Watch did not want him to raise any of those issues directly with the Claimant. Those members of the Watch present wanted Mr Moncrieff to mediate between the Claimant and Mr Waker to try to achieve an improvement in their working relationship.

20. It was agreed by all concerned that Mr Moncrieff would meet with Mr Waker and the Claimant on the afternoon of 12 January 2018. The purpose of the meeting was to talk about how the Watch was going to be run going forward and a particular issue was how much autonomy Mr Waker either could, or should, be given by the Claimant. Mr Moncrieff expected this to be a challenging meeting. It proved to be a very a difficult meeting. He had to calm tempers on two occasions before, despite his best efforts the meeting ended acrimoniously. The Claimant accused Mr Waker of being belligerent at this point. Mr Waker replied to the Claimant by asserting that at least he did not make racist comments. In his interview during the investigation which followed Mr Moncrieff describes what happened. His description is set out below:

*"And then it reaches another flashpoint and it goes. Lee accuses Martin of being belligerent, which he's called him that in the past or at least Martin's reported to me he's been called a belligerent bully in the past, and Martin doesn't really like it. Martin says "yeah well at least I don't make racist comments".*

*"So I calm the situation down from that point but Lee refuses to go on. "No, I'm not racist, I'm not racist, prove that I'm racist". We're stuck on this point now, "I'm not racist, when have I ever made racist comments?" Martin says "well you made one in Business Continuity", "What did I say then?" And Martin goes "I don't know, I wasn't there". At which point Lee turns to me and goes, "he wasn't there" and kind of like flipping his hands up in the air. At which point Martin goes "I was there in the appliance when you made the comment about the Apache helicopters", at which point Martin described the family, some kind of Asian orientation, an ethnic minority pull up in a car alongside them at a traffic light controlled roundabout, at the same time an Apache helicopter has come overhead really quite low, making lots of noise, Lee turns round to the crew, "I bet they were worried". The connotation I'm taking is that the Apache helicopters were coming to attack them is the attempt at humour I think that Lee was making. Lee turns to me and says "what's racist about that?" At which point I say, well "well I think the connotation is Lee, I think the point is I can see the comment is that the helicopters were coming to attack the Asian family". We don't get*

*any further with the conversation there and Lee refuses to go any further until I investigate the claims, so I'll take that as investigate with a small i, you know it wasn't a full investigation but before Martin has a chance to create any kind of collusion with the Fire Fighters."*

21. Mr Moncrieff could not take the meeting any further. Mr Moncrieff explained to both men that, in accordance with the Claimant's request, he would make arrangements to attend on members of Red Watch immediately. Mr Moncrieff then sent the Claimant and Mr Waker to separate rooms. He then attended on Messrs Hardisty, Wyer and Ms Morrell who were in the Watch room. He made arrangements to see each of them separately in turn when he put the same question to each of them which was: *"Have you ever heard Lee make any racists comments?"* He put the same question to Mr Endicott when he returned to the Station after attending a training course.
22. Mr Hardisty informed Mr Moncrieff that he had heard the Claimant make racist comments on three occasions. Mr Wyer referred to what had been said on the Course. Ms Morrell also told Mr Moncrieff about what had been said by the Claimant at the Course and that she thought that the Claimant had taken an unusual interest in the ethnicity of people when they had discussed her work in the West Midlands. Mr Waker referred to those matters he had spoken about in the meeting. Mr Endicott referred to a helicopter incident and comments the Claimant had made during discussions with colleagues about the Grenfell Tower fire.
23. By chance, Mr Moncrieff was able to attend on Mr Drury, Area Manager and Mr Gray, Group Manager who were attending meetings in Salisbury Station that afternoon. He explained what had happened and the responses he had received. It was their view that these matters needed to be formally investigated but that the Claimant should not be suspended on the basis of what was presently known.
24. Mr Moncrieff then attended on the Claimant. He explained that he had spoken to the Claimant's colleagues as the Claimant had wanted him to do and that the answers given to him meant that there would have to be a formal investigation into the incidents described to him. The Claimant informed Mr Moncrieff that the stress of the afternoon had upset him and that he had decided to book sickness for work related stress. Mr Moncrieff agreed that he could do so and that he would contact the relevant office and the First Respondent's sickness line on his behalf.
25. The Tribunal finds that the purpose of the meeting held on 12 January 2018 was to allow Mr Moncrieff to attempt to mediate a return to a viable working relationship between the Claimant and Mr Waker. Mr Moncrieff was not aware that the Claimant was suffering from any kind of illness at this time. He had no reason to doubt that the Claimant was fit and well. He was aware that the Claimant had passed the Service fitness test and that he regularly exposed himself to physical training in the course of his job. He had received no information that brought into question either the Claimant's mental or physical health. He had been given no indication in his contact with the Claimant that he was encountering any difficulties in respect of his health

except that at the end of Mr Moncrieff's interviews he had said that he had been stressed by that afternoon's events and reported sick for that reason.

26. Mr Moncrieff prepared a summary of what had happened which he sent by email to Messrs Gray and Drury and to Mr Standen, the Assistant Chief Fire Officer. Mr Moncrieff instructed the rest of the Watch not to talk about what had happened either with each other, or outside of the Watch, and not to communicate with the Claimant while he was off sick, or discuss what he had discussed with them if he returned to work.
27. In his email Mr Moncrieff also records the incidents that had been described to him:

*"Business Continuity – Whilst in Business Continuity Training with W M Clement the subject of the highest security level arose. WM Glyde made comments to the effect that "this is when you are allowed to wrestle Muslims to the ground."*

*When in the appliance – The appliance was held at traffic lights on a roundabout, a car with Asian passengers pulled alongside. At the same time a formation of Apache helicopters flew low overhead and the occupants of the car were looking around to see the helicopters. WM Glyde made a comment to the effect of "I bet they were worried".*

*Grenfell Tower – WM Glyde made comments to the effect that "it was full of immigrants anyway".*

28. The Claimant's medical records did not indicate that in the period under consideration he was suffering from any significant medical difficulties before 12 January 2018. After considering all the evidence it received from those working in Red Watch the Tribunal found that they had been a supportive team. Although having only limited information available they were concerned about the Claimant's domestic circumstances and were prepared to attribute his abrasive management style in some part to that. The Claimant said that there was an incident which took place in April 2016 which demonstrated Mr Hardisty had made unfounded and prejudicial remarks about the Claimant suffering from diverticulitis. When the circumstances of what had been referred to had been clarified it was explained that when the Claimant had not reported for work or notified his absence to the First Respondent on a date in April 2016 the Watch travelled to his house before taking any steps to report his absence to check up on him and ensure he was well before they did so. This had not been a hostile act by Mr Hardisty as the Claimant had alleged and to suggest otherwise was not to his credit.
29. The Watch's steps taken to address their concerns were constructive and were undertaken to achieve a solution. This involved a frank report of events to Mr Moncrieff in October 2017 in the hope that he could help to resolve them. Mr Moncrieff's Personal Review with the Claimant in December 2017 gives no indication that Red Watch was a dysfunctional team. It indicates the opposite of that, and there was no indication that they had not been performing effectively in the difficult tasks that they had undertaken. The

Claimant had confirmed there had been no difficulties and expressed no concerns about his colleagues. Furthermore, during the course of his cross examination of his former colleagues the Claimant did not present any effective challenge to their evidence that they had acted in good faith and their denial that they had colluded to remove him and fabricated evidence to do so. During the course of the hearing the Claimant also accepted that Mr Moncrieff had not removed him as the Watch Manager as he had alleged until then.

30. After conducting a risk assessment Mr Standen decided the Claimant should be suspended from work with immediate effect until further notice. The Respondent's published disciplinary procedure states that when there is a suspension the suspended employee must be given a Senior Point of Contact (SPOC) in the Respondent's HR department and, in view of the fact that the suspended employee should not make contact with any other employees during the course of the suspension will be provided with a contact officer. Mrs Swan was appointed to be the Claimant's SPOC. She wrote to the Claimant on 16 January as to the terms of his suspension and to notify him that there was to be a formal disciplinary investigation.
31. This letter confirmed that Mr Presley a Station Manager had been appointed the Claimant's Contact Officer, and that Group Manager Mr Graham would be pursuing an investigation into two allegations which were that the Claimant had, firstly, made racist comments on four occasions and, secondly, demonstrated general behaviours of a racist and offensive nature. Mrs Swan explained that the alleged comments were made to members of the Claimant's team regarding immigrants dying at Grenfell fire; excessive interest in respect of interaction of ethnic minority groups with a member of his team; a Black and Minority Ethnic group being scared by being overflowed by a military helicopter; and a comment regarding Muslims in an elevated threat level status context. Mrs Swan explained such conduct would be deemed to be a contravention of the First Respondent's EDI policies and RESPECT Framework which could be found to have brought the Service into disrepute, and regarded as gross misconduct.
32. Mrs Swan also confirmed that the Claimant would continue to receive full pay throughout his suspension and was entitled to access the Respondent's counselling service and provided him with the contact details to do so. She subsequently arranged for the Claimant to be interviewed by Mr Graham by which time she had informed him of two further occasions in which it had been said he had made racist comments and that these were also going to be investigated by Mr Graham. The two additional remarks were that following a series of terrorist attacks in the UK and Europe he had stated to Watch members words to the effect of: "*I hope if I ordered any one of you, you'd run over the terrorist with the truck*"; and, secondly, he had on several occasions described his treatment by the First Respondent's management using the term: "*being treated worse than Jews in a concentration camp*". These were two new allegations which had arisen as a result of Mr Graham's first interviews with members of the Watch.

33. Mr Graham is the Group Manager for Bournemouth, Christchurch and Poole. This is a job in which he manages the operational staff at six fire stations and is responsible for performance management in these stations. He was appointed as the Investigating Officer on 12 January 2018. He investigated the six allegations of alleged racist comments which Mrs Swan had notified to the Claimant in advance of Mr Graham's interview with him. He submitted his completed Investigation Report to Mrs Swan on 30 April 2018, which includes 35 Appendices and comprises 218 pages. This was a diligent and comprehensive investigation. It was completed within an extended, but reasonable, period taking into account the work which was involved in the investigation, the continuing demands of Mr Graham's job and other intervening factors particularly the counterclaims submitted by the Claimant during the investigation.
34. The task for Mr Graham was to determine whether or not the Claimant had a case to answer that he had made various racist comments to work colleagues. Those comments were first referred to in the contemporary note which Mr Moncrieff prepared in respect of the events of 12 January as recorded above. Mr Graham interviewed Messrs Moncrieff, Waker, Hardisty, Endicott, Wyer and Ms Morrell at Salisbury Fire Station on 5 February 2018. The Respondent prepared transcripts of all those interviews. He held an interview with Watch Manager Paul Clement on 8 February at the Respondent's head office. His interview with the Claimant was held at Wilton Fire Station on 20 February 2018. The Claimant was accompanied by Watch Manager Twomey, at that meeting.
35. Mr Graham gave the Claimant a full opportunity to respond to the allegations which he was investigating in a long interview the transcript of which extends to 33 pages. The Claimant did so by reading from, and then submitting, written representations which were an appendix in the Investigation Report, and comprising 18 closely typed pages. In these representations the Claimant set out his working history of Red Watch since the merger, submitted "evidence in support of not being a racist" and made a number of serious allegations and complaints against Messrs Waker, Wyer and Endicott.
36. Mr Graham held further interviews with Messrs Waker, Hardisty, Wyer and Ms Morrell at the Respondent's head office on 26 March, and with Messrs Endicott and Clement at the same venue on 10 April 2018 in view of matters raised with him by the Claimant during his interview which included allegations of misconduct which the Claimant raised against his work colleagues. The Tribunal now summarises what came out of the discussion as to the alleged incidents during Mr Graham's interviews with the witnesses and the Claimant.
37. The Claimant did not dispute that he made a remark at some point during the Course dealing with the position when a high security level was in place. He could not recall referring to a Muslim and disputed that any of his colleagues remonstrated with him about what he had said. Mr Hardisty's recollection was that he stated: "So this means we can look on any Muslim person with suspicion and restrain them". Mr Wyer told Mr Graham that he said: "He believed at that level you could restrain or treat every Muslim you see with

suspicion". Ms Morrell recalled him saying: "So if the threat level is severe or we are at high risk then we are allowed to go up to any Muslim and restrain them". She also described challenging him as to the suitability of the remark he had made.

