# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Adam

**Respondent:** Community Integrated Care

**Heard at:** Liverpool **On:** 22-26 November 2021
29 November 2021
1 & 2 December 2021
(1 December in chambers)

**Before:** Employment Judge Benson
Mr A G Barker
Ms H Vahramian

**REPRESENTATION:**

**Claimant:** In person
**Respondent:** Ms Kaye, Counsel

**JUDGMENT** having been sent to the parties on 9 December 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

**Claims and Issues**

1. The claimant has brought claims of direct race discrimination, victimisation and public interest disclosure (detriment). There were initially two claims which were combined for the purposes of this final hearing. There have been two previous case management hearings on 25 July 2019 before Employment Judge Horne, and on 16 March 2020 before Employment Judge Buzzard. During those hearings the claimant clarified the factual issues upon which he was basing his claims, and he was also ordered by Employment Judge Buzzard to produce a schedule of the protected acts/disclosures which he was relying upon, the detriments which he says he was subjected to, and the allegations of unfavourable treatment in his direct race discrimination claim. Counsel for the respondent, Ms Kaye, prepared a draft List of Issues based upon that schedule and the allegations identified by the claimant at the initial preliminary hearing, which was discussed at the outset of the hearing. The Tribunal spent some time on the afternoon of the first day with Mr Adam (having

spent the majority of the day reading the witness statements and relevant documents), ensuring that that List of Issues reflected Mr Adam's claim. Mr Adam requested some minor changes and Ms Kaye produced an updated list. the issues to be decided were agreed as follows:

**List of Issues**

2. Following the amendment applications discussed below, the issues to be considered by the Tribunal were agreed as follows:

Jurisdiction

2.1 Does the Tribunal have jurisdiction to hear the claimant's claims which have been presented outside of the primary time limit (s.123 Equality Act 2010)?

2.2 Is it just and equitable to extend time for presentation of the claims?

2.3 Is there conduct extending over a period which is to be treated as done at the end of the period and if so, what is that period?

Direct Race discrimination (s.13 and s.39 Equality Act 2010)

2.4 What is the less favourable treatment relied upon?

2.4.1 In or around 24 December 2018, Mr Langley refused to tell the claimant the name of the person who reported him for a medication error;

2.4.2 Mr Langley failed to investigate the medication error in a timely manner;

2.4.3 In March 2019, Mr Langley required the claimant to attend a training course he had already attended;

2.4.4 Between 10 – 17 February 2019, Mr Langley required the claimant to work additional hours (over 37.5 hours);

2.4.5 In a meeting on 13 March 2019, Mr Coyne believed Mr Langley's version of events with regards to a discrepancy in the method of reporting the alleged medication error at paragraph [2.4.1] of the List of Issues;

2.4.6 In June – July 2019 staff and service users said the food the claimant ate was smelly. Mr Doyle also said with a mocking tone that the claimant had "*skinny legs; how can I be capable of doing things*?";

2.4.7 In July – August 2019, C a person supported called the claimant a *"cheapskate*" and talked about wanting to visit "*Monkey World*". C knew the word monkey was offensive to black people and that is why she repeated it;

2.4.8 In August 2019, Mr Doyle made a remark that the claimant wore the same jacket everyday: "*Adam you have the same jacket haven't you*?";

2.4.9 On 18 August 2019, Mr Doyle shouted at the claimant to "*shut up*" during a handover;

2.4.10 On [20 August 2019], Ms Dillion sent the claimant a biased opinion before she had investigated the claimant's grievance. Ms Dillon also failed to follow the company handbook;

2.4.11 Mr Jones suspended the claimant during a telephone conversation.

2.5 Has the claimant been treated less favourably than:

2.5.1 For allegation [2.4.2] the claimant relies on an actual comparator Ms Louise Hankin;

2.5.2 For all other allegations, the claimant relies on a hypothetical comparator.

2.6 Are the actual comparators relied upon appropriate within the meaning of s.23 Equality Act 2010 in that there is no material factor difference relating to each case?

2.7 If so, was the treatment on the grounds of the claimant's race which is defined as black or can the respondent show a non-discriminatory reason for the treatment?

2.8 Is the respondent vicariously liable for the acts of its service users within the meaning of s.110 Equality Act 2010?

Whistleblowing detriment

2.9 Has the claimant made a protected disclosure?

2.10 Has the claimant disclosed information? The claimant relies on the following acts:

2.10.1 In March 2019, the claimant brought a claim in the Employment Tribunal alleging discrimination. The claimant made a complaint to the respondent about staff smoking;

2.10.2 Between 1 – 5 May 2019, the claimant reported medication to Careline;

2.10.3 On 20 May 2019, the claimant complained about working more weekend shifts (Saturday/Sunday) than other staff in whole month of June 2019;

2.10.4 On 28 July 2019, the claimant complained about C threatening to hit him. The claimant alleged C was racist prior to this and informed his manager of previous offensive remarks made by C about Gypsies. The claimant also complained about Mr Doyle's account of an incident recorded in the event tracker;

2.10.5 On 18 August 2019, report medication mistakes to Careline. That same day in the handover John was hostile because CM had been racist about other colleagues;

2.10.6 On 21 August 2019, the claimant complained that he was not allowed to administer medication but Mr Jones was a new employee and had been permitted to do so. The claimant said this was unfair and discriminatory. The claimant waited a long time to administer medication;

2.10.7 On 31 August 2019, the claimant reported C to the police for assault and because she slurred vulgar language towards him. This was also reported to Careline and the Respondent's management.

2.11 If so, did the claimant has a reasonable belief that it tended to show one of the following:

2.11.1 That a criminal offence has been, is being or is likely to be committed (s43B(1)(a) Employment Rights act 1996?);

2.11.2 That the health and safety of an individual has been, is being or is likely to be endangered?

2.12 If so, was the disclosure made in the public interest?

2.13 If so, did the claimant made the qualifying disclosure to his employer (s43C(1)(a) Employment Rights Act 1996)?

2.14 If not, did the claimant reasonably believe that the relevant failure related solely or mainly to any other matter for which a person other than his employer had a legal responsibility and made the disclosure to that person (s43C(1)(b)(ii) Employment Rights Act 1996)?

2.15 Did the claimant reasonably believe that the information and any allegation contained therein was substantially true?

2.16 In all the circumstances was it reasonable for the claimant to make the disclosure having regard to the factors set out in s43G(3) of the Employment Rights Act 1996?

2.17 Did the respondent subject the claimant to the following detriments?

2.17.1 In June 2019, made the claimant work more weekend shift (Saturday/Sunday) than any other member of staff;

2.17.2 Between 14 – 28 August 2019, refused the claimant annual leave and asked him why it was needed;

2.17.3 On 6 September 2019, accused the claimant of having inappropriate conversations with persons supported;

2.17.4 On 6 September 2019, the claimant refused to transfer and told the respondent they were victimising him;

2.17.5 On 6 September 2019, sent the claimant on annual leave with insufficient notice;

2.17.6 On 12 September 2019, Ms Badham asked the claimant to explain his absence and requested that he provide a fit note.

2.18 Did the respondent subject the claimant to the treatment set out at paragraph 14 of the List of Issues because he had made a protected disclosure?

Victimisation (s27 Equality Act 2010)

2.19 Did the following acts, relied upon by the claimant amount to a protected act within the meaning of s.27(2) Equality Act 2010?

