EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Samra	v	**London Borough of Islington**

Heard at: Watford **On**: 27, 28 and 31 January and 1 to 4 February 2022

Before: Employment Judge R Lewis
Members: Mrs J Hancock
Mr P Miller

Appearances

For the Claimant: In person
For the Respondent: Mr L Davidson, counsel

REASONS

Introduction

1. Judgment was given orally at the end of the hearing and sent out in writing on 26 February. All claims were dismissed. On 9 February the respondent requested reasons in accordance with rule 62. Delay then arose for a number of administrative reasons.

Privacy

2. This was a public hearing. In the evidence we heard at length about three Islington residents. No member of the public was present at this hearing, and the names of the three residents were used in evidence and at the hearing. All three were users of services provided to vulnerable members of the community, and the evidence touched on personal and intimate information about all three, including health and social circumstances. As this judgment will be a public document and posted online, it seems to us that the privacy rights of all three outweigh any public interest in their names being published. We refer to them as follows:

   2.1. A was referred to in the claimant’s email of 28 April and spoken to later about a GDPR matter;

   2.2. X was the recipient of the claimant’s letter of 7 May, and was referred to as X in internal inquiries at the time;

   2.3. Z was the author of a complaint about a safeguarding matter.

3. In order to avoid "jigsaw" identification we use gender-neutral pronouns to refer to all three; and we limit quotation in these reasons from either the claimant's email of 28 April or his letter of 7 May, although both should be read in full.

Executive summary

4. We think it will assist if there is a short executive summary. We say so because we understand that this is a case about public service, and that this judgment, when posted online in accordance with normal procedure, may be read by colleagues, service users or residents, and others within the respondent. These reasons are nearly 14,000 words long, and the paperwork before this tribunal ran to some 2,000 pages.

5. The claimant, who was born in 1967, and is of Indian origin, went into local government service at the age of 18, and remains in it, nearly 37 years later. His career before the events in this case was unblemished. He worked in community development. In spring 2019 he was on a protracted secondment, working at the Hub at Finsbury Park, and reporting to Mr Muir. The service was under pressure because of public demand and insufficient resources. A number of incidents took place in late April and early May 2019. They concerned residents whom we anonymise as A, X and Z. Items written by the claimant indicated that the claimant had breached A's data protection rights; that he had written in inappropriate language to X; and had failed to process a written complaint from Z about safeguarding, in accordance with Islington's procedures.

6. On the first point, Mr Muir determined that while there had been a data protection breach, in all the circumstances, including A's views, it warranted no further action by the council. On the second, Mr Muir instructed the claimant to apologise in writing to X, (who had written to complain about the claimant's letter to them) and provided him with a draft template letter for his own adaptation. The claimant failed to do so.

7. As a result of this failure, and of the Z matter, Mr Muir referred the claimant's actions for disciplinary investigation. Mr Jenner conducted a prolonged investigation including two lengthy interviews of the claimant in the company of his trade union representative. After considerable delay, (not of Mr Jenner's making) Mr Jenner reported that a disciplinary hearing on the basis of gross misconduct should proceed. The hearing was conducted by Ms Eden, who found that the claimant had committed misconduct (not gross misconduct), and issued a final written warning of 18 months duration. The claimant appealed. At the appeal Ms Littleton upheld the finding of misconduct but reduced the final written warning to a written warning, and its duration to 9 months. The claimant had meanwhile submitted grievances about his management by Mr Muir. The grievances were heard and rejected by Mr E Lewis. The claimant appealed, and his appeal was heard and rejected by Mr Townsend.

8. At about the same time as Mr Jenner was investigating, the claimant applied for and was interviewed for a PO6 post which arose on restructuring. The

interview panel consisted of Mr Muir, Ms Murphy, and Mr Logeswaran. The same panel interviewed six candidates and scored them. The claimant ranked sixth on scoring. He made a number of complaints about racial discrimination by Mr Muir in the arrangements, organisation and outcome of the appointment process.

9. The tribunal has rejected all the claimant's complaints that in his management of any of these events, and in a number of management matters which preceded them, Mr Muir discriminated against him on grounds of race. The claimant made complaints of racial discrimination by Mr Jenner in his conduct of the investigation, and in his responses to the grievance process. The tribunal has rejected all the claimant's complaints that Mr Jenner discriminated against him in the manner in which he investigated and dealt with his responsibilities.

10. Our <u>overarching</u> finding, which applies to all issues, is that we find that race was not a factor in any respect whatsoever in any of the events in this case, or in anything said, written, done or decided by Mr Muir or Mr Jenner (or anyone else of whom we heard) at any time. Any reference in this document to our overarching opinion or finding refers to this paragraph.

11. The tribunal acknowledges the truth of a remark made by Mr Muir at the end of his evidence when he said that there will be some who, not knowing the detail of this case, say that there is no smoke without fire. For that reason, when we gave judgment, the tribunal said, and we repeat, that this <u>is</u> a case of smoke without fire. We also said, and we repeat, that one allegation about which we heard in some detail, which was that X's letter to the respondent of 8 May 2019 was a forgery written by Mr Muir, is absurd.

Procedure before this hearing

12. Day A was 3 September 2019 and Day B was 3 October. The claim was presented on 1st November. The claimant has at all material times acted in person. Case management hearings took place on 26 January and 2 March 2021 before Employment Judge George. Her Case Management Order was a crucial item in the bundle (82-84). It expressed the claimant's case in terms of 18 issues. We regarded it as definitive. The present hearing dates were set on 26 January 2021.

Procedure and case management at this hearing

First day

13. At the start of the hearing, the tribunal met face to face with the claimant , Mr Davidson and Ms Parker, his instructing solicitor. The parties had exchanged witness statements. The claimant's statement was the only statement on his behalf, and the respondent had provided six other witness statements. The statements were from:

- Mr J Muir, previously the claimant's line manager;

- Mr A Jenner, previously Head of Income and Home Ownership, who had investigated the disciplinary allegations against the claimant;

- Ms K Hamblis, HR Employee Relations Specialist;

- Ms J Murphy, Director, Homes and Community and Safety, who had been Mr Muir's line manager, and a member of the recruitment panel;

- Ms L Eden, Director, Safeguarding, who had heard the claimant's disciplinary case.

- Mr E Lewis, Assistant Director Resident Experience, who had investigated the claimant's grievances.

14. There was an agreed main bundle of about 1800 pages. The bundle contained a second bundle, submitted by the claimant, numbered 1,802 to 1,872. It contained documents generated in the period 8 September 2021 to 4 January 2022.

15. The tribunal dealt with case management for the first morning, and then adjourned for reading. The following matters were dealt with.

16. The parties were reminded that the entire hearing proceeded in public, and was accessible to the public in person, or if being conducted remotely, by CVP. The tribunal advised the parties of the Ministry of Justice practice of posting judgments with reasons online, and of steps to be taken to preserve the privacy rights of the three residents / service users.

17. The judge emphasised the need to adhere to the list of issues finalised by Judge George. He stressed that other matters, even points about which there were strong feeling on both sides, or on which evidence had been presented, were not before the tribunal, and therefore need not be the subject of cross examination.

18. In reply to a question, the parties confirmed that judicial mediation had taken place. They were reminded that everything said at mediation was confidential.

Expert / adjournment

19. The first significant matter related to a handwriting expert. The bundle contained (912 to 913) an important letter which according to the respondent was sent to it by X. The claimant considered that the handwriting looked like the handwriting of Mr Muir, allegedly the major discriminator in this case, and one of two lead witnesses whose statements were before the tribunal.

20. In correspondence the claimant had asked for the appointment of a joint handwriting expert to prepare a report. Judge George had accepted that this application had not been identified or answered.

21. The claimant explained that he had obtained an estimate, which was that a report would cost about £1,500 plus VAT. The Judge explained that his understanding was that an expert would examine the document in question, preferably the original rather than a photocopy (which we understood the parties agreed was available and in the possession of the respondent); and compare it with a handwriting sample provided by Mr Muir. (The Judge briefly raised the question of whether the tribunal's powers under Rule 29 extended to requiring Mr Muir to furnish a sample, Mr Muir no longer being employed by the respondent).