38. Mr Graham wrote to Mr Clement, a Watch Manager, about this alleged incident. In this email correspondence Mr Clement informed Mr Graham that he could not recall the event or of any comments made by the Claimant. Mr Graham told the Tribunal that "on prompting" Mr Clement told him that he had a vague recollection of the events and Mr Graham then interviewed him. In this interview Mr Clement could not recall what had been said by the Claimant or challenging the Claimant about it at that time. He did tell Mr Graham that he was surprised and shocked by what was said and recalled a sense of shock in the room. However, Mr Clement took no action in respect of what had happened and he had not discussed this incident with anyone afterwards.
39. The Claimant accepted that he had taken part in a discussion with colleagues about the residents of Grenfell Tower. He explained that his brother is a Health and Safety Inspector for construction in East London and that he had sent a text message to his brother to ask whether he had inspected Grenfell Tower. He said that his brother had replied stating that it was not in his area and had commented that: "It would be full of quite a few immigrants"; and that he had passed on what he had said to those taking part in the discussion. Mr Graham asked the Claimant to provide him with a screenshot of the relevant text messages to substantiate this account of what happened. He offered to reimburse the Claimant if he needed to use a software application to recover deleted messages. The Claimant did not provide any text messages to Mr Graham who made adverse findings as to the Claimant's credibility as a result of his failure to do so.
40. Mr Waker told Mr Graham that the Claimant had explained that it was his brother's opinion that Grenfell Tower "was probably full of immigrants that should not have been there". He stressed this was not a remark that was made in a derogatory way. Mr Hardisty also confirmed that the Claimant had explained that his brother worked in the area and that he had been talking to his brother about the fire. Mr Hardisty's recollection was that the Claimant had told them that his brother had commented on how bad some of the buildings in the area were and that Grenfell Tower: "was probably full of immigrants". Mr Endicott told Mr Graham that he had been only half listening to the conversation. He said that he had heard something about his brother having something to do with Grenfell and had heard the Claimant say: "It was probably being filled with immigrants anyway". He did not know whether the Claimant was repeating what his brother had said to him. It was only Mr Wyer who said that the Claimant had told them: "It was probably just full of immigrants anyway".
41. The incident as to the stationary fire appliance and the helicopters was subject to extended and detailed discussion with Mr Graham and at the disciplinary hearing before Mr Why. This was largely because the Claimant disputed the location of the fire appliance and the flight path of the helicopters as described by his three colleagues who were in the fire

appliance at the time. The Tribunal does not need to make any determination as to those matters because it is satisfied that Mr Graham, and subsequently Mr Why who devoted substantial time at the disciplinary hearing to the issue of the flight path, reasonably concluded that the incident and the flyover had occurred as the Claimant's colleagues had described it. The critical issues were, firstly, what had the Claimant said after the helicopters had flown over and, secondly, when he made the remark, was he aware of a car waiting at the traffic lights next to the fire appliance and who was in that car. The Claimant's explanation was that he could not have seen the car, or its occupants and was unaware of them when he said: "No wonder you would shit yourself with that lot flying over". The Claimant maintained that this remark was made to his colleagues and referred to the military helicopters that had just suddenly flown over the junction. The Claimant asked Mr Graham to note that his colleagues that were with him at the time had not identified the ethnic minority in the car which they alleged he had referred to.

42. The remark reported to Mr Graham by Mr Waker in their interview was different to the answer he had given to the Claimant during the meeting on 12 January ("I bet they were worried"). He told Mr Graham that the Claimant had said: "I bet they have just shit themselves". Mr Waker confirmed as did his two colleagues who were in the fire appliance at the time that there was a car waiting at the traffic lights on the left of the fire appliance. Mr Waker did not consider that the remark had been made with any malice. He told Mr Graham this car was occupied by two people but could not identify their gender or their race or ethnicity. Mr Endicott, the driver told Mr Graham that there were several Asian people in the car and that the Claimant had said: "Look at them shitting themselves". Mr Hardisty also said the Claimant commented: "Look at them shitting themselves" and was referring to those in the car.
43. Ms Morrell was mentored by the Claimant when she commenced working for the First Respondent at Wilton. She is complimentary of the support which he gave her during that period. She subsequently transferred to work as a Firefighter in Aston, a deprived area of Birmingham. When she moved back to join Red Watch on 6 September 2017 she was not informed of any difficulties between the Claimant and her new colleagues. After a few weeks she became aware that they were frustrated with his management style and began experiencing difficulties with his management herself which she found to be abrasive, and very different to the support he had given to her as her Mentor. The Claimant informed her that he was frustrated with his colleagues and told her that he thought she might be able to assist him in improving the situation.
44. Ms Morrell and her colleagues, were aware that he was having domestic difficulties. They thought this might be having an effect on his behaviour at work. Her colleagues had told her what the Claimant had said in the fire appliance at the traffic lights and in respect of the Grenfell fire. She had attended the Course and had been present when he had made the remarks which had subsequently been reported to Mr Moncrieff. Ms Morrell informed Mr Graham that on at least three occasions the Claimant had asked her questions about mosques, the ethnic minorities who lived where she had

worked in Birmingham, whether the area had been placed under any surveillance and the relationship between the local Fire Service and Muslims in this area.

45. Mr Graham did not ask her to particularise the questions which the Claimant had asked her during these conversations. She told the Tribunal that she could not recall the questions which he had asked and candidly confirmed that she did not believe she would have been able to recall the questions even if Mr Graham had asked her to do so. She had not been made to feel uncomfortable by the Claimant's questions. She had considered them to be odd because she had not been asked any such questions before and as far as she was concerned they were irrelevant. During her first interview with Mr Graham she said as follows *"because I worked at Aston so it was quite socially deprived, there was a lot of Somali Muslims, so you know if I'd said that and we'd got into that kind of conversation then maybe the once, but then to bring it up another few times, it was not that I felt he asked anything wrong or shouldn't be asking it, it was more a case of you know I've never been asked those by anybody."*
46. The Claimant accepted that he had made a comment about running over a terrorist to Mr Hardisty and Ms Morrell. He said he made this comment in the context of a number of terrorist incidents that had recently occurred and that it was not directed at any particular race or ethnic minority but at terrorists. He also accepted that he had described the previous Station Manager as treating his colleagues worse than Jews in a concentration camp. This confirmed what Messrs Hardisty, Waker, Endicott and Wyer had told Mr Graham which was that they had heard the Claimant criticise the Station Manager in this way in the Mess. Mr Waker confirmed that he, and other colleagues considered they were being treated badly by the Station Manager and that a number of grievances had been issued against him for that reason.
47. Mr Endicott was the Mess Manager. He had found the Claimant to be a difficult Manager for the same reasons as his colleagues. He had discussed the Claimant's dietary requirements with him but had not been informed that the Claimant was suffering from diverticulitis.
48. Mr Graham sets out how he considered the new matters raised with him by the Claimant at pages 8 to 10 of his Investigation Report under the heading "Other Matters". This states, inter alia, as follows:

*Appendix 5, "Working History of the Watch Following Combination" is a lengthy account that describes a dysfunctional team in Red Watch and numerous accounts of inappropriate behaviour, conduct and language dating as far back as 2014, citing individual members of the watch who he now considers to be his accusers.*

*Whilst some of the accusations are indeed serious, they are also dated, and should have been dealt with in a timelier fashion, not just as response to allegations being levelled at him.*



*There is clearly an unhealthy working relationship on the watch, for which it is possible several watch members are culpable for. However, none of the evidence in this document relates to the allegations and investigation in hand.*

*I have considered the contents of this document, I have not had the capacity or remit to investigate these matters fully, and due to the time elapsed I am not sure a meaningful investigation would be possible.*

*Whilst I can't say with confidence whether the accusations did or didn't happen, I believe them to be largely irrelevant to this investigation but give some context to the culture of the watch.*

Appendix 6:

*"Evidence of not being a racist" is a detailed account of numerous occasions in which LG feels he has had positive engagement with members of ethnic minorities both in his fire service and military career, as well as his personal life as far back as his childhood. Having reflected on this document I feel it would be better suited to form part of LG's defence, if the case proceeds to hearing. It has no bearing on the investigation itself.*

Appendix 7:

*"Situation prior to allegation" is a rambling account of the poor working environment on watch that culminate in the meeting with JM on 12 January, and the account gives LG's version of the early part of this meeting.*

*In this account LG describes how he believes MW, JW, AH and NE have all colluded and corroborated accusations against him. He describes how MW fails to support him in his managerial decisions and allows inappropriate behaviour from watch members to go unchecked.*

*Again, the document highlights a very poor working culture on the watch, for which there is circumstantial evidence to support, but has no direct impact on the accusations in hand in this investigation.*

Appendix 8:

*"Counter allegations and complaints" lists a series of alleged misdemeanours by NW, JW, AH and NE over an undefined period; some of these are serious. However, these are all against people who he now considers to be his accusers and has had direct line management responsibility for since 1 April 2016.*

*Despite the accusations he now raises there is no record of these transgressions being addressed in the normal managerial way, despite LG claiming he has made reports of these events (App 16, pg.5). To the contrary, he completed Personal Reviews for two of these individuals*

*during 2017, AH and JW, making statements that directly conflict with those cited in this document; for example, LG reports "Alex applies the RESPECT behaviours on a daily basis" (App 18, pg. 3) and "Josh replies the RESPECT behaviours on a daily basis in line with service policies. He prides himself as a professional employee; (App 22, pg.2), despite accusing both of regularly making homophobic statements aimed towards himself. This clearly undermines the validity of this document.*

49. Mr Graham tested some of the Claimant's allegations when he interviewed members of Red Watch for a second time. There are full transcripts of those meetings. He returns to the matter of the other evidence offered by the Claimant at pages 13 and 14 of his Report which state inter alia, as follows:

*In respect of the documents (Apps 5, 6, 7 and 8) offered by LG I can only conclude that these have been submitted to deflect attention, discredit his accusers, confuse the issues raised and frustrate the investigation process. There may well be validity to some of the accusations made within these documents. However, with a lack of time frames offered and some evidence clearly dating back years, it has not been possible to validate these claims of any certainty.*

*Additionally, LG was the Line Manager of the individuals who are now accused. He had plenty of opportunity, and managerial responsibility, in which he should have addressed these matters, but there is no evidence to show this happened.*

*Additionally, he directly contradicts his own allegations in completing the Personal Reviews of those he now accuses. He either made a dishonest entry in an official DWFRS System or is being dishonest in his documents. Both documents only serve to undermine LG's credibility further. I have asked the SPOC to consider these documents and consider if any further action needs to be taken regarding these documents as part of a separate investigation.*

50. The purpose of Mr Graham's investigation was to determine whether or not he considered that the Claimant had a case to answer in respect of any of the allegations about the comments his colleagues said he had made to them, and if so whether those were racist comments. His investigation, as his Investigation Report makes clear, did not extend as to whether the Claimant had demonstrated general behaviour of a racist and offensive nature. Mr Graham had investigated the six occasions that Mrs Swan notified to the Claimant before his interview with Mr Graham. Mrs Swan had given the Claimant no notice of any allegations relation to his alleged general behavior of a racist and offensive nature and Mr Graham's report makes no reference to that allegation.
51. The Investigation Report confirms that Mr Graham went further than making a finding that the Claimant had a case to answer. It included a matrix setting out the evidence which Mr Graham relied upon to reach his determination

that, applying a balance of probabilities test, the Claimant had made the racist remarks on the occasions which his colleagues had described and had asked Ms Morrell questions relating to the Muslim community in the area where she had worked in Birmingham. Mr Graham gives no explanation as to how he concluded that the comments had been racist. His observations as to the Claimant's representations to him have been set out in the extracts from his report set out above. He reasonably concluded that the Claimant's colleagues had not colluded to remove him from his job and fabricated evidence to do so. He also reasonably concluded the counterclaims were not relevant to his investigation and that he could not take those matters any further. He referred them to Mrs Swan. His opinions about the Claimant's possible intentions in pursuing such claims are perceptive and balanced. However, he made no findings against the Claimant for pursuing them. It was for Mrs Swan to consider whether or not the First Respondent should commence investigations into the allegations which the Claimant had made against his colleagues. Mrs Swan confirmed that she took no action in respect of the matters which Mr Graham properly referred to her for consideration.

52. After the Investigation Report had been sent to Mrs Swan she had to make a determination in respect of it. In her determination dated 15 May 2018 Mrs Swan concurred with Mr Graham's opinions and concluded that there was a case to answer. Her recommendations conclude as follows:

*"The allegations are deemed to be a contravention of the Service's Equality and Diversity procedures. They are also deemed to be a contravention of the Service's RESPECT Framework with conduct that has a potential to bring the Service into disrepute. These matters are potentially regarded as gross misconduct and it is recommended that a Level 3 Disciplinary Hearing is convened to hear this case."*

Mrs Swan allocated Area Manager Why to chair the Disciplinary Hearing.