2.19.1 In March 2019, the claimant brought a claim in the Employment Tribunal alleging discrimination. The claimant made a complaint to the respondent about staff smoking;

2.19.2 Between 1 – 5 May 2019, the claimant reported medication to Careline;

2.19.3 On 20 May 2019, the claimant complained about working more weekend shifts (Saturday/Sunday) than other staff in whole month of June 2019;

2.19.4 On 28 July 2019, the claimant complained about C threatening to hit him. The claimant alleged C was racist prior to this and informed his manager of previous offensive remarks made by C about Gypsies. The claimant also complained about Mr Doyle's account of an incident recorded in the event tracker;

2.19.5 On 18 August 2019, report medication mistakes to Careline. That same day in the handover John was hostile because C had been racist about other colleagues;

2.19.6 On 21 August 2019, the claimant complained that he was not allowed to administer medication but Mr Jones was a new employee and had been permitted to do so. The claimant said this was unfair and discriminatory. The claimant waited a long time to administer medication;

2.19.7 On 31 August 2019, the claimant reported C to the police for assault and because she slurred vulgar language towards him. This was also reported to Careline and the respondent's management.

2.20 Did the respondent subject the claimant to the following detriments?

2.20.1 In June 2019, made the claimant work more weekend shift (Saturday/Sunday) than any other member of staff;

2.20.2 Between 14 – 28 August 2019, refused the claimant annual leave and asked him why it was needed;

2.20.3 On 6 September 2019, accused the claimant of having inappropriate conversations with persons supported;

2.20.4 On 6 September 2019, the claimant refused to transfer and told the Respondent they were victimising me;

2.20.5 On 6 September 2019, sent the claimant on annual leave with insufficient notice;

2.20.6 On 12 September 2019, Ms Badham asked the claimant to explain his absence and requested that he provide a fit note.

2.21 Did the respondent subject the claimant to the treatment set out at paragraph 17 of the List of Issues because he had done a protected act?

Harassment

2.22 Was the claimant subjected to the following unwanted treatment?

2.22.1 In June – July 2019, staff and service users said the food the claimant ate was smelly. Mr Doyle also said with a mocking tone that the claimant had "*skinny legs; how can I be capable of doing things*?";

2.22.2 In July – August 2019, C a person supported called the claimant a *"cheapskate*" and talked about wanting to visit "*Monkey World*". C knew the word monkey was offensive to black people and that is why she repeated it;

2.22.3 In August 2019, Mr Doyle made a remark that the claimant wore the same jacket everyday: "*Adam you have the same jacket haven't you*?";

2.23 Was the unwanted treatment related to the claimant's race?

2.24 If so, did the conduct have the purpose of violating the claimant's dignity or creating a hostile, degrading, humiliating or offensive environment for the claimant?

2.25 If not, did the conduct have the effect set out above?

2.26 In deciding whether the conduct did have the effect, having regard to the perception of the claimant and the other circumstances of the case was it reasonable for the conduct to have that effect?

**Amendment Applications**

3. Having reviewed the updated list and having noted that Mr Adam had referred the previous day and in his schedule to harassment, we discussed whether he was seeking to also claim harassment (race). He confirmed that he was and having heard representations from Mr Adam and Ms Kaye (who objected to the application), the Tribunal considered that it was in the interests of justice to allow the application. Reasons were given at the time, including that there were no additional factual allegations and it was a re-labelling exercise.

4. Mr Adam did seek to add an additional allegation of direct discrimination, being that he was refused the opportunity to transfer to another service/premises. This was not a claim which had been brought or indicated by the claimant in any of the previous preliminary hearings, or in his witness statement. As such, having heard representations from the parties, we determined that it was not in the interests of justice to allow this amendment to his claim as it would be more prejudicial for the respondent to have to deal with a completely new allegation at this late stage, than for the claimant to have one less allegation to rely upon. We considered that the delay in making this application was unfortunate in that it could have been made at either of the previous preliminary hearings and that it would seem in any event that the particular allegation was out of time as an individual allegation, though of course the claimant was relying upon a course of conduct. This application was refused.

**Disclosure Applications**

5. The claimant also sought specific disclosure of three documents. The first of those were his "YOU CAN" appraisal prior to Ms Badham becoming his manager. The Tribunal found that that was a relevant document and as such should be disclosed and it was located and produced. The second document was a rota which indicated when the claimant and his colleague Louise Hankin, who was a comparator for the direct discrimination claim, were on shift together. In November 2018 Louise Hankin had also been reported for an issue with regard to medication. The claimant said that this matter was investigated quickly and the date by which he contends that it was dealt with would be evidenced by the rota. This was because there were only the two of them on duty and one of them had to give out medications, and Mr Adam was unable to do so. There was a query as to whether this was in the same period as the claimant was prevented from giving out medication, but this was resolved the following day. We considered that this was also a relevant document and ordered that it be disclosed.

6. The claimant also sought a copy of a particular 'event tracker' which he said would provide him with the date upon which Mr Doyle made a comment about his "skinny legs". The Tribunal determined that that would not assist either the Tribunal or the parties, as the issue was whether he made that comment rather than when he made it. He had already given indicative dates as to when the comment had been made and Mr Doyle denied making those comments. It was explained to the claimant that he could cross examine on that point and it would be a question of whose evidence was preferred.

**Witness Orders**

7. The respondent sought a witness order in respect of its witness, Rachel Badham. Having heard from Ms Kaye, Ms Badham had provided a witness statement and had confirmed she would attend the hearing as late as the Friday before the hearing. She worked for the Prison Service having now left the respondent company and it had been arranged that she would attend on Thursday 25 November. She had now said that she could not attend. It was clear that her evidence was relevant, and therefore a witness order was made for her attendance on that date. Ms Badham attended on 26 November as ordered.

8. The respondent also confirmed that Mr Danny Coyne would not be attending to give evidence. He had also left the respondent company and although he had provided a statement it was not their intention to apply for a witness order.

9. The Tribunal explained to Mr Adam the implications of Mr Coyne not being present, in that less weight would be attached to his statement as he was not there to be cross examined. Mr Adam also indicated that his own witness, Ms Nicola Dezant-Hayden had provided a witness statement but was not going to come to the hearing. Again, the Tribunal explained the implications of that for the evidence, and that less weight would be attached to that witness' evidence.

10. Mr Adam agreed to give some thought overnight as to whether any witness orders were sought in respect of either of those witnesses and would let the Tribunal know the following day. Mr Adam later sought a witness order for Ms Nicola Dezant-Hayden, which was made, but said that he did not wish to apply for an order that Mr Coyne attend. Ms Dezant-Hayden did not attend the hearing, having notified the claimant that she would not be doing so.

**Hearing Timetable**

11. The timetable for the hearing was discussed and agreed. It included one date when the Tribunal could not sit.

**Evidence and Submissions**

12. Evidence was heard from the respondent's witnesses being Richard Langley, the claimant's line manager, Reneta Davies and Natalie Evan's who considered the claimant's initial grievance, John Doyle a colleague, Debbie McMannion who considered the claimant's second grievance and Rachel Badham who became the claimant's line manager in April 2019. Generally, we accepted their evidence and found it to be reliable.

13. Mr Adam gave evidence on his own behalf. It was apparent to us from the evidence that the claimant gave during this hearing and from the documents that we viewed, that the claimant had settled and inflexible views on matters and when challenged could not explain his reasoning for them. It was clear to us that he could not accept that there may be an alternative explanation for things that occurred. He considered that others were lying if they did not agree with his view.

14. We were provided with a joint bundle of documents which was supplemented by the additional disclosure set out above together with a copy of the police report filed by the claimant which was produced by him during the hearing.

15. Ms Kaye provided written submissions and made short supplemental comments. Mr Adam did not wish to make submissions as he asked the Tribunal to rely upon the documents and the evidence we heard. He did however provide short comments upon Ms Kaye's written submissions which he was given time to consider.

**The Law**

<u>Direct Discrimination</u>

16. Section 13 of the EQA provides that:

*"A person (a) discriminated against another (B) if, because of a protected characteristic, A treats B less favourably that A treats or would treat others."*

17. Section 23 (1) provides that:

*"On a comparison of cases for the purposes of section 13…there must be no material differences between the circumstances relating to each case."*

18. Chapter 3 of the quality and Human Rights Commission Code of Practice on Employment (2011) ("EHRC") Code deals with direct discrimination.