22. Mr Davidson submitted that the claimant's allegation was inherently implausible. He submitted that the point which the document raised was relatively minor secondary evidence, and of little relevance.

23. The tribunal explained that the proposal which the claimant had advanced in writing, namely that the tribunal proceed for seven days and then adjourn part heard, possibly to resume in light of the expert's report, was not acceptable as it might require witnesses to be recalled. The request could only be accommodated therefore if the claimant applied to adjourn. It was explained that the next available date for a case of this length would be in 2023. The tribunal took a break for the claimant to reflect on the matter, and he confirmed that he wished to proceed with the application to adjourn this hearing so as to pursue the instruction of the expert.

24. The tribunal explained that it had no power to order an unwilling party to contribute to the costs of a joint report. The correct procedure would be for the claimant to obtain a unilateral report at his own cost, and then submit it to the tribunal with a request that it be admitted as evidence. The claimant understood this point.

25. The tribunal refused the adjournment. We did so for a number of reasons. We noted that this claim had been presented 26 months previously. The claimant had had ample time to prepare and take advice, and it was his responsibility if he had not properly prepared this part of the case, even allowing for the failure of the tribunal to identify the request made in September 2021.

26. We also thought the application to be speculative, and that Mr Davidson's description of the point as implausible sounded well-made. At the time in question, Mr Muir had been a senior employee of the respondent for three or four years. There was every risk that in submitting a forged document to his own employer, somebody would recognise his handwriting. Forgery is a criminal offence, and potentially career ending for a senior public servant. We thought it implausible that Mr Muir would put his career (perhaps even his liberty) at stake, to do something which was foolish, high risk and unnecessary. We set out our findings about the evidence on this point at paragraphs 97-99 below.

Appraisal records

27. The second point was the claimant's appraisals between 2017 and 2019. It was common ground, unlikely though it sounded, that although these documents existed, the respondent could not retrieve them because of a change or upgrade in its IT provider. The respondent agreed that the appraisals which could not be retrieved were good; the claimant wanted verification that they were very good or even better. It was explained by Mr Davidson that at considerable cost, the claimant's appraisals might be retrievable at the end of the following week (but that this could not be guaranteed).

28. The claimant did not apply for adjournment to obtain these documents but obtaining them would be a side effect of adjourning for the handwriting expert. We did not think it proportionate to pursue the point, given the common ground about the quality of the appraisals; but we do express our surprise that the respondent appeared unable to access possibly thousands of past appraisals (we appreciate that there may have been other information about this, which was not part of this case).

Other practical points

29. At the claimant's application, the tribunal had issued a witness order in respect of Ms Holdsworth, currently employed by the respondent as a Director. There was no witness statement from her, and it had been agreed before this hearing that she could give evidence remotely. After hearing an explanation from the tribunal about the procedure for taking the evidence of a witness who may be reluctant or even hostile, and from whom there is no statement, the claimant after a short adjournment stated that he no longer wished to call Ms Holdsworth. The witness order was discharged, the respondent to inform Ms Holdsworth that this had happened.

30. There was discussion on whether the case should proceed face to face or hybrid. The claimant, on reflection, kindly agreed with the proposal that the tribunal could hear from any of the respondent's witnesses by video (CVP). That being so, we left it in the discretion of the respondent, counsel and the witnesses as to how they took part. Mr Muir and Mr Jenner both gave evidence in person. The respondent's other witnesses gave evidence remotely.

31. The final matter was timetabling. In order to make best use of time, the tribunal limited this hearing to liability only. There were 18 separate allegations, only one of which appeared to have a loss of earnings potential. However, it did not seem to us feasible to deal with injury to feeling, on which the claimant had served a high schedule of loss, on the basis of any number between 1 and 18 separate allegations succeeding. The parties agreed.

32. We provisionally timetabled therefore on the basis that the claimant's evidence would last from noon on Friday until close of business on Monday; the evidence of Mr Muir and Mr Jenner potentially one day each; and the respondent's other four witnesses, a fourth day. That would mean closing

submissions on the last listed day and the tribunal arranging deliberation meeting days in the absence of the parties after the allocated time.

Second and third days

33. On the second day of hearing, the tribunal continued reading and the public hearing resumed at 12. It continued on a hybrid basis, with Mr Davidson, the claimant and the tribunal present, and a number of the prospective witnesses observing remotely.

34. The claimant gave evidence from the advocate table not the witness table, and the tribunal agreed, with Mr Davidson's consent, that the claimant could work from his own set of the bundle and of his statement, which he had marked and highlighted. The tribunal took regular breaks, as we scheduled them, and on request.

35. The claimant asked, before giving evidence, whether he could speak further to his evidence. It seemed to us in the interests of justice to allow him to give an introductory statement, reflecting his state of understating and preparedness at the start of the hearing. The claimant spoke for 15 minutes, giving a useful personal introduction of his working life before the events in question. He confirmed that the only allegations of discrimination were against Mr Muir and Mr Jenner. He referred to two other employment tribunal cases involving the respondent, one (Walsh) brought and determined in September 2021 at London Central; and another, which he understood to have been settled shortly before the start of this hearing at Watford. After reading the Walsh judgment and reasons, the judge advised that it did not appear to have sufficient overlap with any of the events before this tribunal to be of assistance. (It was a case about reasonable adjustments for disability, with no overlap with the decision makers in this case).

36. During this introduction, the claimant said that between 1989 and 2001 he had been employed within the Housing Department of the London Borough of Camden. So far as the Judge was aware, there had been no previous reference to this, and on it being made, the judge informed the parties that over those years, he had been a solicitor in private practice in London, and had on a number of occasions advised and represented the London Borough of Camden in employment matters and employment tribunal proceedings. He said that he had no knowledge or recollection of ever having come across Mr Samra. He offered any further information which the parties might request. There was no further request or reference to the point.

37. Throughout the claimant's evidence it was necessary for the judge to intervene during answers. The claimant had been reminded, at the start of his evidence, to keep answers concise; to answer only the question he was asked; not to make speeches in answers to questions; and to say if a question was unclear, or if the truthful answer was that he did not know or could not remember an answer. The claimant was often asked questions to which the answer was yes or no, but which he answered with a long

digression. He repeatedly began an answer with what sounded like the answer to the question and then veered off on a tangent. Similarly, when asked about a specific matter, he began what he thought would be a lengthy answer with a digression about background events.

38. The claimant was cross examined from 12.40 until 1pm and from 2 until 3.50pm with a short break. He was released from oath during breaks and over the weekend. The claimant gave evidence in cross examination for the whole of the third day of hearing, Monday 31 January.

Respondent's witnesses

39. The respondent had served six witness statements. In the course of the hearing, the claimant told the tribunal that he understood that he was required to put questions to all of them. The tribunal explained that that was not the process, and that if he were prepared to agree that the written statement of any witness could be taken as read, unchallenged, the witness need not attend and he would not have the opportunity to put questions. On that basis, the claimant stated that he had no questions for Ms Eden (the first line disciplinary officer, who had imposed an 18-month warning); or Mr Lewis (who had rejected his grievance). He was given time to reflect and was under no pressure to agree any statement of any witness.

40. The tribunal therefore followed the timetable that Mr Muir gave evidence for all of the fourth day and Mr Jenner for all morning on the fifth day. On the afternoon of the fifth day, the only witness was Ms Hambis. She had been HR business partner, and had therefore advised during the relevant procedures, but could not give evidence of decision making in which she had not been involved. She was also able to give some general advice about Islington practice on the basis of many years' service within the borough.

41. The claimant put to her statistical questions about the pattern of disciplinary action against employees. While the tribunal could not make any formal order, it was agreed that the respondent would use best endeavours to obtain statistical information overnight, which could be put to the final witness, Ms Murphy, on the sixth day of hearing.