53. In a letter sent to the Claimant on 24 May Mrs Swan confirmed that Mr Graham had completed his investigation and set out the allegations that were going to be referred to a Stage 3 disciplinary meeting. The allegations set out in this letter are as follows:

- *following the Grenfell fire incident you made comments to the effect, "it was just full of immigrants anyway";*
- *that you showed excessive interest in respect of interaction of ethnic minority groups with members of your team;*
  - *on at least three occasions questioning Lisa Morrell on the ethnic demographic of her station ground with West Midlands FRS, questioning the location of Mosques and whether they were under police surveillance, and*
  - *following a station visit by a South London cadet group,*

*questioning Martin Waker as to the ethnic mix of the group.*

- *whilst out on the pump and seeing a formation of military helicopters overflying a Black and Minority Ethnic group you made comment to the effect of, "I bet they just shit themselves".*
  - *during a Business Continuity training event whilst discussing threat levels and the difference between Severe and Critical, you described the difference as "this is when you can wrestle Muslims to the ground" or words to that effect;*
  - *that following a series of terrorist attacks in UK and Europe you stated to watch members words to the effect of, "I hope if I ordered anyone of you, you'd run over the terrorist with the truck".*
  - *that on several occasions to describe your treatment by DWFRS management, you used the term "being treated worse than Jews in a concentration camp".*
54. The Respondent's Disciplinary Policy sets out under its Rules of Conduct examples of action which may result in disciplinary action. There are a number of examples given of "Misconduct". One of the examples is: *"Failure to behave in line with values and behavioural expectations set out in the RESPECT Framework."* It is made clear that the examples given are neither exclusive nor exhaustive and that acts of misconduct may come within the definition of gross misconduct dependent of their degree of severity and magnitude. The examples of misconduct which are again neither exclusive nor exhaustive include the following:
- "Contraventions of the DWFRS's Equality & Diversity Policies involving harassment, victimization, bullying or discrimination will be viewed by management as a very serious issue and will, in the first instance, be regarded as Gross Misconduct."*
55. The Respondent's RESPECT Framework sets out the expected behaviours within each of the Respondent's seven values. RESPECT is an acronym for those seven values which are: *"Responsibility, Equality, Support, Professionalism, Excellence and Transformation."* The Respondent's Framework makes clear that it is these values that drive the way in which those working for the Respondent behave. It provides a set of expected behaviours across three levels of staff from the most junior to the most senior and explains how these values apply to the work undertaken at each level.
56. By April the Claimant had been referring to declining mental health and bowel disease. Notwithstanding these concerns he had declined an appointment which the First Respondent had arranged for him to attend on Occupational Health on 25 April. Mrs Swan explained to the Claimant in her letter of

24 May that he would be required to attend an appointment with Occupational Health before a hearing date was fixed for the disciplinary hearing.

57. Her letter explained that he was required to attend such an appointment due to his long-term sickness absence throughout his suspension and that the purpose of the appointment was to review his fitness to attend the hearing. The Claimant was advised that the Respondent would provide transport to the appointment if he could not drive himself.
58. The dates offered to him in the letter were 6 and 13 June. These were declined by him. He finally agreed to attend on Occupational Health on 18 July for which the Respondent provided transport for him. Mrs Swan ensured that the Respondent's referral to Occupational Health was updated to include all concerns that had been raised about his health which included concerns as expressed by two Service Chaplains who were also supporting the Claimant. They had reported that he was having suicidal thoughts and considered he needed professional help.
59. The Occupational Health Report was prepared by Dr K Williamson and sent to Mrs Read, the Respondent's Health & Wellbeing Manager. The Report states, inter alia as follows:

*"Mr Glyde would appear to have been experiencing a depressive episode since early 2018. This comes upon the background of domestic stresses relating to his daughter (see below) but he feels that the primary driver for his decline in mental health has related to the allegations at work and subsequent management of the investigation. He tells me that the situation with his daughter is that she resides with her mother and her mother's current husband, and that they have mistreated his daughter such that child protection measures are now in place."*

60. The Report records that the Claimant had attended eight sessions with Workout Solutions, the First Respondent's counselling providers, earlier in the year. He found the Claimant's mood had improved since earlier in the year. He believed that the Claimant was fit to participate in any management processes required to progress his case. He states:

*"He is likely to find such activities difficult and might benefit from someone with him for support and having the opportunity to take breaks as and when required. I do feel however that it will be beneficial to his health to resolve the outstanding disciplinary issues and his complaints as swiftly as possible."*

61. Dr Williamson did not consider that Mr Glyde was ready to return to work. He thought he might be close to being so but states: . . . *"It is unlikely until there is progress on his disciplinary case"*. He recommended a phased return to work. He stated that this would be most likely to have the best chance of success if it were in an alternative location to Salisbury. He further states:

*"As noted above I believe Mr Glyde would benefit from some further psychological support. I think it likely he would need more active psychological therapy rather than simply cathartic counselling. If this can be provided by Workout Solutions as it likely to be available more swiftly than via the NHS. If not then I suggest he discusses the matter further with Steps to Wellbeing (local NHS Psychological Services)."*

62. Ms Balham, HR Services Adviser, wrote to the Claimant on 20 July enclosing a copy of the Report. She confirmed that Dr Williamson' recommendation for more active psychological therapy would be referred to Mrs Read, the Respondent's Health & Wellbeing Manager for consideration and reminded the Claimant that in the intervening period Dr Williamson had suggested that he could discuss the matter further with Steps to Wellbeing, part of local NHS Psychological Services.
63. It is now necessary to refer briefly to earlier events. On 6 February 2018 Mrs Swan informed the Claimant that because he was absent by reason of sickness during a period of disciplinary suspension his suspension would be lifted for pay purposes only and he would be paid in accordance with the terms of the First Respondent's sick pay procedure. Mrs Swan's letter also stressed that the Claimant could utilise the First Respondent's employees' counselling service and could self-refer to Workout Solutions, the First Respondent's counselling provider to do so.
64. In the period from 6 February to 18 July there had been frequent contact between Mrs Swan and Mr Presley, the Contact Officer. The documentation before the Tribunal confirms that Mr Presley was committed, active and supportive of the Claimant throughout his time in this position. Furthermore, it also demonstrates that Mrs Swan was supportive of Mr Presley in dealing effectively with the many matters which Mr Presley raised on behalf of the Claimant with her. In addition to the counselling service the Claimant was also supported by the Respondent's two Chaplains and it is clear that he found their support helpful during this period. Mr Twomey another work colleague, also provided support to the Claimant, and Mr Presley, at this time.
65. On 1 May 2018 an email from Wiltshire Local Authority Officer (LADO), the Designated Officer for Allegations (DOFA) was forwarded to Mrs Swan who was invited to attend a Skype meeting convened by the DOFA on 22 May 2018. This meeting related to difficulties within the Claimant's family in respect of his daughter. During the meeting Mrs Swan advised those present as to the Claimant's suspension. She also informed the meeting that although the Claimant was not involved with safeguarding training for the First Respondent he had completed the First Respondent's safeguarding essential e-learning course. Mrs Swan was asked to attend a further DOFA meeting on 3 July 2018 where she provided an update on the Claimant's suspension. These attendances were confidential to those dealing with the Claimant's family issues. They did not prejudice the Claimant's ongoing employment with the First Respondent or the ongoing internal procedures.
66. An issue that caused substantial difficulty related to the fact that the

First Respondent's sick pay procedure provides contractual sick pay on a tapering basis. The relevant terms and conditions of service reduced the Claimant's sick pay to 75% of full pay from 14 July, then 50% of full pay from 14 August, 25% of full pay from 13 December and ceased altogether on 13 January. The Claimant pursued an appeal to the Chief Fire Officer against the reduction of his full pay that was to be effective from 14 July. His letter of appeal was, with his agreement, considered in his absence by Mr Ansell on 2 August.

67. If an employee of the First Respondent is deemed to be absent from work due to an injury suffered at work then that employee is entitled more beneficial terms in respect of full pay under the First Respondent's sick pay procedure. Any injury at work must be reported through the Accident Occurrence System (AOR). In his appeal letter to Mr Ansell the Claimant said that he intended to present an AOR form for consideration after he had attended his Occupational Health consultation. He submitted a handwritten AOR form on 19 July 2018. This had not found its way on to the First Respondent's electronic records before Mr Ansell considered the Claimant's appeal.
68. The basis of the Claimant's appeal was that his sickness absence was work related. The Claimant considers that because he suffered from deteriorating mental health while on sick leave Mr Moncrieff should have recorded that he had suffered an injury at work on 12 January when the Claimant decided to take sick leave. The Tribunal was informed that this remains a contentious issue between the Claimant and the First Respondent. Mr Ansell concluded (and the First Respondent still considers) that the Claimant's absence resulted from his suspension and was not work related. Mr Ansell could also find no mitigating factors in respect of the Claimant's position. He wrote to the Claimant on 6 August to inform him that his appeal had been unsuccessful. However in that letter it is acknowledged that the Claimant had submitted an AOR report on 19 July and states that although the evidence presented to Mr Ansell did not support his submission that his absence was work related if the investigation of the Claimant's AOR concluded that it was then he would be entitled to continuing full pay from 14 July onwards and would receive an appropriate backdated payment from the First Respondent.
69. The Tribunal does not have to make any determination as to whether or not the Claimant's absence from 12 January onwards could be considered to be work related and does not do so although recognising the apparent strength of the Respondent's contractual position on this issue. However, the Tribunal is of the view that the Respondent's position in respect of the reduction of the Claimant's sick pay, which is not subject to any claim before the Tribunal, appears untenable. This is because the First Respondent had correctly confirmed to the Claimant at the outset of his suspension that he would receive full pay during the suspension. The First Respondent then made arrangements for the Claimant's pay to be made through the sick pay scheme while preserving that suspension. In those circumstances, at the point at which the Claimant's sick pay was to be reduced, and then subsequently reduced again, the Claimant remained suspended. He could not return to work even if he was fit, because of that suspension. The

Tribunal considers that in those circumstances the First Respondent should have maintained the Claimant on full pay throughout his suspension as Mrs Swan had confirmed would be the case in earlier correspondence with him.

70. On 29 May 2018 Mrs Swan was informed by Mr Presley that the Claimant had submitted complaints alleging collusion and breach of confidentiality. Mr Plumley, the Manager of Weymouth and Portland Fire Station was appointed to investigate these complaints. There were three allegations, the first allegation was that an award ceremony in the Guildhall, Salisbury, at which but for the ongoing disciplinary procedures and his suspension, the Claimant would have received a long service and good conduct medal after 20 years' service, a statement had been made to a colleague that he had been suspended for being a racist. He also alleged that Mr Endicott had incited hatred towards him and that Messrs Wyer and Hardisty had leaked information about his position to others.
71. Mr Plumley attended on the Claimant on 12 June. Mrs Williamson, HR Business Partner and Mr Twomey who accompanied the Claimant were also in attendance. Mr Plumley then interviewed three witnesses after which he completed an Investigation Report which he sent to Mrs Swan on 25 July 2018. Mr Plumley's investigation is fully documented. It was a diligent and conscientious investigation. He reasonably concluded there was no evidence to support the allegations which had been made by the Claimant.
72. On or around 18 July 2018 the Claimant submitted a written complaint making allegations that Mrs Swan had bullied and harassed him. At this point Mrs Swan stepped down from the position of SPOC and those responsibilities were handed over to her colleague Mrs Staffiere, Head of HR.
73. On 2 August Mr Presley asked to step down as the Claimant's Contact Officer. He copied Mrs Staffiere into an email received from the Claimant on that day and cited the impact the Claimant's text messages was starting to have on him. He had made arrangements for Mr Twomey to act as an interim Contact Officer but within a short period of time the Claimant asked Mr Twomey to step down and from 21 September Mr Gillion took over as the Contact Officer.
74. On 1 August 2018 Mr Coleman, who was then a temporary Group Manager had been assigned to investigate the Claimant's complaints against Mrs Swan. Despite his best efforts, he was not able to arrange a meeting with the Claimant until 17 October 2018. Mr Coleman had interviewed Mrs Swan during the intervening period and the Claimant had submitted complaints of bullying and harassment against Mrs Staffiere following which Mr Coleman was asked to investigate this further complaint as well.
75. In his Investigation Report submitted on 8 November 2018 Mr Coleman concluded as follows:

*"HW1 Respect at work concern – Although LG is clearly suffering from the impact of the discipline case against him, there is no evidence found that CS has directly bullied or harassed LG during the time which she*



*acted at SPOC in the discipline case against him. The actions taken by CS appear to be well balanced and considered based on all of the information she had available, much of this information had at the time not been released to LG.*

*AOR report – The AOR form makes the same allegations against CS, and again I see no evidence that there has been any bullying or harassing behaviour by CS. I do see evidence of the process being suspended has been stressful and may have affected LG's health."*

76. Mr Coleman provided a summary to Mrs Long of those matters which the Claimant had told him were still to be dealt with by the First Respondent. One of the matters raised by the Claimant was that he was not receiving specific support from the First Respondent. He also requested a further Occupational Health review. Mrs Staffiere was absent on long term sickness absence from 16 October onwards and did not return to the office. Mrs Long, who up till then had had a limited involvement with the Claimant's case, although aware of it, had now taken over as the SPOC. Mr Coleman had not been able to discuss the Claimant's complaints against Mrs Staffiere during his interview with the Claimant. Mrs Long reasonably concluded that Mrs Staffiere's long-term absence made any further investigation impossible and advised Mr Coleman accordingly.
77. By the end of October 2018 the contents and tone of the Claimant's texts became an understandable concern for Mrs Long for reasons that are clear to the Tribunal from the texts from the Claimant that were referred to it during the hearing. Mrs Long wrote to the Claimant about his behaviour with particular reference to rude and aggressive text messages which he had sent to her colleague, Mrs Williams, who had been assisting the Claimant. She reminded the Claimant he should not contact any staff member other than his Contact Officer during his suspension. She explained that while she was aware that he was signed off work with stress she considered the content and tone of his text messages to be inappropriate and instructed him to cease sending them.
78. At this time Mrs Long had also received a complaint from an external organisation about the Claimant's inappropriate behaviour towards its staff. Mrs Long considered this to be a breach of the Respondent's Code of Conduct and RESPECT Framework. She advised the Claimant that she would appoint an Investigating Officer to look into these matters. However, she decided on reflection, not to do so and to focus on resolving the Claimant's complaints and ensuring that the disciplinary hearing took place as soon as possible.
79. On 31 October Mr Gillion sent an email to Mrs Long at 07:38. He apologised for this early communication. He informed Mrs Long that he had received an abusive telephone call from the Claimant at 06:30 that morning and copied an email which the Claimant had sent to him which stated, amongst other matters, that the Claimant had made a sign which he was going to display when he went out begging on the streets of Salisbury for money on that day. The Claimant sent an email to Mrs Swan, and other members of staff, including Mr Ansell attaching a picture of the sign that he was wearing in and

around Salisbury town centre which stated: *"Firefighter, Hungry and soon Homeless"*. This development was reported to Mr Why, who was the Duty Area Manager on that day. He contacted Mr Twomey and Mr Edge, a former employee of the Respondent, to attend on the Claimant as soon as possible to offer support to him.

