EMPLOYMENT TRIBUNALS

Claimant: Mr E Natty

Respondents: (1) Serco Ltd
(2) Ms M Lamina
(3) Mr W Abayomi
(4) Mr D Hawton

Heard at: **London South Employment Tribunal**

On: **4-8 July 2022 & 15 September 2022**
16 September 2022 (in chambers)

Before: **Employment Judge Ferguson**

Members: **Ms B Leverton**
Mr J Turley

Representation
Claimant: In person
Respondent: Mr A Ross (counsel)

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The complaints of direct race discrimination are dismissed.

2. The complaints of harassment related to race are dismissed.

3. The complaints of victimisation are dismissed.

4. The complaints of detriment under section 44 of the Employment Rights Act 1996 (health and safety cases) are dismissed.

REASONS

INTRODUCTION

1. The Claimant worked for the First Respondent as a CCTV Operator from 14 January 2019 until 8 August 2019. The Second, Third and Fourth Respondents were all managers employed by the First Respondent. By a claim form presented on 7 August 2019, following early conciliation which took place in respect of all Respondents between 12 June and 12 July 2019, the Claimant brought complaints of direct race discrimination, harassment related to race, victimisation and health and safety detriment. The original particulars of claim also referred to alleged breach of the Working Time Regulations, but the complaint was never properly particularised and was later abandoned. Following the Claimant's dismissal on 8 August 2019 his claim was amended by consent to add the dismissal as an alleged act of discrimination and/or victimisation.

2. The Claimant was represented by solicitors at the time of presenting his claim. They came off the record in mid-2021. The final hearing was due to take place in September 2021 but was postponed due to lack of judicial resources. It was re-listed to take place on 4-12 July 2022. Following further correspondence from the Claimant a preliminary hearing took place by video on 7 December 2021 before Employment Judge Self. The Claimant was represented by directly instructed counsel and relied on a "Scott Schedule", which is reproduced at pp.432-447 of the bundle for the final hearing. At the preliminary hearing the complaints and issues were discussed at length and a comprehensive list of issues was agreed. The list identified a number of complaints that the Claimant sought to pursue which were not in his original claim and therefore required permission to amend. Employment Judge Self said in his Case Management Order following the hearing:

> "I can confirm that, subject to any matters needing to be added to them on account of the amendment application which are marked in BOLD type (3.1.21, 3.1.29, 3.1.31, 4.2.5, 4.2.7. 4.2.8, 4.2.9, 4.2.10, 7.1.3 and 7.1.4) the remaining matters set down in the issues section have now been agreed and endorsed by me as being the issues in the case and no further amendment to them should be accepted save in exceptional circumstances."

3. At a further preliminary hearing on 7 April 2022 before Employment Judge Truscott, at which the Claimant was again represented by directly-instructed counsel, some of the proposed amendments were allowed (3.1.29, 3.1.31 4.2.7, 4.2.8, 4.2.9, 4.2.10) and some refused (3.1.21, 4.2.5, 7.1.3, 7.1.4).

<u>Adjournment applications</u>

4. By written applications on Friday 1 July 2022, the last working day before the final hearing, and orally at the start of the final hearing on 4 July 2022, both the Claimant and the Respondents applied to postpone the hearing on different grounds.

5. The Claimant's application was on the ground that he had not been able to secure representation. He said he had made enquiries with various chambers from Thursday 30 June 2022 but no-one was available. He said he had been unable to instruct counsel earlier because he did not receive the final version of the bundle from the Respondent until 30 June 2022. We refused the application. The Claimant had known of the final hearing dates since late 2021. He had a draft version of the bundle months before the hearing and all of the documents that had been added subsequently were already in his possession. Other than the orders following the preliminary hearings mentioned above, the only documents added were at the Claimant's request. Not having the final paginated version of the bundle was not a good reason to have delayed finding representation. The Tribunal would ensure that the parties were on an equal footing so far as possible by explaining the law and the procedure to the Claimant and endeavouring to ensure that all relevant issues in dispute were put to the Respondents' witnesses. Further, enquiries with listings revealed that the earliest date for re-listing a 7-day hearing was in 2024. In light of the previous delays it was not in the interests of justice to delay the final hearing further.

6. The Respondents' application was on the basis that the Third Respondent, Mr Abaymoi, had not attended, was on annual leave and not contactable, therefore solicitors and counsel (instructed by all four Respondents) did not have instructions from him. Following further enquiries during the morning, contact was made with him. He was in Nigeria and unaware of the hearing dates. He had not seen recent emails about the hearing because he was already on annual leave. The Respondents' counsel confirmed that all named Respondents had been informed of the re-listed hearing dates in an email in late 2021. Notwithstanding that, it was submitted that it would not be fair to continue in the absence of the Third Respondent.

7. We made further enquiries with listings and established that it would be possible to list three further days in September 2022 so that the hearing could take place in two parts. The Respondents would attend with counsel and solicitors throughout so Mr Abayomi could be briefed on the part of the hearing he missed. In light of that option, which would still enable Mr Abayomi to participate and give evidence, we refused the application to postpone the whole hearing. We decided to proceed with the remainder of the evidence and then adjourn part-heard until 15-16 & 19 September 2022 to conclude the hearing. That solution, although not ideal, was better than either proceeding entirely in the Mr Abayomi's absence or postponing until 2024.

<u>List of issues/ preliminary matters</u>

8. Having refused those applications we discussed the list of issues with the parties. The Claimant objected to Employment Judge Truscott's decision to refuse some of his amendments. We explained that we would not revisit the decisions of two previous Employment Judges who had identified which aspects of the claim required permission to amend and then determined the amendment application, unless there was very good reason to do so. The Claimant had not applied for reconsideration of either of the previous decisions or submitted any appeal. Following a lengthy discussion the Claimant confirmed that he accepted Employment Judge Truscott's decision.

9. The Claimant raised an issue about the Respondent failing to disclose CCTV footage. Employment Judge Self had ordered in December 2021 that the Respondent should send the Claimant a copy of CCTV footage from 8 August 2019 if it was in their possession. The Respondent explained that the footage the Claimant sought was not in their possession because the building was owned by the London Borough of Hounslow, who also operated the CCTV. As far as we could understand from the Claimant's submissions on this issue, he had made a Freedom of Information Act request to the London Borough of Hounslow and following payment of a fee they had provided a DVD to his former solicitors, but the solicitors could not play the footage and they had not given it to the Claimant. There was nothing to suggest that the Respondent had the footage in their possession or control, so we explained there was nothing further the Tribunal could do about it.

10. The Claimant also said that he wanted to pursue an application for costs against his former solicitors and the Respondent. This appeared to relate to the Respondent having made an application for wasted costs against the Claimant's former solicitors, which was settled and resulted in a consent judgment dated 10 April 2022 requiring the Claimant's former solicitors to pay £4,000 to the Respondents' solicitors. The Claimant seemed to object to this having been agreed without his involvement and he suggested that it had caused him to lose his representatives. The orders from both previous preliminary hearings had referred to the Claimant making an application for costs and noted that it was not clear on what basis the application was made. We explained to the Claimant that it was still not clear what he was applying for and on what basis, and that the Tribunal could not become involved in a dispute between him and his former solicitors.

11. Following each of the issues raised by the Claimant he made it clear that he was unhappy with our decisions and continued to argue that we were wrong even after the Employment Judge had told him to move on. The applications to adjourn and the other discussions outlined above, plus some reading time for the Tribunal, took the whole of the first day.

12. At the start of the second day the Claimant applied to reinstate the complaint under the Working Time Regulations, claiming that he worked 60 hours a week and never signed an agreement to work more than 40 hours. A complaint about being made to work five night shifts in a row was already included in the agreed list of issues as an alleged act of direct discrimination and/or health and safety detriment, but the Claimant wished to revive it as a freestanding complaint under the Working Time Regulations. He also applied to amend the claim to add complaints of discrimination and victimisation relating to the actions of both the Respondents' solicitors and his own former solicitors. This latter application was, we believe, the application the Claimant wished to make but had been unable to explain on the first day.

13. We refused both applications. As to the working time complaint, this was never properly particularised and was then abandoned. The Claimant had had ample opportunity to apply to reinstate it since the list of issues was agreed (subject to being granted leave to amend to include certain complaints) in December 2021. It was far too late to add it now. The prejudice to the Respondent of allowing it to be revived would be far greater than to the Claimant in refusing the application since it would involve exploring whether the Claimant had validly

waived the right not to work more than 48 hours in a week, which was not currently in issue, and especially given that the Claimant could still raise the substance of the issue in the context of his complaints of race discrimination and health and safety detriment.

14. As for the complaint against the solicitors, the Tribunal has no jurisdiction to consider a complaint against the Claimant's own former solicitors. To the extent that the Claimant sought to add a complaint of victimisation against the Respondent or the Respondent's solicitors, he had not made any written application to amend despite having the benefit of legal representation at both previous preliminary hearings. The complaint was not sufficiently clear for the Respondent to be able to respond to it. In those circumstances the balance of injustice and hardship weighed heavily against allowing the amendment.

15. The final version of the list of issues, taking into account Employment Judge Truscott's decision, is annexed to this judgment.

The hearing

16. The evidence commenced on the morning of the second day. We heard evidence from the Claimant. On behalf of the Respondents we heard from David Hawton (the Fourth Respondent), Keiron Clarke, Durga Pokhrel, Prakash Sherchan, Mariam Lamina (the Second Respondent) and Ras Dewan. The evidence, save for that of the Third Respondent Wale Abayomi, concluded on the fourth day.

17. The Claimant's conduct of the proceedings was at times extremely difficult to manage. We took great care to help him to understand the process of the Tribunal hearing, both at the start of the hearing and throughout, but he was often argumentative and either unable or unwilling to accept the Tribunal's guidance or authority. During his own evidence on the second day of the hearing he consistently failed to answer the questions asked and instead made speeches or gave evidence on other matters. He would also launch into commenting on a document as soon as he was taken to it and before any question had been asked. He ignored frequent direction from the Employment Judge and often spoke over her and Mr Ross, counsel for the Respondents. Before the lunch break the Claimant became quite agitated and we suggested a break, but he said he wanted to continue. After lunch the Employment Judge reminded the Claimant of the process and reiterated the need to focus on the questions asked. He continued to ignore her guidance and became agitated again, in particular when Mr Ross mistakenly gave the wrong page reference despite it being very quickly corrected. The Claimant said forcefully to Mr Ross that he needed to be more precise, and he objected to Mr Ross's questions in general. The Tribunal warned the Claimant about possible strike-out of the claim if he continued to ignore the guidance and speak over the judge. With some robust management, however, the Claimant's evidence concluded on the second day.