42. This was found to be unsatisfactory and incomplete for our purposes. The respondent was able to produce overnight limited information showing the number of gross misconduct cases brought in each of the years 2019 and 2020, broken down into ethnic categories. Ms Murphy was at pains to explain that this was the information which could be gathered overnight, and was by definition incomplete, due to incomplete record keeping within the respondent, both of disciplinary cases, and of ethnic monitoring. As she explained, ethnic monitoring depended on self-designation and completion of online information, and therefore was likely to under-represent manual staff whose normal daily work did not bring them into contact with IT. We were grateful to Islington staff who had clearly done their best to comply with the tribunal's request at the last moment. We accept that the information

was incomplete, and the statistical samples so small, that little could be drawn by way of inference.

43. On the sixth day, Ms Murphy was the final witness for just over an hour. After an adjournment, the tribunal heard Mr Davidson's closing submissions, in which he spoke to a written skeleton which he had produced that morning. He assured the tribunal that although the claimant had been given a written copy late, the written version contained nothing that would not also be in his oral submissions, so the claimant would not be disadvantaged in dealing with the information.

44. We record for the sake of completeness that during Mr Davidson's submissions, the CVP system failed, so that Ms Parker and Ms Murphy were unable to continue watching. The tribunal asked the claimant and Mr Davidson if they agreed to continue and they did. The system was restored after a gap of about 20 minutes. Mr Davidson used the allocated hour for his submissions, after which the claimant asked for about 1 hour 45 minutes to finalise his response. The tribunal readily agreed to this, after which the claimant addressed the tribunal for about an hour in closing. Judgment was given at a fully CVP hearing the following day, and neither party then requested reasons.

General approach

45. We preface our findings with a number of general points.

The tribunal's approach

46. In this case, as in many others, the tribunal was referred to a wide range of points. Where we make no finding on a point of which we heard; or where we do make a finding, but not to the depth to which the parties or witnesses went, our approach is not a matter of oversight or omission, but rather a true reflection of the extent to which the point was relevant to our task. While the previous remark is made in many cases, it was particularly important in this case. We say so because the claimant's preparation had not led him to focus analytically on the 18 issues before us.

47. When we analyse the evidence, we aim to do so to a standard of realism. A standard of realism is, we hope, the standard of reasonable people in an everyday workplace, dealing with everyday situations. We do not expect of any person a standard of perfection; when human beings go to work, they make mistakes. Not every conversation is well expressed, not every letter or email is well written. No one goes to work with the benefit of hindsight, or with the gift of being able to foresee the future, and no one should be criticised on either basis.

48. The tribunal is familiar with the difficulties faced by members of the public who represent themselves. The procedure and technique of the tribunal are unfamiliar, and the language may seem remote. It is the tribunal's duty in every case to identify any difficulty of that type and consistent with its duty of fairness and even-handedness, to enable a potentially disadvantaged party

to work around it. We have been told that the claimant is dyslexic. The tribunal sought to help. Timing and breaks were the most obvious means; without objection from Mr Davidson, the claimant used his own marked and highlighted copies of the bundle, his witness statement, and notes when giving evidence, and gave evidence from the advocate tables rather than the witness table. As the claimant attended alone throughout, he was automatically released from oath at every break. In particular, after Mr Davidson's closing submission, and allowing for lunch, the tribunal adjourned for almost two hours to enable the claimant to finalise his reply. We saw no sign that the claimant was at a disadvantage when managing the bundles.

49. In closing and seemingly for the first time, the claimant used language which, truly analysed, represented a claim of s.27 victimisation. We did not address the point, and simply record that this case proceeded entirely as directed by Judge George on the basis of s.13 direct discrimination. (The specific was that the claimant in closing appeared to allege that the treatment of which he complained on 3 June, 597, was a consequence of the complaint which he had made shortly previously, 590).

50. Making all of those allowances, this case came on for hearing 26 months after it was presented, 12 months after the first case management hearing, and 10 months after the second. The claimant had had ample time to reflect and prepare. We understood him to continue to be a member of a major trade union, and he stated that he had access to legal advice (although we accept that the cost of private representation at a case of this scale would have been significant).

51. While the tribunal does not expect a member of the public to conduct a case to the standard of a solicitor or barrister, it does expect preparation by thoughtful reflection and analysis. The claimant showed little sign of having engaged in that process. His conviction that he had done nothing wrong in May 2019 was unshaken by the number of occasions on which different senior managers had taken the contrary view. He had not understood or analysed the issue of comparison in discrimination, or the requirement (set out more formally in section 23) that any comparison must be on a like with like basis. The claimant therefore took the superficial comparison of a white gay colleague in a similar role. But that comparison fails at the threshold, because the most obvious material consideration in any comparison must be between the claimant and anyone else who did what he did. That element was lacking from the claimant's understanding and analysis.

The claimant's approach

52. In this section of the judgment we set out the factors which, taken cumulatively, after several days of the claimant's evidence, cross-examination and submission, lead us to the firm conclusion that his analysis of the events before us is unreliable, and that of the respondent to be preferred. We do so, not to criticise the claimant gratuitously, but because, taken together, these factors explain why he has lost this case. We do not set out the factors exhaustively, or in order of priority.

53. The claimant's presentation showed many signs of emotion at the expense of objective reflection; and of conviction to the point of fixation. The claimant's apparent fixations troubled us because they were the strongest indication of the unreliability of his analysis. We give two principal examples. The language with which he spoke about Mr Muir on occasion conveyed hatred. He took many opportunities to put forward a wide range of criticisms of Mr Muir's competence and professionalism. A particular example was the claimant's conviction that Mr Muir was the forger of the document at page 912. We have set out separately (a) at paragraphs 19-26 above our reasons for refusing to adjourn to obtain a handwriting expert's report; and (b) at paragraphs 97-99 below our conclusions on the evidence about the forgery allegation.

54. We take the alleged forgery as the extreme example of what we see as the claimant's tendency to fixate. There were other examples of points with which the claimant appeared passionately engaged, although to us they appeared minor, or not relevant or helpful. We cite as examples: (a) We could not understand why the claimant thought that Mr Muir's management of the GDPR allegation helped his case. It did not: on the contrary it showed that Mr Muir managed a problem thoughtfully and sensitively. (b) It was not the role of this tribunal to give the claimant the opportunity to question Mr Muir and Mr Jenner about their new jobs with another authority. (c) The claimant had no reason in closing to say that Mr Jenner's answer to those questions was untrue; he had no basis to challenge what Mr Muir wrote about his professional and personal CV outside this case; whether or not Ms Murphy is a Justice of the Peace was not a relevant consideration to this case; and while we can understand that at first sight the fact that Islington lost the Walsh discrimination case relatively recently at the London Central Tribunal might appear useful, a reading of the judgment shows that it was factually as different a case from this one as it is possible to imagine.

55. Inadequate analysis gave rise to the recurrent problem in this case of the claimant introducing complaints claims and allegations which went beyond the issues, involved other people, and involved professional issues which might be the subject of grievance but were not claims of race discrimination.

56. Causation was a significant issue in this case. When expressly asked to address it during closing, the claimant repeated that he had been treated differently and felt strongly about perceived discrimination; but could point to no objective evidence which could draw any link between the protected characteristic of race and any detriment complained of.

57. The claimant pursued points which we call "damned if you do, damned if you don't" points. We mean by this that on occasions where a manager made a choice, the claimant attacked the choice as wrong or discriminatory; when it seemed obvious to us that if the manager had made the alternative choice, the claimant would make the parallel criticism of that choice. A striking example was that the claimant and his union had asked Mr Muir to stand down from the selection panel which interviewed the claimant. The respondent took the view that Mr Muir had to be on the panel, as Chairman, because he had led on the recruitment and would be Line Manager of the

appointee. In recognition however of the claimant's concerns, it was decided that Ms Murphy, who was then Mr Muir's Line Manager, would also be on the panel. Mr Muir and Ms Murphy both gave evidence that there was an element of discomfort in the panel being chaired by a person (Mr Muir) who was the direct report of another panel member (Ms Murphy). Mr Muir gave evidence that the power dynamic did not feel quite right. Repeatedly at this hearing the claimant criticised that Mr Muir did not leading the panel and "abdicated" his responsibility as Chair. It was not logical or consistent to complain that Mr Muir failed to lead the panel from which the claimant had tried to remove him.