Harassment

19. Section 40(1)(a) prohibits harassment of an employee. The definition of harassment appears in section 26, for which disability is a relevant protected characteristic, and so far as material reads as follows:

*(1) A person (A) harasses another (B) if -*

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

*(b) the conduct has the purpose or effect of:*

*(i) violating B's dignity, or*

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

*(4) In deciding whether conduct has the effect referred to sub-section (1)(b), each of the following must be taken into account -*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

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

20. Chapter 7 of the EHRC Code deals with harassment.

Victimisation

21. Section 27 EQA provides protection against victimisation.

*"(1) A person (A) victimises another person (B) if A subjects B to a detriment because:*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act —*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

*(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

*(4) This section applies only where the person subjected to a detriment is an individual.*

*(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

22. It is clear from the case law that the tribunal must enquire whether the alleged victimisation arises in any of the prohibited circumstances covered by the Act, if so did the employer subject the claimant to a detriment and if so what that because the claimant had done a protected act. Knowledge of the protected act is required and without that the detriment cannot be because of a protected act.

23. Chapter 9 of the EHRC Code deals with victimisation.

Burden of proof

24. Section 136 of EQA 2010 applies to any proceedings relating to a contravention of EQA. Section 136(2) and (3) provide that if there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A shows that A did not contravene the provision.

25. We are reminded by the Supreme Court in **Hewage v. Grampian Health Board [2012] UKSC 37** not to make too much of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

Protected Disclosures

26. Section 43A and 43B of the Employment Rights Act 1996 (“the Act”) provide a definition of a protected disclosure as follows:

*A43A(1) a "protected disclosure" means a qualifying disclosure (as defined by Section 43B which is made by a worker in accordance with any of Sections 43C to 43H.*

*s43B(1): in this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following:*

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

*(b) …*

*(c) …*

*(d) that the health and safety of an individual has been, is being or is likely to be endangered;*

*(e) …*

*(f) …*

27. The Employment Appeal Tribunal summarised the case law on section 43B(1) as follows in **Parsons v Airplus International Ltd UKEAT/0111/17**:

> **"***23. As to whether or not a disclosure is a protected disclosure, the following points can be made:*
>
> *23.1. This is a matter to be determined objectively; see paragraph 80, Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA.*
>
> *23.2. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.*
>
> *23.3. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information?; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT."*

28. The worker need only have a reasonable belief that the information tends to show the matter required by Section 43B(1) and that the disclosure is made in the public interest.

29. Sections 43C – 43G address the identity of the person to whom the disclosure was made.

Detriment in Employment

30. If a protected disclosure has been made the right not to be subjected to a detriment appears in Section 47B(1) which reads as follows:

> *"A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure."*

31. The question of what will amount to a detriment was considered in the discrimination context by the House of Lords in **Shamoon v The Royal Ulster Constabulary [2003] ICR 337**: the test is whether a reasonable employee would or might take the view that he had been disadvantaged in circumstances in which he had to work. An unjustified sense of grievance cannot amount to a detriment.

32. The right to go to a Tribunal appears in Section 48 and is subject to Section 48(2), which says this:

> *"On such a complaint it is for the employer to show the ground on which any act or deliberate failure to act was done".*

33. In **International Petroleum Ltd and ors v Osipov and ors UKEAT/0058/17/DA** the EAT (Simler P) summarised the causation test as follows:

> *"...I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:*
>
> *(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.*
>
> *(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight [2003] IRLR 140 at paragraph 20.*
>
> *(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."*

Remedy

34. Awards of compensation in claims of discrimination are governed by section 124 of the Equality Act 2010 which provides that:

> *"(2) The Tribunal may —*

*(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*

*(b) order the respondent to pay compensation to the complainant;*

*(c) make an appropriate recommendation.*

35. The Tribunal has the same power to grant any remedy which could be granted in proceedings in tort before the civil courts. Compensation based on tortious principles aims to put the Claimant, so far as possible, into the position that he/she would have been in had the discrimination not occurred, essentially a "but for" test in causation when assessing damages flowing from discriminatory acts. **Ministry of Defence v Cannock [1994] ICR 918**.

36. Awards may be made for injury to the claimant's feelings arising out of the detriments as found to be proven. The purpose of an award for injury to feelings is to compensate the Claimants for injuries suffered as a result of the discriminatory treatment, not to punish the wrongdoer. **Prison Service and others v Johnson [1997] ICR 275**.

37. Guidance was given in **Vento v Chief Constable of West Yorkshire 2003 ICR 318)** as to the appropriate level of injury to feelings awards. Reference was made to three bands of awards. Sums within the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory treatment. The middle band was to be used for serious cases which did not merit an award in the highest band. Awards in the lower band were appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

38. The bands originally set out in **Vento** have increased in their value due to inflation and, a further uplift of 10% given to general damages pursuant to the case of **Simmons v Castle [2012] EWCA Civ 1039.** This had given rise to Presidential Guidance which re-drew the bands according to when the claim was commenced.

**Findings of Fact and Conclusions**

39. The claimant commenced employment with the respondent as a support worker on 18 June 2018. He is black. The claimant's employment continued without any issues until the events of December 2018.

40. The respondent provides care to people with learning difficulties, physical disabilities, autism and mental health issues. The claimant worked at the respondent's premises known as St Michaels which is a 12 -bed 'step down' unit primarily supporting hospital leavers after a long stay in hospital to enable them to be more independent and assist them in living independently. The service users at St Michaels generally have mental health issues, learning difficulties, personality disorders and challenging behaviours.

41. Moving to our findings of fact and decision in relation to each of the specific allegations.

Direct Discrimination

42. The claimant raises the following issues as less favourable treatment because of his race.

*A refusal to tell the claimant the name of the person who reported him and a failure to investigate the medication error in a timely fashion.*

43. On 24 December 2018 Aliya Montaz, a Regional Manager on call, received a phone call from Lyndsey Hing, a colleague of the claimant, to report that one of the service users had said that the claimant had given her the wrong medication, being Ibuprofen, and other issues concerning where medication had been stored. She was told to complete an event tracker report, which she did. Medication errors were a regular occurrence within St Michael's and the normal practice was for an individual to be suspended from being able to give medication until an investigation had been completed.

44. We accept Mr Langley's evidence that he was told about medication issues by the other member of staff on duty that evening named Lucy Collins. As he knew the claimant would be concerned, Mr Langley called him on Christmas Day as he thought it was important that it was he who spoke to the claimant rather than the on-call manager even though Mr Langley was on annual leave. He told the claimant that this issue had been raised and it would need to be investigated. There was no set timeframe for the manager to look into these types of concerns. Following Mr Langley's return from annual leave, the claimant chased him regularly to find out what was happening. Mr Langley spoke to the claimant in the corridor initially and advised he was looking into it and on 18 January, having had a brief review of the event but no real investigation of what happened, he held a reflective meeting with the claimant and confirmed that he could continue to distribute medication.

45. The claimant had misunderstood Mr Langley's initial intentions and he was expecting a formal investigation as he denied he had made a medication error. This had not taken place as the matter had been dealt with informally. He refused to return to administering medication and by this time had become fixated upon who had made the complaint against him as he believed it was untrue. He pressed Mr Langley to tell him who it was who reported him, as he believed it was Lyndsey Hing, Mr Langley's partner, and that he was covering up for her. He believed that her intention was to get him into trouble because she did not like him. Mr Langley would not initially provide the names of Ms Collins or Ms Hing as the respondent's policy and practice was not to reveal the identity of those who reported medication or other errors, in order not to discourage staff from raising issues. He had however obtained the permission of Ms Collins to tell the claimant that she had raised the issue, and Mr Langley advised the claimant of this at their meeting on 18 January. The claimant did not believe him and he alleged that Mr Langley lied about who reported the medication issue to him. He came to that view as at a subsequent meeting with Mr Coyne and Mr Langley, Mr Coyne said that Mr Langley had heard from the on-call manager who was called Ms Montaz. His view was that both could not be correct therefore someone was lying.