80. The Claimant was no longer on full pay at this time and he had also been informed that there had been an overpayment of his salary which would have to be recovered in due course. On 1 November Mr Gillion sent Mrs Long copies of further texts which had been sent to him by the Claimant which were critical of Mr Gillion and the Respondent's alleged actions alleging bullying and stating that the Claimant could not afford prescriptions and would soon starve. Mrs Long made an immediate referral for the Claimant to Occupational Health and then made arrangements for the Claimant to be taken to and from the appointment made for him on 7 November.
81. Dr Williamson attended on the Claimant. His Report was sent to the Claimant by Mrs Long on 10 December after its receipt by the Respondent. Dr Williamson notes that the domestic situation regarding the Claimant's daughter has improved. The Claimant no longer regarded this as a cause of stress with the exception of maintenance. Dr Williamson recommends further psychological support from Workout Solutions. He suggests that the Respondent could consider making further funds available for this because the Claimant had exhausted the counselling sessions previously made available to him. Dr Williamson did not believe that any progress would be made to improve the Claimant's health until his work situation had been resolved. His Report then states as follows:

*"With regards to your specific instructions on "conduct and behaviour", I think the only thing I can say on this matter is that whilst Mr Glyde is under a significant amount of stress which is having a negative effect on his mental health, he has insight and is able to act appropriately and should be able to engage in standard employment mechanisms as long as they are handled in a supportive manner".*

82. Dr Williamson suggests that it would be helpful, if feasible, for the Claimant to be provided with some form of mutually acceptable support for any discussions in the future upon the various employment issues that needed to be addressed. He also considered that the Claimant was ready to engage on these matters. He refers back to points made in his earlier Report about the Respondent ensuring that it undertakes any interviews or meetings in a supportive manner and allows breaks as required.
83. In the letter which Mrs Long sent to the Claimant with the Occupational Health Report she informed him that a disciplinary hearing would now be arranged to deal with outstanding disciplinary matters. She noted that the Claimant had requested some mutually agreed support and confirmed that the Respondent would assist with this. She also confirmed that in accordance with Dr Williamson's recommendations additional sessions with Workout Solutions would be made available to him and that the Claimant could contact Workout Solutions to arrange an appointment. She also notes that Dr Williamson had advised that there would be no benefits to obtaining a

further Occupational Health Report until outstanding matters had been resolved. Mrs Long accepts that Dr Williamson had made a previous recommendation for psychological support for the Claimant in his first Report. She is unsure as to when she found out that the First Respondent had failed to provide that extra support at that time. She accepted that the First Respondent had informed the Claimant that this recommendation would be referred to Mrs Read. She does not know why it was not approved although the fact that the Claimant had not made any application for the relevant funding may have confused matters at that time when much else involving the Claimant was also ongoing. This was an unintentional oversight.

84. A further development at the beginning of December was that although the Claimant had been signed off from work until 7 February he had now declared himself fit for work. In dealing with this Mrs Long explained to the Claimant that in the current circumstances the Respondent had continuing concerns about the Claimant's fitness for work but because he was suspended and had booked fit for work then they would be resuming his full pay from 1 December 2018 onwards.
85. The Claimant sent an email to Mr Ansell on 4 January 2019 headed: *"For complaint regarding false allegations of racism and conduct of HR & the investigating officers"*. In this email he accused the Respondent's HR Managers and Investigating Officers of corrupt investigations, of victimising him as a vulnerable member of the community and causing him harm. He also accused the Respondent's HR Department of bullying and harassment, submitted that Mr Graham had not been an impartial investigator, questioned Mr Coleman's impartiality and accused the HR Department of falsifying statements submitted to Mr Ansell in respect of his pay appeal. He submitted that he would not have a fair disciplinary hearing and that there should be another investigation carried out by a third party and that he should be involved in choosing who was to carry out that investigation.
86. Mr Ansell acknowledged receipt of the Claimant's email on 7 January. This advised the Claimant that Mr Ansell had forwarded his email to Mrs Long because it related to an ongoing disciplinary matter. Subsequently, on 9 January, unknown to Mr Ansell, the Claimant emailed the Chair of the First Respondent's Authority and the Chair of its Finance and Governance Committee with those emails being forwarded to Mr Ansell and then forwarded to Mrs Long. Mrs Long had already written to the Claimant on 9 January in respect of his letter to Mr Ansell. In that letter she explained that the Claimant had raised such issues previously and that in each case the matters had either been investigated or a response provided to him. She confirmed that she was making arrangements for a disciplinary hearing for which the Claimant would receive notification in due course.
87. During January Mrs Long had to block the Claimant's access to Salisbury Fire Station's Facebook page because he had posted inappropriate comments on it accusing work colleagues of victimising others including himself. On 31 January Mrs Long wrote to the Claimant requesting his attendance at a disciplinary hearing to be held on 26 February. This date was subsequently changed to 27 February at the Claimant's request.

88. Mrs Long also wrote separately to the Claimant on that day to deal with a number of questions in respect of the disciplinary hearing which the Claimant had raised through Mr Gillion. The Tribunal finds that in this letter and in other ways Mrs Long dealt diligently, patiently and comprehensively with the Claimant's questions and representations as to his current position and the disciplinary hearing. The Tribunal deals with Mrs Long's response as to the Claimant's entitlement to be accompanied to the disciplinary hearing and to call witnesses at the hearing below but also notes that his requests to her included a full set of the audio recordings from which the transcripts of Mr Graham's interviews had been prepared, notwithstanding that the Claimant agreed with the content of the transcripts; for the tracking data for the fire appliance in which the Claimant and his colleagues had been sitting on 5 July 2017 and that a fire appliance of the same dimensions should be made available for inspection at the disciplinary hearing. These requests were all reasonably refused by Mrs Long.
89. On 6 February Mrs Long wrote to the Claimant to confirm the revised date for the disciplinary hearing and to explain that he was not entitled to be represented by a solicitor but was entitled to be represented by his trade union official or a fellow employee. Mrs Long also confirmed that Mr Why would be chairing the disciplinary hearing supported by Ms Price, HR Services Manager and that Mr Graham would present evidence with a member of the HR Team recording the hearing. On the following day the Claimant made further representations through Mr Gillion as to legal representation and requested the attendance of a number of witnesses. Mrs Long replied in full to these requests by letter of the same day. The Claimant had requested that all his full time colleagues on Red Watch together with Messrs Moncrieff, Graham and Clement should attend the hearing to be cross examined. He also requested that he be allowed to call five witnesses, who he named, from the First Respondent's BAME staff together with Mr Ansell, the Reverend Maxwell (one of the Respondent's Chaplains who had supported the Claimant) and the Salisbury Journal.
90. Mrs Long confirmed that she would contact all the witnesses named to ascertain whether or not they were prepared to attend the hearing with the exception of those witnesses from the Respondent's BAME staff. She explained that it was felt it would be inappropriate and insensitive to contact those individuals and she requested the Claimant to clarify his reasons as to why these staff had been identified as witnesses stating: *"for example, is it because of their ethnicity, social contact with them or character witnesses?"* She also explained that as the hearing could not be a public hearing the First Respondent would not contact the Salisbury Journal. All the other witnesses were contacted and advised that their attendance was not mandatory but provided with the opportunity to attend if they decided to do so.
91. In an email of 8 February to Mr Gillion the Claimant explained that the reasons for wanting to call BAME and LGBT staff to the disciplinary hearing: *"Is to provide evidence I am able to engage in diverse conversations topically without being regarded as a racist"*. He stated that he expected the witnesses to concur that he is not a racist and did not consider that they would consider

it too sensitive a subject to address. Mrs Long had already received confirmation from all those who had been invited to attend the disciplinary hearing, at the Claimant's request, that they had declined to attend. She concluded the Claimant wanted to call these witnesses because of their protected characteristics. She was not satisfied with his rationale for calling them and was concerned that she had a duty of care towards them, taking account of the Claimant's poor behaviour towards other members of staff in recent months. He had also given no indication to her that he either knew them, or had spoken to them and why he considered their attendance would assist, or be relevant to the matters before the disciplinary hearing.

92. Ms Lock, HR Delivery Coordinator who was assisting Mrs Long in making preparations for the disciplinary hearing wrote to the Claimant on 21 February to confirm, firstly, that the Respondent would not allow Mr Twomey to be called as a witness as he had not been part of the investigation; secondly, she informed the Claimant that all those who had been formally invited by the Respondent to attend the disciplinary hearing had declined to attend; and thirdly, that the Respondent was prepared to allow Mr Edge to attend as the Claimant's representative at the disciplinary hearing. Mr Edge was a former member of the Fire Authority and still a member of its Pension Board but the Respondent was satisfied that this did not raise any potential conflict of interest and provided the Claimant with support at the disciplinary hearing when he had not put forward any trade union representative or work colleague to support him.
93. The disciplinary hearing commenced on 27 February, following comprehensive, and diligent preparation in which Mrs Long, Mr Gillion and Ms Lock and Ms Price had taken considerable time to explain the procedure to the Claimant and had endeavoured to respond to all the matters which he had raised with them.
94. The Claimant has confirmed to the Tribunal during the course of this hearing that he had been able to take legal advice, and consult his GP about his medical position, before attending the disciplinary hearing and that he was satisfied that he was fit to do so. Mr Why was aware that the Claimant had attended an Occupational Health appointment in November and had noted that the medical report had indicated that the Claimant was able to engage in such a meeting as long as the meeting was held in a supportive manner. Mr Why was also aware the Claimant had been attending counselling sessions as a result of suffering from stress. Mr Why ensured that the hearing was conducted in a supportive manner. The Claimant was supported by Mr Edge, and the transcript demonstrates that Mr Edge provided excellent support to the Claimant during the hearing and was able to make interventions on his behalf without obstruction or difficulty. Furthermore the Claimant and Mr Edge had access to adequate breakout facilities and adjournments were taken as required. Mr Why did not consider that the Claimant was suffering from any physical or mental impairment which would have prejudiced him during the hearing and nothing occurred during the hearing that would have given him any cause to think otherwise.
95. Mr Why commenced the hearing by dealing with a number of preliminary issues raised by the Claimant. He accepted that the Claimant had been given

short notice of his meeting with Mr Waker and Mr Moncrieff on 12 January. The Claimant also complained the Respondent had refused to allow him to call character witnesses at the hearing, questioned the integrity of the transcripts of interviews prepared for the Respondent and challenged Mr Graham's impartiality. Mr Why reasonably concluded that these matters did not give provide any grounds to postpone the hearing.

96. The Claimant requested information concerning fire appliance locations and staff rota information. It is unclear to the Tribunal as to whether the Claimant had made these requests before the hearing, but, in any event, Mr Why took steps to ensure that the information the Claimant had requested was made available to him during the course of the hearing. The rota sheets requested by the Claimant for the period from 1 June - 25 October 2017 for Red Watch became available at the start of the second day of the hearing. The rotas disclosed that 25 other people, apart from his full time colleagues working on Red Watch, had been assigned to work on or with Red Watch during that period. Mr Why did not give any consideration to the rotas, and the Claimant and Mr Edge made no representations to him in respect of them.
97. Mr Graham made a lengthy presentation of his Investigation Report and the Claimant was able to question him as to his Report. The Tribunal has already recorded that there was extensive consideration of the Claimant's challenges to what his colleagues had said about the incident involving military helicopters which involved detailed consideration of flight paths by means of a flip chart and Mr Why's consideration of a media clip of news footage which enabled him to conclude that the Claimant's position as to the flight path was incorrect. The Tribunal can find no relevance to this lengthy argument when there was no dispute that military helicopters had suddenly flown over the junction at which the fire appliance was stationary and the Claimant had made a remark in respect of what happened. The disputed issue was what the Claimant had said and whether his remark had been referring to anyone outside the fire appliance or was made to his colleagues as he described it.
98. The Tribunal finds that Mr Edge made relevant interventions which demonstrated that he had an understanding of the issues which Mr Why would have to consider. He made the following intervention when the preliminary issues were being considered:

*"I mean if Lee, I mean the Accused; there are accusations that Lee has got basically a history of being a racist and making racist comments, so if Lee has had a history of racial comments why have these not been dealt with through normal informal process proceedings? So in other words, what I'm saying is if it's proved, I mean it seems to be all about one incident that has got out of hand and it appears that the accusations made that he's got a history of it. If he's had a history of it surely that would have been logged somewhere in the process and would have been on his record file and there would have been an informal process of dealing with anything along these lines. And it seems that we've got from start to finish without going through the . . .*

The transcript then states that there was an interruption by Mr Why to say:

*"that's what this process is about".*

99. Mr Edge then intervened on the second day. His initial intervention raised concerns as to why witnesses were not present at the hearing and the Claimant did not have the opportunity of cross examining them. Ms Price responded to this question. She explained that it was not mandatory for witnesses to attend. The First Respondent did not enforce such attendance. They had also explained to the Claimant that they were not calling the witnesses to give evidence but were relying on what they had said during their interviews with Mr Graham.