18. At the start of the third day the Claimant complained that he was unhappy with the way the Employment Judge had managed the case the previous day. He said he thought she was taking sides. He also complained about Mr Ross "handling his personal data". This referred Mr Ross putting to the Claimant in cross-examination that the Claimant must have been aware of Employment

Tribunal time limits because he had brought proceedings previously against a former employer in 2016. Mr Ross said that there was a judgment dismissing those proceedings on the online register of Employment Tribunal judgments. The Claimant accused Mr Ross of illegal conduct and said he would be taking the matter further. The Employment Judge explained to the Claimant that the Tribunal has no jurisdiction to deal with alleged breaches of the data protection laws and in any event we did not consider Mr Ross had acted improperly if all he had done was access information about a previous case that was in the public domain. We also explained why the hearing had been managed in the way it had been the previous day, and confirmed we would take the same approach with the Respondents' witnesses if they did not answer questions properly. During this discussion the Claimant made a vague reference to a medical condition that required him to have more time to find and read documents. The Employment Judge asked if he required any adjustments and he said he was not prepared to disclose anything and was not asking for adjustments. He claimed that the Employment Judge was biased, but expressly declined to make any application for the judge to recuse herself.

19. The evidence, save for that of Mr Abayomi, concluded on the fourth day. When we adjourned we discussed the timetable for the resumed hearing in September. We listed three further days, Thursday 15, Friday 16 and Monday 19 September. We explained to the Claimant that he would have a maximum of half a day for cross-examination of Mr Abayomi. We would then hear the Respondents' submissions on Thursday afternoon followed by the Claimant's. Mr Ross for the Respondents said that he intended to produce written submissions. Given the Claimant's evident difficulties in conducting his case as a litigant in person we adjusted the normal procedure and agreed that if the Respondents produced written submissions the Claimant would be given additional time to consider them and, if the Claimant wished, we would delay his submissions until Friday morning. We explained that if he wished to produce written submissions himself he would need to provide them to the Respondents and the Tribunal before 10am on Friday 16 September. We would then use the remainder of Friday and Monday for deliberations, judgment and remedy if appropriate.

20. We resumed on Thursday 15 September 2022. By this time it had been announced that Monday 19 September 2022 would be a bank holiday for the funeral of Queen Elizabeth II so we would not able to sit on the Monday.

21. We heard evidence from Wale Abayomi. The Employment Judge had to interject in the Claimant's cross-examination of Mr Abayomi frequently because the Claimant was making speeches or asking questions that were too long, unclear or not relevant to the issues. The Employment Judge sought to formulate suitable questions to enable the Claimant's case to be put to the witness. The evidence finished at 1.10pm. There followed a discussion about the procedure for the remainder of the hearing and Mr Ross handed to the Claimant and the Tribunal his written submissions, which were 19 pages long. The Claimant immediately complained about having to read the submissions before making his own. The Employment Judge reminded the Claimant that this was what had been agreed in July and confirmed that he could have until the following day, but the Claimant remained unhappy and said he believed the whole case was stacked against him. He again accused the Employment Judge of bias and suggested that she had had some involvement in his earlier case

in 2016. He was extremely agitated, standing up and shouting over the Employment Judge, and refused to respond when asked if he was applying for her to recuse herself. We adjourned until 2.20pm.

22. When we resumed the Claimant entered the room immediately saying that he had submitted a complaint and he could not attend the following day to make submissions. The Employment Judge expressed the Tribunal's understanding of how stressful Employment Tribunal proceedings can be, especially without legal representation. She explained that the process had already been adjusted to accommodate the Claimant and that we could delay the start of the hearing the following day until 11am. The Claimant said he did not want to make oral submissions because they could be misconstrued and he did not have enough time to produce written submissions. The Claimant again referred to the Employment Judge having been involved in his previous case. The Employment Judge explained that the previous case appeared to be a London South case and she was not a judge in the region at that time. She also had no record or memory of involvement in any previous case involving the Claimant. The Claimant was again agitated, standing and pointing at the Employment Judge, repeatedly saying that she was biased, had not helped him at all and had been unfair to him throughout. He also mentioned having recorded everything that had been said and that he would be making a complaint. The Employment Judge asked the Claimant if he had a recording device and whether he had been recording the proceedings but he refused to answer. The Employment Judge explained that if he continued to behave in this way and did not accept authority of the Tribunal he would need to leave. Security had attended by this stage, the Employment Judge having pressed the call button. The Claimant left the hearing, and as he did so the Employment Judge explained that the hearing would continue in his absence.

23. We adjourned to consider of on our own initiative whether to strike out the claim as a result of the Claimant's conduct. We decided not to do so. We considered the Claimant's conduct clearly crossed the threshold of scandalous and/or unreasonable conduct, but we had completed the evidence and it would be possible for us to reach a decision on the claim even without further attendance by the Claimant. We decided to inform the Claimant that he should not attend the following day but he could submit written submissions before 11am. We considered whether to allow the Claimant additional time and decided not to do so. The process had already been adjusted to accommodate him and he had been aware since July that if he wished to make written submissions they would need to be ready by 10am on Friday 16th. The Tribunal intended to use Friday for its deliberations, as agreed when the hearing adjourned in July. If the Claimant were allowed further time the Tribunal would need to reconvene on a later date. Given that the Claimant's absence from the proceedings was a consequence of his own unreasonable behaviour, we considered that would not be a justified or proportionate use of Tribunal resources.

24. We heard brief oral submissions on behalf of the Respondents in the Claimant's absence and reserved our judgment. The Tribunal then wrote to the Claimant at 15:49 on Thursday 15th as follows:

> "The hearing continued in your absence and is now concluded. The Tribunal considered whether to strike out your claim in light of your conduct and decided not to do so. However, your behaviour was such

> that the Tribunal is not prepared to reconvene tomorrow to enable you to make oral submissions. We took into account the fact that you said you were not willing to attend tomorrow despite the accommodations we had made, your general disrespect for the Tribunal and rejection of the Employment Judge's authority, and your refusal to answer when asked repeatedly whether you had been recording the proceedings. If you wish to make written submissions you may do so provided they are sent to the Tribunal (with a copy to the respondents' solicitor) by 11am tomorrow, 16 September 2022. The Tribunal has reserved its judgment, which will be sent to you in writing in due course."

25. At 16:16 on Thursday 15th the Claimant emailed the Tribunal saying that he had been "suffering from a mild depression since August". He claimed to have raised his depression with the Employment Judge "on several occasions" and said he needed "more time with support from my family to cope under pressure and I just can't". He also said he was "sorry about what has happened through out the case of another side of me. Which is the depressive side of me."

26. At 9:32 on Friday 16th the Claimant emailed the Tribunal again, enclosing a copy of a document entitled "Claimant Ewan Natty closing submission". In the covering email he referred to his depressive state of mind having been "undiagnosed" by the Employment Judge.

27. The Tribunal wrote to the Claimant at 14:47 on Friday 16th as follows:

> "Your email sent at 16:16 yesterday, requesting more time to produce your written submissions, has been considered. The request is refused for the following reasons.
>
> You have not produced any medical evidence in support of the suggestion that you are currently suffering from depression that affects your ability to comply with the deadline. The Tribunal asked you during the hearing in July whether you required any adjustments for medical reasons and you said you were not prepared to disclose anything and you were not asking for adjustments. It is not the role of the Tribunal to diagnose medical conditions.
>
> The timetable for dealing with submissions was agreed when we adjourned in July. That timetable envisaged that the Tribunal would use this afternoon for deliberations. As you will be aware the Tribunal is now unable to sit on Monday because of the bank holiday. If we extend the time limit for you to produce written submissions the Tribunal would not be able to deliberate this afternoon and we would need to reconvene on a later date. You were aware when we adjourned in July that if you intended to produce written submissions they would need to be ready by this morning. We had adjusted the process to accommodate you, giving you ample opportunity to make oral and written submissions with additional time to consider the respondent's submissions. Your conduct yesterday resulted in your absence from the end of the hearing. You have also said that you do not wish to make oral submissions. In that context a further extension, entailing additional use of Tribunal resources, is not justified.

We note that you submitted a document entitled "closing submission" at 9.32am this morning. We will carefully consider that document during our deliberations."

FACTS

28. On 14 January 2019 the Claimant commenced employment with the First Respondent ("Serco") as a CCTV Operator assigned to Serco's contract with the London Borough of Hounslow. His contract of employment said his probationary period was "3 months, but can be extended to 6 months". He was on a five-day rotating shift pattern including nights. The job involved operating CCTV cameras for both traffic enforcement and community safety. In the traffic enforcement part of the role the Claimant would capture footage of parking contraventions and review footage captured by other operators before issuing PCNs. The community safety part of the role was done in conjunction with the police, controlling the cameras to capture suspicious activity or antisocial behaviour.

29. There were around 24 CCTV staff in the Hounslow contract. From February 2019 the Quality Assurance Manager in charge of the CCTV function was Mariam Lamina, the Second Respondent. The Contract Manager for the Hounslow contract was Wale Abaymoi, the Third Respondent. There were also four supervisors amongst the CCTV team, including Prakash Sherchan who was the Claimant's line manager. The supervisors all reported to Ms Lamina, who in turn reported to Mr Abayomi. It is not in dispute that Ms Lamina and Mr Abayomi are both of Nigerian origin. There were also four other Nigerian staff in the CCTV team. The Claimant is of Jamaican origin. The rest of the CCTV team was ethnically diverse and included staff of Nepali, Chinese, Pakistani and Indian origin.

30. There is a dispute about whether Mr Abayomi knew of the Claimant's Jamaican origin during the Claimant's employment. Mr Abayomi said in his witness statement that he did not know. It is not in dispute that the Claimant provided Serco with a copy of his passport as part of the vetting process when he was offered the job. Mr Abayomi said in his witness statement that he had nothing to do with checking Mr Natty's passport details. That turned out to be incorrect because on the first day of the resumed hearing in September, the day that Mr Abayomi was due to give evidence, the Claimant produced for the first time a copy of the Claimant's passport which was certified by Mr Abayomi as being a true copy of the original. It was a British passport and recorded the Claimant's place of birth as Jamaica. Having seen the document Mr Abayomi accepted that he had certified the copy of the passport, but said he paid no attention to the Claimant's place of birth; he would have simply noted that it was a British passport, which would make the vetting process simpler. We accept that what Mr Abayomi said in his witness statement about the passport was a mistake in his recollection, rather than a deliberate attempt to mislead. It is very unlikely that he would deliberately lie about something that could so easily be disproved. We accept his evidence that he paid no attention to the Claimant's place of birth on his passport.

31. As for the Respondents' knowledge more generally of the Claimant's Jamaican origins, Ms Lamina has never denied that she knew the Claimant was Jamaican and we infer from her witness statement that she did. It is not clear how she

knew, but she accepts looking at the Claimant's passport for the purpose of verifying his identity, so it is possible she happened to notice his place of birth. As for Mr Abayomi and Mr Hawton, however, they both gave evidence that they did not know of the Claimant's Jamaican origins until these proceedings were brought. We have no reason to doubt that evidence. This was a multi-cultural workplace and there is no evidence of any managers having any interest in employees' national or ethnic origins. There is no evidence of the Claimant's Jamaican origins having been raised by him or anyone else until the meeting on 8 August 2019 at which he was dismissed. None of the named Respondents was involved in that meeting.