46. One of the claimant's colleagues, Louise Hankin also had a medication issue which involved an event tracker report in respect of an incident on 15 November 2018. From the rotas we were referred to, Ms Collins was able to distribute

medication again on 20 November. As such her investigation took a shorter time than that of Mr Adam. Mr Langley held a similar reflective meeting with her and had no issues with her resuming distributing medication. In neither case does Mr Langley appear to have undertaken any real investigation. It is clear that medication issues arose regularly and if there were no serious implications and the employee understood their mistake there was no formal action taken.

*That Mr Langley required the claimant to attend a training course he had already attended.*

47. The claimant had been booked by Mr Langley to attend an external training course, which the claimant had previously attended. When the claimant found out on 11 March 2019 he called and cancelled his place. Mr Langley had booked him on the course as he had been alerted by the respondent's Learning and Development team that the claimant needed to attend. This was because they did not hold the claimant's certificate from his original course. Mr Adam had provided it to the manager at the time and it was put in the file in the office at St Michael's. It had not been passed on as it should have been. We accept that Mr Langley did not know it was there and when the claimant said he had already been on the course he had asked the claimant to provide it. Generally, we found Mr Langley's evidence on this point a little vague and without detail, and Mr Langley's initial explanation that it was a refresher course was said without any thought or investigation into the matter. At the time he also had interim responsibility for Arundel apartments and his focus was broader than just St Michael's, which may go some way to explain his lack of attention to this matter. We consider, however, that it was no more than an administrative error and the claimant was never required to go on the course.

*That the claimant was required to work additional hours during the week of 10-17 February 2019.*

48. The claimant's contractual hours were 37½ hours per week. He did work overtime when necessary. He had booked annual leave during the period from 4-14 February 2019. Generally, Mr Langley would try to prepare the rota a month in advance but sometimes this was not possible, and it would be done closer to the time. On this occasion we accept Mr Langley's evidence that the holiday was booked after Mr Langley had produced the rota for that period. Mr Adam was on the rota to work the two days after his holiday, being the Friday and Saturday of that week. As such his hours that week were an additional 25 hours. This was something which the respondent accepted was unusual but we find that this was not done deliberately by Mr Langley: it was something that happened inadvertently and which Mr Langley, who was dealing with the rotas for other homes at the time, had not realised. The claimant was aware of it but did not bring it to the respondent's attention as he believed it was something the respondent should have spotted.

*That Mr Coyne believed Mr Langley's version of events in relation to the medication issue above.*

49. At the meeting on 13 March 2019 Mr Coyne was told by Mr Langley that he had been advised by Ms Collins of the medication issue with the claimant. The claimant was adamant that this was untrue as he believed it had been Ms Hing who reported it. Mr Coyne accepted what Mr Langley said. We accept that there had been three people reporting it – Ms Montaz by way of an email to Mr Langley, Ms

Collins by a phone call to him and Ms Hing who had been asked to complete the event tracker. We were referred to the two documents and a statement from Ms Collins.

50. The claimant alleges that each of the allegations were less favourable treatment because of his race. He relies upon these as allegations of direct discrimination.

51. Our conclusions in respect of those allegations are as follows:

52. It is necessary for the claimant to show facts from which we could conclude that he was treated less favourably than his comparators because of his race. There needs to be something more than just a difference in treatment. The claimant has been unable to do this. We find that in respect of these allegations, other than the additional hours worked during the week of 14 February and the delay in investigating the medication issue, the claimant has not shown that he was subject to any less favourable treatment.

53. Mr Langley had justifiable reasons in line with the respondent's policy to withhold the name or names of the informant in respect of the claimant's alleged medication error. When he had consent to disclose it, he did so. Mr Coyne believed Mr Langley as there was a simple explanation being that more than one person made the report. The claimant was unable to accept this and even in cross examination was unable to accept that this was a possibility.

54. At the meeting with the claimant, Mr Coyne and Mr Langley the claimant did not allege that any of these issues were because of his race. The first time that he raised his race as playing a part in these matters was when he raised a grievance after the meeting on 13 March. Even at that stage there is only scant reference to his race in respect of the reason Mr Langley might be protecting his partner, Ms Hing. Although Mr Langley took longer to investigate the claimant's medication error than he did that of Ms Hankin and the claimant was rostered to work the two days in the week that he was also on holiday, there was no evidence or facts put to us which indicated that the claimant's race played any part in the decisions Mr Langley made. The claimant jumped immediately to the conclusion that all of these issues were because he was black. There is no evidence that Mr Adam has produced to this Tribunal which supports that view. The claimant has therefore been unable to shift the burden to the respondent to show a non-discriminatory reason, and as such these claims of discrimination fail.

Direct Discrimination and Harassment

55. Moving then to the comments made by staff and service users, which the claimant alleges were both less favourable treatment and unwanted conduct related to his race.

*Comments about the claimant's food.*

56. Two or three staff members worked together on a shift at St Michael's. The home had 12 bedrooms. There was an office and a kitchen where staff could heat up their meals. The shifts were up to 12 hours long and general conversation took place between colleagues and with residents both around the home and in the office.

The claimant was a vegetarian and often ate chickpeas as part of his meal when in work. Other members of staff would comment to the claimant about them. Staff and service users regularly commented about each other's food, but the claimant did not do so. He did not engage in these interactions. He could not therefore understand why people would make such comments, but we consider that it was just part and parcel of the normal way of life in such a workplace.

57. We accept that in June or July 2019 comments were made about the claimant's food which may have included comments about the smell of chickpeas. We do not see how this amounts to less favourable treatment. Comments were made generally about food. Further, the claimant was unable to explain why he considered the reference to chickpeas and its smell had any reference to his race. We also were unable to find any connection. His explanation when asked about this was that he was vegetarian. The claimant has therefore been unable to show us any facts from which it can be shown that these comments were because of or related to the claimant's race. Even if the claimant may have felt that such comments were offensive, that was not a reasonable view to hold.

58. The claims of direct discrimination and harassment in respect of that comment fail.

*Comment about the claimant's legs.*

59. The claimant alleges that Mr Doyle, another support worker, said that the claimant had "skinny legs, how can you be capable of doing things?". Mr Doyle could not remember this conversation. The claimant gave a more detailed recollection of this conversation at the Tribunal hearing. He said that the comment was made when a service user (L) was in the office and it was in relation to a conversation with him. We consider that the comment upon which the claimant relies makes no sense, even in the context described by the claimant. Although there may have been other conversations which may have been transposed into this quote, the claimant has relied upon this in his claim and it is upon this comment which we must make findings. In that regard we find that the comment, as claimed, was not made by Mr Doyle, and in any event the claimant has been unable to say why this reference had anything to do with race.

60. This claim of direct discrimination and harassment fails.

*Comment about the claimant's clothes*

61. The claimant further alleges that Mr Doyle commented, "Adam, you have the same jacket, haven't you?". This was a question which we accept Mr Doyle asked in August 2019. On balance we accept it is more likely that the claimant would recall this conversation as he appears to have been offended by it, even though we accept that it was so innocuous to Mr Doyle that he cannot recall it. The claimant said he considered that such a comment had a racist meaning or reference because black people are seen to be too hot and he considered that Mr Doyle was joking about this. We cannot see such a connection. We find that the comment did not amount to less favourable treatment and in any event the claimant has been unable to show that such comment had anything to do with his race. Even if the claimant may have felt that such comment was offensive, that was not a reasonable view to hold.

62. The claims of direct discrimination and harassment in respect of this comment fail.

*Comments by service user C*

63. We move on now to the comments alleged to have been made by the service user, C. One of St Michael's service users, C's behaviour towards all staff members was particularly aggressive and difficult. The claimant alleges that she called him a "cheapskate" and regularly talked to him about visiting "Monkey World", knowing that the word "monkey" was offensive to black people.