100. Mr Edge's second intervention shortly after that was as follows:

*"Okay, okay. And the other thing is I'm concerned that the procedure today is down to racist comments, we're talking about racist remarks. We're talking about racism aren't we. Now as far as I can understand, and I've been looking it up and I can tell you exactly what the definition of racism is from the dictionary, but nothing here is racist. It may not be politically correct but these allegations do not reflect racist remarks, racist behaviour or racist comments. As I said, they may be politically incorrect but to me looking at it, it doesn't look like it is a racist case we are looking at accusations on comments that have been made, statements have been made and therefore the true definition of racism to me in this case, there's no case to answer and that's my opinion but that's for; I'd like you to take on board if you don't mind".*

101. Mr Edge then said he had a question for Mr Graham. He set this out as follows:

*"Yeah I was concerned with yesterday we had a picture of the location for the helicopter fly past etc, etc. It occurred to me that reading through the statements, people have made assumptions, all members have made assumptions because to me the allegation is that Lee is supposed to have said words to the effect of, "They look like they're shitting themselves". Now how do they know who he was talking about? Nobody in their statement said Lee pointed to that car and said: "Aren't they shitting themselves" and nobody else referred to that, they were all making various assumptions because there's quite a bit of contextual evidence in there that they do conflict with one another, and I just wondered if Dave has any recollection of them saying Oh yeah Lee pointed to them or yeah, we were looking in that direction or as if there was a general view point".*

Mr Graham replied to Mr Edge as follows:

*"The script is exactly as it was said, which you've read. You're right, there is a lot of presumption over the event and I will be covering that in my questioning because I don't feel you know, we're focusing on the right thing".*

102. Mr Why provided the Claimant with the opportunity to sum up his position

before he adjourned the hearing to consider his decision. The Tribunal consider that in his summing up the Claimant set out his position in respect of the allegations against him more coherently than at any other time during the period in which the Tribunal has had to consider in these proceedings.

103. The Tribunal summarises what the Claimant said to Mr Why as follows. He referred to his 20 years' service and clean disciplinary record and the fact that there had been no previous suggestion or previous allegation of racist behaviour made against him. He also submitted that there had been no report of racist conduct arising in the previous four months after his return from a cultural tour of India in which he had been in diverse company throughout. His case to Mr Why was that Red Watch had made up these allegations to undermine his management of them and that Mr Moncrieff had failed to support him. He also referred Mr Why to the fact that a number of other employees of the Respondent had been working on rotas in Red Watch in the relevant period and had made no complaints against him. He considered that Red Watch was conducting a witch hunt alleging racism against him.
104. He further submitted that they had suggested a connotation of racism in conversations where none had been present. The context of his remarks at the Course, and during his conversations with Ms Morrell was that they all related to terrorism which was an issue of great concern at that time. He further submitted that although those with him in the fire appliance had alleged he had directed his remark towards a black, ethnic minority group no particular race or ethnic group had been identified by his colleagues. He did not accept that the remark he made about Grenfell Tower was correctly reported by those present. He had made a statement of fact that were being mentioned on the television at the time which was that a lot of immigrants could have been living in the building. He did not accept that the comments he had made about giving an instruction to run over a terrorist referred to race or an ethnic minority. Furthermore his description of treatment by management in 2016 did not discriminate against or prejudice Jews. He did not use the word "anyway" when referring to immigrants resident in Grenfell Tower and had not directed any words to or at any individual in the adjacent car during the helicopter incident.
105. After a brief summing up of the representations he had received from Mr Graham, who had also been allowed to make representations, and the Claimant the hearing was adjourned to enable Mr Why to consider his decision.
106. After adjourning the hearing he reviewed the evidence he had received about the Course by contacting Mr Clement. He estimated that that call lasted between 20 and 30 minutes. He then deliberated on matters that had been put before him before drafting an outcome statement which he read to the Claimant and Mr Edge when the hearing reconvened. He estimated that it took him no longer than 30 minutes to prepare this outcome statement.
107. Mr Why rejected the Claimant's allegations that Red Watch and Mr Moncrieff colluded to remove him from his job. He found all the allegations proved on the balance of probability with the exception of the allegation in respect of the



Claimant's alleged questioning of the ethnic mix of a south London cadet group which was dismissed for which reason the Tribunal has given no details in respect of it in these Reasons. He found on the balance of probability that at the Course the Claimant made a statement to the effect of "this is where you can wrestle Muslims to the ground". He further found that in the fire appliance he made a comment to the effect of "I bet they just shit themselves and when referring to the Grenfell fire incident made comments to the effect of "it was just full of immigrants anyway". The other remarks were not disputed by the Claimant. He also found that the Claimant had shown excessive interest in respect of the interaction of ethnic minority groups with members of his team. This finding referred to his questioning of Ms Morrell. He commented as follows: ". . . I would consider local informal management action to deal with issues of this nature. However, in the context of this investigation and taking into consideration the associated allegations, it is my opinion that this allegation is upheld".

108. He did not accept the Claimant's submission that EDI was at the forefront of his work and found that the Claimant had consistently failed to address behaviour at work which was not commensurate with RESPECT values and that the evidence supported a very basic and narrow-minded view of EDI using only his contacts with BAME individuals and did not demonstrate a depth of understanding to be expected of a Watch Manager who should be role modelling leadership and leading by example.
109. He found the Claimant had been complicit in poor management of Red Watch. His outcome statement says as follows: *"In my opinion you have been complicit in the poor management of the Watch as evidenced in Appendix 8, where you yourself raised counter-allegations against Watch members. Your counter-claims include serious allegations against other Watch members including claims of fraud. You have allowed this to continue and have no evidence of addressing this and other issues either informally or formally. This document identifies failings on your part to effectively manage the Watch. The allegations against you only serve to reinforce the poor culture which exists. It is my opinion you should be driving forward change and leading by example . . ."*
110. Mr Why comments that the Claimant has provided limited or no mitigation. During his oral evidence Mr Why told the Tribunal that he had concluded that the Claimant wanted Ms Morrell to see fear and division in the local community; and that he had also found that the Claimant had been trying to incite hatred by taking advantage of his position. He also explained that he had not given any consideration to mitigation because he did not consider that there were any matters that could have mitigated the weight of the allegations proved against the Claimant which required his dismissal. He did not consider that the Claimant's colleagues' view that he was not a racist had been relevant to his considerations because he did not have to determine whether the Claimant was a racist.
111. Mr Why acknowledged that Mr Moncrieff had been told of the Claimant's comment at the Course in October 2017. He concluded that because the remark was reported to Mr Moncrieff when those attending on him were reporting concerns about the Claimant's management style and their

difficulties with his behavior he would not have appreciated it to be a concern about the racist comment and that he did not act upon what had been reported to him had been said at the Course for that reason.

112. Mr Why wrote to the Claimant on 1 March to confirm his dismissal and to inform him that he had the right of appeal against this decision. This letter confirms that the Claimant had been dismissed because on the balance of probabilities the allegations proved against him *"fell within the boundaries of general behaviours of a racist and offensive nature"*. Mr Why enclosed a copy of his outcome statement with this letter. Subsequently, the Claimant submitted a written appeal against Mr Why's decision in a letter sent to Mrs Long on 6 March. Mr Why had familiarized himself with the Occupational Health Report from Mr Williamson. He had no reason to be concerned with the Claimant's fitness to attend the hearing. The Claimant himself considered he was fit to attend. The Claimant's health issues played no part in Mr Why's determinations.
113. Mrs Long wrote to the Claimant on 19 March to confirm that the appeal hearing, would be conducted as a review hearing and held on 30 April. Subsequently, there are a number of difficulties which prevented the appeal proceeding to a hearing until 30 May. In the intervening period on 18 April the Deputy Chief Fire Officer had to write a cease and desist letter. In this intervening period Mrs Long also received reports firstly, from the Respondent's pension administrators that the Claimant had been abusive to them, and, secondly, that Ms Morrell had received an abusive text message from the Claimant. Thirdly, Mr Hardisty had been subject to verbal abuse from the Claimant in Salisbury city centre on 4 April in an incident which unknown to Mrs Long had been reported to the police who attended on the Claimant in respect of it. The Tribunal finds that unfortunately these incidents were part of a continuing pattern of the Claimant's regrettable and unacceptable behaviour towards his work colleagues and others during his suspension.
114. The issue of whether the Claimant would be accompanied to the appeal was also dealt with. Mrs Long made the position very clear to him as she had done in respect of the disciplinary hearing. She contacted six members of the First Respondent who the Claimant nominated to accompany him. Unfortunately these individuals were either not available, or not willing to do so. Once again Mrs Long advised the Claimant he was able to bring someone external to the Service to accompany him at the appeal hearing if he wanted to do so as had happened with Mr Edge. The Claimant's hearing on 30 April was postponed at his request to 7 May and then had to be postponed again because the Claimant suffered an attack of shingles. The Claimant eventually decided that he would attend the hearing unaccompanied. The Claimant considered he was fit to attend the appeal hearing.
115. The Claimant had submitted a detailed appeal letter. He denied that he had made racist comments and his grounds of appeal included the following submissions. He submitted that: he is not a racist; Red Watch did not want the matter to be taken further; witness statements indicated no malice was intended by what he had said; he should not have been suspended and the

suspension made an independent investigation impossible; he was prevented from calling character witnesses; the investigation was not carried out fairly and took too long; Mr Graham had placed pressure on witnesses and embellished what they had said to him; the investigation turned into a witch hunt; the evidence did not support Mr Graham's findings; and Mr Moncrieff had taken no action in respect of his alleged comments at the Course when these were first reported to him.

116. The Claimant also asked the First Respondent to take into account the detrimental impact to his health which had been caused by such a long suspension. He also made two other representations. The first was that the allegations looked at individually did not amount to dismissible offences. The second was that the Respondent should have considered some other course of action within its available procedures to deal with these matters.
117. The appeal hearing was chaired by Mr Mahoney. He was supported by Ms Lewis, HR Consultant. Mr Graham was also in attendance. The Respondent prepared a full transcript of the hearing which lasted just over three and a half hours.
118. Mr Mahoney conducted a well-structured hearing. The Claimant was given the opportunity to question Mr Graham and was able to make representations as to all those matters set out in his grounds of appeal. He had not requested character witnesses attend this hearing and during the hearing he wrongly asserted that the First Respondent had denied him the right to be accompanied.
119. Mr Mahoney was informed that the Claimant suffered from diverticulitis and that the length of his suspension aggravated that condition and that he had also suffered from stress and anxiety as a result of the ongoing disciplinary procedures. However, the Claimant gave no indication to Mr Mahoney that he was ill, or unfit to attend the hearing. Mr Mahoney was not aware that the Claimant was disabled at the time of the disciplinary hearing and the hearing before him. The Tribunal finds that the Claimant's health issues, to the extent they were disclosed to Mr Mahoney played no part in the decision which he reached in respect of the Claimant's appeal.
120. At the conclusion of the hearing Mr Mahoney informed the Claimant he would be considering all that had been submitted to him and would then confirm his decision in writing. Mr Mahoney told the Tribunal that he was satisfied the Claimant had made the comments attributed to him by his colleagues and that these were of a racist nature and in breach of the RESPECT Framework. He explained that the issue for him was not whether the Claimant was a racist but whether or not he had used racist language. It was his view that he was faced with a binary decision. This meant that if he upheld Mr Why's findings that the racist comments had been made by the Claimant then the Claimant had to be dismissed for that reason. He upheld Mr Why's decision on that basis. He gave no consideration to potential mitigation available to the Claimant. His decision was sent to the Claimant by letter of 31 May in which he set out how he had considered the matters the Claimant had referred to him and the conclusions which he had reached. His letter confirmed that he had upheld Mr Why's decision to dismiss the Claimant for

gross misconduct. He told the Tribunal that he did not consider when the comments had been made. This was because he understood that they had all been made within a period of one year. His outcome letter dealt with the Claimant's submission that the comments looked at individually did not amount to a dismissible offence. He concluded as follows:

*"While on an individual basis the allegations may not have been considered gross misconduct, taken together and over the period of time identified, there was a consistent pattern of behaviour which is incompatible with the RESPECT framework amounting to gross misconduct".*

These are the findings of fact which the Tribunal has made.