32. Ms Lamina's evidence to the Tribunal was that when the Claimant started he was good and hard-working, but then all of a sudden he started to have issues with colleagues including her and Mr Sherchan.

33. The Claimant alleges that Ms Lamina would not greet him in the same way as others and she deliberately ostracised him, for example by asking others how they were but not asking the Claimant. She denies this. Her evidence was that sometimes she would greet people by name, and other times she would simply say hello. She said that after some minor issues with the Claimant in February 2019 she spoke to him and he said he preferred to be left alone, so she communicated that to other members of the team. The particular point about the Claimant having said he wanted to be left alone was not put to the Claimant (it having arisen for the first time in Ms Lamina's oral evidence), so we make no finding about it. It is also difficult to make any specific findings about the allegation that Ms Lamina greeted the Claimant differently because he has not given examples and the only evidence is the witness evidence of each of them. In view of the numerous issues and complaints in both directions from March 2019 onwards, we are, however, prepared to accept that the relationship between the Claimant and Ms Lamina after the first couple of months became strained so it is possible that she was not as friendly to the Claimant as to some others.

34. The Claimant also alleges that Ms Lamina deliberately assigned him to "quieter stations", which he believes was detrimental to him. Ms Lamina's evidence was that there was no such thing as a quiet station and in any event staff were not assessed by how many tickets they issued. She said there was no link between productivity and pay. The Claimant gave no evidence to contradict that. Again, it is very difficult for us to make a finding of fact about this in the absence of anything other than assertion from the Claimant and denial by Ms Lamina. Given our conclusions below, we do not consider it necessary to make a factual finding on this issue.

35. On 8 March 2019 the Claimant arrived at work and was assigned to a workstation in the traffic enforcement section. Shortly before 10am Ms Lamina asked him to go to the community safety area and he did so. It is not in dispute that this was to cover for someone who was on a break. When that member of staff returned Ms Lamina asked the Claimant to return to his original workstation. The Claimant's evidence is that she gave this instruction in a loud voice. He agreed in cross-examination that he did not go back to his workstation as instructed. He said he was just about to complete his duties and he was about to record that two of the cameras were not working. He said that when he went to Ms Lamina about this she said "you know what to do". The Claimant

said that when Ms Lamina told him to return to his workstation he said “people don’t speak to me like that”. Ms Lamina then asked the Claimant to go to the “glass room”. It is not in dispute that the Claimant refused to do so. He then went downstairs and spoke to Mr Sherchan, his line manager, in the kitchen area. He explained he was upset about how Ms Lamina had spoken to him and said he wanted to go home. Mr Sherchan encouraged him to stay but the Claimant ultimately left. He reported himself absent once he got home. It is not in dispute that the “client officer” Ms Ramos-Piller witnessed the incident. The client officer was a member of staff employed by the London Borough of Hounslow who worked within the CCTV team as a representative of the client.

36. Ms Lamina says that she asked the Claimant to return to his duty desk and he refused to do so. She says he then shouted at her and she asked him to go with her to discuss things in the glass room, i.e. away from colleagues, but he refused. She denies that she shouted at him or spoke to him in a demeaning way “as if he was a dog”. Mr Pokhrel gave evidence that Ms Lamina was new to the role of Quality Assurance Manager and was not very confident. He said that this sometimes manifested itself as her speaking in a loud voice.

37. Mr Sherchan gave evidence that when the Claimant came to speak to him after this incident he was angry and aggressive. Mr Sherchan said he asked the Claimant not to leave but he left anyway. Mr Sherchan also said that the Claimant had been angry and aggressive towards him on another occasion.

38. Our findings in relation to this incident are set out in our conclusions below.

39. Ms Lamina reported the incident on the same day to Mr Abayomi, her line manager. Mr Abayomi asked Mr Hawton, the Civil Enforcement Officer Service Supervisor (the Fourth Respondent), to commence a disciplinary investigation. He also asked Ms Lamina to send a report of what happened to Mr Hawton and she did so.

40. The Claimant alleges that Ms Lamina falsely claimed to have held a return to work meeting with him on 9 March 2019. This allegation was not put to Ms Lamina in cross-examination and she does not deal with it in her witness statement. The Claimant in his own evidence did not specify how or to whom Ms Lamina claimed to have held this meeting. We assume that the allegation arises solely out of the Claimant having seen a document in the bundle that appears to be a record of a return to work interview conducted by Ms Lamina. We note, however, that the box for “Date of Return to Work Interview” is blank, so we would not necessarily accept in any event that the document supports the Claimant’s complaint.

41. On 11 March 2019 the Claimant submitted a complaint about the incident on 8 March to HR and Mr Abayomi. He wrote:

> “Incident on the 8th March 2019 @ approximately 09:55 hrs to 10:00 hrs @ the Serco Site Derby Road Hounslow.
>
> Titled: Disagreements with Mariam Lamina the Assurance Manager and the Inappropriate Code of Conduct towards I Ewan Natty CCTV from Mariam Lamina @ the Serco Site Derby Road Hounslow.

Ewan Natty SAP : 20099134

Dear Sirs,

I am currently preparing an incident report of truth regarding the above incident in full.

This is deemed to be completed in due course and comply with to the relevant sources of Serco Company Limited.

In respect to the Values of Serco Code of Conduct and any other Serco Limited Contractual compliance where applicable to this specific incident.

With the terms and conditions of employment as well as where the incident is applicable to Mariam Lamina and I Ewan Natty disagreements.

Yours sincerely,

Ewan Natty."

42. Mr Abayomi treated this as a grievance and asked Mr Hawton not to take any further steps as regards the disciplinary process other than speaking to the Claimant to get his account of what happened, pending resolution of the grievance.

43. On Tuesday 19 March 2019 Mr Hawton attempted to send the Claimant a letter by email inviting him to a disciplinary investigation meeting on Thursday 21 March. The email bounced back and Mr Hawton also ascertained that the Claimant was on a rest day on Wednesday 20 March, so he amended the meeting time to 11.45am on Friday 22 March and asked Ms Lamina to hand-deliver the letter to the Claimant on 21 March. Ms Lamina's evidence was that she did so. The Claimant's evidence was that he was on a rest day on 21 March so did not see the letter until 22nd, giving him insufficient time to prepare for the meeting, but that is inconsistent with the contemporaneous emails recording his work pattern. The Claimant also produced in the bundle a handwritten note dated 22 March 2019 in which he recorded that the meeting on 22 March was postponed to 26 March and said the reason was he "was only made aware of an investigation of alleged misconduct on the 21/03/2019, by letter". That is very strong evidence that he received the letter on 21 March.

44. At the resumed hearing on 15 September 2022 the Claimant produced an email dated 21 March 2019 from his private Yahoo email address to "MyHR" about his grievance. The Claimant relied on this as proof that he was not at work on 21 March because he did not have access to his private email at work. We do not accept it is such proof. He could have sent the email from his mobile phone. He claimed not to have internet access on his phone at the time, but we consider that implausible and we have no evidence in support of it other than the Claimant's assertion. It is far more likely that the note of 22 March is correct. We find that the Claimant received the letter on 21 March.

45. The letter stated:

> "I have been appointed by Mr Wale Abayomi to investigate an incident / allegations of misconduct in the CCTV Suite and leaving before the end of your shift on the 8th March 2019, and in order to progress and conclude that investigation it is necessary for me to interview you.
>
> Arrangements have been made for me to interview you at the CCTV Suite on Friday 22nd March 2019 at 11:45am.
>
> You should be aware that this is an investigative interview and a record of the interview will be made.
>
> Specifically, it has been alleged
>
> • On or around 10:05 on the 8th March 2019 you:
> a) Did not want to return to your duty desk
> b) Argued with your Quality Assurance Manager
> c) Raised your voice shouting back at your Quality Assurance Manager
> d) Stated that you would not listen to your Quality Assurance Manager
> e) Left your shift early at 10:15am without prior agreement with your Quality Assurance Manager."

A copy of the disciplinary procedure was enclosed.

46. It became apparent during the hearing that one of the Claimant's principal complaints about the investigation meeting was based on a fundamental misunderstanding. He objected to the minutes of the meeting containing the word "disciplinary" in the header, as if that indicated something more than an investigation and more than had been outlined in the letter. He did not appear to realise that the invitation to the meeting was issued pursuant to the disciplinary process, notwithstanding the mention of misconduct and the fact that the disciplinary procedure was enclosed.

47. Mr Abayomi appointed Eilska Snebergrova to investigate the Claimant's grievance. On 19 March Ms Snebergrova emailed Ms Ramos-Piller, the client officer, asking for a statement of what happened on 8 March 2019. Ms Ramos-Piller provided her account on 21 March.

48. Subsequently, responsibility for the grievance was passed to Durga Pokhrel, a Quality Assurance Manager for Serco on another local authority contract. Mr Abayomi could not remember exactly why this happened but he thought it was because of Ms Snebergrova's availability.

49. On 22 March the Claimant met Mr Hawton. The Claimant objected to the meeting taking place on the basis he had not had enough time to prepare. He also insisted on a "neutral person" being present to take notes. Mr Hawton said that he was neutral, but he ultimately agreed to rearrange the meeting and for a note-taker to attend.

50. On 25 March the Claimant was invited to a "first probationary review meeting". Ms Lamina wrote to the Claimant as follows:

> "As you are aware, your trial employment was subject to a probation period of 3 months.
>
> I am writing to invite you to attend the first probationary review meeting with Jagannath Adhikari to carry out the probationary interview at 14:00 on 2nd April 2019 …"

51. It was clear from the evidence of the Respondents' witnesses that there was a great deal of confusion at the time about how the probation review process was supposed to work. Ms Lamina, Mr Sherchan and Mr Abayomi said that new employees are supposed to have monthly reviews during their three-month probation and then at the end of the three months a decision is made whether to pass or extend. In either case the employee should be informed in writing. Ms Lamina's evidence was that the review that took place on 2 April was a "first" review, not the "end of probation" review at which a decision would be made whether pass the Claimant or extend his probation period. There was no satisfactory explanation for why this "first review" took place so close to the end of the three-month period, or why it was conducted by a different supervisor who was not the Claimant's line manager. Mr Adhikari did not give evidence to the Tribunal and Mr Sherchan's evidence was that he had not had training on the probation process until "after all this", i.e. the dispute with the Claimant.

52. Mr Abayomi accepted in cross-examination that monthly reviews did not take place for the Claimant as they should have done, and that there was no review at the end of the three-month period in which a decision could be taken whether the Claimant had passed or failed his probation, or whether the period should be extended. He said this was the responsibility of the line manager, Mr Sherchan, and that Ms Lamina should have ensured that it happened. He said there was, perhaps, a training issue in this regard and denied that the Claimant had been singled out or treated any differently to anyone else. We had no evidence from the Claimant or elsewhere to suggest that any other new employees were treated differently.

53. The investigation meeting with Mr Hawton took place on 26 March. A minute-taker also attended. The Claimant gave his account of the incident on 8 March, broadly in line with his evidence to the Tribunal. The Claimant accepted in cross-examination that he was given the opportunity in the meeting to put his side of the story in full.