64. The evidence from Mr Langley, Mr Doyle and Ms Badham was that C had visited "Money World" in her childhood and her aspiration was to visit it again. It appeared in her care plan. Her interest in revisiting it had been awakened by a programme on the television called "Monkey Life". She talked to all of the staff about it and watched it on her television and the one for general use in St Michaels. There was no evidence that C talked to the claimant about the programme because he was black or that she considered the word "monkey" to be offensive to black people; she spoke to everybody about it. The claimant's view that the word "monkey" was in itself offensive to black people regardless of the context in which it was said was not a reasonable view to hold. This was a point which the claimant put forward throughout this hearing. He was clear that he considered the word "monkey" itself was a racist word. He would not accept the position that the use of the word "monkey" when referring to the animal itself was not a racist comment. This was an example of him being unwilling to accept an alternative view to that which he held. Nowhere in the claim form or in the grievance process has the claimant complained about the behaviour of C in respect of those comments, so far as we can see.

65. The first matter we must consider as raised by Ms Kaye in relation to the comments made by C is whether the respondent can in any event be liable for the discriminatory actions of the service user. Ms Kaye has referred us to sections 109 and 110 of the Equality Act 2010 which provides for the liability of employers for the actions of its employees and agents. She says that this does not include service users. We agree. We have considered the authorities to which she refers and agree with her analysis in paragraph 15 of her submissions. We have considered whether there is any wider third party liability but having reviewed the authorities in respect of that, we have concluded in this particular case there is not. In any event, we consider that if the respondent did have liability for its service users the claimant has not shown facts from which we could conclude that C's comments about "Monkey World" were said because of or were related to the claimant's race. Rather, they were an expression of her aspiration to visit the attraction. In coming to this view, we have noted that there was clear evidence that C talked to all staff about this, not just the claimant, and it was a matter which occupied much of her conversation.

66. The claimant alleges that C called him a cheapskate. The same issues arise with reference to using this comment in that there is no liability attaching to the respondent for comments made by C. Further, the claimant provided no detail or explanation as to why he thought this term had any racist connotations other than saying that it suggested an association between black people and poverty. This term in itself does not mean poverty, and we do not accept that this view is one which can be reasonably be held.

67. The claimant's claim of harassment and direct discrimination in respect of this allegation therefore fails.

Direct Discrimination

68. The claimant raises the following further allegations of less favourable treatment because of his race.

*Handover Meeting with Mr Doyle*

69. During a handover meeting in August 2019 Mr Doyle was taking the incoming staff through each of the rooms in numerical order. The claimant was keen to tell the staff about the issues with C and kept interrupting Mr Doyle before they had reached C's room number. This irritated Mr Doyle, who told the claimant to shut up. This was said in frustration at the end of a shift when Mr Doyle was ready to go home. We accept that the claimant was offended by the comment made by Mr Doyle, but he has put forward no evidence that this comment or Mr Doyle's frustrations were less favourable treatment because of his race.

70. The claimant had suggested more generally that Mr Doyle and others subjected him to treatment which although not overtly racist was motivated by his race. Again, there is no evidence to which we have been referred which supports this, and there are no facts from which this can be inferred.

71. This claim of direct discrimination fails.

*Ms Dillon's response to the claimant's grievance*

72. Turning then to the email of Ms Dillon, the first thing we should note is that in the List of Issues reference is made to the email being dated 20 August 2019 but it is agreed that the correct date is 20 September 2019.

73. When the claimant raised his grievances on 7 and 13 September 2019 Ms Dillon, who was the Regional Manager (North West), was appointed to investigate and consider his complaints. The claimant's grievances are at pages 350 and 360 in the bundle. They complain about race discrimination and unfair treatment by Ms Badham, Mr Coyne and other colleagues. He provided details of the incidents and behaviour about which he complained. On 20 September Ms Dillon wrote to the claimant (page 371) acknowledging his grievances, and although she indicated that she would be carrying out an investigation and meeting with him, she provided her opinions on some of the issues, and those opinions were premature bearing in mind that she had not yet met with the claimant to discuss his concerns or carry out any investigation.

74. The respondent's grievance procedure provides for an initial meeting with the person making the complaint before further investigation as necessary. That did not happen. In her response Ms Dillon states:

> "I am at a loss to understand why you believe you are being identified as a perpetrator and the reason for us wanting to move you is 'because you are black'."

75. Ms Dillon goes on to give her view that the claimant is not being treated any differently than any other colleague who had found themselves in the same situation.

76. The claimant says that Ms Dillon's response is bias and that her prejudging of the grievance was because of his race. He considers that a white comparator would not have had their grievance prejudged in that way. We accept that viewed objectively the response on 20 September did prejudge those elements of the grievance she refers to and provided a bias view. Further, that it was less favourable treatment in that it was reasonable for the claimant to complain about it, as indeed he did, as per the decision of **Khan v Chief Constable of West Yorkshire Police**, and it was different than what would normally occur in this situation as provided for in the grievance policy. It is not enough, however, for the claimant to show a difference in treatment, he must also show that there was something more in order for the burden to shift to the respondent.

77. In that regard we note the response from Ms Dillon on 23 September to the subsequent complaint by the claimant that she was bias. In that email (page 374) Ms Dillon confirms that she will arrange to meet the claimant and stresses that she is impartial. However, she goes on to say:

> "I would also appreciate if you would cease to continue implying that you have been victimised because you are black. I will be fully exploring this claim when you provide me with specific evidence, but until then I am not prepared to allow you to keep making accusations against colleagues without providing substantive proof."

78. This response is part of a grievance process where the claimant's complaints include his strong view that the staff had been racist. We are permitted to draw inferences from facts which we find, and the response of Ms Dillon is sufficient in our view to infer that (subconsciously at least) race played some part in the views expressed in her email of 20 September. That is therefore sufficient to shift the burden to the respondent to show a non-discriminatory reason for the less favourable treatment.

79. Ms Dillon was not at the Tribunal to give evidence and having written that email, about which the claimant quickly complained, the claimant was told that she was out of the business, and she played no further part in the grievance process.

80. Ms Dillon not being present does not allow her to provide the context or explanation of her comments or explain why she gave a view on aspects of the claimant's grievance without meeting with him or investigating, and rather jumped to the conclusion that his complaint (that his treatment was because he was black) was a suggestion that could not be sustained.

81. We note further that the comments made by Ms Dillon in her emails are contrary to the ethos and culture of the respondent which the witnesses have described.

82. The claimant was treated less favourably than a hypothetical white comparator who raised a grievance because of his race. That claim therefore succeeds.

*Alleged Suspension by Mr Jones*

83. The claimant alleges that during a meeting with Ms McMannion to consider the grievance appeal he was suspended by Dowie Jones, an HR manager, who had been asked to speak to the claimant by phone. Mr Jones produced a note of this call to which we were referred (page 291). That note does not reflect that the claimant was suspended that day. The claimant's status and reason for him not being at work had been the subject of disagreement and confusion since 6 September 2019. The claimant was refusing to work at a different service than St Michael's but would not confirm to the respondent the reason he would not attend work when the respondent had the right to tell him to move. The respondent had queried whether the claimant was taking annual leave or was signed off sick or on holiday. This was an unsatisfactory situation and matters had drifted.

84. The notes of the conversation reflect that suspension was discussed, but as a suggestion by the claimant as to what should have happened to him previously. The claimant has not therefore shown that he was suspended on 10 October. There is therefore no less favourable treatment and this claim fails.

85. That deals with the claims of discrimination and harassment.

Victimisation and Whistleblowing

86. The claimant relies upon the same disclosures as protected both in relation to his victimisation claim and his whistleblowing claim, and our findings both of fact and our decisions in relation to these are as follows.