### **Submissions**

121. Mr Doughty submitted comprehensive and helpful written submissions in which he provided an extensive narrative as to the investigation and disciplinary procedure from 12 January 2018 to 30 May 2019. He submitted that the reason for dismissal was conduct and that the Tribunal should find that the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds following as reasonable investigation as was warranted in the circumstances. He commended the arrangements made for, and the procedure followed at, the disciplinary hearing chaired by Mr Why and the appeal hearing chaired by Mr Mahoney. He further submits that the Claimant was able to challenge the procedure and the evidence presented by Mr Graham at the disciplinary hearing and that each of the points of appeal raised by the Claimant were discussed with Mr Mahoney who gave full consideration to them.
122. Mr Doughty also submitted that the decision to dismiss the Claimant was a fair sanction which was within the range of reasonable responses open to a reasonable employer in the circumstances of this case. He submitted that the Claimant understood the seriousness of the allegations made against him and knew that if they were proved against him he would be dismissed. He submitted that this meant that the appeal was not about the sanction of dismissal which had been imposed on him at the end of the disciplinary hearing. The Claimant had acted in contravention of the RESPECT Framework and the First Respondent's EDI policies. Such behaviour was considered to be gross misconduct which meant that the First Respondent was entitled to consider dismissal as a sanction notwithstanding the Claimant's disciplinary record and long service with it.
123. Mr Doughty also submitted that the First Respondent's delay in providing further psychological support to the Claimant, the fact that the Claimant's claim of bullying and harassment against Mrs Staffiere could not be fully investigated and the Claimant's legitimate complaints in relation to his pay and the processing of his AOR did not impact on either the disciplinary investigation or the subsequent disciplinary and appeal hearings. He also asked the Tribunal to accept the Respondents position that the Claimant had never made it clear that he wished to call BAME and LGBT witnesses as character witnesses and that the other decisions made by the Respondents

as to attendance of witnesses at the disciplinary hearing were reasonable decisions taking account of the circumstances of the Claimant's case.

124. Mr Doughty also made succinct and helpful submissions as to the Claimant's claims of disability discrimination against the First and Second Respondents. The Tribunal agreed with those submissions and adopt them in respect of those claims as will be set out in its conclusions below.
125. The Claimant made oral submissions to the Tribunal which were at times difficult to follow. The Tribunal has already indicated that the Claimant set out an effective summary of his position in the representations he made to Mr Why at the end of the disciplinary hearing and which the Tribunal has summarised above. The Tribunal also took time to consider again the Claimant's written statement and notes the following representations from that statement and his oral submissions.
126. The Claimant criticises the length of the procedure which resulted in detriment to his health. He also refers to the fact that there were others who had worked in Red Watch between June and October 2018 who were not contacted about his behaviour during the investigation. He submits that he was neglected by the Respondent during the ongoing procedure citing the fact that psychological support recommended in the first Occupational Health Report was not provided to him until December 2018.
127. He also submits that the allegations made against him did not warrant a charge of gross misconduct and that the sanction of dismissal was too severe on the facts of his case. In support of this he asked the Tribunal to note that no complaints had been made by his colleagues at the time of the incidents relied on and that Mr Moncrieff did not take any action in respect of the alleged remark on the Course when he was first informed of it or during his Personal Review. He still submits that the procedure was conducted in bad faith and maintained the serious allegations he has made against his colleagues and that the outcome of the disciplinary procedure was predetermined. Finally he submits that his colleagues on Red Watch were aware that he had mental health issues and should have reported these concerns to Mr Moncrieff and that the Respondents should have been aware that by the time the disciplinary hearing was convened he was disabled.

## **Conclusions**

### **(a) Overview**

128. The Tribunal have listened to extensive oral evidence and read hundreds of pages of documents. It is necessary to provide an overview of what has been placed before us particularly as there were no substantial disputes of facts between the parties with the exception of serious allegations of bad faith made by the Claimant against his Station Manager and colleagues.
129. The Claimant had pursued a successful career in the Service and, but for these unfortunate events would, in the course of 2018 have received an award for 20 years of exemplary service and conduct. The Claimant's Personal Reviews which the Claimant completed with his Firefighters on

Red Watch earlier in the year do not indicate that the Watch was performing badly in the vital work it was undertaking in the previous two years.

130. The evidence from those who worked full time on the Watch at the time and Mr Moncrieff confirms, as one would expect in a job where teamwork is so important, that there was a supportive environment in the Watch. The frustrations expressed to Mr Moncrieff by members of the Watch earlier and later in the year were not complaints and with the exception of Mr Endicott's concern, did not require any action by him. He decided that the remark he was informed the Claimant had made at the Course was a pathetic attempt at humour which he did not need to discuss with him. The comments that resulted in the investigation had been made by the Claimant to his colleagues earlier in the year. There were discussions between those on the Watch about those comments but no discussion elsewhere and no concerns or complaints made in respect of them and they were not referred to in the second meeting which members of the Watch held with Mr Moncrieff when the remarks made at the Course were referred to him. The Claimant's full time colleagues on the Watch did not pursue any complaint that he had made racist comments, or that he had been responsible for general behaviours of a racist and offensive nature. In their evidence to the Tribunal they made it clear that they did not consider he was a racist.
131. Ms Morrell's evidence confirms that she and her colleagues were at times frustrated by the Claimant's management style and he told Ms Morrell that he had been frustrated with his colleagues and hoped that her arrival might assist him in resolving those matters. The issue that resulted in the meeting on 12 January was the breakdown in the working relationship between the Claimant and Mr Waker, his Crew Manager. During the hearing they both accepted that they blamed each other for this breakdown between them which appears to have been concerned with the extent of Mr Waker's responsibilities and the discretion which the Claimant was prepared to allow to him in managing the Watch. Those concerned about the working relationship, and the two men themselves, were mature enough to seek Mr Moncrieff's help in an attempt to resolve this situation. There is no indication, and there has been no suggestion, that the difficulties causing frustration on both sides could not have been resolved.
132. The outcome of the meeting could not have been known in advance. The Claimant's colleagues were not seeking to remove him from his job. Neither the altercation between the Claimant and Mr Waker nor the outcome of the Claimant's insistence that Mr Waker's assertion should be investigated by Mr Moncrieff could have been foreseen. An unfortunate, and unforeseen, combination of circumstances commenced an unfortunate chain of events which developed its own momentum. Up to that point the discussions which are central to this case had taken place within the Watch and had not been referred to higher management. This could no longer be the case after what had happened on 12 January. The Claimant's colleagues did not collude with each other, or the Station Manager (which they would had to have done if the Claimant's assertions were correct) to dismiss him, or to fabricate evidence to do so. It was to be the Claimant who, during the course of the disciplinary investigation that followed, made allegations against his colleagues that

painted a picture of a dysfunctional Watch both before, and during, the period of time under investigation.

133. Mr Graham correctly observed that those matters the Claimant raised in his counterclaims had not been previously referred to by the Claimant and were contradicted by what he had said to Mr Moncrieff in his Personal Review. His claims indicated that he had not been managing the Watch well. Mr Graham reasonably concluded that he did not need to investigate these matters to deal with the allegations made against the Claimant. He took the fair and reasonable step of referring them to Mrs Swan. They were not investigated by the First Respondent. The Claimant faced no allegations in respect of inadequate, or poor, management in the disciplinary proceedings that were held in February 2019.
134. The Claimant's work colleagues had no knowledge that he was suffering from diverticulitis, and could only speculate on whether domestic difficulties were impacting in his work. They were not aware that he had mental health issues. They had no reason to report any issues as to the Claimant's health to Mr Moncrieff and they did not perceive him to be disabled. The extent of their knowledge was that he might be suffering from stress as a result of domestic issues. The deterioration in the Claimant's health occurred after he had reported sick on 12 January 2018 and undoubtedly the stress of the continuing disciplinary procedures aggravated his anxiety and diverticulitis.
135. Mrs Swan informed the Claimant in her letter of 16 January 2018 that there would be an investigation into two separate allegations. These were that the Claimant had made racist comments and that he had demonstrated general behaviours of a racist and offensive nature. Those matters eventually came before Mr Why at the disciplinary hearing. However, Mr Graham only investigated the first allegation. The second allegation remained unparticularised and uninvestigated by the First Respondent. These allegations raised emotive, sensitive and difficult matters for all concerned. It is understandable that the Claimant was upset and angry. He concluded on the basis of the information he had been given that he was being accused of being a racist.
136. The Tribunal is satisfied that this influenced the Claimant's conduct in the disciplinary proceedings in the months ahead and provides limited mitigation for that disruptive conduct as does the impact of this long procedure on his health and the unsatisfactory management of his pay during his suspension. It is not disputed that the disciplinary procedure took too long to complete. The First Respondent initiated the procedures and was responsible for managing them and cannot escape criticism for the time which was taken in dealing with these matters. However, the Tribunal is satisfied that the delays that arose were not intentional and that the Claimant's conduct contributed substantially to those delays and so, all in all, for a variety of reasons they were unavoidable.
137. The Tribunal has concluded that from an early stage the Claimant decided on a strategy which is best described as "attack being the best form of defence". He made continuing challenges to the Respondent's procedures and raised unjustified allegations of misconduct and bad faith which he extended to

those dealing with him in respect of his suspension, the investigation and ongoing related matters. The result of this is that he made serious allegations against his colleagues which appeared to show a dysfunctional and badly managed Watch, as well as unjustified criticisms of the First Respondent's procedures, and unjustified allegations of misconduct against Mrs Swan and Mrs Staffiere. These were actions which lengthened the disciplinary procedure, had a detrimental impact on his health and distracted all those involved from what were narrow issues and limited disputes of fact that had to be resolved within the disciplinary procedures.

138. His complaints led to internal investigations by Mr Plumley and Mr Coleman. The Claimant has conceded during this hearing that the complaints which Mr Plumley investigated were unjustified and conceded that his criticisms of Mr Plumley were unjustified and accepted Mr Plumley's findings. Furthermore, the oral and written evidence before the Tribunal confirmed that the allegations he had made against Mrs Swan, which were investigated by Mr Coleman were unjustified and unsustainable.
139. The Claimant made many demands on the First Respondent's HR department and its managers throughout the period under consideration. The Tribunal found that all those concerned responded appropriately and effectively to the many matters which he raised, with the exception of a couple of unintended omissions. The Tribunal consider that Mr Presley, Mr Gillion, Mrs Swan, Mrs Long and their colleagues displayed patience and professionalism in dealing with the many matters and criticisms he raised with them and should be complimented for the support which they gave to him.
140. The Claimant's actions, which included inappropriate behaviour in person and online towards members of the Watch showed an apparent disregard for the potential consequences this could have on his future working relationships and, potentially, his continuing employment with the Respondent as well as the risk of facing further disciplinary proceedings. The Tribunal will now summarise its decision in respect of the Claimant's disability claims in which, as already indicated, they agreed with, and adopted Mr Doughty's submissions. The Tribunal will then deal with the unfair dismissal claim.

**(b) Disability Discrimination Claims**

141. The Claimant cannot prove on the Tribunal's findings of fact that he was treated less favourably than a hypothetical comparator because he was disabled. Mr Why and Mr Mahoney did not perceive, or know, the Claimant was disabled when dealing with the disciplinary and appeal procedures. Furthermore those health difficulties they were aware of did not play any part in their respective decisions to dismiss him, and uphold that decision. The Claimant was dismissed by reason of his conduct and a non-disabled person would have been treated in the same way.
142. There is also no evidence before the Tribunal to support the allegation that those named by him perceived him to be disabled. The Claimant conceded Mr Moncrieff did not remove him as Watch Manager. His colleagues had not



colluded and fabricated evidence to prove that he was a racist to remove him. Furthermore, the allegation involving Mr Hardisty in April 2016 far from undermining the Claimant's position demonstrated his colleagues supporting him when he was unexpectedly absent from work. Therefore, his claims of direct discrimination and perceived disability discrimination are dismissed.

143. The Claimant's claim under **s.15 Equality Act 2010** also fails and is dismissed. The Claimant was not a disabled person for the purposes of the Act until shortly before the disciplinary hearing. The correspondence confirms the efforts made by Mrs Long to ensure the Claimant understood his options and she permitted the attendance of Mr Edge who was an able and effective companion at the hearing. Mr Doughty was correct when he submitted that nothing was done to prevent the Claimant bringing a work colleague to the hearing and that he had never requested such a colleague to attend the hearing as his representative. This was because the issue he pursued was why he was not allowed to bring someone outside the procedure. The Respondents did not refuse the Claimant workplace support for the disciplinary hearing as he alleges.