54. On 27 March the Claimant attended a grievance meeting with Mr Pokhrel. Notes of the meeting are in the bundle and the Claimant does not take issue with them. The Claimant complained about Ms Lamina in general and alleged that she was allocating him stations that were less productive, and that he was bullied and left as an outsider by her. He also complained about the incident on 8 March. Mr Pokhrel explained that Ms Lamina was also on probation for her Quality Assurance Manager role and was developing her managerial skills. It was agreed that Mr Pokhrel would speak to Ms Lamina and others in the team and they would try together to improve the workplace environment. Mr Pokhrel said he would give it a month, until 27 April, and if nothing changed the Claimant should let him or Mr Abayomi know so they could open the case again. The Claimant agreed with that outcome. It is not in dispute that Mr Pokhrel emailed the Claimant on 26 April to follow up. Mr Pokhrel said in the email that he

thought there was gradual improvement in the workplace environment but said the Claimant could contact him if he needed any assistance. The Claimant did not do so.

55. On 28 March the Claimant sent by email to Mr Hawton a statement of his account of what happened on 8 March, which he dated 19 March and said in his oral evidence he prepared on 19 March. The Claimant has an idiosyncratic writing style, so it is not always easy to follow what he means, but essentially the Claimant complained about Ms Lamina's conduct towards him including shouting at him. He alleged "Employment bullying" and referred to "the equality act 2010 and basic employment rights". Of his conversation with Mr Sherchan at the time, he said "I explained to Prekash that I won't tolerate being spoken to by Mariam Lamina in such a demeaning, degrading, uncivil, unpleasant, intimidation Code of Conduct it is called institutional bullying".

56. On 2 April 2019 the Claimant's probation review meeting took place with Mr Adhikari. The notes of the meeting were in the bundle. Mr Adhikari used a pro-forma document which we found somewhat confusing and not wholly apt for a monthly probationary review. The first two pages are a "probationary interview checklist" and list matters that one would expect to be explained to an employee before starting employment, or very soon after. The remaining four pages begin with the title "Performance & Development Review (Jan-Feb, 2019)" and appear to us akin to a general appraisal document, or a performance improvement plan. There is no mention of probation in the header of this part of the document; it simply refers to a "review period". It then lists a number of performance criteria, alongside required and actual performance. Mr Adhikari's entries are broadly positive about the Claimant and state under "AOB", "Good, humble, and good team player". In the "overall summary" section it states:

> "I found Ewan improving and learning fast since he joined us. He is confident and professional in community safety in radio and incident documentation, however, a significant knowledge needs to have in knowing camera location and coverage. There has been much improvement in traffic enforcement suite; capture quality been improved, and review is progressing.
>
> I wish you all the best ahead of your learning and improvement."

57. At the very end of the document there is a section entitled "Probationary Rating (Combined Rating for What I delivered and How I delivered it)" with 5 tick-boxes: "Needs action", "Below expectations", "Successfully achieved", "Exceeds expectations" and "Exceptional". The box for "Successfully achieved" is ticked. We consider this part of the document is consistent with it being used as a monthly review, or at least a review *during* the probation period. If it were intended to record the employee's overall performance at the end of the probationary period we would expect it simply to say "pass", "fail" or "extend".

58. The document is not signed either by Mr Adhikari or the Claimant, and it is not clear whether the Claimant either knew of its contents at the time or was given a copy. He has not given any evidence on that issue. It seems doubtful that he was aware of it because he now asserts that it shows he passed his probation, and he did not express that view to anyone at Serco until the final meeting on

8 August 2019 at which he was dismissed, having been given a copy of this document in the pack he was sent in advance of the meeting.

59. In around mid-April Mr Abayomi told Mr Hawton he could continue with the disciplinary investigation. On 17 April Mr Hawton interviewed two witnesses to the incident on 8 March 2019, YO and Ms Ramos-Piller. For the avoidance of doubt, we have not given any weight to these statements in making our own findings below about what happened on 8 March 2019. Neither of the witnesses gave evidence to the Tribunal. Our findings are based on the evidence of the Claimant, Ms Lamina and Mr Sherchan.

60. Ms Lamina says that on 15 May 2019 there was another dispute with the Claimant where she asked him to come over to watch a video clip for training purposes and he refused. She says that he told her that she would need to send him an email. The Claimant in his evidence said that this incident was invented, but when he was cross-examining Ms Lamina the Claimant put to her that he was busy and had not refused her request. The Claimant complains separately of Ms Lamina referring to him as an "all-rounder" on that day in front of a colleague. He evidently considered this to be a slight but despite being asked to explain we still do not understand why. Ms Lamina could not recall whether she referred to the Claimant as an all-rounder.

61. On 20 May Ms Lamina reported the incident on 15 May to Mr Abayomi.

62. Ms Lamina also gave evidence that on 22 May there was a further incident when she was asking staff what uniform they had been issued with and the Claimant answered "go and check the form I signed". The Claimant later accused Ms Lamina of being uncivilised and rude. Ms Lamina reported this incident in writing to Mr Abayomi on 31 May attaching a statement which appears to have been written on 22 May shortly after the incident. The statement says the Claimant had become aggressive and she had to ask him to go back to his seat or go home. She wrote at the end of the statement, "This is the third time this is repeating itself and I would appreciate if this is dealt with." The Claimant said in his evidence that this incident did not happen and claimed it had been invented in order to remove him from employment.

63. Our findings in relation to these two incidents, on 15 and 22 May 2019, are set out in our conclusions below.

64. It is not in dispute that at some stage on 22 May 2019 Ms Lamina climbed onto the Claimant's desk in order to pin a notice to the wall. The Claimant says that without asking she stood on the desk and he backed away for his own safety. He accepted in cross-examination that he did not say anything to her about it at the time. Ms Lamina says she asked the Claimant if she could quickly pin something to the wall and she knelt on the desk for a few seconds. We do not consider it material whether she stood or knelt. We are satisfied that she was on the desk for a very short time, a matter of seconds, and it was obvious whether she expressly said or not, that she was pinning a notice to the wall.

65. The Claimant alleges that on 22 May 2019 Mr Abayomi attended the CCTV building and he and Ms Lamina colluded to engineer his removal from Serco. This included instructing Mr Sherchan to conduct a probation review the following day and to give the Claimant a poor review. The Claimant said he was

told this by a colleague. Mr Abayomi and Ms Lamina denied that any such meeting took place. Again, our findings about this are set out below.

66. Mr Sherchan verbally invited the Claimant to a further probation review meeting and it took place on 23 May 2019. A different pro-forma document was used to the one that had been used on 2 April 2019. This one was entitled "Monthly Probationary Period Review Form". It listed six measures such as "Quality and Accuracy of Work" and "Timekeeping". The Claimant was marked "Average" for two, "Good" for two and "Improvement Required" for both "Team Work" and "Interpersonal and Communication Skills". The second page of the form was completed by Mr Sherchan and reads as follows:

> "If there are areas that require improvement, give details below:
>
> *Ewan is good in community safety camera location and radio communication. He needs to improve in traffic enforcement to capture quality PCN.*
>
> Outline any plans to improve performance:
>
> *Will provide him more training in reviewing fixed PCNs.*
>
> Outline the employee's overall performance:
>
> *His overall performance is average. He needs to improve to maintain good relationship with colleague and to be an active team member."*

Mr Sherchan then wrote: "Next meeting will be on end of June 2019". The document is signed by both Mr Sherchan and the Claimant.

67. During cross-examination Mr Sherchan said he was not aware of the previous probation review document when he completed the form on 23 May 2019. He accepted that the previous review did not reflect that the Claimant had been angry or aggressive, but said that may have been because the Claimant was different with Mr Adhikari. From Mr Sherchan's point of view, he thought the Claimant was aggressive and was not a good team player. As for the Claimant's probation status, Mr Sherchan said in response to questions from the Employment Judge that he was aware the Claimant had been employed for more than three months by this stage, but had no record of him having passed. He also did not know if the probation period had been extended. He believed the next meeting in June would be the "end of probation" meeting. As noted above, he said that at the time he had not had any training on how to follow the probation procedure.

68. The Claimant alleges that on 31 May 2019 Mr Abayomi spoke to him and put pressure on him to write a statement admitting aggressive behaviour. The Claimant emailed Mr Abayomi the same day referring to "Discussion partly in which Wale Abayomi requesting of I Ewan Natty in writing a report for an alleged occurrence of an incident". He then asked Mr Abayomi to clarify which incident he was referring to and said he had "no trust in you has the Serco contract manager at CCTV Hounslow" and therefore he was copying the email to "MyHR".

69. Mr Abayomi replied later that evening:

> "Dear Ewan,
>
> Reporting reaching me from Mariam Lamina, Quality Assurance Manager, stating that on 22nd of May at around 12pm an incident occurred between the two of you where you are aggressive towards her. Kindly respond to me in writing your recollection of this incident within CCTV Control Room."

70. The Claimant claims that this email is evidence of Mr Abayomi pressuring him to provide a statement admitting he was aggressive. We consider that was one of a number of occasions when the Claimant was either unable or wilfully refused to understand the plain meaning of a document. On any sensible reading of the email Mr Abayomi was doing no more than informing the Claimant that he had received a report of aggressive behaviour and asking the Claimant to provide his recollection of the incident in writing.

71. On 5 June 2019 Mr Abayomi wrote to the Claimant as follows:

> "Dear Ewan,
>
> Invite to Probationary Review
>
> This letter is to inform you that you are required to attend a probationary review meeting to discuss your performance, conduct and capability during your probationary period. The meeting will be held on 12th June 2019 at 1230 hrs at Serco Parking Office […]. If you are unable to attend, please let me have an alternative date, which must be within 5 working days of the original date.
>
> Please be advised that a potential outcome of this meeting may be up to and including termination of your employment.
>
> The following people will be present at the hearing: Wale Abayomi, Contract Manager, holding hearing and David Hawton, CEO Supervisor, taking notes.
>
> If you wish, you may bring a representative with you to the meeting. Your representative may be a Colleague from work or a trade union representative, but not a close relative, solicitor or anyone who does not work for the Company or trade union. Your representative can speak on your behalf (but not answer questions) and help you prepare for the hearing. Should you wish to bring a representative, please would you let me have their name in advance of the hearing.
>
> Please ensure that any documentary evidence that you wish to discuss at the meeting must be provided to me at least two working days prior to the date of the hearing."

72. The Claimant replied on 7 June 2019 saying that he would be referring the letter to "HM Tribunal Court Tribunal Service". He said he needed more time and

requested an alternative date. Mr Abayomi emailed the Claimant on 11 June saying that he had been trying to contact the Claimant by phone but he was not picking up. He asked the Claimant to provide an alternative date for the meeting.

73. Shortly afterwards, on 11 June, the Claimant emailed "MyHR" with a copy to Mr Abayomi, purporting to "appeal on the grounds of employment discrimination". He said this was "Concerning the invite letter dated the 5th of June 2019 for a probation meeting…". He said he would not be available for the meeting until he had spoken with "the legal authority regarding my employment".