58. The claimant's approach manifested denial of responsibility, and a failure to understand, with hindsight and reflection, the need to analyse his own actions and to accept legitimate criticism. This went much further than mere inflexibility. Another instance was that he repeatedly criticised Mr Muir for not responding to his email of 28 April by preventing him from writing to X (see paragraph 92 below). He repeatedly cross-examined Mr Muir on "failure" on his part. The claimant did not understand what poor judgment on his part this showed. He did not see that when managers deal with a colleague's shortcomings, they attach high value to acknowledgment of responsibility for one's own actions, and reflection on them, as a means to demonstrate insight, and therefore a reduced likelihood of recurrence.

59. The claimant spoke at some length about the emotional impact which he felt in response to the words or actions of others, but showed little understanding of the extremity of his own language. He used sharp language to and about X. He spoke about X and Z in terms which implied that their behaviour was such that they had forfeited any entitlement to be treated with consideration or respect. He put to us in terms that Mr Muir failed to support his operational service on grounds of race. That allegation meant that Mr Muir was content to see service users served inadequately, and deprived of access to the Council's services, on grounds of racial animosity against him, the clamant. The tribunal would require compelling, cogent evidence of such extreme conduct, and there was none.

60. The claimant spoke of what he described as a culture of denial within Islington and within his team in particular. He spoke of institutional racism within the Communities Team, a culture of cronyism, and layers of white middle class management, all of which he claimed to be a particular problem within Community and Housing. He answered questions about "culture" and "institutional racism" without specific instances. He agreed that the respondent has appropriate equality procedures, and that job descriptions and management training factor in issues of equality and diversity. He agreed that the respondent has a Code of Conduct and a grievance procedure and an active well organised trade union presence.

61. The claimant's use of the word 'culture' brought to mind the caution expressed by Underhill J (as he then was) in HSBC Asia Holdings v Gillespie UKEAT/0417/10 at paragraph 20, emphasis added:

> Mr. Craig's essential case is that the relevance of the background allegations is not that they cast light directly on the conduct or motivation of individuals against whom allegations are made in para. 20 but that – as pleaded in para. 24 – they "reflect a culture within the organisation in which discrimination is wide-place [*sic*: this is a neologism, but not a bad one, conflating, I presume, "widespread" and "commonplace"]". It is unnecessary when one reads the word "culture" in this context to reach for one's revolver, but it is nevertheless an imprecise term, and it needs to be appreciated how an allegation of a "discriminatory culture" fits into the proper legal approach. In a case of (direct) discrimination the ultimate question will always be whether the claimant was treated in the way complained of by one or more individuals on the proscribed ground (or – as we will soon be saying – because of the protected characteristic). Where there is a dispute about whether the particular acts complained of occurred, or whether they were done with a discriminatory motivation, proving that (say) sexist behaviour or talk was common in the workplace, which is essentially what a discriminatory "culture" means, may well assist in the determination of that dispute (though it should not be allowed to distract the tribunal's ultimate focus from the particular acts complained of). In harassment cases it may also be relevant in another way, in as much as "a discriminatory culture" may be an acceptable synonym (though synonyms are best avoided so far as possible) for the statutory language of a "hostile, degrading, humiliating or offensive environment".

62. There was a recurrent tension between the claimant's use of generalised language, and the specificity required by the tribunal, as shown in the list of issues. There were countless examples. Although the claimant referred to Islington having a culture of institutional racism and fear, he could not cite a single specific example or event to make good the point. When speaking about Mr Muir, he repeatedly used generalised critical language without specifics. He referred to Mr Muir's tone, manner, demeanour, and body language and on a number of occasions, he described Mr Jenner as "patronising". When asked to cite specific language or an event, he either failed to do so, or tried to rely on a document or quotation which did not bear out the allegation.

63. The claimant struggled when asked to comment on factual events which he could not dispute but which showed Mr Muir or others in a positive light. He raised with the tribunal the issue of his dyslexia but could not readily explain the allowance of extra time for the written test during the 2019 recruitment. When asked why he considered that Mr Muir had failed to support him in relation to dyslexia, (not an issue in this case) the claimant could go no further than quote an undocumented conversation in 2015. He alleged that Mr Muir had been indifferent to his family responsibilities towards his mother. This was not an issue in the case. However, passing references in the bundle showed that on occasions in 2016 and 2019 Mr Muir had been supportive when the claimant needed absence to support his mother (1379-1385).

64. The claimant's approach was binary: He admitted no wrong on his own part and acknowledged no good on Mr Muir's. The binary approach rarely assists the tribunal because it rarely reflects the reality of a workplace. It was particularly misleading in this case, at the heart of which lay the claimant's inability to accept responsibility for the letter to X, or the panel's performance of his assessment in competitive recruitment.

65. The claimant showed little or no insight into the reality that his letter to X showed poor judgment in a number of respects. It presented as unnecessary, something which did not need to be sent at all; it presented as

written in anger, which might have been contained if the claimant had asked any manager to look at it in draft. The claimant had no insight into the reality that the letter presented as an abuse of authority, written on behalf of a major public body to a vulnerable individual who depended on its services, and little compassion for the individual (no matter how challenging their behaviour). As Mr Davidson pointed out, the events in question had been considered not just by Mr Muir and Mr Jenner, but by, at least, a disciplinary officer; a disciplinary appeal officer; a grievance hearer; and a grievance appeal hearer. The claimant's belief in his own rightness was not shaken by the number, seniority or unanimity of managers who took the opposite view.

66. The claimant showed at times incomprehension of management discretion operates. When the correspondence of April and May was examined, Mr Muir identified a possible GDPR issue, which he assessed and identified as low category. He spoke to the claimant about a possible disciplinary consequence of the GDPR breach. Later, when disciplinary charges were brought, they did not include the GDPR issue, but three other more serious issues. There was nothing wrong or sinister about this: Mr Muir identified an issue and assessed it; another manager assessed it from a different perspective. Both assessments in the event found that while the claimant had done something wrong, the GDPR breach in isolation did not warrant further action, in light in particular of A's views, and the claimant's apology to A. That is not proof that Mr Muir was at fault in his initial view, or wrong to alert the claimant to it.

67. The tribunal was concerned only with a claim of race discrimination, and not with what the claimant saw as mismanagement. Repeatedly the claimant sought to ask questions about how he, the claimant, perceived, or responded to or felt about an event; repeatedly the judge intervened to state that the witness could not answer as to the claimant's state of mind. Repeatedly the claimant put questions which adopted the language of grievance and criticism: He put to Mr Muir on countless occasions that in a specific matter he had "failed" in his responsibilities. It was repeatedly necessary to remind the claimant that this was the tribunal, not a grievance hearing; and that our task was not to adjudicate on the quality of Mr Muir's work, but on whether there had been race discrimination.

Cross examination of Mr Muir

68. Mr Muir conceded that he had been unable to give the claimant, and the centre where he worked, the time and attention which he would like to have given, due to pressure of work at the time. He added that the same was true of his inability to give as much attention as he wished to the claimant's comparators. On the question of whether, on receipt of the email of 28 April 2019, he should have intervened in a manner which might have prevented the claimant from sending the letter of 7 May, Mr Muir candidly said that he accepted that he could have been proactive in taking that step at the time, but that he could not accept responsibility for the actions of the claimant in sending the letter which he actually sent. That seemed to us a shrewd analysis of the boundary between what could reasonably be expected of Mr Muir and what could not.