144. The reasonable adjustments claim is pursued by the Claimant on the basis that application of the First Respondent's disciplinary process put him at a substantial disadvantage compared to persons who are not disabled because it aggravated his diverticulitis and his mental health which in turn further aggravated his diverticulitis. Mr Doughty accepts that the process is capable of amounting to a PCP in these circumstances because there is a link between stress and any disciplinary process. However, as he reminded the Tribunal, the relevant period commenced on 14 February for anxiety and depression and 15 February for diverticulitis. The Claimant submits that the Respondent should have dealt with the process more quickly during this period. Mrs Long adjusted the procedure so that he could be accompanied by Mr Edge and Mr Why acknowledged the stressful nature of the disciplinary hearing and made due allowances for the Claimant during the course of the hearing to assist him. The Tribunal accepts Mr Doughty's submission that the delay between the disciplinary hearing and the appeal hearing was not intentional and was caused by factors outside of the First Respondent's control which in the circumstances made the delay unavoidable. Therefore, this claim of disability discrimination also fails and is dismissed.

**(c) Unfair Dismissal Claim**

145. The Tribunal are satisfied that the Claimant was dismissed by reason of his conduct. This is a potentially fair reason for dismissal. The Tribunal has to test the fairness of the dismissal and in doing so has to determine two questions. Firstly, did Mr Why genuinely believe the Claimant had made racist comments on reasonable grounds after a reasonable investigation? Secondly, did his decision to dismiss the Claimant fall within a range of reasonable options available to a reasonable employer acting reasonably and taking account of all the relevant circumstances, and was it reasonable for Mr Mahoney to uphold that decision after considering the Claimant's appeal against it?

146. Mr Graham conducted a diligent and impartial investigation. After doing so he

was required to determine whether the Claimant had a case to answer in respect of all, or any, of seven allegations that he had made racist comments. Mr Graham was not required to determine whether or not those comments had been made only if it was arguable that they had been. The key questions he had to answer were, firstly, what were the comments and when, where and to whom they were made; and, secondly whether the comments were racist.

147. The Claimant robustly argued that his comments did not mention ethnic minorities and were not racist. During the disciplinary hearing Mr Edge had referred to looking up the definition of racism and submitted that the allegations did not demonstrate racist remarks, comments or behaviour. The Claimant's colleagues had made no complaints that he was a racist and only on one occasion had they referred a remark the Claimant had made to Mr Moncrieff who had considered that this did not warrant any further action. His colleagues gave an answer to the question which was put to them and were not asked to make any further comments about the Claimant's general behaviour in the workplace either by Mr Moncrieff or Mr Graham. The reference to "racist comments" was made by Mr Waker during a meeting on 12 January. It was adopted by the First Respondent. However no consideration was given in these extensive procedures to what the First Respondent considered would amount to a racist comment.
148. The Tribunal reminded itself that racism is a theory that human abilities are determined by race. Hence the term racist, who is a person who is prejudiced or antagonistic towards a person or people on the basis of their membership of a particular racial or ethnic group, based on a belief that his race is superior. Furthermore, unwanted conduct by an individual can include a wide range of behaviour including spoken words and consideration of racially abusive language will involve subjective assessment by those who are the victims of it. In consideration of this the Tribunal concludes that it would be a reasonable assumption that a racist comment would be abusive, demeaning and derogatory about a race or ethnic group or comments that strongly indicate an animosity or antipathy towards such a race or group.
149. Mr Graham also had to consider the Claimant's allegations of bad faith made against his colleagues as well as the counterclaims alleging misconduct against them. The Tribunal has found that he dealt with these additional matters with commendable care and fairness. It was reasonable for him to conclude after due consideration that the claims of bad faith had no merit. He also reasonably concluded that the counterclaims were not relevant to his investigation and that he could not take those matters any further, then appropriately referring them to Mrs Swan. Mr Graham's opinions about the Claimant's intentions in pursuing such claims are perceptive and balanced. However he made no findings against the Claimant for pursuing them.
150. It is the case that, putting aside the Claimant's allegations of bad faith and misconduct against his colleagues, Mr Graham's investigation confirms that the Claimant was not disputing that the occasions under consideration had taken place. He was disputing what had been said and arguing that, taking all the circumstances and his intentions into account, he had not made racist comments, had not been responsible for general behaviours of a racist and

offensive nature and was not a racist. With the benefit of hindsight it is hard to comprehend how the subsequent disciplinary procedures generated thousands of pages of documents and have taken up such substantial and disproportionate resources and taken so long to conclude, when dealing with apparently brief conversations between work colleagues during a Course, in the Station Watch Room and in a fire appliance.

151. The Tribunal consider that it was reasonable for Mr Graham to have concluded that his investigation had established that the Claimant had a case to answer as to the remarks he was alleged to have made, and his conversations with Ms Morrell and Mr Waker (in respect of the charge that Mr Why did not uphold). However, Mr Graham's determination that the Claimant had, applying the test of a balance of probabilities made the racist comments alleged, should not have been made at this stage of the disciplinary procedure. This was a decision that was reserved to Mr Why at the disciplinary hearing to ensure that the Claimant had the opportunity of reading the Investigation Report and setting out his case in respect of the allegations before any such decision was made. The integrity of Mr Graham in his conduct of the investigation and its transparency together with the integrity of those who dealt with the ongoing disciplinary procedures and the conduct of those procedures demonstrate that the First Respondent had not predetermined the outcome of the disciplinary hearing. However, the Tribunal finds it understandable when reading of this determination the Claimant was concerned that the outcome had been predetermined. This was a further aggravating factor for him as matters proceeded. Furthermore, the allegation that he had demonstrated general behaviours of a racist and offensive nature had not been withdrawn.
152. It has been helpful for the Tribunal to consider what disputes of fact remained after Mr Graham had concluded his interviews with the Claimant and his colleagues as to the alleged incidents. There was no dispute that the Claimant had on occasions in 2016 commented unfavourably on the previous Station Manager's actions towards those he managed, and that he had made a comment about running over a terrorist with a truck to Mr Hardy and Ms Morrell. The Claimant did not accept that these were racist remarks and Mr Graham had given no explanation as to why he had concluded that they were. It was also agreed that the Claimant had engaged in discussions with Ms Morrell about her previous job in Birmingham. The areas of discussion had been broadly identified but there had been no findings made as to what had been said by the Claimant, or the questions which he had asked. Ms Morrell's comments in respect of these discussions would appear to have made it difficult to determine whether or not the Claimant had shown an excessive interest in respect of interaction of ethnic minority groups with Ms Morrell.
153. The difference in evidence in respect of the remark made on the Course related to two specific words. Mr Moncrieff had been told that the Claimant had spoken of wresting Muslims to the ground. The Claimant had no recollection of using the word Muslim and maintained he had been talking about restraining terrorists. Those present said that he had used the word "restrain" and had referred to Muslims. This was why they had been

surprised by the remark and two of them remonstrated with him about it. The weight of the evidence indicated that the Claimant referred to restraining Muslims. However, the charge which the Claimant faced at the disciplinary hearing was that he had stated words to the effect of: "*This is when you can wrestle Muslims to the ground*". This was the only incident which members of the Watch referred to Mr Moncrieff who considered it was a pathetic attempt at humour by the Claimant and took no further action in respect of it. Mr Clement, the Manager who had been presenting the Course had no clear recollection of what had happened and had also taken no formal action in respect of the Claimant's remark.

154. It was not disputed that the Claimant had made a remark in the fire appliance about the flyover of military helicopters. All those present in the fire appliance with him thought he was referring to people in a stationary car waiting at the side of the fire appliance at traffic lights when a flyover by military helicopters surprised everyone. The allegation was that the Claimant was referring to a "Black Minority Ethnic Group" in the stationary car. There are two concerns in respect of how this incident had been described. The first is that the words which Mr Waker attributes to the Claimant during his interview with Mr Graham are very different from what he said the Claimant said to the Claimant and Mr Moncrieff on 12 January. Mr Waker also told Mr Graham that he did not consider that the comments made by the Claimant in the fire appliance were disparaging. Secondly, the evidence as to the number of people in the car is uncertain as is their status. One witness refers to the occupants being Asians and there is no other evidence given to Mr Graham. This does not appear to be the Black Ethnic Minority Group referred to in the allegation. A further concern in respect of this incident had been raised by Mr Edge, and conceded by Mr Graham, during the disciplinary hearing. This was that a number of presumptions had been made to find that the Claimant had spoken as alleged when in the fire appliance.
155. The investigation confirmed that the Claimant was in discussion with four colleagues in the Watch Room about the tragic fire at Grenfell Tower. Mr Waker recalls that the Claimant had been in touch with his brother who had told him that the Tower was full of immigrants who should not have been there. Mr Hardisty also recalls the Claimant being in touch with his brother, as does Mr Endicott, Mr Hardisty recalls that the Claimant had been told the Tower was probably full of immigrants. Mr Endicott's recollection is slightly different. His recollection is that the Claimant said: "It was probably filled with immigrants anyway". Mr Endicott was not sure whether he said this was information he had obtained from his brother. Mr Wyer's recollection was very different. He recalled the Claimant saying: "It was just full of immigrants anyway".
156. Mr Graham was not prepared to accept that the Claimant had been in touch with his brother and may have reported what his brother had said to his colleagues during this conversation unless he produced copies of the text messages he had referred to. This was a demand made notwithstanding that his colleagues had confirmed that he had been in touch with his brother at this time. It also seems plausible that he would have been in touch with his brother because he lived in the area and his job may have involved him

visiting the Tower. The Tribunal has a further concern. The remark attributed to the Claimant is the remark that was recalled by Mr Wyer and is the most derogatory remark reported to Mr Graham by those who were present at the time. The inclusion of the words "just" and "anyway" change what the Claimant has said was a statement of fact to a derogatory remark from which it could be inferred that he had a callous and uncaring attitude towards the residents of the Tower who were immigrants.

157. The Claimant has made serious allegations about bad faith against the Respondents and others, including Mr Graham, in the disciplinary procedures and in these proceedings. The Tribunal emphasises that the observations that it has made above do not in any way undermine the integrity of Mr Graham's investigation or his Report. Indeed they demonstrate its commendable transparency. Furthermore, when the Claimant was asked by the Tribunal to identify those parts of the Report that he has alleged were falsified he could not do so and was unable to explain any grounds for making such unjustified allegations against Mr Graham.
158. The Tribunal has already commented on the First Respondent's implementation of the disciplinary procedures. Three further points raised by the Claimant related to the failure to complete his AOR application, the decision not to investigate his complaints against Mrs Staffiere and Mrs Long's decision that those the Claimant says he intended to call as character witnesses would not be requested to attend a disciplinary hearing.
159. The AOR dispute is apparently continuing. It did not affect the ongoing procedures or have any relevance to the issues under consideration. Mrs Long's decision on the other two matters were pragmatic and within a range of reasonable options open to her. The evidence before the Tribunal confirms that Mrs Staffiere was the SPOC for a limited period and in that time took no action that prejudiced the Claimant. Furthermore, it was within the discretion of Mr Why and Mr Mahoney to make arrangements to call, or attend on the character witnesses if they had considered it relevant to do so.
160. Mr Why is to be commended that during the course of a long disciplinary hearing he provided the Claimant with the support he had requested. He also ensured that the Claimant was able to respond in full to the allegations that had been notified to him by the First Respondent. The Claimant denied that he had made any racist comments but had admitted making the comments alleged against him on two occasions. Therefore, Mr Why had to decide whether he believed that the Claimant had made the remarks attributed to him on the three other occasions. He had then had to decide whether the remarks he believed the Claimant had made on any of those occasions were racist comments. Mr Why also had to decide whether the Claimant had shown an excessive interest in minorities by the questions he had asked Ms Morrell and Mr Waker, and the discussions he had held with Ms Morrell.
161. The First Respondent had not withdrawn the second allegation that the Claimant had been responsible for general behaviours of a racist and offensive nature. This allegation had not been investigated. There was no evidence before Mr Why to support it. Mr Why explained that he had not understood this to be a separate allegation. Therefore, he had not pursued

the issue and had made no decision in respect of it at the disciplinary hearing. This meant that in practice the allegation had been withdrawn. The Claimant suffered no prejudice in these circumstances. He had fully prepared for the allegations that had been notified to him and been given a full opportunity to present his responses to those allegations.