74. The Claimant says that between 12 and 16 June he was unfairly made, by Ms Lamina, to work five night shifts in a row. Ms Lamina does not deny that the Claimant worked five night shifts in a row, but says that this was pursuant to a rotating shift pattern which applied equally to others. During the Claimant's cross-examination of Ms Lamina on this issue he put to her that another member of staff "almost had a breakdown" after working five consecutive nights. Ms Lamina said she did not remember this. We accept that the Claimant did work five consecutive night shifts, but there is no evidence that he was in any way singled out and we do not accept that he was.

75. On 12 June the Claimant was invited to a rescheduled meeting to take place on 24 June. On 13 June Mr Abayomi emailed the Claimant as follows:

> "Kindly confirm what you are appealing against as there is no decision has been reach apart from rescheduling the probation review meeting till the 24th of June 2019 but if you are unhappy with this date and want to treat this as a grievance kindly let me know please."

76. Mr Abayomi did ultimately decide to treat the Claimant's email as a grievance and he appointed Keiron Clarke, Performance and Compliance Manager, to investigate. Mr Abayomi wrote to the Claimant on 21 June as follows:

> "I am writing in response to your emails of 11 June 2019 where you have raised an "appeal on the grounds of employment discrimination". This email was in response to my invite to you to attend a final probation review meeting to discuss your performance during your probationary period.
>
> Your performance during your probation period was reviewed with you at a probation review meeting held with you on 23rd of May 2019 with Prakash Sherchan and your probation period was extended until 30th of June 2019, due to concerns regarding your performance, specifically in the areas of Team Work and Interpersonal and Communication Skills.
>
> I have made two attempts to hold the final probation review meeting with you; on 12 June 2019 and 24 June 2019, and you have said that you are unable to attend until you have spoken with the legal authority regarding your employment with Serco. You have not

> provided me with an alternative date when you will be able to attend a meeting.
>
> Please be aware that your probation period will not be concluded until we have held the final probation review meeting with you.
>
> In response to your "appeal on the grounds of employment discrimination" please note that no decisions have been taken regarding your employment. We want to discuss your performance with you at a final probation review meeting, where you will be given the opportunity to discuss any concerns that you may have and to ask any questions you have regarding the process.
>
> In response to the comments you have made in your email of 11 June 2019 regarding "employment discrimination", in line with our Grievance policy, we would like to offer you the opportunity to attend a meeting with an independent manager to hear your concerns. Kieron Clarke, Performance & Compliance Manager will be available to meet with you on 26th of June 2019 at 1230pm. Please contact Kieron on […] to confirm your attendance, or to ask any questions that you may have in advance of this meeting. You may if you wish bring with you any documents you have in relation to your concerns."

77. Mr Clarke also wrote to the Claimant and it is not in dispute that Mr Clarke and the Claimant subsequently communicated by phone and text. The Claimant consistently told Mr Clarke that he did not want a meeting because he had already contacted ACAS. It became apparent during the Tribunal hearing that the Claimant believed at the time, and still believed, that the ACAS early conciliation process was itself a "grievance process" and that no further meetings should take place with Serco outside of the ACAS process until it was concluded. This was another significant misunderstanding by the Claimant that appeared to us to have negatively affected his ability to engage with his managers and Serco generally.

78. On 1 July 2019 Ms Lamina raised with the Claimant that he had incorrectly issued a PCN where there were flashing lights in the video clip. The policy was that PCNs should not be issued if there were flashing lights because that would indicate there had been an emergency vehicle in the area. The Claimant complained about this the following day saying that he was not to blame and alleging, "This harassment is one of many bullying from Mariam Lamina against I Ewan Natty…".

79. On 10 July 2019 Mr Hawton produced a disciplinary investigation report. It appears that the report was not passed on to anyone else in management at the time. The report outlines the process of interviewing the Claimant and the witnesses about the incident on 8 March 2019. It concludes:

> "**4. Conclusion**
>
> Based on my findings above, I believe that EN has a serious disregard for any kind of authority of his Line Manager (ML). EN made it quite clear that he was not going to follow any instruction, despite knowing that the instruction to return to his work station was correct and that he knew he

should have already done so without being asked. When offered a One-to-One twice to resolve the issue EN refused to participate.

EN walked out of the CCTV Suite during his working shift, which left a work station unattended and unoperated. This also affected the deployable hours that SERCO must provide on a daily basis to the CCTV Suite. This in turn could affect SERCO KPI's (Key performance Indicators) with the Client.

EN was clearly very loud and disruptive to the extent that if he had not left the CCTV Suite of his own accord a Client Officer would have told him to leave.

In interview with me he clearly only wanted his own version of events considered and when those were written down he contested them as selective, prejudice, discriminating to stereotype as well as in reference to its use of language in relation to its inaccuracies for clarity despite my making my own notes separate from my note taker.

I believe that EN has no respect for kind of authority including with his Line Manager, nor did he like to be questioned and I would suggest that this is going to continue if he remains an employee of SERCO.

5. Recommendations

My recommendation is that there is a case for action to be taken in this specific case against Mr Ewan Natty (EN) for having a total disregard for his Line Managers authority, for his behaviour in disrupting the CCTV Suite during the incident and abandoning his duty by walking out during his working shift and failing to return so affecting the CCTV operation, deployment and SERCO KPI's (Key Performance Indicators) to the Client."

80. Mr Hawton's evidence was that the process never got to the stage of deciding whether to convene a disciplinary hearing because the Claimant's employment was terminated on 8 August.

81. On 11 July the Claimant wrote to Mr Abayomi. It is another long and somewhat confusing email, referring to his intention to "take this matter further within the context of the employment Law" and to an "ACAS investigation". The email said, however, that the Claimant was now prepared to attend the probation review meeting.

82. On 5 August 2019 the Claimant was invited to a meeting on 8 August 2019, to be conducted by Ras Dewan, Operations Manager. Mr Abayomi's evidence was that Mr Dewan was appointed "to be neutral", after the Claimant's repeated refusal to attend earlier meetings. The letter of 5 August 2019 also enclosed a 41-page PDF pack which included a copy of the managerial guidelines for final probationary period review meetings, the Claimant's job description, training records and the two previous probation reviews. It also included statements and interview notes relating to the incidents on 8 March 2019 and 15 and 22 May 2019.

83. The Claimant presented his claim to the Tribunal on 7 August 2019.

84. The probation review meeting took place on 8 August 2019. It was conducted by Mr Dewan. Another manager, Ms Wynter, attended to take notes. The Claimant was not accompanied by a colleague or union representative. Mr Dewan said in his witness statement that he had never met the Claimant before and found him "a very difficult character during the course of this meeting". At one stage during the Tribunal hearing the Claimant became very agitated about Mr Dewan having used the word "character" and kept saying "I am not a character". This appeared to be another possible misunderstanding by the Claimant, focusing on the use of the word character rather than the fact that Mr Dewan alleged the Claimant had been difficult. Mr Dewan's statement continued:

> "11. … He came across as being quite impatient. He was very loud in his verbal dealings with me and could not sit still in one place. I found that every time he talked he was getting louder and indeed would approach me and get closer to me.
>
> 12. I would add that it was my impression that Ms Wynter was very intimidated and to my knowledge she is an experienced note-taker at such meetings.
>
> 13. I find that Mr Natty would not let me finish what I wanted to say, and as the meeting progressed he became more and more restless. He was not able generally to evidence statements that he made."

The notes of the meeting record Mr Dewan saying at an early stage, "Mr Natty please don't raise your voice, as you are moving too close to me and to a degree becoming aggressive in your communication." The Claimant replied,

> "This is how I speak, I am not raising my voice. I have a stammer problem, so I speak like this to get my words out. This is a violation of my rights, I am not going to change for you. I have been bullied and discriminated against."

Mr Dewan again later asked the Claimant to stop raising his voice.

85. The Claimant alleged during the meeting that Ms Lamina spoke to Jamaicans in the same way as him and "they leave the job", whereas she speaks to Nigerians "in a better tone of voice".

86. Mr Dewan asked the Claimant what equipment was used to carry out enforcement. The Claimant replied "you should ask them not me." Mr Dewan also asked the Claimant about the incident on 8 March and the Claimant responded by showing Mr Dewan the notes of the probation review on 2 April 2019. He alleged that "what happen from May to date is all fake". Mr Dewan said that he was there "to review if you have demonstrated your suitability for this role". The Claimant continued to make allegations of discrimination and bullying. Mr Dewan eventually said, "I have heard enough and you are being extremely difficult to communicate with".

87. After an adjournment Mr Dewan informed the Claimant he had failed to demonstrate suitability for the role of CCTV Operator and had therefore failed his probation. His contract of employment would be terminated. Mr Dewan's evidence was that he reviewed Mr Hawton's disciplinary investigation report during the adjournment and took it into account. He said he had intended to ask the Claimant about the report during the meeting but the Claimant's behaviour in the meeting was "very difficult indeed" and he was "shocked by how aggressive he was". The notes state that after the Claimant was informed of the outcome he started shouting.

88. It is not in dispute that Mr Dewan asked the Claimant to hand over company property and leave the building. There is, however, a dispute about whether Mr Dewan threatened to have the Claimant arrested. Mr Dewan's evidence was that the Claimant "went absolutely ballistic" when informed of the decision and would not leave when Mr Dewan told him to. Mr Dewan then told the Claimant that unless he left Mr Dewan would have no option but to call the police because the workforce were being intimidated. Mr Dewan denies saying that he would have the Claimant arrested. In fact the Claimant then called the police and had the call on loudspeaker. The operator advised that the Claimant would need to take up the issue with his employer.

89. Our findings as to the disputes of fact about the Claimant's and Mr Dewan's conduct on 8 August 2019 are set out below.

90. On 12 August 2019 Mr Dewan wrote to the Claimant to confirm his dismissal. The letter states:

> "I am writing to outline the outcome to the probationary hearing that you attended on Thursday 8th August 2019. During the hearing you chose not to be represented.
>
> As you are aware, during the course of your initial probationary period, your probationary period was subsequently extended. During this time, you were given a chance to improve your performance specifically relating to Team Work and interpersonal skills. You were also offered support (if required), however you have unfortunately still not met the standards that the organisation requires, which was clearly stipulated in the review carried out by Prakash Sherchan which was signed by you on 23rd May 2019. You have failed to demonstrate suitability for the role of CCTV Operator as a result of poor conduct as a result of the following
>
> 1. Raising your voice to your line manager Mariam Lamina on 8th March 2019
>
> 2. Failure to follow instructions from your line Manager Mariam Lamina on 8th March 2019 to return to your duty desk and attend a one to one meeting
>
> 3. Leaving the workplace without authorisation on 8th March 2019
>
> 4. Failure to follow instructions from your line Manager Mariam Lamina to view a video clip for training purposes

> 5. Failure to follow instructions from Mariam Lamina on 22nd May 2019 to return to your seat
>
> 6. Refusing to answer a question from your line manager on 22nd May 2019 related to how many uniforms had been issued to you in the previous week and replying rudely and aggressively that Mariam Lamina should check the form he had signed
>
> Your last day of service with the Company will be 8th August 2019 and you will be paid in lieu of your contractual notice period of two weeks. You will however, receive payment for any outstanding annual leave, which you have accrued but not yet taken, up until the date of dismissal. Your P45 will be forwarded to your home address."