69. In his witness statement, Mr Muir had set out a number of life events, employments and activities which were consonant with a person to whom equality and diversity are, in his words, "the core of his value base". We accept that evidence. The claimant asked little if anything about race. After the tribunal's reminder of the focus of this case, the claimant asked a number of questions about race which were formulaic (eg you took this decision because of my Indian background). He did not put to the witness a single instance of any of the matters which are sometimes raised in such cases: any question about the witness' engagement with other cultures, or people of the protected characteristic in the case; any expression of opinion, remark, generalisation, or question about India, Indian people, or Indian heritage; or any question which might indicate that any other person of BAME heritage had a complaint of discrimination against Mr Muir. When Mr Muir spoke about the manner in which he had supported other BAME colleagues, the claimant appeared taken by surprise.

70. The claimant questioned Mr Muir on whether he should have been proactive in relation to his protected characteristics. That seemed to us a question put on a dubious premise. The claimant's model appeared to be that in one-to-one meetings, it was the responsibility of the line manager, on his knowledge or perception of the direct report's protected characteristic(s), to initiate discussion about it / them. Mr Muir accepted that one-to-ones should include equality and diversity issues but did not accept that it was the responsibility of the line manager to be proactive in probing. Mr Muir's approach was more nuanced than the claimant's, and we accept that it was legitimate and not evidence of discrimination. We can on the contrary see many risks of stereotyping, misplaced perception, and unwanted offence caused by the potential simplicity of the claimant's approach.

71. During cross examination, the claimant referred Mr Muir to his supplemental bundle. It was troubling that the claimant showed so little insight as to probe Mr Muir on the letter at 1806, in which the claimant's line manager, on 8 September 2021, told him to stop spreading false information about Mr Muir. It was both troubling that the line manager had found it necessary to do this, and that the claimant thought it was a matter for this hearing.

Legal framework

72. This claim was brought exclusively under the provisions of the Equality Act 2010. The only protected characteristic under which this claim proceeded was race. There was no claim based on the claimant's dyslexia.

73. Section 13 of the Act defines direct discrimination as occurring where "A discriminates against B if because of a protected characteristic, A treats B less favourably than A treats or would treat others".

74. Section 23 provides that "On a comparison of cases for the purposes of section 13 .. there must be no material difference between the circumstances relating to each case."

75. Section 26 defines harassment, which for these purposes, occurs if "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".

76. Section 26(4) states "In deciding whether conduct has the effect referred to in 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."

77. Section 27 provides that "A victimises B if A subjects B to a detriment because (a) B does a protected act".

78. Section 27(2) includes in the definition of a protected act "doing any other thing for the purposes of or in connection with this Act; … making an allegation (whether or not express) that A or another person has contravened this Act".

79. Section 136 sets out the burden of proof provisions. Section 136(2) provides: "If there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred." That provision "does not apply if A shows that A did not contravene the provision."

80. Although this is the baldest summary of the relevant provisions, the fundamental, recurrent point throughout this case was that it consisted of a series of bare assertions, in which the claimant asserted that actions by two managers were taken because of his race. Our recurrent findings are that there was not, in relation to any of them, any evidence which linked the event or action with the material protected characteristic; there was no cogent evidence of an actual comparator, or analysis of a hypothetical comparator; and there were, repeatedly, cogent managerial reasons for the actions complained about, which had nothing to do with race, but with which the claimant passionately disagreed.

Findings

81. We now refer to section 15.3 of Judge George's order (82) and follow her numbering and definition of the issues. We start with scene setting.

General scene setting

82. The claimant submitted that the respondent as an organisation, and the Housing Directorate in particular, presented as an organisation which he described as "institutionally racist." He did not seek to define the term, but referred, both in evidence and in closing submission, to what he called a working culture, the characteristics of which included a predominantly white, middle class leadership; where issues of race were not to be mentioned; and where a complaint of race discrimination would not be raised, because

there was a shared understanding that it would inevitably lead to the dismissal of the complainant.

83. It was put to him in evidence that this sounded unlikely in a public authority with an active, recognised trade union presence and staff groups such as a Black Workers Group. The claimant did not regard these as material; and commented that although there had been change and development since the death of George Floyd, and the creation of the Black Lives Matter movement, change at Islington was purely reactive and / or cosmetic.

84. There was considerable evidence from Ms Murphy and Mr Jenner on aspects of their personal commitment to diversity, both in their working lives and in a range of events, activities and aspects of their personal lives. Mr Muir, in a striking phrase, described allegations of race discrimination as cutting to the core of his value system.

85. Ms Murphy gave compelling evidence of attempts made in the Housing Directorate to address the issues raised by staff on behalf of BLM and in response to it. She accepted that much remained to be done in diversity at senior levels. The diversity statistics shown to us were limited, and produced at the last minute, but were indicative of a diverse workplace.

86. The relevance of this background material was that the claimant said that the absence of any complaint of discrimination by him before June 2019 should be taken to be the result of a culture of fear and disempowerment. We do not accept that. We do not accept the claimant's characterisation; on the contrary, we accept as a general approach that while avoiding complacency, the respondent is alert to equality and diversity issues. We noted the prevalence of equality and diversity issues in a number of the procedures and employment issues which were before us. We attach weight to the role of trade unions and the respect given to a BWG. We note that when the claimant first recorded complaints, he showed no signs of fear, and did not pull any punches (597).

Scene setting: the claimant

87. We accept that by April 2019 the claimant was in his fourth decade of unblemished public service. There was no evidence that he had ever before made a complaint or grievance and we accept that he was "a low maintenance" member of staff. We accept the evidence of Mr Muir that he had never initiated a disciplinary matter before this one and that of Mr Jenner that this was the first occasion on which he had been a disciplinary investigator. That seemed to us important evidence. It seemed to us an indication that both were likely to tread carefully in the first case they dealt with; that neither was trigger happy; and that both would be cautiously reliant on HR guidance if available.

88. We accept that the Communities Team within which the claimant and Mr Muir worked was inherently demanding. It was a direct access public service, available to members of the public who may at times have presented as demanding. It was plainly understaffed and under resourced, and staff within the team were aware of the imminence of a restructure, which may have created a form of uncertainly.

Events 28 April to 6 June 2019

89. The crucial material events fall into two chronological tranches. We depart in our fact find from strict chronology, where we think that that will make this document easier to follow. The first tranche is that between 28 April and 6 June 2019 and we deal with it now. We deal separately with a third tranche, which consisted of events which took place before 28 April 2019, and of which there was no compliant at the time, but which formed part of this case.

90. We accept that in the period before 28 April, there had been working difficulties at the Hub. On the evening of Sunday 28 April, the claimant sent an email to three Councillors and four colleagues including Mr Muir (899). It was headed 'Serious concerns about .. X's behaviour.' X was referred to by name. The email was lengthy and it used robust language about X. It was personal and judgmental. It set out ten instances of what the claimant deemed unacceptable behaviour, and concluded by describing X as 'a toxic liability.' It included the sentence,

> 'I will write to them later in the week at my leisure as no doubt they will want to complain.'

91. The email also referred to A by name and surname and gave personal information about a medical condition.

92. A stark demonstration of the claimant's lack of insight was his submission that his subsequent letter to X was not his fault, because he had alerted Mr Muir on 28 April to the fact that he was going to write to X, and Mr Muir had failed to prevent him from doing so. Mr Muir accepted that while he might have intervened after 28 April, he could not be responsible for the contents of a letter which he had not seen. That is self-evidently correct.

93. Although the claimant had said that he was going to write to X, he did not indicate what he would say. He wrote a letter headed 'Written Warning Letter' on 6 May (which was Bank Holiday Monday) and hand delivered it to X's home the following day, by posting it through their letter box (908). It should be read in full. The letter has since been criticised by many managers senior to the claimant. The most detailed single summary of managerial analysis of it was given on 30 September 2020 by Ms Eden after the claimant's disciplinary (1558-64).

94. We accept that managers who have seen the letter have each formed an independent professional view of it, untainted by race. We find that the letter was emotive, hostile, and authoritarian. It states conclusions without identifying evidence, and makes no allowances for X's (admitted) vulnerability.