*Disclosure/Act 1- The commencement of the ET proceedings*

87. The claimant commenced proceedings alleging race discrimination on or around March 2019. From the Tribunal's records it was May 2019, but this does not make any difference to the allegations or to our findings. Those proceedings alleged race discrimination and provided particulars of the discrimination which the claimant says he had suffered. It was accepted by the respondent that this amounts to a protected act for the purposes of a claim of victimisation.

88. In respect of a protected disclosure for a whistleblowing claim, we find that it was not a protected disclosure. The respondent says it is not because in reality it is a set of allegations. We have considered the claim which was submitted in early 2019 which is relied upon by the claimant, and agree that the issues raised in that claim form are individual allegations by the claimant about his work colleagues and the way he was treated. They do not disclose anything which could be said to be information as described in the decision in **Cavendish Munro (above)** which we were referred to by Ms Kaye. In any event there is nothing in its content which on any reading would tend to show that a criminal act has or is being committed or the health and safety of anybody is endangered.

*Disclosure/Act 2 - Smoking in the service user's designated area*

89. By an email of 14 March 2019, the claimant raised concerns that staff were smoking in an area designated for service users (page 244). The claimant had consulted the company handbook and relied upon a section which we were referred to in a separate document which was headed "Smoking".

90. The claimant's understanding of that policy was that it applied to St Michaels and that staff could not smoke anywhere in the respondent's premises. By this he understood that "premises" were the whole of the building and the grounds of St Michael's. The staff were smoking in a designated area which was outside the building but inside the grounds. He gave a further explanation of his concerns in the grievance meeting with Ms Davies.

91. Following the claimant initially raising the concern, Mr Langley suspended all staff from smoking in the designated area while he took advice from the Health and Safety Manager. This suspension was for approximately two weeks. The advice was that because St Michael's was not a home registered by CQC but rather under the control of the Local Authority, it was not therefore classed as registered. As such the same rules concerning smoking did not apply to staff or service users. The staff were then able to resume smoking in the designated area. They were unhappy at the intervention by the claimant. It is easy to see how the policy section could have led the claimant to the conclusion it did. That section is confusing, and it is only with the additional explanation provided at this hearing (that there is a difference between registered and unregistered homes) that it makes sense. The claimant was given that explanation (page 261) at the outcome of his grievance, but at the time he made the complaint he had a reasonable belief that the staff were contravening the company's policy.

92. We look therefore at whether that amounts to a protected act. The disclosure makes no reference to race or discrimination and as such it cannot amount to a protected act for the purposes of section 27 of the Equality Act.

93. We also find that it does not amount to a protected disclosure for the purposes of the claimant's whistleblowing claim. In making the disclosure we accept that it was a disclosure of specific information, however we find that the claimant's belief was that the staff were in breach of the policy rather than expressing any concern or belief that health or safety of any person was being, had or may be endangered.

*Disclosure/Act 3 - Careline reports between 1 and 5 May 2019*

94. The claimant relies upon his reports about medication issues which he says were made during that period. Careline is the Local Authority service where any issues relating to issues of concern within the premises can be raised. Any reports are investigated and a home will also make its own investigations.

95. We find again that this does not amount to a protected act. There is no reference to the claimant's race or discrimination, and this cannot amount to a protected act under section 27.

96. We also find that it is not a protected disclosure. Although there are examples of where the claimant has reported matters to Careline concerning a number of different issues (e.g. page 226), there was no specific information or evidence provided to us by the claimant as to the issues relating to medication that he reported to Careline during that period (i.e. 1-5 May) or indeed anything around those dates. There is therefore no evidence of the disclosure of information which is required by the Employment Rights Act 1996.

*Disclosure/Act 4 - Claimant complaining about being rostered to work weekends in June*

97. On 20 May the claimant complained to Mr Langley by way of a text message that he was rostered to work more weekend shifts than others during June (page 297). It states:

> "Hi Rick, you put me on every Sunday/Saturday on the whole month of June. That's not fair. Can you look it up please if you don't mind?"

98. We were taken to the rotas for the month of June and it is correct that during that month claimant was rostered to work seven out of eight Saturdays or Sundays. Other staff were also rostered to work weekends but the most were two staff who were to work five days out of the eight.

99. We considered the rotas for the preceding months and also after June and noted that although the claimant did work more Saturdays and Sundays in June than his colleagues, this was not necessarily the case when looking at a longer period. The claimant's complaint about this in May 2019 was a complaint about it being unfair and not discriminatory.

100. There was no mention of race or anything which would be sufficient to amount to a protected act within section 27 of the Equality Act 2010.

101. In respect of a protected disclosure, although the claimant was raising matters about working more weekends, he was not being asked to work any more hours and so even if that was a disclosure of information it cannot be said that he held any reasonable belief that his health and safety was endangered or any criminal act committed or likely to be. In any event, this is a personal issue only and there is no public interest element.

*Disclosure/Act 5 - Threat by C to hit the claimant*

102. On 28 July the claimant reported a threat to hit him by a service user (C). Having been threatened by C the claimant took the appropriate action and de-escalating the situation by moving away and stepping back as he had been trained. He completed an event tracker reporting the incident in which he described what had occurred. He included the comment (page 321) "she wants to hit me". Mr Doyle witnessed part of the incident and put in the report that C had said "there are times when I really feel like hitting you" to the claimant. Although the claimant claimed that Mr Doyle was not supporting him in his report, when this was explored with him in the hearing before us the claimant referred to the difference in these two sets of words as evidence of his lack of support. We consider that there is no real difference in the two versions and that it was not reasonable for the claimant to have held that view.

103. There was no reference in the event tracker or report of this incident that the claimant considered that C was racially motivated in her threat. The claimant suggests that the respondent should have known that this was his complaint because he had made that allegation about C to his manager previously, including a comment C had made about gypsies. It is clear that C is an abusive and difficulty service user, however the alleged racist nature of such abuse was not brought to the

respondent's attention until 23 August in the meeting with Ms Badham. This is against a background where the claimant was regularly raising grievances and completing detailed event trackers of incidents.

104. At the meeting on 23 August the claimant made general comments about C and her references to the skin colour of the royal baby and that his view that she would not take advice from him because he was black. He alleged at this time that she was racist. The claimant had not mentioned this allegation in his UCAN meeting with Ms Badham on 26 June where the record confirms that he had no issues with service users and does not reference racist comments or behaviour.

105. We find that there was no protected act because there was no reference to race or discrimination under the Equality Act 2010. We find that there was no protected disclosure. We consider that the reports of the incidents (both on 28 July and 31 August) concerning C were no more than allegations. They do not in our view pass the threshold necessary for the disclosure to be one of information, which is required by the Employment Rights Act 1996.

*Disclosure/Act 6 - Careline report in August 2019*

106. The claimant says that on 18 August he reported medication mistakes to Careline. Although we note that the claimant did make references to Careline in some of the event trackers about various issues, we were not referred to any detail of what was reported nor any documentary evidence in support of this particular report. There is nothing in the claimant's witness statement or claim form to assist us.

107. We therefore find that this does not amount to a protected act for the same reasons as stated previously, and in respect of a protected disclosure there is nothing upon which we can make any positive decision.

*Disclosure/Act 7 - Mr Doyle hostility*

108. From what we can understand about this alleged disclosure, it is a reference to Mr Doyle being hostile. It is not an act carried out by the claimant which is capable of protection, and so in our view it cannot amount to a protected act or a disclosure.

*Disclosure/Act 8 - Administration of medication by Mr Jones*

109. On 21 August the claimant says he complained, though he did not say who to, that he could not administer medication, but Mr Jones (a new employee) had been permitted to do so. The claimant had been signed off to administer medication in November 2018, which was approximately five months after he started.