91. The Claimant makes a general allegation that Ms Lamina repeatedly shouted at him, including on one occasion shouting: "why are you writing the wrong hours on the signing in time sheet?" Ms Lamina denies ever shouting at the Claimant. She could not recall an issue with the time sheet. She accepted that people sometimes made mistakes that she had to correct but said that she treated the Claimant in the same way as everyone else.

92. The Claimant also alleges that on an unspecified occasion Ms Lamina made a comment about Jamaicans being hostile. He elaborated on this in cross-examination, saying it was an occasion when he was trying to enter the building. Ms Lamina came down the stairs fast and as she reached the bottom the Claimant had already entered. He then went into the canteen and she was chasing him, saying "you Jamaicans are so hostile". Ms Lamina denies ever making such a comment.

93. Our findings on these matters are set out below.

THE LAW

94. The Equality Act 2010 provides, so far as relevant:

> **13 Direct discrimination**
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
>
> …
>
> **26 Harassment**
> (1) A person (A) harasses another (B) if—
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of—
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
> …

(4) In deciding whether conduct has the effect referred to in subsection (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.

27 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.

…

39 Employees and applicants

…

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

(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

…

123 Time limits

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

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

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

…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

…

> **136 Burden of proof**
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

95. Section 44 of the Employment Rights Act 1996 provides:

> **44 Health and safety cases**
> (1) An employee 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—
> …
> (c) being an employee at a place where—
> (i) there was no [designated health and safety] representative or safety committee, or
> (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety…

96. A "detriment" is treatment that a reasonable worker would or might consider disadvantaged him or her. An unjustified sense of grievance cannot amount to a detriment. (Shamoon v Chief Constable of Royal Ulster Constabulary [2003] ICR 337, HL, per Lord Hope at paras 34-35)

97. As to the burden of proof, a claimant must show that there is a *prima facie* case of discrimination before the respondent is required to discharge the burden of showing that the discrimination did not occur: Ayodele v Citylink Limited [2018] IRLR 114, CA, per Singh LJ at paras 92-93. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient to shift the burden of proof: Madarassy v Nomura International plc [2007] ICR 867.

98. At the first stage, the Tribunal should have regard to all of the available evidence, including evidence adduced by the respondent (Madarassy paras 57 & 71). This may include evidence about whether the alleged discriminatory acts happened; whether, if they did, they were less favourable treatment of the complainant; about actual comparators and whether the comparisons made by the complainant are of like with like; or about the reasons for the differential treatment. If the Tribunal concludes that the impugned treatment simply did not happen, the burden of proof does not move to the respondent (para 72).

99. As regards victimisation, a complaint about general unfairness, as opposed to detrimental action based on a protected characteristic, does not constitute a protected act. Whether an employee has impliedly alleged a contravention of the Equality Act 2010 will depend on the circumstances (Durrani v London Borough of Ealing EAT 0454/12).

CONCLUSIONS

The factual disputes

100. As noted above, the Claimant sent written submissions which we have taken into account. The submissions are largely about him suffering from depression, which he says affected his behaviour during the hearing and ability to conduct the proceedings. He alleges that the Employment Judge discriminated against him on medical grounds, and that she was "twisted in her own agenda of selfishness". He also alleged that she "became paranoid" about the Claimant recording the proceedings and that she was "incompetent" in not seeing that the Claimant was encountering symptoms of depression.

101. We of course acknowledge the possibility that the Claimant was suffering from depression and we sympathise with the inherent stress involved in pursuing a claim without legal or other support. We note, however, that we had no evidence of any mental health condition other than documents in the bundle relating to of a course of therapy the Claimant undertook in 2019 which mention depression and anxiety. As we explained to the Claimant in the Tribunal letter of 16 September, it is not the role of the Tribunal to diagnose medical conditions. When we directly asked the Claimant about medical issues and the possible need for adjustments he said he was not prepared to disclose anything and was not asking for adjustments. In those circumstances there is a limit to the allowances we can or should make for the Claimant. We agree with the Respondents' submissions that he showed "a remarkable (and unusual) lack of courtesy to the Judge". We would not hold that lack of courtesy against the Claimant except that it is, in the particular circumstances of this case, relevant to the findings of fact we are required to make. The Respondents submit that the Claimant's conduct "indicates a general lack of respect for and defiant attitude towards authority", and that he lacked insight into how he comes across to others. We acknowledge that the context of representing oneself in the Tribunal is not the same as the employment context, but there are some striking parallels between the behaviour we observed and the behaviour alleged by the Respondents. Where relevant, we have taken that into account in reaching our findings of fact. Further, in the absence of any medical evidence we cannot accept that the Claimant's behaviour in the hearing was caused by depression or that it is improper for us to take it into account.

102. We have already rejected the Claimant's evidence about not receiving Mr Hawton's letter inviting him to the investigation meeting until 22 March 2019. Of course people can make mistakes about such things, especially when asked to recall a precise date more than three years later, but we consider the Claimant's insistence that he did not receive the letter on 21 March 2019 was damaging to his credibility. As it happens, nothing turns on this particular factual dispute because the meeting was postponed in any event, but the Claimant believed that it was a very significant issue and maintained his position in the face of overwhelming evidence (in the form of a note he wrote himself, and which he added to the bundle at the last minute) that he received the letter on 21 March. He then produced an email at the resumed hearing which he said proved that he was not at work on that day and claimed, somewhat implausibly, that he did not have internet access from his phone. We consider that the Claimant became fixated on this dispute and embellished his evidence to support a position that was obviously not correct.

103. We also consider the Claimant's evidence and submissions about Mr Abayomi's email of 31 May 2019 suggest that he was not a reliable witness because of his tendency to misconstrue and take offence at ordinary, unobjectionable events. The Claimant's continued insistence that the email accused him of aggressive behaviour and put pressure on him to admit such behaviour casts doubt on his reliability generally.

104. As to the incident on 8 March 2019, it is not in dispute that the Claimant refused two instructions from Ms Lamina, first to return to his workstation, and secondly to go to the glass room with her to discuss the matter. We are prepared to accept that Ms Lamina may have spoken to the Claimant in a loud voice, perhaps being frustrated that the Claimant had not returned to his workstation when the other member of staff returned from a break. We find, however, that the Claimant overreacted and created an unnecessarily confrontational situation. We give some weight to the evidence of Mr Sherchan who was not involved in the dispute but said that the Claimant was angry and aggressive when they spoke after this incident. We also note that the Claimant said in cross-examination that he did not believe he was required to follow reasonable instructions from Ms Lamina because she was not his direct line manager. It was evident from the Claimant's evidence that he took an unduly narrow approach to his obligations under his contract of employment, believing that he was only required to do things that were in writing and/or as instructed by his direct line manager. This accords with our own observations of the Claimant during the hearing, where he was often extremely argumentative and unwilling to listen or to follow guidance or instruction. The Claimant's own account of the incident, that he was perfectly calm while Ms Lamina shouted at him and treated him "like a dog" is not credible. Overall, and taking into account our concerns about the Claimant's credibility generally, we prefer the Respondents' evidence about this incident. We find that Ms Lamina instructed the Claimant to return to his workstation, as she was entitled to do, and he reacted in an unreasonable and aggressive manner. Ms Lamina's conduct after the Claimant started shouting at her, including instructing him to go to the "glass room" so that she could have a one-to-one conversation with him, was a reasonable response to the Claimant's behaviour. We also find that the Claimant left work without authority.

105. As to the 15 May incident, on balance we accept Ms Lamina's account that she asked the Claimant to come over to watch a video for training and he refused. She reported it a few days later. The Claimant's bare denial is not reliable in light of his poor credibility generally and his apparent admission while questioning Ms Lamina that he had not complied with her request because he was "busy".

106. As for the "uniform" incident on 22 May, Ms Lamina's account of this incident is entirely consistent with the Claimant's behaviour that we have found proved on other occasions and with his behaviour during the Tribunal hearing. She also made a contemporaneous report of it. We accept that it happened as she described, i.e. that the Claimant responded to her reasonable enquiry to all staff about what uniform they had been given by saying, in an aggressive manner, "go and check the form I signed". He then became agitated and Ms Lamina had to ask him to return to his seat. Again, for the avoidance of doubt, we have not placed any weight on statements that appear in the bundle from

other employees about this incident (which support Ms Lamina's account) because those employees have not given evidence to us.

107. We do not accept there was any conspiracy or collusion on 22 May as the Claimant alleges. We do consider it likely, however, that Mr Abayomi and Ms Lamina were prompted by the uniform incident and the incident on 15 May to check on the status of the Claimant's probation and they noticed that the review process had not been properly carried out. Although Ms Lamina did not say so in her evidence, perhaps due to reluctance to concede failings in the probation review process, we consider it likely that she asked Mr Sherchan to hold the review meeting on 23 May because of her concerns about the Claimant's conduct and in a belated attempt to complete the probation review process.

108. We turn to the meeting on 8 August 2019. Mr Dewan, who did not know the Claimant previously and had no prior involvement in the Claimant's employment, described conduct that is again consistent with the Claimant's conduct on other occasions during his employment and with his conduct during the Tribunal hearing. It is also consistent with the notes of the meeting. We found his oral evidence, including his descriptions of the Claimant invading his personal space, powerful and credible. We accept that his account is accurate. As to the dispute about whether Mr Dewan threatened to have the Claimant arrested, we note Mr Dewan accepts saying that he may need to call the police. We do not accept he used the words "have you arrested", but we accept that that is what the Claimant thought he meant.

109. We should record that the Claimant became extremely upset in the hearing when discussing this meeting and its aftermath. He said he was traumatised by Mr Dewan's treatment of him. When questioning Mr Dewan the Claimant described feeling delusional at the time and like he "wanted to fly". We do not wish to diminish how the Claimant felt at the time, or how he feels now about his treatment by Serco or any individual, but objectively we find that, as on previous occasions when challenged or given firm instruction, the Claimant overreacted and became extremely confrontational. Further, we do understand why the Claimant may have felt aggrieved, having seen the notes of the 2 April 2019 probation review meeting for the first time when he received the pack on 5 August 2019, and believing that they showed he had passed his probation, but that did not begin to justify the way he behaved in the meeting and afterwards.

110. We accept Mr Dewan's evidence that the reasons for terminating the Claimant's employment were those given in the dismissal letter and, as described in his witness statement, the Claimant's behaviour during the meeting. Those matters would have led any employer to be concerned about the Claimant's suitability for the role. Mr Dewan did not know the Claimant or have any prior involvement with him, and there is nothing to suggest the reasons he gave at the time were not the genuine reasons for dismissal.