95. The following day, 8 May, the respondent received a handwritten letter from X (912-913). It appeared that this letter was sent to the council offices, where a member of staff identified it as falling within the remit of a Councillor, to whom it was passed, who in turn passed it to the Housing Directorate. The letter came to Mr Muir, who on 9 May met X at their home, and agreed how to manage the situation which had arisen (922). He also decided that X was entitled to a written apology from the claimant.

96. The claimant was convinced that X's letter was written by Mr Muir. The letter was the subject of the applications for adjournment and a handwriting expert on the first day of this hearing. We find that the letter was written by X, or on their behalf. We find the forgery allegation absurd, and we reject it out of hand, for reasons set out in the next two paragraphs.

97. If Mr Muir forged a letter from a service user and resident to his own employer, because racial hatred led him to want to get at Mr Samra, he committed serious gross misconduct of a level which might render him unemployable throughout public service. Forgery of a letter from a service user might well be a criminal offence. To do so on grounds of a colleague's race would be a career ending act for a public servant.

98. As formulated by the claimant, Mr Muir's actions carried a high risk of exposure, which could have come from a colleague who recognised the handwriting, or indeed from X, who could well have seen what purported to be their letter and repudiated it. It was a pointless thing to do, because the claimant's letter to X could come to light at any time, and stand on its own merits. The claimant's letter was with X on 7 May and X's complaint was with the council during 8 May. That creates a tight time scale for X to make contact with Mr Muir, for Mr Muir to see the claimant's letter, formulate the concept of a forged complaint, prepare it and facilitate its delivery. It required some thoughtful preparation. The letter is written in what appears to be the style of a person with limitations in their use of grammar, spelling, and standard English. The claimant's allegation was that while Mr Muir was able to devise the forgery plan, and then master X's style very swiftly, it did not occur to him to ask somebody else to write the letter so as to disguise his handwriting. Mr Muir then (on the claimant's analysis) tried to cover his tracks on 9 May (916) by having a meeting with X, which purported to record that that was when he saw the claimant's letter.

99. The claimant met Mr Muir on 10 May. Mr Muir told the claimant that his email of 28 April contained information about A which potentially gave rise to a GDPR issue. Mr Muir said that that could give rise to a disciplinary consequence, and that he would look into the matter further. Mr Muir's evidence was that he recognised the potential gravity of the GDPR point, and thought it fair to mention it to the claimant at an early opportunity, rather than say nothing and spring a disciplinary on the claimant later. That was a nuanced balance of judgment, unrelated to race and which we do not fault. Mr Muir then assessed the level of GDR breach. He found it to be low level. He arranged a meeting between A and the claimant on 16 May. A said that he was 'not bothered' about the breach, provided that the email put in him in a positive light. The claimant ('after a prompt') apologised and A accepted the apology. The meeting note records that that was closure of the GDPR issue (944). That little sequence was some indication of the importance to Mr Muir of apology, speed and closure and is much to the credit of all three involved: Mr Muir, A, and (despite the need for a prompt) the claimant.

100. On 2 May Z put in a written complaint (901) which was forwarded to the claimant the following day (903). It referred to a potential child safety issue. In accordance with the respondent's procedures, it should have then been processed formally, even if on its face it appeared based on a misunderstanding of the facts, or even not sent in good faith. It was not processed.

101. The claimant was then briefly on annual leave. In his absence Mr Muir drafted what he thought was an acceptable letter of apology for the claimant to send to X. He showed it to members of the claimant's team, one of whom commented that it would not lead to closure of the issue, given what she knew of X.

102. Mr Muir met X on 22 May and confirmed that they were entitled to an apology (957). He was then involved in activity to identify what had happened to Z's complaint.

103. There was an important meeting between the claimant and Mr Muir on 28 May. Mr Muir asked about Z's complaint, and the claimant replied that it had been anonymous. That was not correct, and all contact details were on the version sent to the claimant on 3 May (903). The issue for Mr Muir was why the claimant had done nothing with it. While it may have proved unmeritorious, it raised a safeguarding issue which should have been addressed, not ignored.

104. Mr Muir wrote to the claimant the same day, confirming the actions to follow from the meeting, one of which was to send an apology to X (967 to 968). The letter started as follows, with five bullet point actions, of which the first is quoted below:

> 'Just a quick summary of the actions agreed today. Please can you keep me copied in so that I can see how these are progressing?
>
> - (Claimant) to review and update a draft letter of apology to X, forwarding to [Mr Muir] to review.'

105. Mr Muir attached a draft. The draft was perhaps rather stiff, and did not make clear whether it was to be sent as a first person letter from the claimant or a third person letter from somebody else on behalf of the respondent. Mr Muir's evidence was that he made clear to the claimant that it was to come from him (the claimant) as a first person letter.

106. The claimant did not respond. On 3 June Mr Muir wrote to the claimant to ask for an update (971). The claimant replied with hostility 35 minutes later, complaining of being hassled and harassed (974). About three hours later, Mr Muir replied in emollient language (973) which shortly afterwards produced a second hostile email from the claimant (973). The claimant wrote about Mr Muir's 'unprofessional' conduct, his need to 'put a hold on your behaviour towards me,' and wrote (973),

> 'I've made you aware for some time that you treat me so differently in a negative way than you do the other two managers.'

107. In the event, the claimant never sent a letter of apology to X. On 5 June Mr Muir informed the claimant (590) that he had decided to refer the events for a disciplinary investigation. In the course of 6 June, the claimant was told of precautionary measures which would be taken, which involved locating to work elsewhere temporarily and that Mr Jenner had been appointed to conduct the disciplinary investigation (597). He was told that the investigation would look into three points: his letter to X; his failure to action Z's complaint; and his failure to follow reasonable management instructions (ie his failure to send a written apology to X).

The chronology after 6 June 2019

108. We record the following outline matters of chronology. Mr Muir tasked the claimant, while located on his precautionary relocation, with tasks which he thought would stand him in good stead for the recruitment which Mr Muir knew would take place later in the year. The claimant was one of six candidates interviewed in October 2019 for the newly created PO6 post.

109. The disciplinary investigation was completed by Mr Jenner in March 2020, leading to a 10-page report (860) with 250 pages of appendices. A disciplinary hearing took place over three days in August and September 2020. On 30 September 2020 Ms Eden (then Director – Safeguarding) gave the outcome, which was that the charges were upheld in all or part; that they were reclassified as misconduct, not gross misconduct; and an 18-month final written warning was issued (1561). The claimant appealed, and in

February 2021 the appeal was part upheld by Ms Littleton, then Corporate Director of People. The sanction was reduced to a 9-month written warning (1657).

110. The claimant meanwhile presented grievances about his management by Mr Muir. The grievances were heard and rejected by Mr E Lewis (then Assistant Director), in reports dated 22 June 2020 (1129-1164) The claimant appealed, and his appeal against the grievance outcomes was rejected in May 2021 (1775) by Mr Townsend (then Corporate Director Environment).

111. These procedures generated paperwork in excess of 1,000 pages. They absorbed very considerable time and resource. The claimant's issues about them in the tribunal were very limited indeed. He raised no issue about any aspect of the disciplinary or grievance outcomes, and the only issues which he raised about process are those referred to in our discussion below.

The recruitment issue

112. Departing from chronology, we turn to the PO6 recruitment. There was a considerable amount of detailed evidence. We do not repeat the detail to which the parties went. We summarise the position. It had been known for some time that a restructure of the Community Service was underway. The claimant had, since 2016, been seconded to a management post at Finsbury Park Hub. The claimant understood that that post would be regraded (upwards) in the restructure, and that he would be a serious contender for a new regraded post, which he saw as the same or substantially the same as the role which he had been undertaking for a long time.