162. Mr Why dismissed the allegation relating to questions the Claimant had asked Mr Waker. He concluded on a balance of probabilities that the Claimant had made racist comments on five occasions as had been alleged. He also concluded that the Claimant had shown excessive interest in Ms Morrell's interaction with ethnic minorities in her previous job. He upheld this allegation on the following basis:

*"... I would consider local informal management action to deal with issues of this nature. However, in the context of this investigation taking into consideration the associated allegations, it is my opinion that this allegation is upheld".*

163. He made no finding as to what the Claimant had actually said on the three occasions in which this had been disputed. He concluded that the Claimant had said words to the effect of what was alleged against him. His explanation as to why Mr Moncrieff had not dealt with the remark which the Claimant had made during the Course when it had been referred to him contradicted Mr Moncrieff's evidence and is unsustainable for that reason. He also gave no indication that he had given any consideration to the Claimant's Personal Review which had been completed in December with Mr Moncrieff.
164. The Tribunal has already found that Mr Graham had undertaken a reasonable investigation. The Tribunal is satisfied that Mr Why genuinely believed that the Claimant had made racist comments and had shown an excessive interest in Ms Morrell's interaction with ethnic minorities in her previous job. The Tribunal then has to consider whether Mr Why had reasonable grounds to do so and, if he finds that it did, whether his decision that the Claimant should be dismissed fell within a range of reasonable options available to the First Respondent.
165. In Mr Why's outcome statement which he read to the Claimant and Mr Edge to conclude the disciplinary hearing he explained that in reaching his decision he had made adverse findings against the Claimant in respect of matters on which no allegations had been made by the First Respondent within the disciplinary proceedings. His findings relate to the Claimant's management of Red Watch. The Tribunal has referred to them at paragraphs 109–110 above.
166. His grounds for making those findings are the allegations against members of Red Watch made by the Claimant in the counterclaims which he submitted to Mr Graham during his investigation. The Tribunal's findings of fact above explain how Mr Graham dealt with those counterclaims. The Claimant's allegations were not investigated by either Mr Graham or the First Respondent. Mr Graham had reasonably concluded they were not relevant to his investigation. There were no reasonable grounds on which Mr Why could have made the adverse findings against the Claimant set out in his outcome statement and the fact that he made such findings on matters

that were not before him compromised the outcome of the disciplinary hearing. This is because his findings were obviously prejudicial to the Claimant and confirmed that he had taken other matters into account in addition to the allegations which had been notified to the Claimant, who had been unaware that he was facing any such criticisms. Although it is not relevant to the matters before it the Tribunal also observes that in reaching this decision Mr Graham appears to be accepting that members of Red Watch had been responsible for misconduct.

167. A further concern for the Tribunal is that during his oral evidence Mr Why had said that he had concluded that the Claimant had wanted Ms Morrell to see fear and division in the local community where she had worked and that the Claimant had taken advantage of his position in the First Respondent to incite hatred. The Claimant had not faced those allegations in the disciplinary hearing. These conclusions had not been referred to by Mr Why in his outcome statement. The Tribunal emphasises that Mr Why gave extensive and helpful evidence to the Tribunal and answered all questions put to him frankly and honestly. The Tribunal has given careful consideration as to whether Mr Why in explaining his position was expressing his opinion about the Claimant's motives which he had reached after concluding that the Claimant had made the racist comments alleged against him, rather than confirming further findings which he had made against the Claimant. However, even if that is so, the Tribunal are satisfied that no reasonable employer could have reached such damaging views as to the Claimant's motives on the evidence before Mr Why.
168. Mr Why's findings as to the Claimant's management and his findings, or opinions as to his motives compromise his findings in the disciplinary hearing as a whole. This is because Mr Why explained that he had concluded that the weight of proven evidence against the Claimant was such that it required the Claimant's dismissal and that there were no factors that should, or could have mitigated the sanction of dismissal. The weight of proven evidence included Mr Why's finding of poor management against the Claimant and, whether viewed as findings or opinions, his very serious, and damaging, conclusions as to the Claimant's motives and intentions would have influenced his decisions. This discloses a flawed approach which compromised findings made by Mr Why at the disciplinary hearing and these serious failings prejudiced the Claimant. The Tribunal refer to the appeal hearing below. This upheld Mr Why's decision to dismiss the Claimant without referring to, or remedying, these matters.
169. The issue to be determined by Mr Why in those allegations that were before him were what was said by the Claimant during the discussions about Grenfell Tower, in the fire appliance after the fly past and during the Course; and whether he had shown excessive interest in Ms Morrell's interaction with the local community when she was working in Birmingham. It had not been alleged that he had made racist comments in his discussions with Ms Morrell but in dealing with the other allegations Mr Why had to decide whether the Claimant had made racist comments.
170. The phrase "racist comments" had been used by Mr Waker in a heated argument with the Claimant on 12 January. The First Respondent adopted

that phrase when framing the allegations to be investigated by Mr Graham and subsequently the charges which he faced within the disciplinary procedures. It remained undefined and was, therefore, open to interpretation. Mr Graham, Mr Why and Mr Mahoney provided no explanation of how they interpreted that phrase or how they had concluded that the comments made by the Claimant had been racist. It appears that they all considered that the circumstances spoke for themselves. The Tribunal consider that for a comment to be racist it would need to be hostile or derogatory towards a certain nationality or ethnic minorities or in terms from which an antipathy or animosity to them could be inferred. The Claimant was not accused of making any overtly discriminatory, insulting or hostile remarks towards any race or ethnic minority. However, he held a management position which placed increased obligations on him within the First Respondent's RESPECT Framework which is an area which will always be reviewed in a Watch Manager's annual Personal Reviews. The remarks the subject of the disciplinary hearing had been made in discussions about current events that were in the news, an unexpected flyover, an intervention during a course and expression of frustration made several times in respect of a previous station manager at some time in 2016. The Tribunal is sure that, with the benefit of hindsight, the First Respondent will conclude that in such circumstances this undefined phrase was an unnecessarily emotive one with which to proceed into what was a necessary investigation into the various unconnected comments made by the Claimant to his work colleagues which in three cases had unsettled them, and caused concern, because of when and how he made what they considered to be inappropriate remarks.

171. It was reasonable to conclude that the Claimant had referred to a Muslim in the remark he made during the Course. Although this is not a reference to a race or ethnic minority there are a substantial number of people from ethnic minorities living in the UK who are Muslims. The evidence confirms that this remark caused immediate concern amongst his colleagues who were on the Course. They reported this remark to Mr Moncrieff which confirms they had been unsettled by it. The Tribunal has observed above the limitations and uncertainties in respect of the evidence disclosed during the investigation as to the discussions about Grenfell Tower and the Claimant's remark in the fire appliance. However, it is significant, that on both these occasions his colleagues' independent perceptions were that he had made an inappropriate comment about immigrants and an unnecessary and vulgar remark which they all told Mr Graham had been referring to the foreign occupants of a nearby car. It is these perceptions combined with the circumstances reported by his colleagues from which it was reasonable to conclude that, applying a wide interpretation of what are racist comments to the comments that the Claimant made on those three occasions.
172. The Tribunal has concluded that a reasonable employer undertaking a reasonable scrutiny of the evidence in respect of the other allegations made against the Claimant would have concluded that in those cases there were no reasonable grounds to conclude that the Claimant's remarks at that time were racist comments. A reasonable employer would have required far more detailed evidence from Ms Morrell about the questions which the Claimant had asked her and the content of their discussions to be able to reach a



decision as to whether or not the Claimant had shown an excessive interest (as opposed to an interest) in the area in which the Claimant worked and would have also noted there was little if any evidence that the Claimant was pursuing enquiries as to Ms Morrell's interaction with her local community at that time.

173. The First Respondent had received no complaints about what the Claimant had said on several occasions about the previous Station Manager. Mr Waker had indicated that the Claimant was expressing a frustration felt by many of his colleagues with their manager and several grievances were pursued in respect of his behaviour before his departure in October 2016. The fact that a remark is immature and socially inept does not make it discriminatory or racist. The Tribunal finds that the Claimant's remark was socially inept and immature and that it drew an insensitive analogy with the Holocaust and that it was inappropriate to do so. However a reasonable employer acting reasonably would not have concluded that it demonstrated any animosity or antipathy towards Jews. It could not have been considered a racist comment for that reason.
174. The remark the Claimant had made to two of those he managed in Red Watch that he expected them to run over a terrorist is a comment that is immature and inappropriate for a Watch Manager to make to colleagues who are under his management. The Claimant made no reference to any race or ethnic minority in making the remark. He referred to terrorists. A reasonable employer acting reasonably would not have found that to be a racist comment. These considerations demonstrate how a reasonable employer would have considered the Claimant's actions and then the comments which he had made. The Tribunal emphasises that such a consideration does not condone the remarks which the Respondent made and in his position as Watch Manager he could have expected the Respondent to have taken action against him to address his failings in making them. They did not have to be racist comments to lead to disciplinary action.
175. The Tribunal concludes that Mr Why's genuine belief that the Claimant had made racist comments on the three occasions referred to above was based on reasonable grounds after reasonable investigation. In this case neither Mr Why nor Mr Mahoney considered it was necessary to consider whether there were any mitigating factors to be taken into account in determining what sanction should be imposed on the Claimant. A reasonable employer acting reasonably would not have reached that decision because a reasonable employer acting reasonably would and should have considered whether there were any mitigating factors which should be taken in to account in determining whether or not dismissal fell within a range of reasonable options available to the First Respondent. This would have been the case whether or not Mr Why had fairly concluded that the Claimant was responsible for all, or any, of the allegations made against him.
176. The circumstances of this case make it clear that there were a number of potential mitigating factors which a reasonable employer would have considered. These included the following. The Claimant had enjoyed a long, successful and exemplary career with the First Respondent. He had not been subject to any previous disciplinary procedure or sanction. He was ensuring

difficult domestic circumstances at the relevant time. He had also completed a successful personal review with Mr Moncrieff in December 2017. Furthermore, Mr Moncrieff had determined that the remarks which he had made during the Course had been a pathetic attempt at humour which did not warrant any further action. Mr Clement had also taken no action in respect of it. The Personal Review did not indicate a dysfunctional Watch, it was his counterclaims that did so. There were no public facing remarks that had to be considered. There had been no complaints made in respect of the remarks from full time members of Red Watch or the substantial number of other employees who had worked on, or with, Red Watch in the relevant period. Such a consideration would have resulted in a reasonable employer concluding that in these circumstances the Claimant's dismissal would not fall into a range of reasonable options available to it to deal with these issues.

177. The Tribunal deals briefly with the appeal hearing chaired by Mr Mahoney. This was a review hearing. The Claimant had submitted detailed grounds of appeal in which he continued to pursue unjustified allegations of bad faith, all of which have been referred to above. However, these grounds included two representations which were that the allegations, when considered individually did not amount to dismissible offences; and that the First Respondent should have considered some other course of action within its available procedures to deal with them. In these representations the Claimant was submitting to Mr Mahoney that dismissal was an inappropriate sanction for the matters that have been alleged against him, even if the First Respondent found him responsible for them.
178. Mr Mahoney approached the appeal on the basis that it required him to make a binary decision. The result of this was that if he upheld Mr Why's findings that the Claimant had made racist comments as alleged then the appeal failed. He is also to be commended for providing appropriate support to the Claimant, who attended by himself, during the appeal hearing and providing him with a full opportunity to set out the rounds for his appeal. Once again, the allegations of bad faith made by the Claimant detracted from his other more relevant representations. Mr Mahoney also provided written findings to the Claimant in respect of all the points that have been raised with him with the exception of the Claimant's representation that the First Respondent should have considered some other course of action to deal with his conduct.
179. Mr Mahoney did not deal with that representation because it was his view that having upheld Mr Why's findings it was not necessary for him to consider whether there were any mitigating factors to be taken in to account or to even consider whether dismissal was an appropriate sanction. The submission made to the Tribunal that because the Claimant knew that he would be dismissed if the allegations were upheld meant that the appeal could not be about sanction is unsustainable. The Claimant had been advised that he was at risk of dismissal. He was concerned that dismissal was a predetermined outcome. A reasonable employer acting reasonably in the circumstances in which the First Respondent found itself in this case would have ensured that in order to deal with the Claimant's case on its own merits there had to be consideration as to whether or not dismissal was a reasonable option and to have undertaken that consideration any relevant mitigating factors would

need to be considered. In this case the First Respondent had been employed for over 20 years and but for the intervention of these procedures would in the course of 2018 have received an award from the First Respondent to mark his exemplary service and conduct. Mr Mahoney's appeal did not remedy the defects of Mr Why's decision and also excluded any consideration of potential mitigating factors relevant to the Claimant's situation.

180. As a consequence of Mr Why's findings the Claimant was dismissed with a combination of allegations that were before Mr Why for determination and for matters which were not, and without any consideration of potential relevant mitigating factors to which a reasonable employer acting reasonably would have given careful consideration. These failings were not remedied by the appeal hearing. The Claimant was unfairly dismissed for these reasons. The Tribunal has left that finding of unfair dismissal to one side to ensure comprehensive consideration of this claim and in doing so it has concluded that a reasonable employer would not have had reasonable grounds to uphold three allegations faced by the Claimant and that, in all the circumstances, taking account of the available mitigating factors, a reasonable employer would have concluded that dismissal of the Claimant was not within a range of reasonable options available to it.
181. This finding that the Claimant was unfairly dismissed by the First Respondent means this case will now be set down for a Remedy Hearing. It will be allocated two days for that hearing at Southampton Employment Tribunal on dates to be fixed. The Tribunal considers it is helpful to confirm that (in addition to such matters as the parties may wish to raise at the Remedy Hearing) it will expect the parties to have given consideration to the potential issue of the Claimant's contributory fault in advance of Remedy Hearing. The parties are also directed to agree and prepare a separate bundle of Documents for the Remedy Hearing.

Employment Judge Craft  
Date: 7 December 2020

Judgment sent to the parties: 9 December 2020

FOR THE TRIBUNAL OFFICE