111. The final factual dispute to resolve is the Claimant's allegation that Ms Lamina shouted at him repeatedly. The Claimant has not given evidence of any occasions when this happened except those specifically dealt with in the list of issues. The only allegations not already dealt with above are an occasion when it is claimed Ms Lamina shouted at the Claimant about a timesheet and another

when she allegedly made a comment about Jamaicans being hostile. As regards both of these allegations there is a straight dispute of fact between the Claimant and Ms Lamina. There is no record of the Claimant having made any complaint about either incident, in contrast to other occasions where he has made multiple written complaints. Given our doubts about the Claimant's credibility generally, and noting also his tendency to overreact and misunderstand things, together with the lack of detail in the Claimant's evidence about these incidents and the lack of any evidence to support his account, on balance we find that they did not happen.

112. We reach the following conclusions on each of the complaints set out in the list of issues.

Direct race discrimination

2.1.1

113. We have found that the Claimant received Mr Hawton's letter on 21 March 2019, inviting him to the investigation meeting on the following day. We did not hear any evidence about what time of day the letter was handed to the Claimant, so we are unable to say whether he was given a full 24 hours' notice, but that is irrelevant because the substantive investigation meeting did not take place until 26 March. Even if the Claimant had less than 24 hours' notice of the meeting on 22 March, therefore, it is incorrect to say that he was "not sent a warning letter". Further, convening a meeting that was then adjourned at the Claimant's request to give him more time is not capable of amounting to a detriment.

2.1.2

114. It is not in dispute that there was no minute-taker at the meeting on 22 March 2019. Mr Hawton wanted to take his own minutes, but he agreed to the Claimant's request for a minute-taker at the next meeting on 26 March 2019. This, similarly, is not capable of amounting to a detriment.

2.1.3

115. The purpose of the meeting, as explained in the invitation letter, was simply for Mr Hawton to interview the Claimant about the incident on 8 March and note his account of what happened. There was no need for any witnesses so this allegation is, again, not capable of amounting to a detriment.

2.1.4

116. The Claimant has not specified any breach of the Respondents' "Code of Conduct" or explained what aspect of Mr Hawton's handling of the investigation he complains about (other than the matters in paragraphs 2.1.1 to 2.1.3). As noted above, the Claimant sought to argue during the hearing that any mention of the word "disciplinary" equated to disciplinary action and he did not seem to understand that Mr Hawton was simply conducting an investigation. The confusion perhaps arises because various matters of conduct, including the 8 March incident, were referred to at the final probation hearing and in the outcome letter. It was always clear, however, from the

invitation letters and the outcome letter, as well as Mr Dewan's explanations during the meeting on 8 August, that this was a probation review meeting, not a disciplinary hearing. There is no reason why Mr Dewan should not have considered those matters as part of the probation review. This allegation is not made out on the facts.

2.1.5

117. We have found that this comment was not made.

2.1.6

118. This allegation effectively repeats the allegation at 2.1.4. It is not clear what aspect of the investigation the Claimant believes was not fair or transparent. To the extent he complains of the disciplinary investigation forming part of his probation review we have already concluded that there was no reason why it should not have done. There was no unfairness that could amount to a detriment.

2.1.7

119. This appears to be another complaint along the same lines. It is not clear what is meant by "disciplinary grounds meeting". If the complaint is a failure to establish "grounds" before holding the investigation meeting, there was no requirement to do so and this is not capable of amounting to a detriment. If the complaint is a failure to hold a disciplinary hearing *after* the investigation meeting, again that cannot constitute a detriment in circumstances where the incident on 8 March was merely one of several conduct matters taken into account at the probation review meeting on 8 August and the Claimant was given ample opportunity to respond to the allegation during the meeting with Mr Dewan.

2.1.8

120. This allegation is far narrower than the complaints about the probation process that the Claimant made during the hearing. The Claimant's contract says that the probation period was "3 months, but can be extended to 6 months". There is nothing in the contract specifying the process for such an extension. On the facts we have found, there was no formal decision to extend the Claimant's probation after three months; the matter was simply overlooked until 22 or 23 May 2019, more than four months after the start of the Claimant's employment, at which stage the Claimant was treated as still being within his probation period. Mr Dewan referred in his outcome letter to the Claimant's probation having been extended on 23 May 2019, but there is nothing to suggest this was a formal extension as envisaged in the contract. Mr Sherchan simply recorded there would be a further meeting at the end of June 2019. To the extent that that amounted to an extension, the Claimant was informed because he signed the notes. There was no other decision to extend, so no "failure to inform".

121. The Claimant's main argument during the hearing was that he had, in fact, passed his probation on 2 April 2019. That is not how the case is put, but for the avoidance of doubt we do not consider such an argument would have

succeeded. Clearly there were failings in the way the Claimant's probation was handled, and we have found that the form used on 2 April 2019 was somewhat confusing. The language "successfully achieved", in particular, is liable to misinterpretation. We have found, however, that the form was more consistent with an appraisal *during* the probationary period than an "end of probation" review. Importantly, the three-month period had not yet elapsed. Further, the fact that the Claimant was not aware of the document until he was sent it on 5 August 2019 suggests that it was not intended to record a decision that the Claimant had passed his probation. Even though the process was somewhat haphazard, one would expect the Claimant to have been informed if he had passed his probation. We do not accept there was any managerial decision that the Claimant passed his probation.

122. We do accept that the 2 April 2019 review gave the Claimant broadly positive feedback, in contrast to the 23 May 2019 review, but we do not accept there is anything surprising or suspicious about that. We accept Mr Sherchan's evidence that he had experienced the Claimant behaving aggressively and the review he completed reflected his genuine impression of the Claimant. By the time of the 23 May 2019 review there had been three incidents in which the Claimant was alleged to have behaved in a rude, aggressive and/or insubordinate manner. The comments and scores are unsurprising.

123. The failure to hold a final probation review meeting after three months was not exemplary management, but there is no evidence, and we do not find, that the Claimant was singled out in that regard. It was clear from Mr Sherchan's evidence that this was a wider training issue.

124. The pleaded case, failure to inform of an extension, is not made out on the facts. To the extent that any other failings in the probation process constituted a detriment, there is no basis on which we could find that it had anything to do with the fact that the Claimant is Jamaican so the burden would not shift to the Respondent.

2.1.9

125. The only meetings that took place on 17 April 2019 were the investigation meetings with the two witnesses to the incident on 8 March. The Claimant was not involved in those meetings and there was no requirement to inform him the meetings were "for conduct".

2.1.10, 2.1.13 & 2.1.14

126. The initial delay in the investigation process was caused by the Claimant having raised a grievance. We did not hear any evidence as to why Mr Hawton did not produce his investigation report until 10 July 2019, almost three months after he had interviewed the two witnesses. The delay in itself is not alleged to amount to a detriment and we do not consider it could be. The real complaint is that the investigation was not "fair or transparent" and the outcome was predetermined, "selective" and a "whitewash". The fairness issue is already dealt with above. There is no basis on which we could find that the outcome was predetermined, selective or a whitewash. The conclusions and recommendation were supported by the evidence Mr Hawton had obtained.

2.1.16

127. The Claimant has not disputed or produced any evidence to counter Ms Lamina's evidence that the shifts he worked were pursuant to a rotating shift pattern that applied to all staff. Indeed the Claimant said when cross-examining Ms Lamina that another member of staff had worked five consecutive nights. We therefore do not accept he was treated less favourably than others or singled out because of his race.

2.1.17 & 2.1.18

128. This allegation is confused, and must have intended to refer to the meeting on 23 May 2019, not 8 August. The Claimant has not made any specific allegations about Mr Sherchan's conduct during the meeting. As for overlooking the previous review, Mr Sherchan's evidence was that he was not aware of it. That was a failing in the process, but it did not result in any detriment to the Claimant. It would have made no difference to Mr Sherchan's own assessment of the Claimant. We have not accepted that the Claimant passed his probation on 2 April 2019, so the review on 23 May 2019 needed to take place.

2.1.19

129. This allegation is vague and we cannot see that it adds anything to the more specific allegations made by the Claimant. The list of issues refers to point 17 of the Scott Schedule, which alleges a deliberate failure to hold a further probation meeting as envisaged in the notes on 23 May. If that is the allegation the Claimant seeks to pursue here, it is misconceived. He was invited on 5 June to a further probation meeting to take place on 12 June. He sought to "appeal" that invitation and repeatedly refused to attend until the meeting eventually took place on 8 August.

130. As for the more general allegation that the Claimant was set up to fail, we do not consider this to be either logical or plausible. The Claimant's case is that Mr Abayomi and Ms Lamina hired the Claimant, knowing from the outset (because they saw his passport) that he was Jamaican, and then spent the whole of his employment trying to engineer his dismissal because he was Jamaican. That does not make sense and we do not accept it is what happened. The reason the Claimant "failed", i.e. the reason he was dismissed, was because of his challenging and at times wholly unacceptable behaviour towards his managers.

Dismissal

131. The list of issues does not include the specific allegation that the Claimant's dismissal was an act of direct race discrimination, but that was clearly part of the Claimant's amended claim. For the reasons given above, however, we do not consider there is any basis on which we could conclude that the Claimant's dismissal was because of his race. We have accepted that the reasons given by Mr Dewan were the true reasons for the dismissal.

132. All of the complaints of direct race discrimination therefore fail and are dismissed.

Harassment

3.1.1 – 3.1.3

133. We have found that Ms Lamina may have used a loud voice when she asked the Claimant to return to his workstation, but we do not accept that any of her conduct on 8 March crossed the threshold for harassment, i.e. we do not accept it had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. At most it was impatient or irritable conduct. Nor is there any basis on which we could conclude it was related to race. As for "sending the Claimant to glass room so she could monitor him", there is no basis for this allegation. She said it was in order to have a one to one meeting with him and the Claimant has not challenged that. There was no reasonable basis for the Claimant to believe that this was in order to "monitor" him. If he did not know what the glass room was, or why she had asked him to go there, he could simply have asked.

3.1.4 & 3.1.5

134. We have already found that Ms Lamina's response to the Claimant's conduct on 8 March 2019 was reasonable. Ms Lamina denies using the words alleged at paragraph 3.1.4, but even if she did it was in the context of the Claimant refusing to comply with her request that he return to his workstation. The screens referred to were in the community safety room, which the Claimant should have left when the other member of staff returned from their break. If Ms Lamina became frustrated with the Claimant during the conversation that would have been understandable. It had nothing to do with his race. We also do not accept that the alleged comment, even if was said in a dismissive manner as the Claimant contends, could constitute harassment.

3.1.6 – 3.1.8

135. We have accepted that the relationship between Ms Lamina and the Claimant became strained, so it is possible that she was not as friendly to him as she was to others. If that was the case, on the balance of probabilities we find it was because he was extremely difficult and confrontational, not because of his race. We also would not accept that these allegations, even taking the Claimant's case at its highest, could constitute harassment.

3.1.9

136. This is another allegation that is not capable of constituting harassment. Further and in any event the Claimant has not explained in what way he would be disadvantaged by being given a "less productive" workstation. There was no evidence of any monitoring of productivity or any consequences of low productivity. Nor has the Claimant established that he was treated differently to anyone else.