113. Mr Muir was responsible for the restructure. When the job descriptions for the new posts were finalised, they were sent for independent job evaluation by an external advisor. Mr Muir's evidence was that he thought that the post which the claimant hoped for would be regraded at PO5. If that happened, the claimant, who was at PO4, stood a substantial chance of being assimilated into it without competition. In the event, it was independently graded at PO6. Mr Muir's evidence was that he was surprised by that grading, which meant that the post had to be advertised, as the claimant could not be assimilated into a post two grades above his then substantive post.

114. As recruiting manager, Mr Muir then had a discretion as to whether or not to advertise externally or internally. He chose to advertise externally. Ms Murphy commented that that was Mr Muir's usual practice. We accept that was a legitimate exercise of managerial judgment. The objective was to widen the pool of talent available to deliver this public service. The claimant's suggestion was that the recruitment was external so as to

prevent him from gaining appointment. We reject that submission. There was no evidence to support it, but in any event, Mr Muir could not foresee or control how many external candidates would apply, their ethnicity, or the race of the best candidate on the day.

115. Mr Muir and Ms Murphy undertook short listing. Ms Murphy gave oral evidence, to which unfortunately there was no reference in the bundle, to the effect that she had scored the claimant at short listing stage so low as to have excluded him from being shortlisted for interview. Her evidence was that she took the view that on his application he had failed to show any evidence of one criterion, on which she had therefore scored him as zero. Her evidence was that Mr Muir had exercised his power as chair of the disciplinary panel to overrule her, and thereby guarantee the claimant an interview. That evidence alone, which we accept, cut the ground from under the allegation that Mr Muir was trying to damage the claimant's application.

116. It was appreciated during September 2019 that the claimant was shortlisted for a job for which Mr Muir was the lead interviewer, at a time when he had a live grievance against Mr Muir. The claimant's union therefore asked for Mr Muir to stand down from interviewing. Mr Muir declined to do so, and we agree that the claimant's request put him in an impossible position. We agree that it was a legitimate judgment call to state that Mr Muir had to be on the interview panel for a new post which would be his direct report. The matter was therefore discussed with Ms Murphy, and it was agreed that she would join all the interview panels, despite the power dynamic issue which we have referred to above.

117. The claimant was the fourth candidate to be interviewed on the first day of interviews. He was allocated extra time for the written test portion because of dyslexia. His face-to-face interview lasted just under one and a half hours. He scored 18 points and was not appointable, because he had fallen below the minimum of 3 points on 3 criteria. We did not in detail go through the interview notes, although Ms Murphy in oral evidence was highly critical of the claimant's performance, which she had summarised in her notes at 752. The claimant asserted that Mr Muir had abdicated chairmanship of the interview; and that he had been, in his own, telling phrase, 'allowed to ramble', without being probed in his answers.

118. The claimant asked why his interview had not included more probing questions. Although Mr Muir was reluctant to say so in terms we understood his evidence to be that an experienced interview panel quite quickly understood that the claimant's performance at interview was poor, that he was not likely to be in contention, and that his answers did not merit further probing. We understand that that may well be a legitimate professional response to an interview, and was consistent with the notes of interview, and with the unanimous feedback from the panel.

119. We accept that at interview the claimant failed to achieve what he felt was his potential. We accept that the scoring represented the legitimate exercise of judgment by the three interviewers in which race played no part whatsoever. In so saying, we do not underestimate the hurt felt by the claimant when he found out that he had been unsuccessful and that he was not even the best rated internal candidate. The scoring outcome is at 754.

120. Mr Muir astutely realised that the claimant was unlikely to leave the recruitment issue there. He agreed a 'Feedback' note in which the panel set out its analysis of the claimant's performance, with guidance on points on which he could have done better (760-2). We accept that the document summarises the panel's honest assessment. They found the claimant, as a competitive interviewee, to have been unfocussed, discursive and unclear, and that he failed to answer the specific questions put to him.

Issues before 28 April 2019

121. It was agreed that the claimant had raised no formal complaint or grievance, whether on grounds of race or any other basis, before the events in this case. We have not accepted that that absence was the product of a culture of fear. After about 6 June 2019 he raised complaints about a handful of management events involving Mr Muir in the preceding months. We set out our findings about them in our discussion below about issues 1-5. A common thread was that they were mostly undocumented at the time; that four of them incorporated the claimant's subjective description of Mr Muir's demeanour (rude, aggressive, angry); and that they arose out of the interpretation of everyday workplace exchanges.

Discussion and conclusions

122. We now turn to discussion and conclusions on the 18 issues in the list of issues (82-84). All our conclusions should be read as subject to our overarching finding, and to our observations above about the claimant's approach.

123. The logic of our findings is that issues 1 and 3-4 and 6 are on their face each wholly out of time. (We can see that issue 2 extends across time, and that issue 5 may be argued to be part of a sequence of events which formed a continuing act). The claimant gave no evidence in support of an extension of time for any of these allegations; on their face, he had all the factual material about each event when it happened. As all claims about later events have failed, these issues cannot form part of a continuing act of discrimination such as to extend time. Furthermore, as all claims of discrimination fail, it cannot be just and equitable to extend time to allow them to be heard. These issues were however capable in theory of being relevant evidence to matters which were within time; and as we have heard

evidence about them, it is in the interests of justice to give judgment about them, even though strictly the tribunal may not be obliged to do so.

124. On issue 1, we accept that there was an event on or about 27 November 2018, recorded in an email sent by Mr Muir the following day (468). The first account of it given by the claimant, and the first indication by him of a complaint, was written almost exactly nine months later, on 25 August 2019, in a report to his union representative (1419). The only finding we can make is that there was a professional discussion on or about 27 November 2018 about funding. That is a frequent occurrence in public service. We do not find that Mr Muir was rude or aggressive: we find that if Mr Muir had over stepped the boundary of professional language, the claimant would have said so at the time; we reject any suggestion that he was too frightened to speak up. The claimant has made a bare assertion that this event was related to race. We see no evidence that it was.

125. Issue 2 refers to funding and resourcing. Despite its anodyne wording, we regard this as potentially the most serious allegation before us: it is that Mr Muir knowingly deprived Hub service users of the Council's services, on grounds of the claimant's race. We have rejected that general allegation. The only evidence we had of communication about overtime was at pages 495 and 523, two episodes on which Mr Muir confirmed the availability of overtime. We accept the broad picture set out at paragraphs 23 to 26 of Mr Muir's witness statement, namely that the claimant had responsibility in relation to overtime and was on par with his comparators. There was no evidence to the contrary except the claimant's assertion.

126. Issue 3 refers first to an incident on 8 March 2019. Mr Muir had visited the Hub. It was a day on which there was food distribution. An incident took place at the distribution point. The claimant was not on hand to deal with it. He was working in a back office. There was clearly a disagreement between the claimant and Mr Muir about whether the claimant should proactively have been more involved in the distribution. At the time neither Mr Muir, nor the claimant, nor Ms Khan, the claimant's direct report who was present, thought it necessary to record it or even write an email about it. We accept that an operational issue arose that day, and that Mr Muir made clear that he did not think that it was well managed by the claimant. He was entitled to do so, if that were his honest assessment as manager. We can see no evidence that race played any part whatsoever in this event. On the second sentence of issue 3, which is a reiteration of the complaint that Mr Muir did not support the Hub on grounds of race, we repeat what we have said in the previous paragraph.

127. Issue 4 is entirely undocumented. The claimant's complaint appeared to focus on how he identified Mr Muir's reaction, when the claimant made an allegation of wrongdoing by a colleague. Mr Muir's evidence on the matter was speculative, as he had no real recollection of it. The claimant gave no specifics. We accept that there was an everyday exchange, which both the claimant and Mr Muir found unsatisfactory. We do not accept that it had in any respect anything to do with race.