110. There is no suggestion by the claimant that his complaint was related to or had any connection with his race, nor that he was concerned about any health and safety implications. We were not provided with any evidence as to Mr Jones' position or how long it was before he was able to administer medication. We are therefore unable to understand this particular allegation, but from what we have seen it cannot amounts to either a protected act or a protected disclosure.

*Disclosure/Act 9 - Reporting C to the police and also to the respondent*

111. On 31 August the claimant alleges he was subjected to a verbal and physical assault by C who hit him on his arm and subjected him to verbal abuse. The claimant reported it to the respondent and completed an event tracker on 1 September (page 338 in the bundle) in which he alleged that the attack by C had been racially motivated. He also reported the incident to the police as a racist attack and to Careline. We have seen the report to the police that Mr Adam provided.

112. The respondent accepts that the reporting of C to the police on 31 August and the respondent thereafter amounts to a protected act for the purposes of the Equality Act 2010, but for the reasons we have already explained we do not consider that this was a disclosure of information and therefore it cannot amount to a protected disclosure for the purposes of a whistleblowing claim.

113. We have therefore found that there are two protected acts, and these are the commencement of the Employment Tribunal proceedings in early 2019 and the complaint by the claimant about C in August 2019. There are no disclosures which are protected in respect of the claimant's whistleblowing claims, therefore our findings now in relation to the detriments only relate to the victimisation claim.

114. The claimant alleges that because he carried out protected acts he was subjected to detriments by the respondent. Our factual findings in respect of these are as follows.

*Alleged Detriment 1 – The claimant was made to work more weekend shifts than any other member of staff in June 2019.*

115. Our findings in respect of the weekend shifts are set out above. It was likely that Mr Langley prepared the rota for June rather than Ms Badham as there was a handover period and the rota was generally prepared in advance. Mr Langley had two other homes and rotas that he was responsible for at the time, and he was unable to recall why the claimant had been given those shifts to work. Weekend shifts were more difficult to fill but generally he tried to share them out fairly. As set out above, other staff did work weekends in that month, but not as many. Many staff had restrictions on when and how many hours they worked, and the rota would often need to be amended as the particular week approached. The claimant, for instance, could not work nights on the advice of his GP.

116. We consider that Mr Langley did not give the rota his full attention when he prepared it for June. He was involved with three homes at the time and he did not appreciate that the claimant was working so many weekends until it was raised with him.

117. We find that the claimant has not shown that Mr Langley was influenced to any extent at all by the Employment Tribunal proceedings. Although the claimant considered that there was a pattern of behaviour amongst staff and Mr Langley to treat him unfavourably or victimise him because of his race and because he had raised discrimination issues, we consider that he has not shown facts from which we can come to that conclusion. Although the staff, including Mr Langley, saw the claimant as inflexible and difficult and sometimes challenging to work with, there is no evidence or inferences that we can draw which demonstrate it was because it had raised the Tribunal proceedings about his race. The claim of victimisation in respect of this detriment fails.

*Alleged Detriment 2 - Between 14 and 28 August the respondent (Ms Badham) refused the claimant annual leave and asked him why it was needed.*

118. On 21 August the claimant submitted a request for six weeks' leave to commence on 16 September and last until 24 October. This was his full year's entitlement and Ms Badham was only permitted to authorise two weeks. Ms Badham met with the claimant on 23 August and explained this to him, telling him that she would need to obtain permission from her manager. She did not refuse his request then or at any time. At the meeting on 6 September the claimant was asked to explain why he needed six weeks in order that the request could be considered. He did not provide a reason and the application remained outstanding.

119. As there was no refusal to give leave, there was no detriment and the claim of victimisation fails.

*Alleged Detriments 3,4,5 and 6*

120. The next alleged detriments (and we set out the findings of fact of the Tribunal in respect of those below) are the inappropriate conversations, the refusal to transfer, being sent on annual leave without notice and the requirement to explain absence and provide a fit note.

121. At the probationary meeting with the claimant on 26 June, Ms Badham had raised concerns which had been raised with her about inappropriate conversations the claimant was reported as having with service users and staff. These were mentioned as Ms Badham had been told by some of the team that the claimant had been talking about the Tribunal proceedings he was bringing, and that Mr Coyne and Mr Langley were racist. Also, that he was having conversations with service users about news and world events which were inappropriate, and which were antagonising them. The claimant's view was that he was entitled to talk about his claim with whomever he wanted, and Ms Badham formed the view that he had no insight into the impact his conversations about world events might have upon the service users, many of whom had mental health issues.

122. Shortly after that meeting Ms Badham was approached by a colleague, Ms McQueen, who reported that she had witnessed a conversation between the claimant and a service user's visitor in which the claimant pressed the visitor to say how much money he had inherited after a bereavement. Ms Badham also received reports of further inappropriate conversations and she asked those involved to put their concerns in writing. These were from Ms Rushton, A Stewart and Ms McQueen.

123. On 20 August Ms Badham was told by a colleague that during a conversation with a service user the claimant had asked whether he would marry his cousin. He had shown the service user pictures and had said that he could arrange for her to be flown over. The service user had mental health issues and became distressed. Ms Badham was becoming increasingly concerned about the claimant's behaviour.

124. At the meeting with the claimant on 23 August Ms Badham raised these issues in addition to other matters she wanted to discuss. The claimant would not address the concerns at that meeting and instead made allegations about others, including service users, and talked about their conversations being racist. Ms

Badham was concerned about the claimant as only a short time before that he had reported that he had a good relationship with everyone.

125. On 31 August Ms Badham was told by the claimant that he had been assaulted by C. He wanted the respondent to move C from the premises. This was not possible as she had a licence to occupy the property which was her home. It was only if the police considered that she was an ongoing risk that she could be removed, and that would involve her being taken into custody. Ms Badham confirmed that the matter needed to be investigated. The claimant was unhappy that C was not removed, and Ms Badham suggested that he work at a different CIC property until the matter was investigated. The claimant refused. Ms Badham then arranged for the respondent's escalation process to be commenced and met with C's Housing Officer and C on 30 August and 4 September, and C received a warning for her behaviour.

126. On 6 September Ms Badham arranged a meeting with the claimant with her colleague, Sarah Taylor, who was the service leader at another of the CIC properties. The meeting was to discuss the claimant's inappropriate comments concerning marrying off his cousin, the incident with C and the allegations of racism. Ms Badham advised the claimant that whilst these issues were being investigated, she needed to move him from St Michael's temporarily and suggested a move to another premises, Sefton Grove. The claimant refused to move and repeated that he was being punished and that C should be moved. Ms Badham asked Mr Coyne to join the meeting and he explained to the claimant that he could not return to St Michael's until the investigation was complete. He was given the option of moving to any other of the respondent's premises. The claimant then asked if he could take six weeks' annual leave. Mr Coyne immediately authorised two weeks as the claimant refused to work at Sefton Grove.

127. The claimant raised a grievance on 7 September which included complaints about about being moved from St Michael's, that he had been forced to take two weeks' annual leave rather than being suspended whilst the investigation was undertaken, and that he wanted his annual leave to be taken from 16 September as he had originally requested, and other issues. The claimant said that he considered his treatment to be race discrimination.

128. Between 7 September and 12 September, the claimant and Ms Badham had a series of conversations by text in which Ms Badham was seeking to ascertain why the claimant was not attending work; she asked whether it was annual leave or sickness? When told by the claimant that he wanted to come back to work Ms Badham explained to him that he could not return to St Michael's at present. Ms Badham was concerned about the claimant's mental health, following the claimant's comments at the earlier meeting that he was feeling stressed and depressed. As she understood that the claimant was to see his GP after the meeting on 6 September, she asked that he produce a sick note to say he was fit to return to work. Ms Badham made it clear that the claimant could not in any event return to St Michael's at that stage. The claimant refused to accept this, and his texts became more accusatory, alleging that his treatment was because of his race and because he had brought a claim to the Tribunal and the police. The claimant remained away from work.