3.1.10

137. We have found that this allegation is not proved on the facts.

3.1.13

138. This allegation cannot succeed because we have found that the Claimant's absence was unauthorised. We do not accept that Ms Lamina ever agreed that the Claimant could leave work on 8 March 2019.

3.1.14

139. As noted above, the Claimant has not explained in what way Ms Lamina "stated" that she held a return to work interview with the Claimant. He has not given evidence of her having asserted that she did so to anyone. We have assumed that this allegation arises out of the document in the bundle that appears to be a record of a return to work interview, but as we have already noted the Claimant did not cross-examine Ms Lamina about the document and we would not accept in any event that it constitutes an assertion that a return to work meeting was held, without knowing the context in which it was produced and to whom it was given. Further, taking the allegation at its highest Ms Lamina completed the form without holding a return to work interview. There is nothing to suggest that was related to race and it could not cross the threshold for harassment.

3.1.15

140. As we have already said, we do not understand why the Claimant considers it offensive to be called an "all-rounder". We agree with the Respondent's submissions on this point, that the Claimant's contention during cross-examination of Ms Lamina that he was "not an all-rounder", rather he was "flexible", was typical of his idiosyncratic use of and understanding of words. This conduct is not capable of constituting harassment.

3.1.16

141. We have found that the "uniform incident" occurred as alleged by Ms Lamina on 22 May 2019, so the complaint she made about it was not false. Further, there was no obligation on Ms Lamina to speak to the Claimant, whether formally or informally, before raising the matter with her line manager. Mr Abayomi properly asked the Claimant for his version of events after the report had been made. There is nothing in this complaint that could constitute harassment.

3.1.17

142. The Respondent accepts that there was no separate investigation into the Claimant's conduct on 22 May 2019. We cannot see how this could possibly constitute harassment. There was no obligation on the Respondent to conduct an investigation and any failure to do so could not conceivably have had the proscribed purpose or effect under section 26 of the Equality Act 2010.

3.1.18

143. It is not in dispute that Ms Lamina climbed onto the Claimant's desk. The Claimant made no complaint about it at the time. There is no basis on which we could find that this was unwanted conduct related to the Claimant's race.

We certainly would not accept it had the proscribed purpose under section 26. If it had the proscribed effect it was not reasonable for it to do so, given that it was obvious Ms Lamina was pinning a notice to the wall and climbed onto the desk for a matter of seconds. This cannot constitute harassment.

3.1.19 & 3.1.20

144. This complaint is against Ms Lamina and/or Mr Abayomi but neither of them was in the meeting on 23 May 2019 so it must refer to them having told Mr Sherchan about the complaint, rather than the fact that it was raised during the probation meeting. Ms Lamina accepts that she spoke to Mr Sherchan about the incident on 22 May, but says it was not racially-motivated. We accept that. For the avoidance of doubt, we agree with the Respondent's submissions that this was an entirely proper matter to be raised during a probation review at which the Claimant's interpersonal skills were being discussed. There is no basis on which we could find either that this was related to the Claimant's race or that it had the proscribed purpose or effect under section 26.

3.1.21

145. The Claimant relies for this allegation on the email from Mr Abayomi but as we have already noted it did not put any pressure on the Claimant or "force him to admit that he behaved aggressively". It simply asked for his account. This complaint is not made out on the facts.

3.1.23

146. It is not in dispute that Ms Lamina raised an issue with the Claimant about a PCN having been issued when there were flashing lights in the footage. She was entitled to raise this as the Quality Assurance Manager. The Claimant has not explained why he believes she was "incorrect" but even if she were there is no evidence that she raised the matter other than in good faith. There is no basis on which we could find that this incident was related to the Claimant's race or that it had the proscribed purpose or effect.

3.1.24 & 3.1.25

147. Mr Abayomi denies saying to the Claimant that he would not report any further incidents concerning Ms Lamina to HR. There is no documentary or other evidence to support the Claimant's contention that he said this. In light of our general observations about the Claimant's credibility, on the balance of probabilities we prefer Mr Abayomi's evidence on this issue. Even if this did happen, there is nothing to suggest it was related to race and nor would it reach the threshold for harassment.

3.1.26

148. We have found that this alleged comment did not happen.

3.1.27

149. The Claimant has not given any evidence about Ms Lamina "humming" on 8 August 2019 and nor did he cross-examine her about it. The allegation is not made out on the facts.

3.1.28 & 3.1.29

150. We have already found that Mr Dewan's evidence of the meeting on 8 August 2019 was accurate. The Claimant was aggressive, spoke loudly and came too close to both Mr Dewan and the note-taker. In those circumstances telling the Claimant that he was too loud and that he should move away was entirely reasonable and cannot constitute harassment. Mr Dewan accepts telling the Claimant that he had not demonstrated his suitability for the role, which the Claimant could easily have interpreted as being "unfit for work". Even if Mr Dewan used the words "unfit for work" that would not have been inappropriate given the Claimant's extremely unprofessional and challenging behaviour during the meeting. Nothing about Mr Dewan's conduct could be said to be either related to race or to have the proscribed purpose or effect.

3.1.30

151. We have already found that the reason for the Claimant's dismissal was the fact that he did not pass his probation, as set out in the dismissal letter. It was not related to race. Nor could it have had the proscribed purpose or effect, bearing in mind the requirement to consider reasonableness in section 26(4). As we have already said above, we do not wish to diminish the impact of the dismissal on the Claimant; we have no doubt that it affected him very badly. We simply do not accept that it had anything to do with the fact that he was Jamaican, and given the legitimate concerns of his managers about his behaviour in the workplace it was not reasonable for the dismissal, expressly because of those concerns, to have had the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

3.1.31

152. We have found that Mr Dewan said he would have to call the police if the Claimant did not leave, which the Claimant may well have interpreted as a threat to "have him arrested". We accept that this was because of the Claimant's aggressive behaviour and his resistance to leaving the building. It was not related to race and was a reasonable response to the Claimant's extremely difficult behaviour.

153. The complaint of harassment are therefore dismissed.

Victimisation

154. The Claimant relies on two alleged protected acts.

4.1.1

155. The email of 28 March 2019 did not contain any allegation of a contravention of the Equality Act 2010 and was not therefore a protected act. The closest the email comes to such an allegation is the comment, "I thought I

was not entitled to the equality act 2010 and basic employment rights". There are also allegations of "bullying" and "institutional bullying". The email does not, however, mention race or any other protected characteristic. Nor is there anything about the context that could have led the Respondents to understand that this was a complaint of race discrimination. The Claimant had never made such an allegation orally or in writing and had never raised his own race or ethnic origins as an issue with anyone. This mere reference to the Equality Act 2010 and "bullying" is not sufficient to constitute a protected act.

4.1.2

156. There was no grievance submitted on 1 July 2019. This paragraph must be intended to refer to the Claimant's email of 2 July 2019. He complained in the email of "harassment" and "bullying" by Ms Lamina but again he did not mention race or any other protected characteristic. The email did not contain an allegation of a contravention of the Equality Act 2010, whether expressly or impliedly, so it was not a protected act.

157. The victimisation complaints must therefore fail.

158. The detriments relied upon are addressed below for completeness.

4.2.1

159. We have already dealt with the failings in the probation process above. There was no "failure to inform" the Claimant of an extension because there was no actual decision to extend the probation. In any event, there is no basis on which we could find that any failures in the probation process were because the Claimant had raised a grievance on 28 March 2019. The grievance was taken seriously and resulted in a meeting with Mr Pokhrel. It was the Claimant's later conduct in May 2019 that prompted the further probation review meeting on 23 May 2019.

4.2.2

160. We have already found that this allegation is not made out on the facts.

4.2.3

161. This is not in dispute, but it is not capable of being a detriment given that there was no requirement to conduct a formal investigation into the incident, and given we have accepted Ms Lamina's evidence about what happened any investigation is likely to have resulted in a negative outcome for the Claimant.

4.2.4

162. There was no "threat" to terminate the Claimant's employment in the letter of 5 June 2019. The letter properly informed the Claimant that one possible outcome of the meeting was the termination of his employment. This complaint is not made out on the facts, and in any event given our findings above it had nothing to do with the fact that the Claimant had raised a grievance on 28 March 2019.

4.2.6

163. We have already dealt with this allegation above. The complaint is not made out on the facts.

4.2.7 – 4.2.10

164. We have already dealt with all of these alleged detriments. We have accepted that Mr Dewan's conduct was a reasonable response to the Claimant's behaviour in the meeting and afterwards. There is no basis on which we could find that Mr Dewan's conduct, or the decision to dismiss the Claimant, had anything to do with the Claimant having raised a grievance on 28 March 2019 or his email of 2 July 2019. Indeed there is no evidence that Mr Dewan even knew about those communications.

Health and safety detriment

165. This complaint is misconceived. The right not to suffer a detriment arises from an employee bringing to the employer's attention, by reasonable means, circumstances connected with work which the employee reasonably believes are harmful to health and safety. The Claimant relies on Ms Lamina climbing on his desk, but he does not assert that he raised any concerns about it with anyone. He said in his witness statement that he heard a colleague say that Ms Lamina's actions were a health and safety risk. The list of issues refers to the Claimant "voicing his concerns in relation to health and safety", but that is not borne out in the Claimant's witness statement or his oral evidence. This complaint therefore cannot succeed.

7.1.1

166. This complaint is not made out on the facts. The Claimant did not voice his concerns and nor has he given any evidence that Ms Lamina shouted at him in response.

7.1.2 & 7.1.6

167. Again, these allegations are not made out on the facts. Mr Abayomi did not claim the Claimant had been aggressive. He said that an allegation had been reported to him and he asked the Claimant for his account. There was no attempt to coerce the Claimant into signing a report.

7.1.5

168. We have accepted that the Claimant acted as alleged by Ms Lamina, so that is the reason she raised issues about his conduct. There is no basis on which we could find she raised those issues, or Mr Abayomi dealt with them, because of the incident with the desk.

7.1.7

169. There is no evidence of Ms Lamina having "changed the rota". We have accepted that the Claimant worked those shifts pursuant to a rotating shift

pattern that applied equally to others. There is nothing to link it to the incident with the desk on 22 May.

Jurisdiction

170. Finally, for completeness, the complaints relating to Ms Lamina's conduct on 8 March 2019 and the following day are out of time. Given our findings above, there was no continuing act of discrimination. The ordinary time limit for bringing a complaint about these matters expired at the latest on 8 June 2019. The Claimant did not bring proceedings or contact ACAS by that date. The Claimant has not given any explanation for the delay. It appears that he only contemplated Tribunal proceedings after 5 June 2019 when he received the invitation to the final probation review meeting. He then retrospectively sought to complain about everything that he perceived to be unfair since the beginning of his employment. We have considered the complaints in full, so the point is academic, but the Claimant has not established it is just and equitable to extend the time limit so the Tribunal has no jurisdiction to consider the complaints about the events of 8/9 March 2019.

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Employment Judge Ferguson

Date: 14 October 2022