128. Issue 5 is the first of the issues relating to the main sequence. We do not find that Mr Muir made a threat: he told the claimant that disciplinary action was a potential outcome of the claimant having breached the privacy / GDPR rights of A (not X, as stated in the Order). We accept his reason for doing so: he preferred to express himself openly and candidly, and perhaps be criticised for those; than to say nothing, and be criticised for bringing up the point in a disciplinary context weeks or months later. It was a 'damned if you do' choice, and we make two findings: that Mr Muir made a choice which was honestly and legitimately open to him; and that race played no part in his actions whatsoever. We add that Mr Muir is not to be criticised for having later, on further reflection, and in light of A's views, decided not to take the matter further.

129. The second half of issue 5 adds a separate point. We do not accept that an allegation which pleads 'very angry behaviour in his mood and body language' is capable of fair trial without more specific information. We repeat our overarching observation, to which we add that there was no evidence that Mr Muir brought anger to any aspect of his managerial responsibilities.

130. On issue 6, it was agreed that on 10 May 2019 other members of the claimant's team at the Hub wanted to speak to Mr Muir, and that he was unable to make time for them. One version was that he said that he had another commitment, another that he specified that he had to catch a train. We remind ourselves: this is an allegation that Mr Muir failed to give proper attention to the Hub on grounds of the claimant's race. It is not our role to find whether he was a good manager of his time. We repeat our rejection of that general allegation. There was nothing which indicated any relationship whatsoever with race.

131. We break issue 7 down into six separate points. (1) We find that on 16 May Mr Muir told the claimant that he was not to face disciplinary action. That was clearly said in relation to GDPR and A only. It could not have been said about X, because Mr Muir was not to know that the claimant would later refuse to send the letter of apology. (2) It is correct that in the same meeting Mr Muir told the claimant that he should apologise to X (561). (3) It is wrong to say that Mr Muir refused to discuss why an apology was necessary; we find that Mr Muir made clear to the claimant why he had decided that the claimant should apologise to C. (4) The allegation that Mr Muir talked down to the claimant leads us to repeat the overarching observation above. The final sentence of this issue is "Mr Muir then wrote the letter of apology acknowledging fault which the claimant felt was not justified." (5) The first half of the sentence is misleading. Mr Muir gave the claimant a template draft and invited him to review. It was Mr Muir's prerogative to conclude that the claimant should apologise. (6) The final point is that Mr Muir's draft 'acknowledged fault which the claimant felt was not justified.' We have commented on the claimant's inability to accept that that has been the unanimous assessment of at least eight members of the respondent's senior management. We saw no evidence whatsoever that

the assessment of Mr Muir, or indeed any of them, was tainted by any consideration of race.

132. In the previous paragraph we summarise why we do not agree that the claimant had any legitimate reason to be aggrieved by any of the six points in issue 7. As we have stated more than once, our task is not to adjudicate on workplace grievances. We could see no evidence that race played any part whatsoever in any of the six points which we have identified.

133. On issue 8, it is correct that Mr Muir on 5 June referred the claimant for disciplinary investigation. The reason was not race. One reason was that the claimant had refused to carry out his legitimate management instruction to apologise to X. That being so, the claimant's actions to X, and his failure to respond to Z, were also live issues. If we had any doubt about this point (which we do not) we note the stark contrast between this event and how Mr Muir dealt with the claimant and A: once the claimant had apologised, closure was achieved.

134. As to issue 9, we accept that there was a meeting on 6 June. It was not a disciplinary investigation, but a meeting related to precautionary steps, and the commencement of Mr Jenner's investigation (593). The reason for the meeting had nothing to do with race: it was the formal step needed to progress matters.

135. On issue 10, the claimant's case was that when Ms Robinson (a peer of the claimant) on 11 June used the phrase "issues happening at the Hub", that is to be taken as evidence that Mr Muir had broken confidence and given her confidential information about the disciplinary process which had just been triggered; and, secondly that he did so on grounds of race. We disagree: the claimant has mistaken chronology for causation. The issues happening since mid-April at the Hub were visible and known to all colleagues: we heard evidence about problems with volunteers, complaints, the distribution of leaflets, the claimant's departure and the arrival of a cover person. There was no evidence at all of a breach of confidentiality, or of the involvement of Mr Muir, or of any link with race.

136. Issue 11 relates to an unfortunate coincidence of timing, which was the piloting in June 2019 of a 360-degree reporting system. Mr Muir's evidence was that this was a new management tool; that its implementation in his team was badly timed; and that he had found some of the 360-degree observations made by colleagues about himself difficult to read. We agree with the first two of those points. Having read Mr Muir's comments about the claimant (1250) we can see no evidence that they were distorted by race, or anything other than his legitimate management assessment. There was no evidence that he was any more or less generous about the claimant than about anybody else. We can see no evidence that they were 'unreasonably critical' (to use the pleaded phrase) of the claimant; a point to be tested objectively by the tribunal, and not reliant on the extent (if any) to which the claimant felt himself to be open to criticism. Comparison with the unavailable appraisals would not have assisted us because we accept that appraisal is a different management tool from 360-degree reporting. An

individual found on appraisal to be a good performer may nevertheless benefit from the observation of those beside and below him, and from guidance on how to do even better.

137. Issues 12 and 16 are points on which Mr Jenner is alleged to have been patronising and interrogating towards the claimant. The issue, we remind ourselves, is not whether the claimant felt patronised or interrogated; the issue is whether that was what happened. The claimant could not point to a single word or phrase which exemplified this. He did at length complain that at his disciplinary investigation interview, Mr Jenner kept asking questions, and when he answered, kept asking follow-up questions. We agree that the record confirms that. That was precisely the point of the interview. It was a fact finding procedure. It was the first such occasion for Mr Jenner, which was why he had HR support; and the claimant had the support of a trade union representative, who at any time could have asked for the interview to be slowed down, or a question made clear, or for a break. There was no record of the representative having done any of those. Mr Jenner's approach was inherent in the exercise, and unrelated to race.

138. The complaint (issue 16) that Mr Jenner was not impartial is slightly different. It reflects the claimant's misunderstanding of the process. He thought that what should have been conducted was a general fact finding, perhaps akin to the public enquiry model, rather than an enquiry focussed on him as an individual. But that is plainly the wrong model for a potential disciplinary investigation. A disciplinary investigation by definition focuses on the individual(s) whose actions may give rise to disciplinary action. As it was only the claimant who was under investigation, Mr Jenner was entitled to focus on him in a manner which was partial, but open-minded.

139. Issue 17 relates to the recommendation of disciplinary action made by Mr Jenner. Mr Jenner's report and appendices ran in the bundle from 860 to 1116 inclusive. In a section entitled 'Management concerns' Mr Jenner set out a detailed analysis of what he thought the claimant had done wrong and why he thought it merited disciplinary action (866-868). He wrote:

> '[Claimant's] decision to accuse X .. was a grave error. It is my belief this led directly to the negative DBS campaign against the Hub. This in turn had the potential to negatively impact on the council's reputation .. My main concern is that [Claimant] does not appear to recognise why his actions were an issue. I cannot see any evidence of regret or remorse; [he] does not seem to have any empathy with X … [He] seems to have also made his decisions around X unilaterally, without consulting his manager .. The letter comes across harshly with serious allegations .. It feels completely unaware of what the potential impacts would be …'

140. We accept that this extract sets out Mr Jenner's genuine views based on his investigation and analysis, and that they were legitimate managerial views, wholly devoid of any taint of race. Taken as a whole, the report is a comprehensive piece of work, considering that the three underlying factual questions were not disputed and were relatively straightforward. We find that the reasons set out by Mr Jenner, broadly endorsed later by Ms Eden, were the legitimate managerial response to his investigation, wholly without

reference to race. They set out the reason why disciplinary action was recommended.

141. When Mr Jenner was subsequently interviewed by Mr Lewis in the course of the claimant's grievance, he gave honest answers as he understood the position, wholly untainted by any consideration of race. He was entitled, if it were indeed his opinion, to express views which were broadly supportive of Mr Muir and unsupportive of the claimant. Issue 18 therefore fails.

142. The claimant's claims fail in their entirety.

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Employment Judge R Lewis

Date: 12 April 2022

Sent to the parties on: 22/4/2022

For the Tribunal Office