129. On 13 September the claimant raised a further grievance about these issues and on 16 September Mr Coyne wrote to the claimant (page 362) setting out the position to date, which included a paragraph that if he did not contact Mr Coyne before 18 September to discuss the reasons for his current absence he would be considered to have been absent without leave, which was considered a gross misconduct issue under the respondent's policies.

130. The claimant thereafter continued to raise grievances and did not return to work. His employment ended on 10 December 2019 when he resigned.

*Conclusion – raising accusations of inappropriate conversations*

131. The claimant says that Ms Badham accusing him of having inappropriate conversations was a detriment which the claimant suffered because he had brought Employment Tribunal proceedings or because he had complained about C to the police and to the respondent.

132. The initial reference to these conversations was before the report on 31 August, although they were further discussed on 6 September, which is the date about which the claimant complains. As one of the issues which Ms Badham raised was that the claimant had been talking about his Employment Tribunal claim and making further allegations about Mr Coyne and Mr Langley, we consider that this is sufficient to shift the burden to the respondent to show that Ms Badham's decision to raise these issues with the claimant was not because he had raised complaints about discrimination.

133. We consider that Ms Badham had justifiable reasons for raising these issues with the claimant, which were not in any way because of his bringing Tribunal claims or making a complaint about C and her alleged racist behaviour. These were serious behavioural matters noted by a number of staff and which were upsetting for service users and staff and it was appropriate for them to be raised with the claimant.

134. As such the respondent has shown a non-discriminatory reason for raising these issues and the claim of victimisation fails.

*Conclusion – requirement to transfer*

135. Although the timing of the report on 31 August and the decision to move the claimant may have given rise to the claimant's concerns, Ms Badham did not require him to transfer because he had made a complaint about racist behaviour. The decision to move the claimant to a different setting was to protect him and the service user whilst the investigation into the incident on 31 August was undertaken.

136. Ms Badham had a clear and justifiable reason for that decision, which was clearly explained to the claimant in the meeting on 6 September and in correspondence after the event. It was in line with the respondent's own practices and procedures and it had a contractual right in any event to move the claimant. This claim of victimisation also fails.

*Conclusion – sending the claimant on annual leave with insufficient notice*

137. There are no facts from which we can conclude that the decision to require the claimant to take leave from 7 September was because he had made a complaint about racism or racist behaviour in the form of the protected acts.

138. At the meeting on 6 September the claimant's wellbeing was of concern to Ms Badham and he was refusing to move temporarily to another service. He was asking for six weeks' holiday. Ms Badham and her colleagues saw the decision to grant the claimant an immediate period of two weeks' holiday as a way to resolve what was a problem in a way that they thought was of benefit to the claimant. It was only the following day that they realised that the claimant had not wanted to take his holiday immediately. By that stage the claimant was continuing to refuse to move to the other premises and there was a period where it was unclear why he was not in work.

139. There was nothing which the claimant has been able to show to us which suggests that the decision was because of the protected acts. That claim therefore also fails.

*Conclusion – claimant being asked to explain his absence on 12 September 2019 and requested to provide a fit note*

140. It was a detriment to the claimant to have to demonstrate to the respondent that he was fit to work. He has not however shown us anything which could link that with his complaints about discrimination. As set out in our facts above, there was confusion at this time about the reason for the claimant's absence from work. He was refusing to attend the alternative CIC premises; he was not stating whether he was sick but had agreed on 6 September to see his GP; his behaviour was irrational.

141. There was, however, nothing put forward by the claimant which suggests that the reason Ms Badham asked for that fit note or asked the claimant to explain his absence was because he had raised allegations of discrimination. This claim of victimisation therefore also fails.

**Time Issue**

142. The remaining issue which we must consider is whether any proven claim was presented outside the requisite time limit set out in the Equality Act 2010.

143. Any acts which occurred before 2 September 2019 were presented out of time. The only issue which we have found proven was that of the allegation of direct discrimination in relation to Ms Dillon. This occurred on 20 September 2019 and as such we find that claim was in time.

**Remedy**

144. The claimant succeeded in respect of one allegation, that being the finding of direct race discrimination by Ms Dillon's response to the claimant's grievance on 20 September 2019.

145. We heard further evidence from the claimant concerning the impact that the act of discrimination had upon him, and we have also been referred to documents which are in the form of medical GP notes and also a brief letter from his GP.

146. Within his Schedule of Loss, the claimant has set out three heads of loss in respect of which he is seeking an award. These are injury to his feelings, his loss of earnings and compensation for personal injury.

Injury to feelings

147. It is appropriate that an injury to feelings award is made in this case. We consider that it was a one-off act by one individual, and it should fall in the lower band of the Vento awards. In this case we consider that it should be towards the top of that band.

148. The discrimination in this case was the act of a Regional Manager, a senior manager in the respondent organisation, and as such a person who has a duty to ensure and maintain confidence in policies of the organisation. We do not consider, as suggested by Ms Kaye, that the award we order should be compared to awards made for a one-off comment in an email. We consider that the grievance process itself is one in which an employee is entitled to have confidence, and the act of Ms Dillon, compounded by her dismissive response on 23 September when the claimant raised his concerns about the prejudging of his grievance, showed a serious disregard for the policy under which employees should be entitled to have confidence in order to seek redress and caused the claimant hurt and anxiety. This is particularly the case when the organisation is one which sets out to care for and support the most vulnerable people in our society, and whose culture and ethos is very much contrary to the action which was taken by Ms Dillon. This had a clear negative impact on the claimant who explained that in Ms Dillon 'jumping to conclusions' and her bias response to his grievance has made him think everyone is racist towards him. He has found this view difficult to remove from his mind and this was apparent in some of the evidence given by the claimant during the Tribunal hearing.

149. An injury to feelings award is to compensate the claimant. There is clear evidence that the claimant was impacted by the series of events within his employment which started in December 2018. He has been diagnoses with depression and anxiety for which he is prescribed medication. From his GP records and the evidence we have been referred to, although it cannot be said that Ms Dillon's actions caused his anxiety, there is evidence that on 1 October, a week or so after the discriminatory act, the claimant was provided by his GP with advice and information about harmful thoughts, and on 4 October he advised his GP that his medication was not working. We accept that his stress and anxiety increased following Ms Dillon's response on 20 September.

150. Although we are obliged to take into account the fact that it is not just Ms Dillon's discriminatory act which has caused the claimant's anxiety and injury to his feelings, and indeed his worry and emotional upset, it clearly played a part at that particular time.

151. For those reasons we consider that an award should be made at the top of the lower band, and we make an award of £9,000.

Financial Loss

152. We cannot say that it was Ms Dillon's discriminatory act which caused the claimant to resign in December 2019 and therefore suffer losses. There was an intervening event, being the grievance, which was considered by Ms McMannion. Although we note disappointingly that she did not give the claimant a response to his grievance before he resigned, that was not an act of discrimination nor indeed ever put forward as a complaint by the claimant. As such, no financial losses flows from Ms Dillon's discriminatory act in September 2019 and no award is made.

Personal Injury

153. There has to be clear medical evidence which shows that the discriminatory act has caused specific personal injury. Although we have been referred to some GP records covering a brief period of time, and a very short letter from the doctor, there has been no other medical evidence produced to us. The claimant has not been able to show that any personal injury has been caused by the discriminatory act, and no award in respect of personal injury is made.

Summary

154. The award is one of £9,000 in respect of injury to feelings. We are obliged to consider whether interest should be payable, and we have awarded interest which we calculate to be £1,560, being an award of 8% per annum for two years (£720 x 2) and a further two months (£120). Total interest of £1,560.

155. The total award is £10,560.

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Employment Judge Benson

Date: 25 March 2022

REASONS SENT TO THE PARTIES ON

7 April 2022

FOR THE TRIBUNAL OFFICE